

**NOTE: This determination contains an order at [24] prohibiting publication of certain information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 855  
3179939

BETWEEN SUSAN MOWAT  
Applicant

AND CHRISTCHURCH BOYS' HIGH  
SCHOOL BOARD OF TRUSTEES  
Respondent

Member of Authority: Lucia Vincent

Representatives: Kathryn Dalziel, counsel for the Applicant  
Ashley-Jayne Lodge, counsel for the Respondent

Investigation Meeting: 31 March to 4 April 2025 in Christchurch

Submissions Received: 8 and 26 May 2025 from the Applicant  
15 May 2025 from the Respondent

Determination: 24 December 2025

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**DETERMINATION OF THE AUTHORITY**

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**What is the Employment Relationship Problem?**

[1] Mrs Mowat's time teaching at Christchurch Boys' High School (CBHS) continued a strong family connection to the school and its traditions. Her professional career with CBHS spanned 18 years.

[2] During her early years, the former Deputy Headmaster described her as "... a cheerful, positive teacher who often stated, through her words and her involvement with teams and groups, that she was always out to do her best for the boys and the school." Unfortunately,

Mrs Mowat's experience of CBHS during her final few years affected her otherwise positive associations with the school. She resigned in December 2019.

[3] Mrs Mowat says her employer, the CBHS Board of Trustees (Board), unjustifiably disadvantaged her and unjustifiably (constructively) dismissed her. In support of her personal grievances, Mrs Mowat partly points to a concern about the CBHS Headmaster blaming her unfairly for things she did not do. When she complained, she says the Board supported him at her expense.

[4] Many of Mrs Mowat's concerns arose during a difficult time for Mrs Mowat, CBHS and the Board, when they dealt with a series of anonymous letters containing content critical of the Headmaster. Although an independent investigation could not conclude who wrote the anonymous letters, Mrs Mowat says the process and behaviour by the Board throughout that time caused her employment to become untenable, resulting in her resignation.

[5] The Board acknowledges the difficulty for Mrs Mowat and others involved in the independent investigation but denies any unfairness. It says it did what any responsible, reasonable and fair employer could do in challenging circumstances.

[6] The Board says it considered Mrs Mowat's concerns about the Headmaster and investigation but believed her concerns had already been addressed. It says it supported Mrs Mowat's successful return to work, so that by the time Mrs Mowat resigned, she had chosen to do so for her own reasons.

[7] In short, the Board says Mrs Mowat's claims have no merit. It also says they are vexatious or out of time.

### **What are the issues?**

[8] The issues for determination are:

- (a) As preliminary matters:
  - (i) Should the Authority dismiss Mrs Mowat's matter under clause 12A of Schedule 2 of the Act?
  - (ii) Are any matters out of time?

- (b) Did the Board unjustifiably disadvantage Mrs Mowat? This includes consideration of whether the Board breached the duty of good faith or obligation to act in a way a fair and reasonable employer could in all the circumstances.
- (c) Did the Board unjustifiably (constructively) dismiss Mrs Mowat?
- (d) What (if any) remedies should the Authority award?

### **How did the Authority investigate?**

*This matter took time to progress*

[9] Mrs Mowat's matter has a history. The documents reflect that.

[10] Although the parties lodged their original statement of problem and statement in reply with the Authority in August 2022, the investigation meeting did not occur until April 2025. There were several reasons for this.

[11] At the point of lodging, the parties had not yet attended mediation. The Authority directed the parties to attend. Mediation did not occur until July 2023. It was unsuccessful.

[12] The matter progressed during 2024. The parties lodged an amended statement of problem and statement in reply. The Authority held teleconferences, made directions and issued memoranda, to deal with timetabling and case management matters. This included a direction to specify discrete disadvantage grievances, dealing with an application for disclosure, and making non-publication and exclusion orders.

[13] The Authority held an investigation meeting for four and a half days from 31 March to 4 April 2025. Witnesses answered questions under oath or affirmation from the representatives and the Member.

[14] Following the evidence, the Authority timetabled submissions for an updated application for disclosure. After making a direction on the disclosure matter, the Authority timetabled substantive written submissions up to and including 26 May 2025.

*Pragmatic approach taken*

[15] The Authority took a pragmatic approach to its investigation. This is consistent with the Authority's role in resolving employment relationship problems by establishing facts and determining matters according to the substantial merits of a case, without regard to technicalities.<sup>1</sup>

[16] A pragmatic approach at times means although the Authority has considered all the evidence, submissions and information received, it may not be referred to directly. As permitted by s 174E of the Employment Relations Act 2000 (Act), this determination makes relevant findings of fact and law, expresses conclusions on matters or issues required to dispose of the matter and specifies orders made. It does not record all evidence and submissions received, credibility findings made, or process followed.

[17] This determination took longer to write due to exceptional circumstances.<sup>2</sup> Consequently, the Authority has provided its written determination later than three months after the date on which it received the last information from the parties. As provided for under s 174C(4) of the Act, the Chief of the Authority decided exceptional circumstances existed that allowed the determination to be provided at a later date.

*The Authority made an interim non-publication order*

[18] Prior to the investigation meeting, the Board applied for a non-publication order for aspects of the evidence. Specifically, references to young people, a particular teacher and Court judgment(s) subject to a suppression order. Mrs Mowat supported such an order being made with amendments.

[19] The Authority may order that the name of any party or witness or other person not be published, subject to any conditions it thinks fit.<sup>3</sup> Exercising this discretion should be according to principle. The Employment Court has recently outlined the approach to take.<sup>4</sup> It starts with a presumption of open justice that may be departed from after weighing relevant factors like the

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<sup>1</sup> Employment Relations Act 2000 (Act), s 157.

<sup>2</sup> The parties are aware of these circumstances that relate to the Member.

<sup>3</sup> Act, Clause 10, Schedule 2.

<sup>4</sup> *MW v Spiga Ltd* [2024] NZEmpC 147 at [87] to [96].

interests of the parties, third parties and the public, if adverse consequences could be reasonably expected to result from publication.

[20] The Authority made an interim non-publication order in directions dated 28 March 2025. The order remained in place until the Authority published a substantive determination, when it would decide whether and to what extent the interim order should be made permanent.

*Permanent non-publication order warranted with reduced scope*

[21] This case concerns a teacher and a school. Evidence refers to events involving past or present students and teachers in sometimes sensitive circumstances. It also refers to a judgment in another Court subject to a suppression order.

[22] The circumstances justify a departure from open justice. The Authority cannot compromise a suppression order made by another Court. It should avoid identifying young people such as students of CBHS (past or present) and a CBHS teacher involved in an incident involving sensitive circumstances already subject to some media attention but who has not appeared as a witness. Good reason exists to make the terms of the interim order, permanent, with one minor amendment.

[23] The amendment reflects that the circumstances and fact of filming of the CBHS teacher by students referred to in the interim non-publication order have already been published to some extent. This change reflects the Authority's consideration of submissions made by the parties and media representatives present at the investigation meeting.

[24] The Authority makes a permanent non-publication order that the following information from the documents and evidence not be published:

- (a) Any reference to the judgment(s) in another Court and details subject to suppression orders in those judgement(s);
- (b) The name of and any details that could identify the former CBHS teacher filmed by students already subject to media publicity (excluding the fact of and circumstances of that incident to the extent they do not identify the teacher or are details that have previously been published); and

- (c) The names of and any details that could identify any past or present student(s) of CBHS.

[25] No one may search the file without leave from a Member of the Authority.

*The Authority made an exclusion order*

[26] Prior to the investigation meeting, the Board applied for an exclusion order under s 160(1)(e) of the Act. As the parties are aware, the Authority took the unusual step of making such an order.

[27] The Authority may when investigating any matter decide an investigation meeting should not be in public or should not be open to certain persons. The circumstances in which the Authority may make such an order are likely to be rare.<sup>5</sup> The Employment Court's decision in *Spiga* reinforces the importance of open justice. This is relevant when considering whether to exercise the discretion under s 160(1)(e).

[28] The Board highlighted a risk that members of the public or media who may attend the meeting (particularly members of the CBHS community), could identify people referred to in evidence from the circumstances discussed, or by witnesses or others inadvertently naming individuals, among other things. The Authority accepted there was a reasonable risk that people subject of an interim non-publication order could be identified in this way.

[29] An alternative suggested was the use of anonymous identifiers. The Authority had reservations about adopting such an approach including because of the risk participants in the investigation meeting could inadvertently use the names of those that were at that time subject of an interim non-publication order over the course of a five-day investigation meeting scheduled.

