Neutral Citation: [2016] NIQB 102 | *Ref:* **KEE10018**

Judgment: approved by the Court for handing down | *Delivered:* **4/10/2016**

(subject to editorial corrections)*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

PATRICK CARRAGHER

Plaintiff;

-and-

FRANK DAWSON

First Defendant;

COUNCIL FOR CATHOLIC MAINTAINED SCHOOLS

Second Defendant;

VERY REVEREND T RAFFERTY AS NOMINEE OF THE BOARD OF GOVERNORS OF ST RONAN'S PRIMARY SCHOOL

Third Defendant.

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KEEGAN J

Introduction

[1] The plaintiff's claim is brought by writ of 13 September 2010. The plaintiff claims damages for personal injury, loss and damage sustained by reason of the harassment, negligence, breach of contract and breach of statutory duty of and by the defendants and each of them, their servants or agents, in or about the inspection, supervision, management, safe keeping and control of the plaintiff and the working operations and the working environment within which the plaintiff was engaged and further in and about the employment of the plaintiff by the defendants and while the plaintiff was employed by the defendants and arising out of the course of the said employment.

[2] The writ referred to the provisions of Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. There was no argument in relation to this provision at the hearing.

[3] The plaintiff also claimed breach of the Harassment (Northern Ireland) Order 1997. However early in the hearing this head of claim was abandoned and so the plaintiff proceeded with the case in relation to negligence and breach of contract only.

[4] The first defendant Mr Frank Dawson was the Principal of St Ronan's Primary School where the plaintiff was a teacher at the relevant time. The second defendant the Council for Catholic Maintained Schools (CCMS) is the employer. The third defendant is the Board of Governors who has a management and oversight responsibility for the school. This hearing was in relation to liability only, as both counsel agreed that if liability was established there would be a separate hearing in relation to quantum. Mr Michael Potter BL appeared for the plaintiff and Mr Ringland QC and Mr Phillips BL for the defendants. I am grateful to counsel for their written and oral submissions and for their ability to isolate the core issues among a myriad of papers and a protracted history in this case. I have set out the salient events as follows.

Background

[5] The plaintiff was born on 3 March 1959. He is a qualified teacher. The plaintiff began his employment as a teacher in St Patrick's Primary School in Newry from in or about 1980. He then obtained employment in St Ronan's in 1994 upon the opening of that new school. The plaintiff's case is that he had a happy and successful teaching career during this time. The plaintiff raised no concerns during the period 1994 to 2000 when a Mrs Mulgrew was the Principal in St Ronan's School. In 2000 Mr Dawson became the Principal. At the outset there were no particular problems for the plaintiff. However, gradually issues were raised by the plaintiff against the Principal. These culminated in a situation in 2003 when the plaintiff resigned from his post as a Physical Education (PE) co-ordinator. The plaintiff had been in this post for some time and the plaintiff felt that as a result of the new Principal's management style he could not continue in the post. In particular the plaintiff raised an issue that the Principal had not attended at prize giving. The plaintiff was on sick leave from November 2003 to March 2004.

[6] At this time the plaintiff was also the teacher representative within the school for the National Association of Schoolmasters and Union of Women Teachers (NASUWT). There was correspondence sent on behalf of the NASUWT to the Principal in relation to clarification of the proposed monitoring and evaluation of the curriculum scheme. A meeting was suggested to deal with the plaintiff's decision to resign as PE co-ordinator however this did not take place on the basis that his decision was voluntary. These matters provide some context but do not form the

subject matter of the claim. The significance of this information is to provide a background to what happened to the plaintiff as his employment progressed.

August 2006, policy change regarding Heinemann mathematic texts

[7] There were no specific issues raised by the plaintiff between March 2004 and August 2006. However, in August 2006 an issue arose as a result of correspondence sent by the Principal to all teachers in relation to a proposed new method for teaching mathematics within the school. The plaintiff was affected by this given that he was a maths teacher. This new development is encapsulated in a letter from the Principal to all teachers which is dated 31 August 2006. This letter is entitled "Re Heinemann Textbooks and Resources." The letter states that:

> "Over the past number of years there has been a slipping away from the textbooks and other accompanying resources allocated to be covered in each year group and this has led to a cramming of a huge amount of work when the children arrive at P6 and P7. To redress the situation I have instructed Mrs Patterson to allocate the following textbooks and resources to each year group as follows."

[8] The letter refers to a new regime whereby the Heinemann textbooks were to be re-allocated. The school had used the Heinemann model which has various levels depending on the particular class involved. It is described as a dynamic model involving books and worksheets. The August 2006 correspondence was a change in school policy. In a nutshell this was that classes would only use the one level of text for their year. For example Heinemann 5 would be used for P5 without the flexibility of being able to use Heinemann 4 as well. Previously there was flexibility about the text used and classes were usually a year behind with the texts. The rationale for change was to redress a perceived issue of cramming of a huge amount of work when the children arrived at P6 and P7.

[9] This progression and change of policy was no doubt a significant issue within the school. The core of the plaintiff's case was that this was undertaken without consultation. It is correct that the plaintiff raised issues with this new procedure as indeed did other teachers. A further letter was sent by the Principal to the teachers dated 20 October 2006. In this letter the Principal stated that following his note of 2006 and after listening to the views and opinions which were expressed he has given the issue further deliberation. The letter says that he has met with Mrs Patterson who was the maths head teacher and he indicated some changes to the structure whereby there would be more flexibility in introduction of the new regime. It seems that this was essentially to provide a cross-over between the old system and the new system. This led to a situation whereby the new system was not introduced until 10 January 2007.

[10] Notwithstanding the deferral of implementation, the plaintiff complained about the entire philosophy behind the introduction of this policy. He effectively complained that it had been introduced without consultation and that it was difficult to proceed with it without using the books from the previous year. The plaintiff stated that the children would have difficulties with the change. As part of his case the plaintiff also alleged that he had been prevented from getting the P4 books to assist in the cross-over on the direction of the Principal and as a result he felt that he had been singled out by the Principal.

[11] In an amended defence served on 24 April 2014 the defendants pleaded that all of the plaintiff's claims were barred by provision of the Limitation (Northern Ireland) Order 1989. No issue was taken with this in so far as the claims in negligence go and it was accepted that only matters from September 2007 can form the basis of that claim. The breach of contract claim extends further back however no vigorous argument was made in relation to that case. The main argument was in relation to negligence. However, I did hear evidence in relation to matters arising prior to 13 September 2007 because it was significant in establishing context. I heard evidence from the plaintiff and two witnesses Ms Keely and Ms Hutchinson. I heard evidence from the first defendant Mr Frank Dawson. I heard evidence from two consultant psychiatrists Dr Brian Mangan and Dr Brian Fleming. I also received written arguments from counsel which were augmented by oral submissions at the conclusion of the case.

[12] I have referred to the issue of the maths Heinemann books in brief compass given the timeframe within which the plaintiff can bring his claim in negligence. It is however relevant to the plaintiff's grievances which are rooted in the school's change of policy.

The Principal's grievance

[13] Before I deal with the plaintiff's grievances there are some other matters which are of important to mention. Firstly, the issue of grievances actually starts with a grievance brought by the Principal, Mr Dawson against the plaintiff. This was in relation to an incident which allegedly occurred on 24 January 2007 which led Mr Dawson to make the following allegations:

(a) That Mr Carragher refused to comply with the reasonable directive which Mr Dawson gave to all staff to implement the school's mathematics policy which had been decided at a staff meeting in August 2006.

(b) That Mr Carragher used foul language and threatening behaviour towards him.

[14] There was an investigation of these allegations by a sub-committee of the Board of Governors. At a convened hearing the Principal and the plaintiff gave

evidence. There is correspondence from the plaintiff's union the NASUWT outlining some procedural issues and the plaintiff's disappointment with the decision to proceed to a disciplinary hearing. In any event the matter came to a conclusion and the plaintiff was informed by letter dated 15 March 2007 that:

> "The sub-committee of the Board of Governors of St Ronan's Primary School, having given careful consideration to the oral and the written submissions made by yourself and your trade union representative, have concluded that the charge of insubordination i.e. failure to carry out a reasonable directive given by the Principal was not proven."

[15] The disciplinary procedure initiated by the Principal was not taken any further. It appears in the body of a note in relation to this consideration that the Board of Governors could not make any determination on whether or not the plaintiff used foul language or acted in a threatening manner towards the Principal.

The plaintiff's first sick leave

[16] The other matter which is relevant in relation to this time frame is that the plaintiff was on sick leave from April 2007 to December 2007. I note an entry in the plaintiff's general practitioner notes and records of 26 April 2007 where Dr A Mulvaney sets out a surgery attendance which states:

> "1. Fluoxetine capsules are prescribed 20 mgs for daily consumption.
>
> 2. Mood decreased. The certificate backdated 17 April.
>
> 3. Two disciplinary issues resolved and was proven to be correct. Now is it clear that proper consultation did not take place."

An entry of 14 May 2007 noted that the plaintiff was feeling a bit better but it also noted depression and referred to a continuation of the prescription for Fluoxetine.

[17] A psychiatric report was obtained on the plaintiff and this was completed by Dr Helen Harbinson, consultant psychiatrist. This report is dated 6 October 2007. Dr Harbinson was asked to provide a detailed medical report on the plaintiff's health, fitness to teach and ability to provide a regular and sustained service. In the conclusion section of this report Dr Harbinson opines:

> "In response to difficulties at work Mr Carragher developed a depressive illness in April 2007. He felt

> helpless, frustrated and powerless to effect any change in his situation. He was subjected to disciplinary procedures and was observed. His sleep and appetite were poor. He lost weight. He lost energy and interest. He was tearful and emotional. His general practitioner prescribed beta blockers and anti-depressants for him and referred him to a cognitive behavioural therapist. He discontinued his medication in August. He has found cognitive behavioural therapy of considerable benefit. He is keen to return to teaching. He is presently fit to do so. Hopefully he will not find himself again in situations which make him feel frustrated and helpless in the way he did before. Frustration and helplessness are well recognised causes of depression. He is determined to be positive and that is to his credit."

[18] I note a letter from the plaintiff's general practitioner Dr A Mulvaney of 23 November 2007. In it Dr Mulvaney says that he has studied Dr Harbinson's report. He opines that:

> "His symptoms clearly relate to as yet unresolved matters arising at work. He will be at risk of relapse if he is expected to return to work without this issue being addressed."

There follows correspondence about the difficulties in arranging a return to work meeting. In a letter of 22 November 2007 the plaintiff's union wrote to the Principal indicating that the letter sent advising him of the meeting caused distress and anxiety because the plaintiff understood from CCMS that an officer from the Council and its representative would be in attendance. As a result it took some time to re-arrange the return to work meeting but this did occur on 14 December 2007.

The return to work meeting: 14 December 2007

[19] The minutes of the return to work meeting have been provided. The meeting took place in CCMS premises in Newry. The Principal and the plaintiff were present. Also present was a union representative Aileen Hogg and a representative of CCMS Angela Armstrong. In the body of the minutes it is stated that the plaintiff had required the Chair of the Board of Governors to be present. Ms Armstrong explained that to keep the meeting in line with others that have been held and to keep it informal, the Chair was not asked to participate in this meeting.