[30] The Authority considered the circumstances of the case warranted an order under s 160(1)(e) (although not to the extent sought by the Board) to maintain the integrity of the then

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<sup>5</sup> See for example, comments by the Employment Court in *Oldco PTI (New Zealand) Ltd v Houston* [2006] ERNZ 221 (EmpC) at [58].

interim non-publication order. It also supported the Authority's non-technical approach to investigating employment relationship problems.<sup>6</sup>

[31] The Authority directed that the investigation meeting not be open to the public. The following people were permitted to attend:

- (a) The parties, their counsel and support people;
- (b) Witnesses; and
- (c) Accredited media representatives or media representatives who were members of the New Zealand Media Council.

[32] The Member highlighted the terms of the interim non-publication order and the importance of complying with it to everyone attending the investigation meeting. A concern arose during the meeting about potential breaches. The Member dealt with this concern on the day. After assurances from relevant people in the room that they would comply with the terms of the interim non-publication order (the terms of which the Member clarified), no further exclusions were made. The Authority has not been notified of any further issues that may have arisen since the investigation meeting.

*The Authority declined disclosure direction*

[33] During the investigation, Mrs Mowat asked the Authority to exercise its power under s 160(1)(a) of the Act to require the Board to provide original copies (native format) of three sets of Public Excluded (PX) minutes from March, June and August 2019. She wanted this information to support claims about the authenticity (or lack thereof) of the PX minutes.

[34] In a direction dated 14 November 2024, the Authority declined the application. At that stage, the Authority was not satisfied of the relevance of the information to the issues being investigated. If after hearing the evidence the Authority held a different view, it could request further information under s 160(1)(a).

[35] At the close of the investigation meeting held on 31 March to 4 April 2025, it was agreed that an application and responses on this issue would follow.

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<sup>6</sup> Act, s 157.

[36] In directions dated 29 April 2025, after having considered the application, responses and evidence, the Authority was still not satisfied of the relevance of the information sought to the issues being investigated. The Authority declined the application.

[37] Mrs Mowat made it clear her application for disclosure was important to her. But she did not have this information at the time she resigned nor since. The Authority's investigation focused on the employment relationship problem – Mrs Mowat's claim of an unjustified (constructive) dismissal and discrete disadvantages. The Authority informed its determination of those matters from what the parties knew at the time of the alleged grievances.

**Should the Authority dismiss Mrs Mowat's matter under clause 12A of schedule 2 of the Act?**

[38] The Board asked the Authority to exercise its discretionary power to dismiss the proceedings as vexatious on the following grounds:

- (a) Mrs Mowat allegedly attempted over a number of years to facilitate the removal of the Headmaster from CBHS, as early as August 2018 saying he "had to go."
- (b) Mrs Mowat approached seven other institutions seeking to bring the same or similar claims as raised in the Authority against the Board or the Headmaster personally:
  - (i) New Zealand Police;
  - (ii) Office of the Privacy Commissioner;
  - (iii) Ministry of Education;
  - (iv) A Member of Parliament;
  - (v) The Office of the Ombudsman;
  - (vi) WorkSafe New Zealand; and
  - (vii) The New Zealand Teaching Council.
- (c) The Board says none of the complaints have resulted in any finding of wrongdoing by the Board or the Headmaster, and that Mrs Mowat has attempted to relitigate the same matters despite having limited or no relevance to the

employment relationship problem or having already been dealt with appropriately by another institution.

- (d) Mrs Mowat unreasonably delayed the matter. Having raised a grievance in December 2019, the parties only attended mediation in July 2023, after the Authority directed it, and despite the willingness of and offers from the Board to attend several times.

[39] Mrs Mowat says she has not litigated her grievances with any other institution, not least because the Authority has exclusive jurisdiction for employment matters. She says all her complaints were legitimate and based on advice to do so. None of the institutions have found Mrs Mowat to be vexatious.

[40] At any time in any proceedings before it, the Authority may dismiss a matter it considers frivolous or vexatious.<sup>7</sup> The Authority should not exercise the power to dismiss lightly because doing so prevents access to an important employment institution. The Employment Court has described the Authority's power to dismiss as limited, the threshold high and reserved for clear cut cases.<sup>8</sup>

[41] The high threshold has not been met here.

[42] Whilst Mrs Mowat has made complaints to other institutions about Mr Hill, and the Board, and many of these complaints involve an employment element, that is not unusual given the parties were in an employment relationship.

[43] The Authority has exclusive jurisdiction to determine Mrs Mowat's grievances with the Board. They are a controversy arising during the employment relationship and in a work context.<sup>9</sup> No other institutions have determined Mrs Mowat's grievances. She has not raised, nor could she have raised, her grievances with any other institution in the way now framed in the Authority.

[44] The Authority is tasked with investigating Mrs Mowat's employment relationship problem. It would not be appropriate to dismiss her claims without having done that.

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<sup>7</sup> Act, clause 12A, schedule 2.

<sup>8</sup> *Lumsden v SkyCity Management Ltd* [2015] NZEmpC 225, at [37] to [39].

<sup>9</sup> Act, s 161. A point reinforced in *FMV v TZB* [2021] NZSC 102 at [93] and [94].

Mrs Mowat is entitled to a considered determination of her employment relationship problem. The Authority declines to exercise the discretion to dismiss in the circumstances.

**Are any matters out of time?**

*Mrs Mowat had to raise her grievances within 90 days*

[45] A grievance is raised with an employer as soon as an employee has made (or taken reasonable steps to make) the employer (or a representative of their employer) aware they allege a grievance they want addressed.

[46] When Mrs Mowat raised her grievances, s 114 of the Act required her to do it within 90 days of the date on which the action alleged to amount to a grievance occurred (or came to her notice).

[47] An exception can apply where an employer consents to the grievance being raised out of time or if the Authority grants the employee leave to raise it out of time because exceptional circumstances occasioned the delay and justice requires it. Mrs Mowat did not suggest an exception applies.

[48] After raising a grievance, an employee cannot commence an action in the Authority more than three years after the date on which they raised it.<sup>10</sup> The Employment Court has confirmed the three-year time limit is absolute and cannot be extended under any of the Act's provisions that allow an extension in other situations.<sup>11</sup>

[49] Judge Holden summarised relevant principles when considering whether an employee has raised a grievance in *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132:<sup>12</sup>

The grievance process is designed to be informal and accessible. A personal grievance may be raised orally or in writing. There is no particular formula of words that must be used. Where there had been a series of communications, not only would each be examined as to whether it might constitute raising the grievance, but the totality of those communications might also constitute raising the grievance.

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<sup>10</sup> Act, s 114(6).

<sup>11</sup> *Blue Water Hotel Limited v VBS* [2018] NZEmpC 128, at [99].

<sup>12</sup> At [36] to [38]. The Authority has removed all footnotes and numbering when referring to cases.

It does not matter what an employee intended his or her complaint to be, or his or her preferred process for dealing with it in the first instance. It also does not matter whether the employer recognised the complaint as a personal grievance. The issues are whether the nature of the complaint was a personal grievance within the meaning of s 103 of the Act and, if so, whether the employee's communications complied with s 114(2) of the Act by conveying the substance of the complaint to the employer.

It is insufficient for an employee simply to advise an employer that the employee considers that he or she has a personal grievance, or even specifying the statutory type of personal grievance. The employer must know what it is responding to; it must be given sufficient information to address the grievance, that is to respond to it on its merits with a view to resolving it soon and informally, at least in the first instance.

[50] Despite this pragmatic approach to raising grievances, working out when a specific grievance arises (and the date from which the 90 days runs) can be tricky - particularly if the grievance involves allegations of inappropriate behaviour over time (such as bullying or harassment) or an ongoing failure to act (like not investigating an employee's complaint or failing to take steps to ensure an employee's safety at work).<sup>13</sup>

[51] If an employee alleges a continuum of unfair conduct, then they must raise that grievance within 90 days of the most recent occurrence or when the grievance crystallises. The Authority will assess whether individual examples of behaviour are sufficiently connected to amount to a continuous cause of action.

*Mrs Mowat raised her grievances within time*

[52] Mrs Mowat raised her personal grievances for unjustified (constructive) dismissal and disadvantage in her emails to the Headmaster, Nicholas Hill, on 18 and 19 December 2019, in which she resigned and explained why.

[53] The Board does not dispute Mrs Mowat raised her unjustified (constructive) dismissal grievance within time. It says the disadvantage grievances are out of time to the extent the events on which they are based occurred more than 90 days prior to Mrs Mowat raising her grievances.

[54] The events upon which Mrs Mowat relies for her discrete disadvantage grievances all occurred during the 90 days prior to her resigning (on 7 and 30 October and 6 December 2019).

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<sup>13</sup> *Premier Events Group Ltd v Beattie (No 3)* [2012] NZEmpC 79 at [19] to [20], *Davis v Commissioner of Police* [2013] NZEmpC 226 at [47] and *Panapa v Spotless Facility Services (NZ) Ltd* [2021] NZEmpC 88 at [38].

At least one of those grievances relates to ongoing behaviour by the Board. Events sufficiently connected to that grievance raised within time are relevant.

[55] Following the above timeline, Mrs Mowat raised her grievances with the Board within 90 days of the date on which the action alleged to amount to a grievance occurred (or came to her notice). Mrs Mowat then commenced her action with the Authority within time. She lodged her original statement of problem in August 2022 i.e. within three years of raising her grievances with the Board.

#### *Relevant evidence goes beyond 90 days*

[56] The Board disputes the extent of evidence relevant to Mrs Mowat's grievances, suggesting only events that occurred within the 90 days leading up to Mrs Mowat's resignation are relevant. The Employment Court has commented on the expansive evidence constructive dismissals may involve,<sup>14</sup> even if an event relied on cannot be used to establish a separate grievance.<sup>15</sup> However the more historic an event, the less likely it could be reasonably said to meaningfully contribute to a constructive dismissal claim down the track.

#### *Penalties out of time*

[57] Mrs Mowat seeks penalties. Section 135(5) of the Act requires any action for recovery of a penalty to be commenced in the Authority within 12 months of the date when the cause of action should reasonably have become known. Mrs Mowat commenced her claim for penalties more than 12 months after her employment ended. The penalties claim cannot proceed.

### **What happened?**

[58] Answering the question of whether the Board unjustifiably (constructively) dismissed Mrs Mowat starts with asking how the employment relationship ended.

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<sup>14</sup> *Meyer v Ports of Auckland Ltd* [2004] EMHNZ 536: "It is in the nature of constructive dismissal cases that the evidence can span a considerable period of time over the course of the employee's employment" at [24].

<sup>15</sup> *Coy v Commissioner of Police* CC23/07, 19 November 2007 at [6].

*Mrs Mowat resigned*

[59] On 18 December 2019 Mrs Mowat emailed her resignation to Mr Hill:

I am writing to let you know of my resignation from my position as a teacher at Christchurch Boys' High School.

I resign effective of 27<sup>th</sup> January 2020.

I want to thank the school for the opportunity to work alongside our students, staff and parent community over the past 18 years.

This has come about a result of me being the subject of two investigations as the alleged writer of a series of anonymous letters that were submitted to the board throughout 2017 and 2018. I was not involved in any way in any of the letters and still today, do not know who the actual writers are, however, in my opinion, I believe it was a group of staff members. Although the investigation findings showed that I had no involvement in the letters, from within that investigation period there has been considerable negative dealings with the board/ sub committee/ management in relation to the handling of the anonymous letter post-investigation communication. This is ongoing and my trust has been further eroded to the point, it has become untenable as of yesterday for me to remain teaching at this school. The actions of the Board do not align with my values.

Boys' High has been and will continue to be a rich part of my family's life.

Please treat this letter as submission of a personal grievance pursuant to s114 of the Employment Relations Act 2000 on the grounds of constructive dismissal and disadvantage relating to the matters in dispute between the parties prior to my resignation.

[60] Mr Hill responded the following day. Among other things he was concerned Mrs Mowat may have resigned in haste following a disciplinary investigation (the subject and outcome of which has not been challenged by Mrs Mowat). He asked Mrs Mowat to reconsider her resignation.

[61] Mrs Mowat responded hours later saying:

Thank you for your offer to allow me to reconsider my decision.

The recent disciplinary process has had no bearing at all on my decision to resign. If anything, this was a factor to stay.

Please be assured that my decision has not been made in haste, it is quite the contrary.

My thoughts on choosing to resign very much originated from an email I received from a staff member on Wednesday 28<sup>th</sup> August, the day following a conversation that had taken place at the August Board Meeting that he had attended; as well as a February letter that the PPTA and I sent to the board, a meeting that I attended on 14<sup>th</sup> March and then the subsequent communication at board level that has followed as a result of that 28/8/19 email. My decision to resign has been further reinforced by recent emails from two board members relating to these communications and documents.

Upon sending you my resignation email yesterday, I received email communication from a board member, which further cemented that my decision to resign, was the right one.

Please accept this as my resignation from Christchurch Boys' High School.

[62] The next day, Mr Hill responded to Mrs Mowat's email. He acknowledged her resignation on behalf of the Board and thanked her for her service to CBHS.

[63] To understand Mrs Mowat's reasons as expressed in her resignation, it is necessary to outline what happened during her employment in some detail.

*It started well*

[64] CBHS is a state boys school based in Ōtautahi with around 1400 students in years nine to thirteen and 140 staff.

[65] The Board governs CBHS. It is comprised of seven parent representatives, one staff representative (who each serve a three-year term), Mr Hill (in his role as Headmaster) and an annually elected student representative. The Board shares its workload with standing committees and periodically delegates powers to subcommittees formed for reasons like investigations and disciplinary matters involving staff or students.

[66] Mrs Mowat worked at CBHS teaching Health, Mathematics, Science or Social Studies between 2002 and 2019. Excited and honoured to teach at CBHS, she took on other responsibilities such as membership of the health and safety and wellbeing committees, supporting student council groups and teaching the Traveller's programme (Cognitive Behavioural Therapy, resilience and wellbeing).

[67] Mrs Mowat had a strong personal connection to CBHS. Many members of her family attended CBHS as students and were proud old boys. Three members of Mrs Mowat's family attended CBHS in 2018.

[68] Mr Hill became Headmaster of CBHS in 2013. As Headmaster he had delegation for operational, curriculum and financial management of CBHS and responsibility for implementing employment agreements including initial enquiries into discipline and competence matters. Mr Hill and Mrs Mowat worked together on various committees and employment matters during the course of Mrs Mowat's employment, although their interactions significantly reduced during her final year at CBHS, 2019.

[69] When Mr Hill started at CBHS Mr Hill remembered Mrs Mowat's warm and welcoming manner towards him, and enthusiasm for CBHS. He rated her favourably as a teacher because he could see she really, "... cared about the boys." This echoed the introductory comment from former Deputy Headmaster Steven Fraser complimenting Mrs Mowat's early years as, "... a

cheerful, positive teacher who often stated, through her words and her involvement with teams and groups, that she was always out to do her best for the boys and the school.”

[70] Coincidentally, Mrs Mowat and Mr Fraser both started working at CBHS in 2002. Mr Fraser started as a Senior Master in 2002 until May 2019 when he became Deputy Headmaster except for a period as Acting Headmaster from July to September 2019 covering Mr Hill’s sabbatical.

*Collective agreement covered Mrs Mowat*

[71] Throughout her employment, the Secondary Teachers’ Collective Agreement covered Mrs Mowat - most recently, for the term 1 July 2019 to 30 June 2022 (CA).

[72] Mrs Mowat highlights two clauses in the CA:

- (a) Clause 3.4 records an agreed approach to matters of teacher conduct and discipline. It refers to potentially initiating disciplinary procedures where a breach of discipline appears to have occurred.
- (b) Clause 12 recognises the importance of ensuring good and safe working conditions through health and safety in the workplace. In consultation with others, the Board must take all reasonably practicable steps to eliminate or minimise an identified risk where an employee’s health, safety or welfare is shown to be at risk in carrying out their duties.

*The Board had a complaints policy*

[73] The Board had a complaints policy on how to deal with concerns and complaints from anyone in the CBHS community, including teachers (complaints policy). In summary, the complaints policy at the relevant time:

- (a) When dealing with concerns and complaints, committed the Board to complying with natural justice principles, processes set out in employment agreements and statutory obligations.

- (b) Defined:
- (i) a “concern” as “... a matter that causes worry or disquiet that can be resolved collaboratively at the level, or close to the level, where the concern was generated.” An unresolved concern may escalate to a complaint.
  - (ii) a “complaint” as “... a serious concern that the complainant wishes to be investigated and resolved.” In addition:  
A complaint must:
    - a) Be in writing;
    - b) State in detail the reason for the complaint;
    - c) Be based on specific and factual information, with all information provided; and
    - d) Identify the complainant.
- (c) Outlined a process for making and dealing with a complaint:
- (i) Someone provides a written, specific, factual and signed account of the relevant issue;
  - (ii) Complaints about the Headmaster or governance matters go to the Board via the Chair who tables the complaint at the next Board meeting with written acknowledgement of the complaint. The process specifies expected timeframes unless exceptional circumstances arise.
  - (iii) Someone assesses the best level for a complaint to be addressed with a view to having it addressed fully, fairly and expediently, and at the lowest appropriate level.
  - (iv) The Board only addresses complaints about the Headmaster, governance matters, or where a complainant is unsatisfied with the outcome of an investigation of a complaint raised with the Headmaster.
  - (v) The person against whom a complaint is made is fully informed of the complaint’s details including the complainant’s identity (some exceptions apply such as safety concerns).