[20] The context of the meeting appears to me to be tolerably clear. At the outset Ms Armstrong invited the plaintiff to go through the issues which he felt would need to be resolved before he returned to school. It is noted in the minutes that the plaintiff gave his assessment of these issues. The plaintiff states that he hoped that

he would get some answers though he appreciated he may not. He pointed out that he was originally off ill as he felt he had been treated differently from other teachers, but both his GP and Dr Harbinson recommended that certain issues needed to be addressed before he came back to school.

[21] Ms Armstrong asked Mr Carragher specifically what he felt he would need addressed so that he could go back into school. The plaintiff indicated in answer to this that he felt in the past that he was denied access to resources for his class. The plaintiff asked the Principal what resources he would have access to on his return. The Principal replied that the plaintiff would have access to the resources currently available in his class. The Principal reported that the staff were working away on the new scheme. He also said that there had been some areas highlighted by the staff and that these would be looked at. The Principal specifically stated that the review would be finished by mid-February.

[22] The plaintiff then went on to refer to training. It appears from the minute that the plaintiff reported that there had been training for the primary 5 teachers on the new curriculum. Ms Armstrong asked if the Principal would contact the Southern Board to see if any training could be accessed for Mr Carragher. The Principal agreed that he would do this. There was then some discussion about when the plaintiff would go back to school. It was agreed that the plaintiff would return to work on Thursday 20 December 2007 and then go into class on 21 December. It is noted in the minutes that the plaintiff asked if he could get any information which had been handed out to staff on training days. The plaintiff also sought clarification on the staff review that was carried out prior to him going into work and when it was going to happen. The meeting concluded on the basis that there would be a return to work, the plaintiff's issues having been ventilated before the various parties who were present.

The plaintiff's return to work: December 2007-April 2009

[23] The plaintiff did return to work just before Christmas 2007 and he continued with his teaching in the New Year. In January 2008 the plaintiff wrote to the personnel officer at CCMS Ms Armstrong to ask for a meeting with the Chairman of the Board of Governors Mr Michael Warde. Mr Warde replied by letter of 24 January 2008. That letter asks that the plaintiff set out the items that he intended to raise at the meeting. In response, the plaintiff referred back to the fact that he had wanted the Board of Governors Chair to attend at the back to work meeting on 14 December 2007. He said that the reason why he requested the attendance at the meeting was to ask the Chair to oversee any agreements that may have been reached at the meeting as he was concerned about this due to past experience. The plaintiff went on in this letter to say that he was very concerned that the following agreements from that meeting have not been acted on. He sets out three matters:

> "(i) Training that Mr Dawson agreed to access has not materialised.

(ii) Clarification of staff review and minutes of the staff review to be copied to me have not been forwarded.

(iii) Meetings between Mr Dawson and myself were not always witnessed by a third party."

[24] In the letter the plaintiff stated that he was anxious and worried about the above issues and would appreciate a meeting as soon as possible. Thereafter, it appears that a meeting was not set up for the plaintiff. The plaintiff in his submissions to the court has set out a long litany of telephone calls to Angela Armstrong CCMS and Geraldine McCourt CCMS which he says were not answered in or around this time period. There is an e-mail from Geraldine McCourt to Angela Armstrong of 12 June 2008 whereby she says

> "Have had Paddy Carragher, [St Ronan's PS] on the phone to me several times in the last few months in relation to issues he still has about the grievance he had taken against him by the Principal which he was cleared of. He then went off on sick leave. At the meeting you had with him and Frank Dawson before he returned to work were there recommendations suggested as a way forward for Mr Carragher to assist him in his return to work after his sick leave. Can you maybe check any notes etc? Mr Carragher claims that recommendations were to be put place but have never been implemented. Any joy you can let me know ok."

[25] There is a replying e-mail from Angela Armstrong to Geraldine McCourt of 13 June 2008 whereby Geraldine McCourt states:

> "This is a note of the meeting which took place prior to him coming back. The main issues agreed were: resources for Mr C class, training to be provided on P5 curriculum - minutes of staff meeting re staff review, always someone else at meetings - I know the Paddy rang me a few times as he was waiting the minutes so I am not sure if he ever did get them. Hope this helps."

[26] There then appears to have been an impasse. On 25 September 2008 the plaintiff wrote to Mr Donal Flanagan who is also a member of the CCMS. He stated that he has received some advice and support from Angela Armstrong and Geraldine McCourt which was beneficial and reassuring during a difficult period. However, he states that he "would appreciate a little more help from your officers as

a breakdown in communication has resulted in some outstanding issues and concerns still remaining unclear and unresolved. "

[27] There follows a chain of e-mail correspondence about the issue of what was agreed at the back to work meeting. On 16 November 2008 the plaintiff wrote to his union representative who was present. Again he was asking about the number of conditions that were to be implemented for his return to work. He stated that almost 11 months later almost all of the conditions have either been contravened or ignored. Most pertinently the plaintiff states:

> "The one condition that is impacting on my health at the moment is the refusal to bring me up-to-date with professional training days to assist me in the execution of my professional duties as a teacher. Not only have I been expected to administer new tests (INCAS) but I am also expected to report to parents next week on the results of these tests without any professional training. I have constantly asked and requested meetings of the CCMS and my Board of Governors but to no avail re these issues. I trust you appreciate my anxiety re these issues."

[28] There is also correspondence which is dated 25 November 2008 from the plaintiff's union representative. This is not a reply from Ms Hogg but from her professional assistant Alan Longman. It starts that:

> "Aileen's understanding of matters arising from the representations would appear to differ from yours. She has advised that there was no agreement regarding the provision of professional training days in relation to the administering of the new INCAS tests."

This letter goes on to say:

> "That you will appreciate that although teachers have an entitlement to seek to secure training provision there is no actual entitlement to receive. The important point is that you retain a record of your request to receive such training. Should you have difficulties in relation to the future delivery of the INCAS then you have a record that you requested but were not afforded the opportunity to access training specific to these new tests. I am not aware that there are any training days specific to INCAS are you?"

The plaintiff's first formal complaint: 28 June 2008

[29] There was a parallel process in relation to these issues because on 28 June 2008 the plaintiff began a complaints procedure in relation to alleged bullying and harassment by the Principal. From September 2008 to December 2008 I note that some time was spent trying to resolve the issues raised by the plaintiff by way of mediation. However, this was not possible and in particular in relation to this issue I note the correspondence of 18 December 2008 from CCMS. This says that:

> "In response to your conversation with Mairead Logue, personnel officer, I wish to confirm that the offer of mediation as outlined to you in a letter from Mr M Warde, Chairperson, dated 18 September is now not an option. The Board of Governors would have been open to mediation as a means of reaching a resolution if both parties agreed."

In relation to this, the Principal, Mr Dawson, did not agree to mediation and as a result the grievance procedure had to proceed.

[30] It is important to provide a flavour of the complaint. This was broken down into a number of headings which I summarise as follows:

- inequitable allocation of resources-regarding Heinemann texts

- whiteboards in school - the plaintiff alleged discrimination in their provision

- singling out and/or treating differently from other teachers - this relates to the Principal bringing a formal grievance against him and reference is also made to discrimination

- undermining a teacher in front of others - this relates to how the Principal dealt with the Heinemann issue

- inappropriate use of formal procedure - this relates to the grievance taken against the plaintiff

- behaviour that has the effect of belittling, demeaning, ridiculing, patronising etc to another teacher

- negative criticism which cannot be justified and is contrary to the assessment of the teacher's peers

- suppression of career development - this includes a reference to training

- training

[31] There is a letter from the plaintiff to Mr Donal Flannagan dated 5 September 2008. In this letter the plaintiff stated that he was fearing a protracted period of illness "I view my health is once again being put at risk through the inertia described". The plaintiff says that Dr Harbinson and his own GP have clearly stated in their reports as requested by the CCMS and our Board of Governors that unless the issues are resolved I will get sick again. These issues cannot be resolved without the intervention of the CCMS as I had repeatedly tried on my own with no success. The plaintiff says that "I really need advice and dialogue with these people as a matter of urgency. This whole situation has become an embarrassment not only to me but also the people I work with."

[32] The complaints made by the plaintiff on 26 June 2008 proceeded to a hearing. An investigatory panel was established by the Board of Governors at St Ronan's Primary School. The panel met with the plaintiff accompanied by his union representative on 11 February 2009. They then met with the Principal accompanied by a representative on 10 March 2009. There was a further meeting with the plaintiff on 20 April 2009. The panel then called witnesses to a hearing on 29 May 2009 to 3 June 2009 and a report was made available of the panel findings dated June 2009. This report deals with the grievances raised by the plaintiff and a reply is given by the Principal. It is a report which I do not replicate in full but the overall conclusion is clearly one encouraging both parties to try and resolve issues.

[33] I quote as follows from the conclusion of the report:

> "The panel respect and value Mr Carragher and Mr Dawson as professional educators and their significant contributions to the education of the children at St Ronan's Primary School. The panel acknowledges the serious effects the issues highlighted have had on Mr Carragher and Mr Dawson. The panel's aspirations would be, in keeping with the ethos of St Ronan's Primary School, that Mr Carragher and Mr Dawson might agree between them to meet and resolve their differences without involving independent mediation. The panel understands this would involve relinquishing past hurts and finding a way to forming an effective working relationship. To this end, a member of the Board of Governors would make themselves available for this meeting if required. The panel appreciate how difficult this will be but request they give this very serious consideration. In the event that this way forward is not acceptable to either Mr Carragher or Mr Dawson the panel would urge independent mediation to take place as soon as possible."

[34] The report does support the plaintiff's position in certain aspects of his grievance. For instance, it said that a meeting on 11 December 2008 was ill-judged by Mr Dawson. It found that the plaintiff had been undermined in front of other teachers. A finding was made that the plaintiff had received negative criticism due to the poor working relationship with the Principal. The panel did make a finding that the Principal should have made a greater attempt to secure a place on training courses as agreed at the back to work meeting. Notwithstanding these positive comments the plaintiff brought an appeal of the determination to an Appeal Panel.

Events post complaint

[35] After the Panel reported there was a series of correspondence which has been set out in the papers and which I summarise as follows. Firstly, by letter dated 2 September 2009 the plaintiff wrote to Mr Warde of the Board of Governors. He asked that the Board of Governors deal with the issue of how the matter of his position can be moved on. He said that he was very disappointed and annoyed that for him to accept any change in his circumstances he had to instigate a grievance procedure to have his professional concerns acknowledged. He said that it was unfortunate that agreed mechanisms and procedures recommended by CCMS unions, Boards of Governors and Labour Relation Agencies were not employed by Mr Dawson at an early stage in seeking a resolution of the dispute. This correspondence also stated that the plaintiff sought help and guidance from all of the parties in the hope of arriving at a resolution which was amenable. It said that the plaintiff made repeated efforts to have the differences reconciled informally. The plaintiff goes on to say that he is pleased that the Investigating Panel have recognised and validated many of the issues brought to its attention but he is concerned that the Investigating Panel have not indicated how this whole process can be moved forward. He asks the Appeal Panel to remedy this situation in their report.