- (vi) The complainant is informed who will investigate their complaint, who the decision maker will be and the likely timeline for undertaking the investigation.
- (vii) Complainants are advised in writing of the outcome of their complaint so far as is allowed by law and in a way that preserves the mana and dignity of all parties involved.
- (viii) The Board only reviews already investigated complaints if they are satisfied the investigation process was unfair, or where the complainant provides new information.
- (ix) The Board recognises not all complainants will be satisfied with the outcome of an investigation into their complaint. Once reconsidered, if the Board is confident of its decision, it may refuse to communicate further about the complaint.

*Concerns emerged early on*

[74] As early as June 2013, Mr Hill addressed a matter in writing with Mrs Mowat regarding a complaint she had made to the Board regarding another teacher.<sup>16</sup> Mr Hill referred to Mrs Mowat's complaint, acknowledged her concerns, positive manner and openness, but also outlined his concerns about how the matter had escalated. He encouraged a restorative focus for working relationships moving forward.

[75] Mrs Mowat also made a complaint about a teacher in 2016. CBHS provided an email to Mr Hill on 17 August 2016, in which Mrs Mowat asked him to accept her email as a "formal complaint" about the teacher. Mr Hill acknowledged her complaint in an email on 19 August 2016, confirming they would work through a process to address it.

[76] Some inconsistencies arose in evidence such as whether Mrs Mowat had made a formal complaint (Mrs Mowat initially denied doing so). To an extent, inconsistencies in evidence are expected when witnesses have difficulty recalling events from several years prior. Because of this, the Authority has found written records particularly useful when assessing what happened.

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<sup>16</sup> Letter to Mrs Mowat from Mr Hill dated 18 June 2013.

*A negative shift started*

[77] Despite an initially amicable working relationship between Mrs Mowat and Mr Hill, both agreed a negative shift had occurred by at least 2018. Mrs Mowat says Mr Hill began to treat her badly, particularly when she challenged or disagreed with him, then blamed her for things she did not do. Mr Hill says he and Mrs Mowat had a robust relationship in which he addressed matters in his role as Headmaster - matters he reasonably raised informally.

[78] In making its determination the Authority has not needed to decide the merits (or otherwise) of the concerns Mrs Mowat has raised about Mr Hill and Mr Hill raised about Mrs Mowat. To the extent this determination refers to these concerns, they are included as context rather than conclusions about what did or did not occur.

[79] Mrs Mowat says she discussed a high workload and hours with Mr Hill at the start of 2017. The parties disagree about what had caused Mrs Mowat to work additional hours. It is common ground however that Mrs Mowat later raised a concern about what happened at a March 2017 meeting between Mrs Mowat and Mr Hill, saying it caused her to feel emotionally unsafe. Mrs Mowat raised this concern during a meeting in March 2018 (outlined in more detail below).

[80] In an email on 9 March 2018 Mrs Mowat raised concerns with Mr Hill about her wellbeing (as a female member of staff) and hours of work, in response to a request for her to sign her letter from Mr Hill about her hours of work for the following year.<sup>17</sup>

[81] Mr Hill wrote to Mrs Mowat on 13 March 2018 asking her to meet with him to discuss these concerns. In addition, Mr Hill expressed concern Mrs Mowat's "... behaviour and actions in certain situations, whether intentionally or not, can undermine me in my role as Headmaster." As an example, he referred to a previous discussion about Mrs Mowat's enthusiasm for projects sometimes leading her to overstep boundaries and making decisions that should be escalated to the Senior Management Team (SMT) or Headmaster (such as the Kahu road matter detailed below).

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<sup>17</sup> Mrs Mowat forwarded to Mr Hill her response to an email from Mr Hill's Executive Assistant dated 20 February 2018.

*Mr Hill raised the protest matter with Mrs Mowat*

[82] In his 13 March 2018 letter, Mr Hill raised a further example with Mrs Mowat, saying he understood she had organised a protest to occur during assembly on 9 March 2018 (to mark International Women's Day)<sup>18</sup> without communicating her concerns with him or the school, or discussing the planned protest with him. The protest involved a number of female staff members not sitting on stage during assembly (when most teachers normally would). Mr Hill had given staff advance notice he intended to discuss the topics of gender equality and pay equity at the assembly. Mr Hill viewed events as having potential to undermine him and CBHS in front of other staff and students.

[83] Although expressing concern in his letter to Mrs Mowat, Mr Hill said he did not formally raise it as a performance or disciplinary matter. Among other things, he wanted to discuss the concerns, improve communication between them and provide clarity around Mrs Mowat's authority and decision making.

*Expectations set*

[84] The parties met on 15 March 2018 after which Mr Hill wrote Mrs Mowat a letter recalling a healthy and honest discussion in which they both expressed frustration about past interactions.<sup>19</sup> Mr Hill summarised his understanding of what they had discussed and set expectations moving forward including saying:

- (a) He acknowledged Mrs Mowat said she was not the original instigator of the assembly protest and simply passed the message on.
- (b) Whilst Mrs Mowat felt physically and emotionally safe at school, she had previously not felt emotionally safe due to the meeting that occurred between Mr Hill and her during March 2017. Mr Hill noted a clear difference of opinion about what led to and happened at the March 2017 meeting. For example, Mrs Mowat described Mr Hill as having banged the table, told her she was blackmailing him and should not speak to him as she had. Mr Hill understood Mrs Mowat was looking for appreciation from him and felt talked at. He

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<sup>18</sup> Mr Hill refers to 9 March 2018 although International Women's Day is celebrated on 8 March.

<sup>19</sup> Letter from Mr Hill to Mrs Mowat dated 16 March 2018.

apologised that she felt like that and said it was important they both listened and reflected, among other things. They agreed to focus on future communication.

- (c) Mr Hill recognised Mrs Mowat's passion for CBHS and concern for students.
- (d) Mr Hill appreciated Mrs Mowat's realisation he felt constantly criticised by her, and was reassured to hear she did not fuel negative conversations about CBHS or Mr Hill and instead reported that back.
- (e) They discussed process, that Mr Hill felt undermined by Mrs Mowat not following appropriate process and her awareness of both.
- (f) The letter records an agreement going forward for Mrs Mowat to:<sup>20</sup>

Listen and reflect.

Take on feedback.

Not represent others anonymously or without their consent.

Report negative community feeling instead of fuelling it and to be especially careful of involvement in conversations that are critical of the school.

Follow the correct processes when taking action or making decisions.

Recognise that there will be times when we disagree and that when this occurs I do need you to respect my role. It would be remiss of me in my role not to give feedback when it is required.

#### *The Kahu Road incident caused concern*

[85] The above point about process not being followed partly related to an incident involving cones put out on Kahu Road in June 2017 and Mrs Mowat's role in that. The Student Executive Council (SEC) had been exploring ways to making the crossing on Kahu Road safer for students arriving or leaving school grounds. Mrs Mowat supported the SEC and had been working with students and the SLT.

[86] Mr Hill recalled that Mrs Mowat set up cones blocking traffic on Kahu Road to temporarily improve safety in that area for staff and students, without adequate communication with, or sign off from, the SLT.

[87] An email from one of the SEC students dated 24 June 2017 says the student (at Mrs Mowat's prompting) talked to a member of the SLT the day prior about organising a time

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<sup>20</sup> Numbering removed.

to meet to put together a proposal to the Christchurch City Council (CCC) about painting yellow lines on Kahu Road.

[88] Emails between Mrs Mowat and a CCC Area Traffic Engineer (ATE) on 9 and 11 August and 15 September 2017 discussed a request to paint yellow no parking lines on two parks on Kahu Road to ensure better safety for students (and others) at the then primary entrance to the school. The CCC ATE told Mrs Mowat the Community Board would need to approve it to have legal effect.

[89] Earlier in the year during a discussion between Mrs Mowat and Mr Hill on 7 February 2018 about the SEC, Mr Hill had mentioned as an example of limited communication from the SEC to him, his concern Mrs Mowat had not consulted Mr Hill or the SLT about the proposal to place cones on Kahu Road. Mrs Mowat emailed Mr Hill that same day outlining her concern about his criticism of her - she expressed surprise at the accusation of “minimal communication” – outlining the history of communication about the Kahu road car parks to clarify her view she had consulted with members of the SLT.