[36] There is a fuller letter from the Union Representative, Richard Egan, of 26 September 2009 whereby he points out that the plaintiff has lodged an appeal to his complaint but the appeal has not been heard and appeal is now well outside the procedural timeframe. Mr Egan points out that the Board of Governors is aware from Mr Carragher's medical records and his current medical condition that continuing delays in addressing the work related issues have the effect of delaying his recovery and in fact cause him immediate distress. This letter strongly urges the Board of Governors to address the matter as quickly as possible to set a date when the issue can be resolved.

[37] The plaintiff is asked to attend with Occupational Health in or around this time and there is a report dated 17 October 2009. This report from a Dr A J McGreevy states that there is an underlying medical reason for the plaintiff's non-attendance at work due to anxiety and depressive illness. This report states that:

> "I feel that Mr Carragher is currently unfit for work and while I would encourage the grievance process is brought to a close as soon as possible I cannot foresee that he will return to work in the current school. That is given his perception of his relationship with his head teacher."

[38] The report states that this man's condition is likely to be considered a disability under the Disability Discrimination Act. The report does state that the plaintiff could make a successful return to work at another location.

[39] There is also a letter of 10 November 2009 from Dr A Mulvany which states that the plaintiff has been suffering from depression from early 2007. It states that;

> "He continues to be very symptomatic despite high dose anti-depressants and ongoing cognitive therapy. He has been off work since April 2009."

This letter also states:

> "My understanding is that his symptoms are directly related to issues arising from his working environment. It is clear that an absence of any meaningful resolution of his grievance procedure is having a direct effect on his ability to recover from his depression. I would strongly recommend that all efforts to ensure procedures are completed in a timely fashion in order to prevent further deterioration in his already serious condition'."

[40] Another letter from the same doctor of 27 November 2009 states:

> "I trust that you have already had letters supporting Mr Carragher's case. I am deeply concerned about the length of time it has taken to resolve this matter. I want to emphasise the seriousness of the impact on this man and that any prolonged process most likely will have an adverse effect on his mental health."

[41] The plaintiff continued to write to the CCMS, to Mr Warde Chair of the Board of Governors and to the Reverend John McAreavey. The plaintiff met with the Reverend John McAreavey as he confirms in his letter of 12 January 2010. At this time the plaintiff also enlisted the assistance of political representatives to assist him in moving on with the grievance procedure. There is a letter of 23 February 2010 whereby the plaintiff's union writes to CCMS asking that a meeting take place in the near future. It is noted in this letter:

> "Hopefully during this meeting we can explore ways to move matters forward, as I have serious concerns that progress to getting a resolution to this difficulty is not only disappointingly slow for both Paddy and NASUWT but that any further delay will further exaggerate the impact the difficulties are having on Paddy's health."

[42] There is a response to an elected representative from CCMS dated 3 March 2010. This response does accept that the timescales are outside the noted timescales for bullying and harassment procedures however there have been difficulties in setting up a meeting. This letter suggests that Mr Carragher declined to engage in mediation following the investigation process. Given the indication about mediation in that letter the elected representative responds and points out that in correspondence between Mr Carragher and CCMS on the following dates 23 September 2008, 25 September 2008, 30 September 2008, 24 October 2008, 8 December 2008, 9 January 2009 and 20 January 2009 the plaintiff did suggest mediation but it was not accepted by the other party.

[43] The plaintiff's version of events regarding mediation is subsequently confirmed as correct in a letter of 11 June 2010 in that CCMS accepted that the word decline was incorrect.

The first Appeal Panel: May 2010

[44] An Appeal Panel was established by the Board of Governors and this met the plaintiff on 30 November 2009 and the Principal on 21 April 2010. The report is a lengthy document outlining all of the various complaints raised and it is dated May 2010. Again I am not going to outline all of the recommendations made. The ultimate outcome of this report was that based on the evidence available to them the panel were unable to uphold the plaintiff's complaints of bullying and harassment.

[45] The Principal did raise an issue at this appeal hearing that he had been wrongly criticised for failure to provide training after the plaintiff's return to the school. It appears that at this Appeal Panel the Principal was vindicated in that the Appeal Panel indicated that the Panel received an extensive list of the many training courses arranged which Mr Carragher could have attended or if the Principal made every effort to ensure training was available sickness absence resulted in Mr Carragher's non-attendance to some of these courses. The determination became the subject of a further independent Appeal Panel before the Labour Relations Agency and that was a panel that looked at all of the issues and reported on 7 December 2010.

[46] It is important to note that a report from Occupational Health was made available in July 2010. This report from Dr A J McGreevy states that the plaintiff's symptoms remain significantly problematic despite intensive therapy. Dr McGreevy refers to symptoms which include depressed mood, anxiety, poor concentration,

poor sleep pattern and that he finds social contact problematic and hence functionally he continues to be affected with underlying tasks which include dealing with others as well as even basic tasks related to self-care, this is a concern. The report finds that the plaintiff has an underlying medical reason for non-attendance at work, namely anxiety and depressive illness. Dr McGreevy states as follows:

> "I feel he is currently unfit to return to work in the teaching environment and on balance it is most unlikely he will ever return to his current place of work regardless of the outcome of the Labour Relations Agency as I believe given the level of his disgruntlement and sense of demoralisation combined with his ongoing mental ill health, would prevent this. The issue therefore is to give consideration now to an application to retirement on health grounds. That is, I do not believe there are any specific adjustments or restrictions that will enable a return to work at his place of work in St Ronan's."

The Independent Panel: 7 December 2010

[47] The Independent Appeal Panel was chaired by Dr C W Jefferson. Many of the complaints raised by the plaintiff are not upheld in this independent document. However, the report requires close reading as the plaintiff's case was accepted in relation to some matters. Complaint 2E was a complaint which stated that "despite repeated requests to Mr Dawson and assurances from CCMS, I did not receive the same training opportunities for the revised curriculum as afforded to my female colleague, Mrs McCartan". The Independent Appeal Panel was unable to support the allegation of discrimination on a gender basis or victimisation. However, there is another paragraph which states:

> "It is generally accepted that it is not the responsibility of CCMS to ensure that training was provided for Mr Carragher. It was the responsibility of the Principal. There is evidence that the Principal arranged training for Mr Carragher during 2007 and 2009. Many of these arrangements were thwarted due to Mr Carragher's absences due to illness. However, no training appears to have been arranged for 2008. Particularly, in view of the back to work meeting on 14 December 2007, it was incumbent on Mr Dawson to make every effort to arrange a programme of support/training courses for Mr Carragher in 2008. Training courses for P6 teachers would surely have provided useful training in the absence of P5 courses."

[48] Complaint 4 is expressed as singling out or treating differently from other teachers. Again the outcome of the Independent Panel requires close examination. It states:

> "In the case of a teacher returning to work after a prolonged illness the Board of Governors and the Principal has a responsibility to provide a programme of support and training. There is also a need to monitor and evaluate the success of such support. There appears to be little effort by management to provide support and training for Mr Carragher in 2008 despite commitments made in the return to work meeting of December 2007. Mistakes have been made which have exacerbated the situation. For example the Principal's letter of 6 March 2009 refusing further communication with Mr Carragher and the letter of 18 June 2009 to parents blaming Mr Carragher's absence for the non-issue of pupil reports could clearly have an adverse impact on an individual suffering from a long term nervous illness. The Independent Appeal Panel is unable to uphold this complaint. However, there a number of issues outlined above where the Principal's actions have been less than satisfactory."

[49] Complaint 7 relates to negative criticism which cannot be justified and is contrary to the assessment of the teacher's peers. First there is criticism of the plaintiff in providing no written guidance or evidence on which to base his appeal. There is an issue raised in that the Appeal Panel had accepted a list of allegations of unsupported behaviour from Mr Dawson which he had no opportunity to refute. This was a list provided by the Principal to the Appeal Panel of 25 allegations over a 9 year period, many of which were unrelated to the current dispute. This Independent Appeal Panel states that it was inappropriate for the Appeal Panel to accept this list of accusations without giving Mr Carragher the opportunity to respond. The Independent Appeal goes on to quote:

> "Without more guidance and evidence from Mr Carragher the Independent Appeal Panel is unable to make a determination on this complaint. However, the one sided acceptance of the list of allegations from Mr Dawson must call into question the validity of the Appeal Panel's response to this complaint."

[50] Complaint 8 is in relation to alleged suppression of career development. The Independent Appeal Panel also makes some pertinent comments as follows:

> "On the training aspect of career development it was important to take into account Mr Carragher's absence

> due to prolonged illness. The Principal should have been more pro-active in arranging training and monitoring and evaluating his return to work in 2008 and advising the Board of Governor's accordingly. It is not unlikely that the poor working relationship between Mr Dawson and Mr Carragher may have hindered this."

[51] The Independent Appeal Panel considered that Mr Carragher was not proactive in his own career development. The ultimate outcome of this complaint was that the Independent Appeal Panel was unable to find sufficient evidence to uphold the plaintiff's complaint regarding suppression of career development.

[52] Complaint 9 is entitled "Abuse of Process by the Appeal Panel". Again, the Independent Appeal Panel's position in relation to this issue is important. The Independent Appeal Panel states:

> "The nine month delay in the completion of the Appeal Panel's investigation and report was completely unacceptable. The current "Policy and procedure to combat bullying and harassment etc (TMC 2009/11)" stipulates that the internal appeal should take normally up to 30 working days. The reasons given for the delay were the extent of the inquiry and the difficulty in finding an acceptable date when Mr Dawson and his union representative could meet the Appeal Panel. This delay had now led to frustration for Mr Carragher and may well have contributed to the deterioration in his health. The delay may also have affected the conduct of the appeal process adversely in the later stages because of the mounting pressure from doctors, MLAs and others requesting an end to the delay. A number of witnesses requested by Mr Carragher were not called in an attempt to avoid further delay. In fairness to Mr Carragher the Appeal Panel should have interviewed them. The Appeal Panel accepted from Mr Dawson a list of allegations of unsupportive behaviour by Mr Carragher covering the period 2000 to 2009 which were not all relevant to the current grievance. Mr Carragher was not made aware of these allegations until July 2009 so that he had no opportunity to refute them to the Appeal Panel. These allegations may have influenced the Appeal Panel in their deliberations. The Independent Appeal Panel upholds the appellant's complaint of abuse of process by the Appeal Panel."