[90] Mr Hill responded with an email on 8 February 2018 saying he did not want to relitigate it but was pointing out that her role on the SEC did not give her a mandate to implement decisions, although he was happy for recommendations to come through SEC to the SLT. He raised this again as an example in the meeting held on 15 March 2018 mentioned above.

[91] The emails about the Kahu Road matter suggest some confusion occurred. For example, the email from the student on 27 June 2018 which Mrs Mowat forwarded to Mr Hill on 7 February 2018 referred to painting yellow lines on Kahu Road. Mrs Mowat’s email mentioned meetings about Kahu Road, carpark safety and cones.

[92] In addition to the above, on 19 March 2018 a CBHS Senior Master emailed Mr Hill to tell him about a conversation with Mrs Mowat. The Senior Master said Mrs Mowat had questioned him about what he knew about the yellow lines proposal for Kahu Road, and had basically said Mr Hill had told her he (the Senior Master) had lied about not knowing anything about the proposal. Mrs Mowat emailed the Senior Master later that day noting the “liar comment” had been made by “just one person and certainly never ever by me,” noting her belief in the Senior Master’s honesty and good communication. Mrs Mowat also said she, “... came

a stone's throw from handing in my job, I didn't want to be in a job where dishonesty prevails," but had been convinced by others not to.

[93] Mr Hill, not recalling having made any "liar" comment, wrote to the Board Member who had attended the meeting with him to ask them about what they had heard (or not). The Board Member emailed back saying they recalled Mr Hill had said the Senior Master knew nothing about it (not that he was a liar).

#### *Expectations reset*

[94] Off the back of these and other concerns, Mr Hill wrote to Mrs Mowat in a letter dated 20 March 2018 saying that based on what others had told him, Mrs Mowat had made statements about others that were inaccurate (such as the liar comment). Mrs Mowat claims that by doing this, Mr Hill unreasonably escalated matters despite having agreed to move forward at the meeting on 15 March 2018.

[95] Another matter Mr Hill looked into was a comment Mrs Mowat had made that no female staff were willing to meet with Mr Hill without a support person present, and that Mrs Mowat obtained this view from what was said at a meeting of female staff on 14 March 2018. Mr Hill had spoken with the Chair of that meeting and asked her about the statement. The Chair said it was raised at the meeting but not agreed as a motion by those present. In his 20 March 2018 letter, Mr Hill told Mrs Mowat what he had been told and expressed concern about what Mrs Mowat had told him - it appeared not to be accurate based on what the Chair of that meeting had said.

[96] One further point from Mr Hill's 20 March 2018 letter to Mrs Mowat warrants mention. Mr Hill expressed concern Mrs Mowat had not invited him to meetings of the Student Forum as agreed. Presuming Mrs Mowat had excluded him from meetings despite agreeing (in a meeting on 7 February 2018) Mr Hill would be involved (his assistant had emailed Mrs Mowat without a response), Mr Hill relieved Mrs Mowat of her role with the Student Forum. In evidence, Mrs Mowat said she had not yet emailed Mr Hill because she had been canvassing senior managers for meeting dates and waiting on answers before finalising dates and inviting Mr Hill.

[97] Mr Hill acknowledged he had decided Mrs Mowat would not continue in the role for the time being and told her of this in his 20 March 2018 letter. However, Mrs Mowat became involved again a few months later. In an email on 10 May 2018, Mr Hill told Mrs Mowat, “I would be appreciative of that and very happy for you to have a role” but wanted to establish at the outset what the role would be.

[98] Mr Hill, Mrs Mowat and another staff member met on 23 May 2018 to discuss the role. Mr Hill’s notes from the meeting are contained in emails the next day with the other person present. The notes summarise the discussion which covered a number of matters. This included Mrs Mowat saying Mr Hill had accused her of going to the media regarding an incident involving a female teacher being filmed by students, and that she had retracted her speaking role at the Positive Education conference because of Mr Hill. These matters are detailed more below.

*Mrs Mowat withdrew from speaking at a conference*

[99] Mrs Mowat expressed pride in her proposed speaking role at a conference scheduled for 7 and 8 April 2018 about the Traveller’s Programme at CBHS. Despite being initially enthusiastic about the opportunity and supportive of her speaking, Mrs Mowat says Mr Hill later forbade her from presenting at the conference and instructed her to cancel her speaking slot without a reason except to comment he was nervous about what she might say. Mrs Mowat felt upset cancelling at short notice. His comment was at odds with how she felt about CBHS (she loved CBHS – three members of her family attended as students at the time).

[100] Mr Hill denies forbidding Mrs Mowat from speaking. He says Mrs Mowat told him she had decided not to present because preparing for it was too stressful and she did not have enough time. He says he supported Mrs Mowat’s decision to prioritise her wellbeing.

*Mr Hill informally raised another matter*

[101] Mr Hill informally raised a further matter with Mrs Mowat. A member of staff left CBHS at some stage during 2018. Mrs Mowat had allegedly told members of the community that the person had left because they were unhappy at CBHS.

[102] Mr Hill emailed Mrs Mowat on 10 April 2018 telling her what had been reported to him, and that if she had made the statement, it was inaccurate. He reminded her of their earlier conversations in the term and his letters of 16 and 20 March 2018 in which he had raised concerns about Mrs Mowat being accurate in her representations of what others had said and taking care around conversations that were negative of the school.

[103] Mrs Mowat replied the same day in a comprehensive email discussing the matter more generally and indicating she had relayed a more positive reason when asked why the person had left.

[104] Mr Hill replied on 12 April 2018 explaining her account was different from what had been reported to him, but that he was only raising it informally to explain the point she, "... can't be seen to act subversively which includes talking negatively about the school."

*Students filmed a teacher inappropriately*

[105] In February 2018 an incident occurred at CBHS involving a female teacher being filmed by students in sensitive circumstances then shared online.<sup>21</sup> The media reported the incident. Police became involved.

[106] Mr Hill recalls ensuring good support and communication for and with the teacher involved, other staff, students and parents. He involved advisors and members of the SLT and Board. Mr Hill recalled holding a special school assembly. He communicated the importance of respect for others and expectations and policy around cell phone use.

[107] Mrs Mowat says Mr Hill blamed her for leaking the incident to the media – highlighting a comment in a letter from Mr Hill to the former Board Chair dated 4 July 2018 that refers to concern about "... someone contacting the media earlier in the year." In his letter he referred to Mrs Mowat saying he had accused her of going to the media. He recalled Mrs Mowat asked him if he blamed her for leaking the incident to the media and he asked her if she had (but did not accuse her of it). This letter was one of three pieces of correspondence complaining about Mrs Mowat by Mr Hill (outlined in more detail below).

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<sup>21</sup> The name of this teacher and any details that could identify her are subject of a permanent non-publication order.

*Students filmed with retrospective consent*

[108] Mrs Mowat refers to another matter involving Mr Hill and media. He had arranged for media to film her class on 18 June 2018 without consulting adequately in advance. Mrs Mowat says she had to reorganise her class to deal with privacy concerns and felt stressed. She says Mr Hill incorrectly reported to the Board that he had acted appropriately prior to filming.

[109] Mr Hill says a student at school had been working with junior students in health lessons as a role model and senior support student. Mr Hill had approved the media request to film but had not arranged the filming itself - the student went to Mrs Mowat directly to arrange filming in her class. A media representative said they liaised with Mrs Mowat prior to and following filming about anyone they needed to avoid filming.<sup>22</sup>

[110] Mr Hill says Mrs Mowat raised the issue of parental consent with Mr Hill after the filming. Mr Hill emailed parents on 20 June 2018 using a draft Mrs Mowat had prepared, telling them the filming had taken place and if anyone had concerns, to let him know so he could ensure the student did not appear on screen. Mr Hill says advice received in July 2018 confirmed CBHS and he had acted appropriately with the procedure followed regarding the filming.

[111] Mrs Mowat's lawyer emailed the former Board Chair on 23 October 2018 asking the Board to correct an error in its August 2018 meeting minutes so that it reflected retrospective consent from the parents of boys had been sought and proper process not followed, contrary to Mr Hill's report. Emails note an amendment to reflect a deviation on the day to the plan discussed between media and Mr Hill that was well handled by staff, with NZSTA confirming the school's actions were appropriate.

*Anonymous letters received*

[112] At the same time as some of the above events, between March 2017 and July 2018, the Board received a series of anonymous letters containing content critical of Mr Hill. The Authority has not seen the anonymous letters.

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<sup>22</sup> An email from one of the Media representatives to Mr Hill dated 19 June 2018 refers to liaising with Mrs Mowat prior to filming.

[113] The Board delegated authority to a subcommittee to handle the matter at the 29 May 2018 PX Board meeting - the anonymous letter subcommittee (AL subcommittee). The AL subcommittee included the former Board Chair throughout 2018 and 2019 (former Board Chair) and three other Board members.

[114] The Authority did not hear evidence from anyone on the AL subcommittee. The Board produced documents made by members of the AL subcommittee about key events. The Board Chair at the time of the Authority's investigation meeting, Michael Singleton, gave evidence about what he knew as a Board member at the time or had learned from his position as Chair since.

[115] The AL subcommittee investigated the substantive allegations in the anonymous letters. This included speaking with Mr Hill about the allegations made about him. Not knowing the identity of the letter writer(s) limited the extent of that investigation.

[116] The former Board Chair sent an email on 13 August 2018 to all CBHS staff asking for the anonymous letter writer(s) to come forward. No one did.

*Mr Hill complained*

[117] At the same time as the AL subcommittee investigated the allegations in the anonymous letters, Mr Hill complained.

[118] Mr Hill emailed the former Board Chair on 31 May 2018 noting his appreciation of the Board's support in agreeing to investigate the harassment of him by the anonymous letters. He expressed a belief Mrs Mowat wrote the letters including because of the language, content and handwriting.

[119] On 8 June 2018 the AL subcommittee asked a handwriting expert at the Police to consider whether Mrs Mowat could have written any of the anonymous letters. The Document Examination Report was inconclusive.

[120] In letters to the former Board Chair and AL subcommittee dated 4 July and 24 August 2018, Mr Hill set out in detail the reasons for his belief Mrs Mowat wrote the anonymous letters. This included a list and description of dates, details and communications of circumstances and factors that had caused him to believe Mrs Mowat had written the anonymous letters.

*Mrs Mowat approached the Board*

[121] After receiving the above 13 August 2018 email from the former Board Chair to all staff about the anonymous letters, Mrs Mowat says she felt anxious Mr Hill would attempt to blame her. Mrs Mowat met with two members of the AL subcommittee (one of whom was the former Board Chair) on 29 August 2018 to tell them about her concerns. Mrs Mowat says she provided information supporting her concerns including behaviour by Mr Hill towards her. The AL subcommittee kept a copy of the material Mrs Mowat provided and later asked for her permission to give this material to the external investigator they later engaged. The AL subcommittee did not tell Mrs Mowat about Mr Hill's complaint at this meeting.

[122] Mr Singleton says Mrs Mowat raised concerns about Mr Hill at the 29 August 2018 meeting that upon investigation, had been previously addressed. He also says when asked what she wanted out of the meeting, Mrs Mowat told the former Board Chair Mr Hill needed leadership coaching and if it did not fix the issues, "he has to go."

[123] The former Board Chair emailed Mrs Mowat on 17 September 2018 thanking her for meeting with her and the other AL subcommittee member on 29 August 2018 about the anonymous letters. She advised the Board had completed and closed their investigation into the allegations made in the letters.

*The Board engaged an independent investigator*

[124] Two days later, on 19 September 2018, the former Board Chair emailed Mrs Mowat to tell her (in summary) that:

- (a) The Board had received a formal complaint from Mr Hill about the anonymous letters;
- (b) The Board had engaged an external person to investigate the letters;
- (c) Mrs Mowat could provide feedback on the terms of reference (TOR) for the investigation and encouraged her to take advice on the draft;
- (d) The investigator would contact Mrs Mowat to meet with her; and
- (e) The investigation was not a disciplinary process.

[125] Mrs Mowat says she felt devastated when she received the email. It seemed to her that the former Board Chair and the other AL subcommittee member had become part of Mr Hill's bullying.

*Information gaps caused concern*

[126] The scope of the investigation, as set out in the TOR, required an investigation into the complaints including asking:

- (a) If there were any coincidences of time, place or circumstances which could assist in identifying the letter writer(s); and
- (b) Whether any of the staff members Mr Hill identified (including Mrs Mowat) were the letter writer(s) or involved in writing the letters, and if possible, conclude who was responsible for the letters.

[127] Mrs Mowat engaged a lawyer to advise her on the TOR. He wrote to the former Board Chair on 1 October 2018. He asked the Board to engage a handwriting expert to refute the accusation of Mr Hill that her handwriting was on the envelopes. Mrs Mowat denied being involved in the letters.

[128] In early October 2018 the Board advised Mrs Mowat's lawyer her handwriting had already been sent to the Police for analysis and comparison with the handwriting on the envelopes on or around 8 June 2018.<sup>23</sup>

[129] Mrs Mowat received the forensic report on 9 October 2018 which referred to the police examining two other letters that were not part of the information sent on 19 September 2018.

[130] On 24 October 2018 the Board Chair provided a number of additional letters.<sup>24</sup>

[131] Mrs Mowat's lawyer wrote to the Board's lawyer on 25 November 2018. In summary:

- (a) Mrs Mowat denied any involvement in the letter writing.

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<sup>23</sup> The letter from the PPTA representative to the former Board Chair dated 26 August 2019 refers to this notification.

<sup>24</sup> Referred to in the letter above n 23.

- (b) It expressed concern crucial evidence was withheld from Mrs Mowat until “very late in the piece” such as some of the letters and the engagement of a handwriting expert who made inconclusive findings. This evidence was only provided after it had been requested.
- (c) The late provision of information was said to disadvantage Mrs Mowat when preparing for her interview with the investigator and when responding.
- (d) It asked the Board to urgently explain why Mrs Mowat had not received all the information at the outset, and to confirm it had met its disclosure requirements.

[132] The former Board Chair emailed Mrs Mowat’s lawyer on 29 November 2018 addressing the concerns about information. She confirmed Mrs Mowat had received relevant letters and explained the reasons for not initially sending the envelopes (delays in scanning and the investigation initially focussing only on letter content). She offered to send the envelopes to Mrs Mowat.

[133] Mrs Mowat’s lawyer wrote to the Board on 7 December 2018 expressing concern about withheld information and alleging it breached the Board’s obligations of good faith, and asked for the envelopes to be sent.

[134] The former Board Chair emailed Mrs Mowat’s lawyer on 11 December 2018 attaching the information requested, reiterating any documents being missed initially was not deliberate and had been rectified in time for Mrs Mowat to have an opportunity to respond.

#### *Report inconclusive*

[135] The investigator completed a draft report during December 2018. Mrs Mowat and Mr Hill had an opportunity to comment on the draft before being finalised.

[136] Ultimately the investigator could not conclude who wrote the letters. Among other things, the final report dated 20 December 2018 (finalised in March 2019) said:

- (a) Mr Hill had identified Mrs Mowat as the likely writer of some or all of the letters because of the considerable conflict between the two during 2018 and the matters referred to in the letters appearing to reflect Mrs Mowat’s views or information she had access to.

- (b) At first blush, Mrs Mowat appeared connected to the letters (after an analysis of circumstances). She also: "... appeared to 'fit the profile' of the letter writer as a woman, teacher, in conflict with the Headmaster and a strong association with the Boarding Hostel..."
- (c) However, several factors weighed against Mrs Mowat being the writer. For example:
  - (i) Mrs Mowat directly and willingly shared comprehensive information throughout the investigation. The investigator noted this part of Mrs Mowat's nature, "... seems inconsistent with a person who could sustain an anonymous campaign and keep her identity secret."
  - (ii) Mrs Mowat shared her concerns about Mr Hill widely amongst staff, had strongly held views about him and rallied support for those views. Having an outlet for her concerns and a supportive circle of colleagues and friends was inconsistent with covert letter writing.
  - (iii) Mrs Mowat had several personal matters taking her attention during key timeframes for the letter writing.
- (d) Despite being unable to conclude Mrs Mowat was the letter writer(s), whoever wrote the letters had information about things happening to Mrs Mowat at CBHS, probably from her.

[137] The report also concluded that whoever wrote the letters had engaged in behaviour capable of being bullying. Mr Hill gave emotional evidence of the impact on him of the letters. Mrs Mowat also gave emotional evidence about the impact on her of being accused of being the letter writer. She added that the behaviour by the Board during the investigation and subsequently suggested to her that the Board believed she was the letter writer despite the report's findings.

#### *Mrs Mowat complained*

[138] Mrs Mowat says she spoke to Mr Fraser in January 2019 saying that she was struggling and may resign. However, it was not until she emailed the Board on 16 February 2019 that she directly communicated her concerns to the Board in writing.