[53] The general recommendations of this Independent Appeal Panel Report were as follows:

> "The poor working relationship between Mr Dawson and Mr Carragher is the cause of many of the issues raised in this grievance and in the disciplinary procedure which preceded it. These events have contributed to the deterioration in Mr Carragher's health, a poor learning experience for Mr Carragher's P5 pupils, an ongoing distraction and strain on Mr Dawson and a large input of time from the Board of Governors and CCMS. Mediation at an early stage might have proved helpful. It is disappointing that Mr Dawson rejected the offer of mediation when it was recommended. "

[54] I quote again in full from the next paragraph:

> "It is incumbent on the Board of Governors to be proactive in the rehabilitation of teachers returning from long term illness. They should ensure that the Principal is vigilant in establishing a programme of support and training to facilitate the return to work. Such a programme requires monitoring and evaluation to assess its effectiveness. The current governors require training in the efficient operation of agreed grievance disciplinary procedures. This should help to avoid the sort of problems discussed in Complaint 9."

[55] The final paragraph also refers to the plaintiff's role in this matter. The Panel is quite clear in stating that:

> "Mr Carragher should be encouraged to consider his own role, behaviour and attitudes in explaining the poor relationship with Mr Dawson. There are examples in the evidence where he has shown himself to be careless in the operation of established procedures thereby causing problems and additional work for others. Mr Carragher should review his responsibility in contributing to the damage to his health and the potential ruin of his career. He should also bear in mind that Mr Dawson as the Principal carries the responsibility for the day to day running of the school and as such deserves the respect and support of his teaching staff. "

The plaintiff's second complaint: 13 September 2010

[56] Before the completion of the Independent Panel Report the plaintiff lodged a further complaint dated 13 September 2010. This was dealt with in accordance with the policy and procedure to combat bullying and harassment of teachers including Principals and Vice Principals in grant aided schools TMC 2009/11. I summarise matters raised within this second complaint as follows:

- putting the plaintiff at risk of physical harm while carrying out his teaching duties at St Ronan's Primary School and of being reckless regarding the possibility of the same

- putting the pupils in the plaintiff's care at risk of physical harm while being taught by him or being reckless regarding the possibility of same - this related to the plaintiff's brother visiting the school

- treating the plaintiff differently from other teachers regarding alleged complaints made about his teaching by parents by not applying established procedures for dealing with such complaints

- treating the plaintiff differently by scrutinising the union activities which he was engaged in by way of a lawful and bona fide union directive - by enquiring about my NASUWT action from NASUWT members

- having and discussing unfounded issues about the plaintiff at secret meetings with other parties unknown to him neither informing me about these meetings or giving him an opportunity to respond

- passing this information to various parties without knowledge

- informing others that the plaintiff was neither courteous nor professional and that he would want the plaintiff to get on with his work in a professional manner

- refusing to comply fully with data protection and freedom of information requests.

[57] It is reported that the Panel met the plaintiff on 26 October 2010. Due to concerns that the plaintiff was referring to documents which had recently come into his possession further time was allowed and further documentation was provided to the Panel. It is quite clear that the Panel deciding this complaint was concerned that issues raised within the complaint had already been considered in the other processes. These were the previous grievance panel and the appeal from that and the subsequent Independent Appeal Committee established by the Labour Relations Agency. The Panel determined that its remit did not include any obligation to reconsider issues which had already been addressed and ruled on in another forum.

A summary of issues and terms was completed to try and narrow the second complaint and to ensure that it did not overlap with the first complaint. It appears that the plaintiff expressed dissatisfaction with the summary and this led to considerable delay in terms of the Panel meeting.

[58] There were new issues which did require to be dealt with, the first being a complaint in relation to the plaintiff alleging that he had been put at risk of physical harm whilst carrying out his teaching duties at St Ronan's. This related to an allegation that the school did not deal properly with a risk posed by the plaintiff's brother's attendance at the school premises. Two parts of the complaint dealt with this issue. The other issues raised were about differential treatment, in particular differential treatment due to the plaintiff's union membership, the allegation of discussing matters at secret meetings, sharing knowledge with others without the consent of the plaintiff and matters to do with freedom of information requests.

[59] Upon completion of this investigation the Panel did not find the plaintiff's complaints to have been substantiated. The Panel did believe that there were a number of subsidiary issues to be considered by the Board of Governors, namely a review of the school's arrangements for day to day security, including the admission and management of visitors. Also it was recommended that there should be a review of systems for record keeping with regard to unscheduled visits on school premises to include recording of advice sought and received. Finally, it was recommended that a review of the systems for information management and handling requests for data should take place. There was an appeal by the plaintiff from this determination.

The second appeal: 26 August 2011

[60] The appeal report was sent to the plaintiff by letter dated 26 August 2011. In a short report the appeal found that the panel had carried out a fair investigation. It was also concluded that the panel provided adequate reasons for not considering the remaining aspects of the complaints because they had been dealt with elsewhere. The Appeal Panel recognised that the whole process of dealing with Mr Carragher's complaint did take a considerable amount of time beyond the recommended periods. However, the panel noted that there were considerable issues including extensive and complex documentation and frequent communication which in many ways explained how difficult it was for all concerned to conclude this matter within recommended timeframes. On the basis of the findings the Appeal Panel decided not to uphold the plaintiff's appeal.

[61] After this appeal the plaintiff indicated his intention to appeal further to the Independent Appeal Panel as part of the Labour Relations Agency. In the intervening period the plaintiff's contract of employment was terminated. This was on 31 August 2011. In view of this the CCMS stated that the appeal should not proceed. This view was based on the reality of the situation that the Board of Governors and the employing authority would not be in a position to meaningfully

implement any recommendations or outcomes given that the working relationship had already come to an end. The plaintiff took issue with this approach from the CCMS and he requested that the hearing before the Independent Labour Relations Panel should proceed.

The second Independent Panel: 22 November 2011

[62] That hearing did take place on 10 November 2011 in the Labour Relations Agency office in Belfast. The Panel heard from the plaintiff and the Chairman of the Board of Governors at St Ronan's and two senior management officers for CCMS. The findings are set out in a report in which the Panel came to the following conclusions. The Independent Panel accepted that the Internal Appeal Panel defined that its remit under the procedure was to consider the points of appeal made by Mr Carragher, to fully examine the documentation provided by the original Investigatory Panel and to come to a conclusion in respect of the appeal. The Independent Appeal Panel was satisfied that this approach was both proper and reasonable. The Internal Appeal Panel agreed that it did not have any role in reinvestigating internal complaints and the Independent Appeal Panel accepted that view. The Internal Appeal Panel decided that the main purpose as an appeal body was to consider the application of the procedures and to consider if any evidence made available was not considered by the investigatory panel. Again the Independent Appeal Panel was satisfied with this approach.

[63] The Independent Appeal Panel then considered each of the findings made by the Internal Appeal Panel and upheld them. In a report dated 22 November 2011 the Panel did not uphold the plaintiff's appeal. It strongly recommended that the Board of Governors with guidance and advice from the CCMS takes steps to implement the recommendations in the Investigatory Panel's Report in their entirety.

[64] This ended the complaints procedure. In the meantime it must be understood that the plaintiff having returned to work in December 2007, took sick leave in April 2009 and did not return to work. Ultimately, this led to his medical retirement in August 2011.

The Plaintiff's case and evidence

[65] The plaintiff's case was focussed upon the management of the plaintiff by the second defendant, its servants and agents in the period December 2007 until June 2009 and also in relation to how the grievance was subsequently dealt with. The case made in support of this was essentially that the second defendant, its servants and agents failed to ensure a safe system of work particularly in the period December 2007 until April 2009. It was argued that this failure re-activated the plaintiff's depressive illness and ultimately led to his medical retirement in August 2011. As would be expected in a case of this nature expert evidence was called on the part of the plaintiff.

[66] The plaintiff gave evidence before me over a number of days. He was very anxious in giving his evidence and as a result he was afforded breaks. It is quite clear to me that the plaintiff is a precise man. He is also a man who is totally consumed by his case. He was able to recount the details of his case and to refer to voluminous correspondence and matters of complaint over the years. He described the court process as cathartic. In terms of chronology the plaintiff accepted that his issues began to arise after the introduction of the new Heinemann procedure. It was very clear in evidence that the plaintiff was extremely annoyed that the Principal invoked a disciplinary procedure against him at the outset. Whilst this was resolved successfully in favour of the plaintiff, it is clear that it set the tone for the relationship. It seems to me that the plaintiff found the Principal difficult to work with. They clearly had a relationship of some conflict. It appeared to me that the plaintiff found it difficult to recover from the fact that the Principal invoked a disciplinary procedure even though there was no finding made against the plaintiff. The plaintiff described his first period of sick leave which was as a result of a change in the maths curriculum.

[67] The plaintiff also described an optimism that he could return to work in and around December 2007. I listened carefully to the plaintiff about this crucial time and his understanding of the return to work meeting on 14 December 2007. It seems to me that the plaintiff went away from that meeting thinking that he would be supported in his return to work and he would receive training. I accept that the issue of specific training is not spelt out in the minutes however it seems to me that the plaintiff's case makes logical sense in that that part and parcel of the return to work would be support for him which includes training. The plaintiff described his return to work as problematic because he perceived that the promises of his employer to support him in going back to work were not kept. Further, he felt that he was not being communicated with on a proper basis by the Principal, the Board of Governors or the CCMS.

[68] This led to the plaintiff bringing his first grievance in June 2008. There was a large part of the plaintiff's evidence consumed by an analysis of the plaintiff's various grievances. Indeed, he was cross-examined at length about the grievances and how most of his claims were not substantiated. This painstaking analysis did reveal that most of the plaintiff's complaints particularly those dealing with discrimination were not made out. However, the defendants could not airbrush out the fact that some of the plaintiff's complaints did have merit. The plaintiff gave evidence in relation to how the delays in working out the various grievances and appeals affected his health. Overall the plaintiff consistently came back to the fact that he objected to the Heinemann text changes and he was upset by the Principal taking a grievance against him. It was clear from the plaintiff's evidence that the relationship difficulty was a core problem. I found that the plaintiff was also consumed by extraneous issues in this case which formed part of his grievances.

[69] However, I believed the plaintiff when he said that he tried to have his issues dealt with throughout 2008. It is clear that the plaintiff sent a large volume of

correspondence about his ongoing issues to the defendants. He also tried to engage the defendants during this time by telephone. The plaintiff also contacted the training providers himself. This culminated in a meeting in December in 2008 which was particularly unsatisfactory as the Principal left with matters unresolved from the plaintiff's perspective.

[70] The plaintiff was cross-examined about his psychiatric history. It was put to him that he had not mentioned previous mental health issues when attending with Dr Fleming. Counsel went so far as to suggest that this dishonesty on the part of the plaintiff made him impossible to believe in relation to his case as a whole. I take the view that this type of submission overlooks the nature of the plaintiff's depressive type illness. I accept that the plaintiff was vague in his recollection and explanation of past psychiatric matters but I make an allowance for the fact that the issues are difficult to discuss. Also the general practitioner notes and records were not provided to Dr Fleming and I was not given an explanation as to how that came about. Dr Mangan did have the entire practitioner notes and records and he does set out the history. It seems to me that the nature of this type of illness must be appreciated. The general practitioner notes and records are there to be read and it is common case between the two psychiatrists that the plaintiff did have a vulnerable personality.

[71] The plaintiff did accept the medical history as set out in Dr Mangan's report and contained within his GP notes and records. However, the plaintiff had a very poor recollection in relation to these matters. In particular, the plaintiff was taken to an entry on 2 September 2002 which refers to 'harmful thoughts'. An entry of 25 July 2002 refers to the death of father and sister refers to the plaintiff 'struggling a little'. An entry of 21 September 2002 refers to the plaintiff thinking a lot about death and 'couldn't cope with work'. An entry of 25 February 2004 refers to 'still finds stressed at work'. An entry of 6 February 2006 reports 'stressed out'- ongoing poor sleep - got palpitations today after meeting - re also parent teacher meetings re transfer procedure all week - half Inderal LA capsules 80mg-take 1 each morning, 28 capsules - advised re side-effect". The entries from 2007 refer consistently to issues at the workplace and they refer to prescriptions for anti-depressant medication and counselling. The plaintiff also accepted that he had been off work during November 2003/March 2004 due to stress although this had not been mentioned to the doctors. Mr Potter describes the period 2000-2006 as 'plaintiff experiences some psychological ill health on a number of occasions'. The plaintiff himself referred to alleged data protection breaches which also caused him significant stress after he left his employment. This is a broad summary of the records however it obviously gives a flavour of the plaintiff's medical issues.

[72] The plaintiff also explained the effect upon him of the actions of the defendants. He explained that he was an enthusiastic teacher. He was also keenly involved in sports. However, as a result of the treatment which he says he was exposed to, the plaintiff described a very different outlook which involved him

having feelings of anxiety and becoming withdrawn, feelings that have been described by the experts in the case to which I will return.

[73] The plaintiff also called the evidence of a witness, Marian Keely, in support of his case. Ms Keely said in evidence that she had worked in St Ronan's School for 20 years, she indicated that she also started when the school opened in April 1994. This witness indicated that the change in the Heinemann procedure back in September 2006 was a radical change which she could not understand. Ms Keely also said that she found the change very difficult to deal with and she considered that it was made without consultation. Ms Keely said that this caused her stress and it also caused problems for the children. This witness did confirm that the Principal had specifically said to her that if the plaintiff asked for the Heinemann 4 books she was not to give them to the plaintiff. This witness described Mr Dawson's manner as aggressive. She had brought her own grievance against Mr Dawson and that involved his management style. This witness did indicate that she had had one full day's INCAS training, possibly two and that the training was important. Under cross-examination the witness accepted that she was a friend of the plaintiff as well as a colleague. She also accepted that she had resigned last year due to work related stress.

[74] A further witness was called on behalf of the plaintiff. Ms Hutchinson indicated that she was a teacher at St Ronan's and had started in 1995. This witness indicated that she remained a teacher at St Ronan's. It appears that this teacher was involved with a different level of class from P3 to P4. She also had a difficulty whenever the policy was introduced in relation to the Heinemann materials. This caused this witness considerable stress and led to her taking time off work. She described the Principal as dismissive of her and she recounted an episode off work due to ill-health as a result of this. In my view Ms Hutchinson displayed a considerable amount of fortitude in giving evidence against her current Principal. That demonstrates to me the strength of her feeling in relation to the issues involved. She is clearly a valued teacher. She is also willing to speak for what she perceives to have been a significant change of policy regarding the maths syllabus. It was pointed out in cross-examination to this witness that her situation in relation to the change of maths methodology was somewhat different in that she was dealing with a class that had particular needs. I accept this differentiation in the situation however I should also say that I accept the evidence of this witness entirely in relation to internal management and the stress that she suffered as a result of the changes within the school.

The expert medical evidence called by the plaintiff

[75] The plaintiff relied on a report from Dr Brian Mangan, consultant psychiatrist. That report is dated 21 December 2015. Dr Mangan also gave evidence to this court. Dr Mangan had access to the General Practitioner notes and records of the plaintiff, a report prepared by Dr Helen Harbinson dated 6 October 2007, a report prepared by Dr John Simpson, consultant psychiatrist dated 8 March 2011 and a report prepared

by Dr Fleming, consultant psychiatrist dated 8 August 2014. Dr Mangan set out the plaintiff's account of difficulties in his working environment and subsequent psychological impact. He set out the plaintiff's personal history.

[76] Under previous psychiatric history Dr Mangan records that the plaintiff reported none. In terms of medical state examination Dr Mangan stated the plaintiff was co-operative throughout interview. He was distressed when talking about his difficulties. His mood was depressed. He reported that in the last month he has feelings of life not to be worth living but denied any act of suicide ideation. Dr Mangan said that the plaintiff's wife was a protective factor. He reported a problem with sleep disturbance including early morning waking. He reported tiredness, loss of interest in normal activities, loss of self-confidence, social withdrawal, irritability, variable appetite and absent libido. He was fully orientated in time, place and person and Dr Mangan reported there was no abnormality of recent memory.

[77] The diagnosis given by Dr Mangan is one of adjustment disorder complicated by the development of a moderate depressive episode (chronic course). Dr Mangan stated in his report that he considered the plaintiff developed a psychological adjustment disorder as a consequence of difficulties in his working environment from 2007 onwards. He stated that adjustment disorders are states of subjective distress and emotional disturbance, usually interfering with social functioning and performance, arising in the period of adaption to a significant life change or stressful event. The doctor sets out that the adjustment disorder was characterised by depressed moods, sleep disturbance, a loss of interest in his normal activities, social withdrawal, irritability and a pre-occupation with difficulties in his working environment. The symptomology included panic attacks.

[78] Dr Mangan also stated that in his opinion the adjustment disorder in early 2007 was complicated by the development of a moderate depressive episode in April 2007. In his opinion Dr Mangan stated that the plaintiff will continue to have lifelong problems with depression as a consequence of the extended difficulties in his working environment. The doctor accepted that the plaintiff's wife diagnosis and treatment of breast cancer contributed to his mood disturbance. Dr Mangan gave very helpful evidence in relation to these issues. He described the plaintiff's case as a classic case of depressive illness. He referred me to issues of functioning and contrasted a very active man pre-injury to a person who he described as "a shell of the person he was". He referred to the plaintiff's condition as fluctuating and he said that it amounted to a chronic depressive illness. He said there was some improvement but that this was not a case where there was a full recovery, that he may have a situation of anti-depressant use for the rest of his life and that he would be subject to relapse or deterioration at future times of stress due to the underlying illness.

[79] Dr Mangan was cross-examined at length about the issue in terms of the plaintiff not describing a previous psychiatric history. Dr Mangan accepted that the

plaintiff had not explained previous symptomology. However, Dr Mangan made a clear assertion that this is a psychiatrically vulnerable man. He gave an explanation of the fact that this mental health situation would not likely improve until the issue of his grievances/litigation were concluded. Dr Mangan frankly said the issue between him and Dr Fleming was one of diagnostic labelling. He referred to a fluctuating condition and even if there was a two week amelioration of symptoms the underlying problem remained.

The Defendants case and evidence

[80] The evidence on the part of the three defendants was given by Mr Dawson, the Principal. Mr Dawson described being the Principal at St Ronan's School since 2000. Prior to that appointment he had been an advisor for the Southern Education and Library Board. He had undertaken some work on secondment to Harberton Primary School in an advisory role. Mr Dawson stated that he continued to hold the position of Principal at St Ronan's Primary School. This witness gave evidence in relation to the issue of the change in the use of maths materials known as the Heinemann materials. He stated that this was not a new issue however it was decided in August 2006 that the school should go ahead with changing the structure to assist the P6s and P7s. I was not at all convinced that Mr Dawson could pinpoint the exact consultation process leading up to this change. However, I was satisfied that Mr Dawson did take on board some concerns after he sent the letter on 31 August 2006 which led to a postponement in implementation. The rationale behind the change was to assist the P6 and P7 classes. Mr Dawson then gave evidence in relation to training which he said was important as part and parcel of revised curriculum training which was introduced and provided for all teachers from 2006 to 2010.

[81] There was also an issue of training for pupil profiles which was known as INCAS training which teachers had to undertake. Mr Dawson gave evidence that he had made enquiries to try and get the plaintiff onto the various training courses but the plaintiff was ill or could not attend the other courses. Mr Dawson was the only witness who gave evidence on the part of the three defendants. He did however dispute the entire case made by the plaintiff in relation to his claims about the Heinemann procedure and about the lack of training. Mr Dawson could not give evidence about the issue of the time taken to deal with the plaintiff's various grievances as that was not within his remit. Mr Potter cross-examined the defendant and the witness started by accepting that it was clear that this plaintiff had ill-health and could become unwell due to workplace pressures. It seemed to me that whilst the witness was somewhat evasive he could not escape the proposition put by Mr Potter that the employer had effectively been on notice of the vulnerability of the plaintiff. Mr Dawson clearly had to accept this and no one else gave evidence on the part of the various defendants.

[82] The witness did also accept that there was a particular duty upon a school to deal with training if someone had returned from stress leave and to provide

consultation and support if someone had been off work. I could not however from the evidence of this witness truly discern what exact support and efforts were made to assist the plaintiff upon his return to work. It does seem clear to me that the Principal did make calls to check what training courses were available but I am not sure that much more was done than that during 2008. The evidence appeared to have a quality of the defendant Principal ticking boxes in relation to the plaintiff rather than any act of consideration of what could be done. There was also some conflict in the evidence given by this witness in relation to INCAS training in 2008. Initially the witness had said that he was not able to get the plaintiff into a course for year 6 and explained the problem in terms of availability. However, then the witness changed his evidence and said that the problem was eligibility because the plaintiff was a year 5 teacher. As a result of the evidence on this issue, I was not convinced that sufficient steps were taken for the plaintiff in getting the training up and running.

[83] It is clear to me that this witness is a dedicated teacher. I consider that he was placed in an invidious position in this case. He was someone who had been criticised by the plaintiff at the outset and he also took a disciplinary proceeding against the plaintiff. His complaint against the plaintiff was not established but thereafter he had to manage the plaintiff in the school. I am not convinced that it was fair to place the entire burden of that management upon the defendant Principal. As I have said I did not hear any evidence from either the Board of Governors or the employer who it seems to me bear a heavy responsibility for the management of relations particularly in a situation where the two parties have brought grievances and initiated disciplinary proceedings against each other. I consider that the defendant Principal did try his best to give evidence but he was naturally evasive when it came to management issues.

The medical evidence called by the defendants

[84] The defendants also called evidence from Dr Brian Fleming, consultant psychiatrist, and he filed two reports one of 8 August 2014 and another of 26 January 2016. Dr Fleming also set out the history and the psychological complaints made by the plaintiff. Of concern to me was that whilst the doctor did have a small bundle of mental health records he had not been supplied with any GP notes and records. In his report Dr Fleming opines that:

> "The overriding impression from both Mr Carragher's account the information contained within the records is that he has a chronic depressive adjustment disorder which is fluctuated depending on the level of stress which he is experiencing at any point in time. There may have been occasions when this spilled over into depressive illness per se but in the main his condition is more opined to a chronic depressive adjustment disorder. There appear to have been times when he was

> functioning quite well and at other times coped less well depending on the degree of stress which he was experiencing for example at the time of tribunals/hearings."