[139] Still waiting for the final version of the report (provided in March 2019), Mrs Mowat emailed the Board on 16 February 2019 asking for, "... an urgent pathway to gain closure to what has been and continues to be, an extremely difficult situation for me and to let you know how the events of the last year have affected me." In summary:

- (a) Mrs Mowat asked to meet to discuss how to ensure a safe workplace. She feared backlash and expressed concern at feeling forced to share information about Mr Hill she would not have otherwise chosen to.
- (b) Mrs Mowat wanted to "move forward by addressing the issues I raise in this letter by sitting and comfortably going over these, so that I can just come to school and teach Boys' High boys. The thing I love doing, in the school I adore."
- (c) Mrs Mowat described a pattern that emerged during 2018 whereby Mr Hill accused her of doing things she had not done (the Kahu road incident, protest matter, conference speaking cancellation, student and teacher filmings and anonymous letter writing).
- (d) Mrs Mowat had found the investigation into the anonymous letters stressful. She highlighted concerns about withheld information (handwriting analysis and additional letters and envelopes) and perceived reputational damage done due to being named as the letter writer in discussions with the SLT.
- (e) She found the delay from when the investigation concluded on 7 December 2018 to mid-February 2019 stressful especially as she anticipated returning to work feeling unsafe.
- (f) Mrs Mowat sought assurances from the Board she would be safe and fully supported if further untrue allegations were made. She asked for measures to be put in place to ensure her safety and wellbeing and to alleviate her warranted concerns.
- (g) Mrs Mowat noted the importance of professional relationships and asked for "some sort of mediated assistance" in working out how to best move forward.

[140] The former Board Chair emailed Mrs Mowat on 25 February 2019 acknowledging her email, apologising for the delay, noting Mrs Mowat's health concerns, offering support (such

as EAP) and indicating they would likely meet in mid-March with Mrs Mowat after the next Board meeting about future focussed next steps (noting the investigation was complete and the Board did not consider it appropriate to re-open it). In subsequent communications the Board or its representative repeated its offer of EAP and for Mrs Mowat to ask for any additional support she needed.

[141] The Board met on 5 March 2019. The PX minutes do not record tabling Mrs Mowat's 16 February 2019 email but relevantly record:<sup>25</sup>

The key messages are:

The Board appreciate [Mrs Mowat's] patience and cooperation throughout this process. It has been a difficult process for all involved, but the Board recognise [Mrs Mowat] was in a particularly difficult position. The Board stand by the decision to engage an independent investigator given the serious nature of the complaint and the content of the anonymous letters, and are grateful for her input throughout the process.

The Board acknowledge the investigation has had an impact on [Mrs Mowat's] wellbeing, and reiterate the support that is available to her.

[Mrs Mowat] was not identified as the anonymous letter writer by the report, and therefore [Mr Hill's] complaint was not upheld.

The Board do however want to assist in improving the relationship between [Mrs Mowat] and [Mr Hill], for both of their wellbeing.

The Board is committed to supporting both [Mrs Mowat] and [Mr Hill] as employees.

The investigation, report, and these subsequent discussions are highly confidential.

[142] Mr Singleton, present at the above meeting as a Board member, recalled the Board considered whether some sort of meeting or mediation between Mrs Mowat and Mr Hill would be appropriate or beneficial. The Board concluded it would not be. He expressed the Board's view that Mr Hill had attempted numerous times with other members of the Board or SLT present to resolve tensions with Mrs Mowat. He also referred to the impact on Mr Hill of the anonymous letters, the Board's obligations to both Mr Hill and Mrs Mowat (as employees), and that the investigation had highlighted behaviours that were not acceptable and impacting on Mr Hill.

#### *March meeting forward focussed*

[143] The former Board Chair emailed Mrs Mowat the final investigation report on 12 March 2019 (the investigator had made no material changes to the draft following feedback). The former Board Chair reiterated to Mrs Mowat the purpose of the meeting - to discuss the

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<sup>25</sup> The Authority has referred to titles or surnames for consistency. The content reflects the legal advice received from the Board's law firm finalised in a letter dated 12 March 2019.

outcomes of the investigation. She said Mrs Mowat could bring an external support person but viewed PPTA representatives who were CBHS staff members as inappropriate given the confidential nature of the discussion. The former Board Chair reiterated the informal nature of the meeting and focus on finding a way forward.

[144] The former Board Chair and another AL subcommittee member met with Mrs Mowat on 14 March 2019. Regrettably, the meeting did not go well from Mrs Mowat's perspective. Among other things she felt shut down when attempting to discuss her concerns.

[145] The former Board Chair made a file note of the meeting that relevantly recorded:

- (a) The Board thanked Mrs Mowat for her openness and willingness to share information during the investigation, and appreciated how difficult the period had been.
- (b) The report did not identify Mrs Mowat as the letter writer, but highlighted concerns about the relationship between Mr Hill and Mrs Mowat, and the Board wished to ensure a productive and effective working relationship moving forward.
- (c) Mrs Mowat should raise any genuine concerns with the then Deputy Headmaster Mr Fraser and if those concerns were unresolved, use the complaints policy.
- (d) Mrs Mowat raised a number of issues about Mr Hill and her safety.
- (e) They redirected Mrs Mowat on a number of occasions.
- (f) Mrs Mowat wanted to discuss the detail of what happened during the investigation regarding information being withheld – issues the former Board Chair said had been responded to through lawyer(s). Wanting to move forward, the former Board Chair expressed uncertainty about what Mrs Mowat wanted to achieve given the report did not conclude Mrs Mowat wrote the anonymous letters.
- (g) The Board was committed to supporting both Mrs Mowat and Mr Hill to rebuild their relationship and provide whatever support Mrs Mowat needed.

[146] Mrs Mowat had asked 30 questions in advance. These were captured in a document containing the Board's responses. In summary the document recorded that:

- (a) The Board believed it had followed a fair, robust and transparent process in good faith, but acknowledged the difficulty experienced by Mrs Mowat and others involved in the investigation.
- (b) Some of the questions were irrelevant or inappropriate from the Board's perspective (such as Mr Hill's professional development and personal experiences of Board members being blamed for something they had not done).
- (c) Mrs Mowat said Mr Hill blamed her 18 times in one year, she felt in fear almost daily and asked why she was being targeted. The Board's response was: "This is your interpretation of the situation and it is not appropriate for us to speculate on this, nor revisit what happened previously as this has been part of the investigation."
- (d) Mrs Mowat asked why the Board investigated twice. The Board explained the second investigation was in response to Mr Hill's complaint and that it had a duty of care to Mr Hill as an employee to respond to his formal complaint (which it did through the independent investigation).
- (e) The Board reminded Mrs Mowat she had received a response about aspects of the investigation (like the "unintentional error" of not receiving all relevant documents) through her lawyer and that it had now been completed so was not appropriate to revisit those issues.
- (f) The Board reassured Mrs Mowat only those involved in the investigation knew about it and those people were instructed to keep the matter confidential (in response to a concern raised by Mrs Mowat about her reputation).
- (g) Mrs Mowat asked about next steps and a safety plan moving forward. The Board directed Mrs Mowat to raise issues with Mr Fraser or through the complaints policy.

[147] Mrs Mowat says the Board gave her a warning at the meeting and read it from a letter later modified to exclude reference to it. Mrs Mowat believes the Board thought unfairly

disciplining her and ignoring her concerns would result in her resigning. Neither the notes nor the letter following recorded any warning being issued. I will return to this point later.

[148] Responding to a question about what she wanted, Mrs Mowat says she asked for a restorative process with Mr Hill to help him improve his EQ and empathy skills with the staff and her. She says the other AL subcommittee member said he would look into how her reputation with the SLT could be restored.

*Board sets expectations again*

[149] After the meeting, the former Board Chair wrote to Mrs Mowat in a letter dated 14 March 2019 which Mrs Mowat recalls receiving on 20 March 2019. In summary the letter:

- (a) Acknowledged the difficult process of the investigation particularly for Mrs Mowat, and thanked her for her patience and cooperation.
- (b) Noted the report did not conclude Mrs Mowat was the letter writer but it highlighted the relationship between her and Mr Hill needed improvement.
- (c) Mrs Mowat's wellbeing and safety was important.
- (d) If Mrs Mowat had any concerns, the correct processes were:
  - (i) Talk to Mr Fraser about concerns regarding her role, students or teachers; and
  - (ii) Escalate matters using the complaints policy if not dealt with satisfactorily from her perspective.
- (e) Outlined behaviour by Mrs Mowat that was not acceptable such as sharing frustrations on decisions made by Mr Hill or the SLT, that undermined them.
- (f) Set expectations as part of moving forward and building the relationship between Mrs Mowat and Mr Hill. Mrs Mowat accepted these expectations were not unreasonable.
- (g) Encouraged Mrs Mowat to continue using EAP support and to discuss any additional support she required with Mr Fraser.