[85] Dr Fleming did put some degree of reliance upon the significant degree of stress arising out of poor health which his wife developed towards the end of the year of 2011 having a bearing on the plaintiff's condition. Dr Fleming also referred to the relationship with his brother as a contributing factor however I note that Dr Fleming concludes his opinion by saying:

> "Nonetheless, it does seem clear that the majority of his problems have been related to a work issue and with his symptoms very typical of a stress related reaction characterised by the typical mood changes of anxiety, lowered mood and irritability."

[86] Dr Fleming in evidence referred to the plaintiff's condition being time limited. He opined that the symptoms have persisted despite removal from the workplace. Dr Fleming thought that the most obvious reason for this was the need for vindication and he opined that this was typical in a work-related conflict. He indicated that the plaintiff was difficult to treat until the whole matter has been resolved. Where he differed from Dr Mangan was the diagnosis by Dr Mangan of a lifelong depressive state. Dr Fleming thought that was too pessimistic and that there were clear periods where symptomology was not so stark in this case. Dr Fleming thought that the plaintiff's injury was best described as an adjustment disorder which had distilled into bouts of depressive illness at times. Dr Fleming gave some examples for instance between 2007 and 2009 the plaintiff was able to perform well at school and this was not consistent with significant depression. Dr Fleming also referred to the differences in presentation of the plaintiff between his two reports and that his depressed state at the second meeting was related to data protection breaches which the plaintiff said he experienced. Dr Fleming stated that when the plaintiff encounters stress he gets upset and cannot cope with work and that is the core of the matter.

Legal principles

[87] I was referred to a number of legal authorities in this area by counsel. The case of Somerset County Council v Barber and Others [2002] PIQR p.21 involved four conjoined appeals dealing with stress at work claims. The findings of the Court of Appeal resulted in 16 guidelines which are found at paragraph 43 of the judgment and which I recite as follows:

(1) There are no special control mechanisms applying to claims for psychiatric (or physical) illness or injury arising from the stress of doing the work the

employee is required to do (para 22). The ordinary principles of employer's liability apply (para 20).

(2) The threshold question is whether this kind of harm to this particular employee was reasonably foreseeable (para 23): this has two components (a) an injury to health (as distinct from occupational stress) which (b) is attributable to stress at work (as distinct from other factors) (para 25).

(3) Foreseeability depends upon what the employer knows (or ought reasonably to know) about the individual employee. Because of the nature of mental disorder, it is harder to foresee than physical injury, but may be easier to foresee in a known individual than in the population at large (para 23). An employer is usually entitled to assume that the employee can withstand the normal pressures of the job unless he knows of some particular problem or vulnerability (para 29).

(4) The test is the same whatever the employment: there are no occupations which should be regarded as intrinsically dangerous to mental health (para 24).

(5) Factors likely to be relevant in answering the threshold question include:

(a) The nature and extent of the work done by the employee (para 26). Is the workload much more than is normal for the particular job? Is the work particularly intellectually or emotionally demanding for this employee? Are demands being made of this employee unreasonable when compared with the demands made of others in the same or comparable jobs? Or are there signs that others doing this job are suffering harmful levels of stress? Is there an abnormal level of sickness or absenteeism in the same job or the same department?

(b) Signs from the employee of impending harm to health (paras 27 and 28). Has he a particular problem or vulnerability? Has he already suffered from illness attributable to stress at work? Have there recently been frequent or prolonged absences which are uncharacteristic of him? Is there reason to think that these are attributable to stress at work, for example because of complaints or warnings from him or others?

(6) The employer is generally entitled to take what he is told by his employee at face value, unless he has good reason to think to the contrary. He does not generally have to make searching enquiries of the employee or seek permission to make further enquiries of his medical advisers (para 29).

(7) To trigger a duty to take steps, the indications of impending harm to health arising from stress at work must be plain enough for any reasonable employer to realise that he should do something about it (para 31).

(8) The employer is only in breach of duty if he has failed to take the steps which are reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which may occur, the costs and practicability of preventing it, and the justifications for running the risk (para 32).

(9) The size and scope of the employer's operation, its resources and the demands it faces are relevant in deciding what is reasonable; these include the interests of other employees and the need to treat them fairly, for example, in any redistribution of duties (para 33).

(10) An employer can only reasonably be expected to take steps which are likely to do some good: the court is likely to need expert evidence on this (para 34).

(11) An employer who offers a confidential advice service, with referral to appropriate counselling or treatment services, is unlikely to be found in breach of duty (paras 17 and 33).

(12) If the only reasonable and effective step would have been to dismiss or demote the employee, the employer will not be in breach of duty in allowing a willing employee to continue in the job (para 34).

(13) In all cases, therefore, it is necessary to identify the steps which the employer both could and should have taken before finding him in breach of his duty of care (para 33).

(14) The claimant must show that that breach of duty has caused or materially contributed to the harm suffered. It is not enough to show that occupational stress has caused the harm (para 35).

(15) Where the harm suffered has more than one cause, the employer should only pay for that proportion of the harm suffered which is attributable to his wrongdoing, unless the harm is truly indivisible. It is for the defendant to raise the question of apportionment (paras 36 and 39).

(16) The assessment of damages will take account of any pre-existing disorder or vulnerability and of the chance that the claimant would have succumbed to a stress related disorder in any event (para 42).

[88] Barber v Somerset County Council was appealed to the House of Lords and that case is reported at [2004] UKHL 13. The decision in that case by a majority was that the award of compensation should be reinstated. Mr Barber was also a teacher

as was Ms Hatton. The Hatton case was not appealed but the facts of it bear close analysis. It was clear in the Hatton case that foreseeability was an issue given the lack of complaint by Ms Hatton and the lack of employer knowledge. There were also some stark extraneous factors contributing to Ms Hatton's presentation. The case of Mr Barber seems to be more akin to this case.

[89] In the House of Lords, in the Barber appeal, Lord Walker sets out the facts. Mr Barber was a school teacher who retired at the end of March 1997 when he was 52 years old after suffering a mental breakdown at the school in November 1996. Since that time he was unable to work as a teacher or do any work other than undemanding part-time work. He sued his employer the Somerset County Council for damages for personal injuries principally in the form of a serious depressive illness. His claim was heard in the County Court, where he obtained judgment in his favour and an award of general and special damages.

[90] The Court of Appeal decided that the appeal should be allowed and the award removed. The Court of Appeal held that the Council had not been in breach of their duty as an employer. It also held that in any event the judge should have calculated Mr Barber's loss of future earnings on a lower multiplier because of the chance that, if he had continued with a similar teaching job, his health might have broken down in the same way. In the House of Lords the appeal centred on whether or not the Court of Appeal was right to conclude that the evidence before the judge taken at its highest sustained a finding that the County Council were in breach of their duty of care which they owed as employer to Mr Barber. Lord Walker then stated that it is clear from the facts of that case that this teacher found school life stressful after a restructuring. There were tensions within the school. Lord Walker sets out the medical evidence and refers to the fact that Barber was not the only teacher who gave evidence about the autocratic and bullying style of leadership of the head teacher in that case.

[91] At paragraph 65 Lord Walker stated that the guidelines from the Court of Appeal contained useful practical advice but he commented that "it must be read as that and not as having anything like statutory force. Every case will depend on its own facts and the statement of Swanwick J in Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd 1968 1 WLR 1776 is to be applied namely;

> "The overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know; where there is a recognised and general practice which has been followed for a substantial period in similar circumstances without mishap, he is entitled to follow it, unless in the light of common sense or newer knowledge it is clearly bad; but, where there is developing knowledge, he must keep reasonably abreast of it and not be too slow to apply it; and where he has in

> fact greater than average knowledge of the risks, he may be thereby obliged to take more than the average or standard precautions. He must weigh up the risk in terms of the likelihood of injury occurring and the potential consequences if it does; and he must balance against this the probable effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected of a reasonable and prudent employer in these respects, he is negligent."

[92] Lord Scott, who delivered a dissenting judgment, preferred the statement of Hale LJ in the Court of Appeal as Swanwick J was not dealing with the problem of psychiatric illness caused by stress. Lord Scott stated at paragraph 5:

> "An employer ought to take steps to understand the implications for the physical safety of his employees of the system of work he is imposing on them. But how can this approach be right where stress caused by a heavy workload is concerned? Most employees can cope. A few may have problems in coping. Only a tiny fraction of them will be at risk of psychiatric illness. And how can the employer even start to consider whether any special steps need to be taken unless the employee keeps the employer informed about his problems? Swanwick J was dealing with a completely different problem. Hale LJ was providing guidance as to the approach to a new problem."

[93] Lord Walker's conclusion is found at paragraph [67] as follows:

> "My Lords, the issue of breach of the County Council's duty of care to Mr Barber was in my view fairly close to the borderline. It was not a clear case of a flagrant breach of duty any more than it was an obviously hopeless claim. But the judge, who saw and heard the witnesses (including Mr Barber himself, Mrs Hayward and Mr Gill) came to the conclusion that the employer was in breach of duty, and in my view there was insufficient reason for the Court of Appeal to set aside his finding. The Court of Appeal was concerned about the timing of the breach, but for my part I do not think there is much room for doubt about that. The employer's duty to take some action arose in June and July 1996, when Mr Barber saw separately each member of the school's senior

> management team. It continued so long as nothing was done to help Mr Barber. The Court of Appeal evidently considered that Mr Barber was insufficiently forceful in what he said at these interviews, and that he should have described his troubles and his symptoms in much more detail. But he was already suffering from depression, and neither Mrs Hayward nor Mrs Newton was a sympathetic listener. What the Court of Appeal failed to give adequate weight to was the fact that Mr Barber, an experienced and conscientious teacher, had been off work for three weeks (not two weeks, as the Court of Appeal thought at paragraph 160) with no physical ailment or injury. His absence was certified by his doctor to be due to stress and depression. The senior management team should have made inquiries about his problems and seen what they could do to ease them, in consultation with officials at the County Council's education department, instead of brushing him off unsympathetically (as Mrs Hayward and Mrs Newton did) or sympathising but simply telling him to prioritise his work (as Mr Gill did)."

[94] At paragraph 69 of Barber Lord Walker states that it is generally unprofitable to contrast the facts of one case with another. He does however refer to a Scottish case of Cross v Highlands and Islands Enterprise [2001] IRLR 336 where a promising young executive became depressed at work and killed himself. The employer was held not liable because no causative breach of duty was established. The line manager spent considerable time trying to help the employee and the employer was not liable because:

> "The evidence does not establish that objectively the job was the problem."

[95] A case in this jurisdiction where a similar claim was brought is the case of McCarroll v Northern Ireland Housing Executive [2012] NIQB 83. In this case Gillen J dismissed the plaintiff's claim having applied the principles in the Hatton decision. It seems to me that this case is substantially different on the facts in terms of the employer knowing about the plaintiff's condition. At paragraph [39] Gillen J says that he concluded in March 2009:

> "In the wake of the disciplinary process the plaintiff was suffering from a work related adjustment disorder but it is important to observe that the plaintiff had not sought any medical advice or treatment for such a condition prior to March 2009 and had not informed her employer of any such condition or symptoms."

In that case the judge found that the overarching narrative reflected an instance where the tensions of a difficult relationship with a fellow employee and dissatisfaction with management as to the manner in which her complaints were dealt with caused her stress.

[96] I also bear in mind the points made at paragraph 5 of the Hatton case in particular the following articulation of the difficulty involved in assessing causation of psychiatric injury

> "While some of the major illnesses have a known or strongly suspected organic origin, this is not the case with many of the most common disorders. Their causes will often be complex and depend upon the interaction between the patient's personality and a number of factors in the patient's life. It is not easy to predict who will fall victim, how and why."

Submissions of the parties: plaintiff

[97] Mr Potter did not pursue the harassment case and in my view that was the correct legal course to take. However, he submitted that there was a remaining case in negligence which the plaintiff had established. In particular, Mr Potter referred to the particulars of negligence in the statement of claim which refer to establishing and enforcing a safe system of work, provision of support, welfare support, health support and counselling and the obligation to follow relevant policies, procedures and practices. Mr Potter asserted that the plaintiff's injury was foreseeable by the defendants and ought properly to have been averted. He focussed upon the management of the plaintiff by the second defendant, its servants and agents in the period December 2007 until June 2009 and also upon how the grievance was managed subsequently. Mr Potter made the case that the second defendant, its servants and agents failed to ensure a safe system of work particularly in the period December 2007 until April 2009 when the plaintiff again went on sick leave. This reactivated his depressive illness and ultimately led to a medical retirement in August 2011. Mr Potter contended that it was reasonably foreseeable that the plaintiff could become mentally unwell due to his own particular circumstances if the employer failed to ensure he was safely managed in his work and specifically in respect of his return to the workplace in December 2007. Mr Potter argued that there had been a failure to provide training throughout 2008 and that the evidence given by Mr Dawson was unconvincing on that issue.

[98] Mr Potter pursued the case at least as much on the basis of omissions as acts. He alleged that the reasonable employer acting in this situation and exercising the required standard of care would have undertaken various active measures to ensure that the plaintiff was effectively supported on his return to work and given proper training. Mr Potter clearly made a case that there was a duty of care towards the plaintiff and that that duty had been breached and that the breach of duty ultimately

led to the injury as set out in the medical evidence and particularly the evidence of Dr Mangan.

[99] Mr Potter also made a case that there was a failure to deal with the plaintiff's many complaints and grievances in a proper and timely manner. Mr Potter disputed the defence assertion that the plaintiff had repeatedly perused grievances without good reason, that he was out to get Mr Dawson and that he was disingenuous about his prior instances of sick leave and the success of his grievance. Mr Potter rejected any suggestion that the plaintiff's case should be undermined by the fact that he did not fully disclose prior psychiatric issues to Dr Fleming. Mr Potter also asserted that the failure to progress mediation was a breach of duty.

Defendant's submissions

[100] In his closing submissions Mr Ringland QC on behalf of all defendants submitted that the remaining claim is one of negligence which can only relate to events after 13 September 2007. He pointed out that as with any claim in negligence it is incumbent on the plaintiff to plead his case in specific terms and in such a manner as the defendants know exactly what the claim is. Mr Ringland QC referred to the following parts of the amended statement of claim in particular:

(i) To provide suitable, adequate, appropriate and/or required training.

(ii) Inappropriate utilisation of disciplinary procedures against the plaintiff rather than properly addressing his concerns.

(iii) Following the plaintiff's return from sick leave work related stress.

- Failing to take proper cognizance of the occupational health report obtained by the third defendant.

- Giving undertakings and promises about the return to work meeting as to training in December but reneging on same.

- Failing to provide training despite repeated requests.

[101] Mr Ringland stated that was a level of dishonesty on the part of the plaintiff given that he did not recount his entire psychiatric history to the doctors and that flowing from a Supreme Court decision of Fairclough Homes Limited v Somers [2012] UKSC 26 that his claim should be rejected. Mr Ringland also asserted that the plaintiff was disingenuous about the issue of writing up minutes for a meeting on 18 December 2009 and that this strengthened his submission in relation to dishonesty.

[102] Mr Ringland quite properly in my view stated that the primary principle in an action of this sort is that a liability for injury caused by occupational stress should

be treated no differently from the way that liability for any other occupational injury is treated. In other words the questions to be posed are whether there is a duty, whether there has been a breach of that duty and whether the injury has been caused or contributed to by the breach.

[103] Helpfully Mr Ringland accepted that the defendants owed the plaintiff a duty of care in tort. He said that the question of breach of duty involves answering two simple questions favourably to the employee. First that the employer knew or ought to have known of the risk often called the foreseeability of injury. Mr Ringland realistically accepted that this could not be an issue on the facts of this case. The second issue however is in the light of the magnitude of the risk which the defendant did appreciate whether there was a failing to take reasonable steps to avert it. This Mr Ringland said was the core assessment that the court has to make. In this respect Mr Ringland referred to Guideline 8 from the Hatton case namely:

> "The employer is only in breach of duty if he has failed to take the steps which are reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which may occur, the cost and practicability of preventing and the justifications for running the risk."

[104] Mr Ringland submitted that Mr Dawson made it clear throughout his exposure to the plaintiff that he found him to be a difficult individual. He pointed to the fact that this plaintiff also had a number of pre-existing issues which made him vulnerable to stress namely family illness, bereavement and everyday experiences. Mr Ringland faithfully set out the case on behalf of the defendants that there was no breach of duty regarding any of the heads of claim made out by the plaintiff. He also made a case that should the plaintiff establish primary liability against the defendants that contributory negligence should apply. At an early stage in the hearing, and without objection, I allowed Mr Ringland to amend his pleadings to include a claim of contributory negligence.

[105] Mr Ringland rightly referred to the fact that in so-called occupational stress cases findings of contributory negligence are comparatively rare. However, he said this is a quite exceptional case and he referred to the views of Dr Jefferson, the Chairman of the Independent Appeal Panel which reported on 7 December 2010 wherein Mr Jefferson referred to Mr Carragher reviewing his responsibility in contributing to the damage to his health and the potential ruin of his career.

Consideration

[106] In relation to the question of psychiatric injury I was assisted greatly by the experienced medical practitioners who gave considered and thoughtful expert evidence. It is clear to me that the collective expertise of the medical witnesses is that a psychiatric injury is established. The difference between them has been

described as diagnostic labelling. On balance I prefer Dr Fleming's analysis of this case as an adjustment disorder which has been characterised by bouts of depression. This accords with the definition of an adjustment disorder and it seems to me to accurately characterise the facts of this case.

[107] I reject Mr Ringland's argument made on the basis of the Fairclough case that the claim should be dismissed due to the plaintiff's alleged dishonesty regarding his medical history. This is a very different factual case and I do not consider that it falls within the parameters of the principle set by the case of Fairclough. That case states that it would be an exceptional circumstance where the principle would apply and I do not consider that this is such a case.

[108] The next question is whether this kind of harm to this particular person was foreseeable. Given the clarity and focus of counsel in relation to this issue I need not dwell on it. It was accepted that there were clear indications of impending harm. In this case the plaintiff raised the issue of his health on many occasions and medical reports were also provided. The signs were clear enough to necessitate the employer to take the necessary action. This was a man who had already suffered a breakdown and had returned to work.

[109] The duty of care is established and as foreseeability was also accepted the next issue is one of whether or not there has been a breach of duty and whether the employer has taken reasonable steps to avert the harm.

[110] In determining the issue of breach of duty and the associated questions the context of the case is important. The plaintiff was an established teacher. There were no reported difficulties in his work environment until Mr Dawson became the Principal. After that the Principal is first to raise an issue against the plaintiff which is not sustained. Then the plaintiff's grievances begin. That leads to an absence from work but the plaintiff does decide to return and the defendants do not prevent that happening despite the alleged conduct of the plaintiff. After his return it is clear that the plaintiff flagged his issues to all of the defendants. Some of these were valid. In particular the plaintiff raised training and I consider that he validly pursued this issue. He also complained about the length of time taken to deal with his grievances. Again I consider that was valid. However, I do recognise that the plaintiff also pursued many unmeritorious claims which were not made out and which prolonged the process.

[111] In relation to the issue of training, I have found that the report of the Labour Relations Agency Independent Panel December 2010 is instructive. The first issue of a failure to action training was found in favour of the plaintiff by the original Internal Panel however the Appeal Panel overturned that finding. After considering the matter, the Independent Panel Report determined that there was no training arranged for the plaintiff in 2008 and that more could have been done in relation to this. Secondly, it clearly articulates the point that there is a responsibility on the defendants in relation to a teacher returning to work to evaluate the success of

support. The report concluded that in this case there was little effort by management to provide support and training for Mr Carragher in 2008 despite the training attempts that were made. Thirdly, this independent report is quite clear in relation to the delay in the completion of the Appeal Panel's investigation and report being "completely unacceptable".

[112] In this case it is incorrect of the defendants to state that all of the grievances on the part of the plaintiff were dismissed. I have considered the Independent Panel Report in relation to this issue and I have also formed my own view having heard the evidence of both parties. On a careful reading, the Independent Labour Relations Agency Report raises some important points which are in the plaintiff's favour. This accords with my own view.

[113] I must also consider what was reasonable for the employer to undertake. This is a school and I appreciate that dealing with grievance issues is a drain on the Principal's time. Also this was a case where there was a clear personality clash between the Principal and the plaintiff. I have some sympathy for the Principal's position and consider that he was not properly directed and that there were management issues at the higher levels. In terms of taking reasonable steps and not imposing an unreasonable duty upon the employer I consider that some fairly basic steps would have assisted in this case which would not have imposed an unreasonable duty on the employer. I bear in mind that the plaintiff had a challenging presentation at times. However, the defendants also knew about his psychiatric vulnerability and that should have led to further steps being taken. Also the magnitude of the risk and the gravity of the harm should have been obvious. This was a case where the plaintiff had already suffered a breakdown in his mental health.

[114] I consider that the employer should have been pro-active in supporting the plaintiff upon his return to work. Training was part and parcel of this. For instance, there should have been better communication with the plaintiff about what was happening in relation to the training. There should have been follow-up meetings with the plaintiff to discuss how he perceived matters to be progressing and what his issues were on an ongoing basis after his return to work in December 2007. I consider that someone other than the Principal should have been tasked to do this. I did not hear any evidence by way of justification or explanation from the second or third defendants in relation to these issues.

[115] I consider that the end of December 2007 into 2008 was a critical period as the plaintiff had just returned to work. That was at a time when the issue was patently obvious. It is clear to me that the issue of training was raised at the return to work meeting in December 2007 and that the plaintiff had an expectation that training would be provided following from that. It was not suggested that training was ever refused by the plaintiff or that it was not necessary. I note that the plaintiff made enquiries about training availability himself. I accept that the Principal made attempts to provide training however I do not think that there was any meaningful

communication or follow up or support in relation to this issue. In this regard I consider that the defendant's focus was too narrow and this illustrates a lack of appreciation of the support this plaintiff needed upon his return to work. I did not find the defendant's evidence persuasive about the efforts made to assist the plaintiff throughout 2008.

[116] At the time when the facts of this case arose there was a greater appreciation of the effects of occupational stress at work and it is not unreasonable to suggest that schools should have some service to assist staff in relation to that.

[117] I also consider that there has been a failing to deal with the plaintiff's grievances in a timely way. This is in contravention of the stated policy. I accept that this was a difficult case to manage given the personalities involved. However, the delay issue was flagged to the defendants by way of correspondence from the general practitioner and the union representative. They both indicated that the on-going delays were causing severe stress and anxiety to the plaintiff. The plaintiff's issues were not dealt with in a timely manner and in my view this is failing in management. If grievances are left to fester and if the person complaining in relation to matters does not believe that the grievance is being taken forward the matter escalates and the outcomes are bound to fail. In this case the situation became so bad that the Principal walked out of a meeting in December 2008 because he considered that matters which were raised by the plaintiff were not on the agenda. Yet these were the matters which the plaintiff considered were unresolved.

[118] I must consider the efficacy of the proposed steps the employer should take. This is because an employer can only be reasonably expected to take steps which are likely to do some good. This issue is clouded by the many extraneous issues the plaintiff introduced as matters of complaint. However, it is significant in my view that the grievance process was started 6 months after the plaintiff returned to work. That was after the plaintiff expressed his dissatisfaction with his return to work conditions. Undoubtedly, the plaintiff resurrected many old grievances however it seems to me that the trigger was the situation which prevailed after he returned to work. The delay in dealing with the plaintiff's complaints compounded the problem. Therefore, on the balance of probabilities, I consider that certain steps in relation to training and support and prompt dealing with grievances would have been likely to do some good. I consider that there has been a breach of duty by the defendants in a number of respects in relation to training and support and the time taken to deal with the plaintiff's grievances.

[119] I reject the claim that the failure to provide mediation is a breach of duty. In my view it is unfortunate that this route was not tried at an early stage. By the time mediation was back on the agenda it was too late and matters had escalated. However, it appears clear that mediation was refused by the Principal and that was his choice.

[120] I consider that the defendants have breached the duty of care to the plaintiff in these two respects. I consider that both of these issues have been pleaded and are clearly issues which the defendants knew were part of the case against them. I consider that the Principal was particularly defensive when giving evidence about his own position. I do understand this because ultimately the chain of events shows that this case started with the Principal bringing a disciplinary procedure against the plaintiff. He clearly had an issue with the plaintiff from the outset. Then the Principal's management style was criticised. I glean some corroboration of this from the teachers who gave evidence including a serving teacher. It seems entirely predictable to me that as the Principal was the person managing the plaintiff that difficulties were likely to arise. The problem was graphically illustrated to me by the letter in which the Principal indicated that he would no longer be communicating directly with the plaintiff. Also the letter from the Principal whereby he indicated that the children's reports would be late due to the plaintiff being off on sick leave was ill judged.

[121] However, it is my view the Principal should not have been put in such a management position given his personal difficulties with the plaintiff. These pre-dated the plaintiff's grievances. As such I consider that the third defendant, the Board of Governors should have taken more of an advisory role to the Principal in terms of what should have been done.

[122] I also consider that there was a failing on the part of the second defendant in terms of responding to the plaintiff and actively managing and supporting him and dealing with his grievance. It seems that some advice may have been offered but it was not enough. In the absence of any evidence being called on behalf of the second named defendant I accept the plaintiff's case. I note the many attempts he made to communicate with the second named defendant which went unanswered. It seems to me that there was a deflection of the issue and the responsibility was left largely with the Principal. That was unwise and inapt given the circumstances of this case. It also seems to me that there was a lack of coordination between the three defendants as to how best to deal with the issue.

[123] In my view the more difficult questions relate to causation and the application of the principles set out in the Hatton guidelines 14, 15 and 16. I accept that these do not have statutory force and they should not be slavishly applied however the principles seem to me to be at the heart of this case. I have to consider whether or not the defendant's breach of duty caused or had a material contribution towards the plaintiff's injury.

[124] Paragraph 35 deals with causation in the Hatton judgment as follows:

> "Having shown a breach of duty, it is still necessary to show that the particular breach of duty found caused the harm. It is not enough to show that occupational stress caused the harm. Where there are several different

> causes, as will often be the case with stress related illness of any kind, the claimant may have difficulty proving that the employers fault was one of them: see Wilsher v Essex Area Health Authority 1988 AC 1074. This will be a particular problem if, as in Garrett, the main cause was a vulnerable personality which the employer knew nothing about. However, the employee does not have to show that the breach of duty was the whole cause of his ill health: it is enough to show that it made a material contribution: see Bonnington Castings v Wardlaw 1956 AC 613."

[125] This is a complicated assessment given the history of the case and the fact that the Plaintiff pursued many matters which were found to be without substance alongside the legitimate issues I have found against the defendants. The question is whether the defendant's breach of duty has caused or materially contributed to the injury amid all of this. To borrow from Lord Walker, was it the job that caused the injury. In this case the defendants suggest that there were causative factors associated with other stressors in the plaintiff's life such as his wife's illness. The defendants also suggested that the plaintiff was waging a vendetta against Mr Dawson.

[126] Dr Mangan states that the plaintiff developed a psychological adjustment disorder in early 2007 following a disciplinary proceeding against him. This developed into a moderate depressive disorder in April 2007. The defendants cannot be held liable for these matters as they are not part of this claim in negligence. After that Dr Mangan states that that the illness has run a chronic fluctuating course, being exacerbated at times of stress, in particular by the current legal process. Dr Fleming in his report of 18 January 2016 referred to his diagnosis of a stress related condition characterised by depressive symptoms which fluctuated depending on the degree of stress experienced. Dr Fleming accepted that the work situation was the main cause. In May 2014 Dr Fleming noted that the plaintiff was not depressed but two years later when he saw him he was depressed as a result of additional stressors of data protection breaches and his need for vindication.

[127] In the midst of this complicated aetiology, I turn to the purpose of Guideline 15 from the Hatton case. This states that the employer should only pay for that proportion of the harm suffered which is attributable to his wrongdoing. Paragraph 42 of Hatton refers to this issue as follows:

> "Where the tortfeasors breach of duty has exacerbated a pre-existing disorder or accelerated the effect of a pre-existing vulnerability, the award of general damages for pain, suffering and loss of amenity will reflect only the exacerbation or acceleration. Further, the quantification of damages for financial loss must take

> some account of contingencies. In this context, one of those contingencies may well be the chance that the claimant would have succumbed to a stress related disorder in any event."

[128] I then consider the medical evidence and from it I draw a number of themes. Firstly, both medical experts accept that at the date the plaintiff's claim arises, he has a pre-existing injury. Secondly, both doctors accept that the plaintiff has a vulnerable personality and is susceptible to stress. Thirdly, both doctors accept external stresses will have contributed to the plaintiff's injury. In his report Dr Mangan of 21 December 2015 says 'I would accept that the plaintiff's wife's diagnosis and treatment for breast cancer contributed to the mood disturbance'. Dr Fleming also states in his report of 8 August 2014 that "it is obvious that there was a significant degree of stress arising out of the poor health which his wife developed towards the end of 2011". Dr Fleming opines that that issue and the relationship with his brother contributed to the plaintiff's presentation. Fourthly, both doctors agree that 'the majority of his problems have been related to the work issue'. Fifthly, Dr Fleming raises the issue of personal vindication. In his report Dr Fleming states that:

> "He reports no significant change since he finally came out of work in 2009. A good deal of his time is taken up with the litigation process and it is clear that he feels the need for vindication. It is his strong perception that he has been the wronged party and that others are to blame. He feels that the earliest Tribunals have found in his favour and that the current litigation process will clarify the residual issues which remain and allow him to obtain closure."

[129] Munkman on Employer's Liability at paragraph 15.70 is instructive in relation to the issue of causation. Having found a breach, I have to decide whether it caused or materially contributed to the injury. In this case Mr Potter categorised the injury as a "reactivation of a depressive illness from December 2007 to April 2009 leading to medical retirement in 2011". At its height this is an exacerbation case. However, to establish liability the plaintiff must establish a causative nexus between the breach and his injury. As Munkman states:

> "In a case where, for instance, the allegation is one of unreasonable workload, it must be established whether a breach of the employer in contributing to, or failing to relieve that workload at least to an extent, has made any difference. Contribution to a psychiatric injury which would have occurred anyway for reasons of non-negligent workload gives rise to no sustainable claim."

[130] The breaches of duty which I have found relate to a failure to provide training and support in 2008 and a failure to deal with the first grievance in a timely manner. I have to consider the causal relationship between these breaches and the plaintiff's injury taking into account the full circumstances of this case. I have also considered this question having observed the plaintiff giving evidence before me. I bear in mind the medical evidence which attributed the majority of the plaintiff's problems to work related issues. That is pertinent during the time frame from the plaintiff's return to work to his sick leave in 2009 as the other external stressors are not as prevalent. I have also considered whether the plaintiff's quest for personal vindication results in the causation question being decided against him. However, I find that such a conclusion is not supported by the evidence. I reject the argument that there was a vendetta as that fails to recognise the shortcomings in the defendant's dealings with the plaintiff.

[131] On the basis of the evidence I have heard, I consider that on the balance of probabilities, the breaches of duty I have identified have materially contributed to the injury. I consider that they have caused an exacerbation of the pre-existing adjustment disorder. It is quite clear that from early 2008 that the plaintiff and various professionals were raising these issues as causes of concern and warning that ill health could follow if the matters were not addressed. It was 6 months after the return to work that the plaintiff started the grievance process.

[132] However, I consider that the defendant's negligent acts exacerbated the injury for a time limited period only. I assess this as from January 2008 when the plaintiff began complaining about the lack of training to December 2010 when the Independent Panel Report became available. After that I consider that the plaintiff's ongoing symptomology cannot be attributed to the defendant's actions. There were clearly other external stressors and I consider that the plaintiff acted unreasonably in embarking upon a second grievance having had the benefit of the Independent Report. The defendants cannot be held responsible for that.

[133] Given that I have decided that this is an exacerbation case only, I do not need to consider Guideline 16 in any detail. There are obvious contingencies in this case which the medical experts confirmed in terms of the plaintiff succumbing to a stress related illness. However, I do not consider that this issue reduces the exacerbation claim. I was also asked to consider contributory negligence in this case. Given my finding that the plaintiff has succeeded in establishing that the defendant's actions exacerbated his injury over a 3 year period only, I do not consider that contributory negligence applies.

Conclusion

[134] I consider that the plaintiff has established liability on the balance of probabilities. However, I consider that the plaintiff should only recover damages for the limited period of exacerbation I have identified. I will allow counsel to address

any issues in relation to quantum in due course. However, I will afford some time to allow a discussion in relation to quantum before listing a further hearing on that matter if required.