[150] Mrs Mowat took the letter as a record of the warning already given.

*Mrs Mowat raised concerns with Mr Fraser*

[151] Mrs Mowat emailed Mr Fraser, Deputy Headmaster at the time, on 28 April 2019 asking him questions about aspects of the 14 March 2019 letter. Mrs Mowat referred to needing to potentially leave if at some stage the workplace culture affected her wellbeing (after the “ongoing saga of the anon letters”). Among other things she said she was not frustrated with anyone in the SLT or management except for not getting any apologies for the things Mr Hill had unfairly blamed her for. She said her frustration was with the Board, not the SLT.

[152] Mr Fraser replied the same day asking if the information was confidential between Mrs Mowat and the Board. She replied giving him express permission to read the material. She described how it was important to her and she told the former Board Chair and AL subcommittee member at the meeting on 14 March 2019 that she felt unfairly treated when the documents were withheld.

[153] On 6 June 2019 Mrs Mowat emailed all teaching staff a statement she had prepared with the support of Manaaki Tāngata (Victim Support) about an unpleasant act that had happened overnight at her property during term time since term four of 2018. Someone had defecated at her doorstep - eight times by that point. Mrs Mowat described the difficulty of coping with what had happened as it followed a significant work-related stress issue and impact on her health. She hoped by telling her colleagues, it would explain why she appeared “... out of sorts and not my usual happy self.”

[154] Mr Fraser made notes of two conversations he had with Mrs Mowat during 2019. Mr Fraser recalled that during June 2019, and again in the first or second week of July 2019, Mrs Mowat said she suspected Mr Hill was responsible for the unpleasant act. On the second occasion Mr Fraser also noted Mrs Mowat’s earlier stresses had returned but because of his upcoming Acting Headmaster role the following term, directed her to another staff member to provide support to her moving forward.

[155] In her evidence to the Authority Mrs Mowat denied directly blaming Mr Hill for the unpleasant act on her property. She says a private investigator had told her about the likely profile of the person - someone she had experienced conflict with.

[156] The Authority did not hear any evidence suggesting a credible link between the unpleasant act and Mr Hill.

*Mr Mowat complained about how his wife had been treated*

[157] Mrs Mowat's husband, Richard Mowat, emailed the Board on 16 June 2019. He started his email by saying Mrs Mowat had been "subjected to consistent and unwarranted blame" from Mr Hill, for "... things she had no knowledge of or involvement in." Mr Mowat then described concerns about the events above regarding Kahu road, the protest, a media leak, conference, media filming and investigations into the anonymous letters. He described the behaviour as bullying in nature and that Mrs Mowat's health had suffered in a serious way, requiring six months to fully recover.

[158] The former Board Chair emailed back on 19 June 2019 addressing the response to Mrs Mowat. She expressed the view that the issues raised had been directly addressed with Mrs Mowat or her lawyer during the investigation, meetings with Board members in August 2018 or on 14 March 2019, or brought to the Board's attention by Mr Hill which the Board looked into further as necessary. The former Board Chair reiterated that if Mrs Mowat wished to make a formal complaint, she needed to go through the formal process. The former Board Chair offered support through EAP and asked Mrs Mowat what further support she may require.

[159] The PX minutes provided with the letter of the Board's meeting on 19 June 2019 record in relation to Mr Mowat's 16 June 2019 letter that:

There is nothing new in the letter that hasn't already been raised with the Board. The [*former Board Chair*] and [*AL Subcommittee*] has kept the Board well informed. Many of the issues raised in the letter have already been covered during the investigation.

The [*former Board Chair and AL Subcommittee member*] met with [*Mrs Mowat*] in March to go through the outcome of the investigation. She had 30 questions that she had put forward to the [*former Board Chair and AL Subcommittee member*] prior to the meeting. Most of the questions had already been raised and addressed so there were only a couple of things she raised that were new. We told her if they were genuine concerns she needed to go through the formal process to lodge them as complaints and to date we haven't heard anything.

... Previously during a discussion with [*Mrs Mowat*] it was unclear about what outcome she wanted apart from the fact that she said that the Headmaster needed to change or leave.

[160] Mr Mowat emailed the former Board Chair back on 23 June 2019 making it clear he wished for his 16 June 2019 email and 23 June 2019 email to be treated as an official complaint.

He referred to Mrs Mowat having enough on her plate to deal with including because of the unpleasant acts at her property suggested to be employment related. He expressed his concern Mr Hill had “launched a personal campaign of false blame” against Mrs Mowat leading up to the anonymous letter investigations, as well as raising concerns about the investigation itself and what followed, including the failure of the Board to address Mrs Mowat’s concerns at the meeting on 14 March 2019 when she had expected they would, and the concerns already expressed in Mrs Mowat’s email of 16 February 2019. Mr Mowat suggested Mr Hill had told others he believed she was the anonymous letter writer, causing her unnecessary reputational damage. Mr Mowat said Mrs Mowat had no issues with the investigator who appeared to have done her job well with the material she had.

*Mrs Mowat and Mr Hill both off work during term three*

[161] Mr Hill started a sabbatical during July 2019 until September 2019 (term three of 2019). During this time Mrs Mowat was also on sick leave.

[162] Leave records show Mrs Mowat took several days of sick leave during the first part of 2019 then several weeks (46 days) from 23 July 2019 until 6 September 2019.

[163] Medical certificates show Mrs Mowat visited her doctor on 17 July and 13 August 2019 and record a link between her sick leave and work.

*Mrs Mowat asked for information and Mr Fraser supported her return to work*

[164] Prior to Mrs Mowat’s return to work in term four, a number of information requests were made and correspondence exchanged.

[165] On 2 July 2019, Mr Fraser gave Mrs Mowat access to her personal file.

[166] On 10 July 2019 Mrs Mowat wrote to her PPTA representative about what she saw on her personal file. She observed Mr Hill had forwarded emails to the Board’s lawyer as early as March 2018. She surmised a negative view had been formed of her prior to the independent investigation that persisted. It also referred to Mr Mowat’s complaint. Mrs Mowat wanted to ask for a copy of the PX minutes given what she had discovered.

[167] On 13 July 2019 Mrs Mowat emailed Mr Fraser about the negative impact on her of having viewed her personal file. As well as concerns about the file contents, Mrs Mowat followed up on her request made in her 16 February 2019 email about sending something to staff to repair her reputation. She described feeling frustrated with a “huge loss of trust” when thinking of returning to work.

[168] On 16 July 2019 Mr Fraser emailed Mrs Mowat noting she should contact a Senior Master to talk things through due to his Acting Headmaster role. In the meantime, he attempted to assure Mrs Mowat of the confidentiality of her file and the investigation process and urged her to seek help with her health.

[169] Emails between the former Board Chair and another person on 1 August 2019 explain a delay in responding to Mr Mowat’s email due to the email not coming to her until that day. This email chain also refers to the former Board Chair as “actively working with the PPTA and sending regular requests for information... We have today passed this back to our lawyers to try and put a stop to this harassment.” The Board provided this email chain to Mrs Mowat in response to an information request and it is subject of a discrete disadvantage claim.

[170] The former Board Chair emailed Mr Mowat on 2 August 2019 to explain the delay in responding due to the email not coming to her until the day prior. She said his email would be discussed at the next meeting.

[171] The Board’s lawyer wrote to Mrs Mowat’s PPTA representative on 5 August 2019 about Mrs Mowat’s request for her personal file. The letter confirmed Mrs Mowat received a complete copy of the file CBHS held onsite on 2 July 2019. It explained that for confidentiality, the Board did not keep some information about Mrs Mowat on her file. Specifically, the documents and correspondence relating to the information provided to and from Mrs Mowat during the investigation. The letter suggested putting a note on Mrs Mowat’s personal file saying this information was not on file and should the reader of the file wish to access that information, they should contact the Board Chair. It asked Mrs Mowat for her view of that approach and whether she wanted an additional copy of the information.

[172] On 23 August 2019 Mr Fraser emailed Mrs Mowat in his role as Acting Headmaster. He noted Mrs Mowat’s support from a Senior Master but wanted to express his concern directly

about Mrs Mowat and in particular her medical certificate saying she suffered from stress. Mr Fraser noted there were communications between Mrs Mowat and others such as the Board through her PPTA representative, and that the work-related issue causing Mrs Mowat stress was being dealt with through those channels. He offered to help separately on matters relating to her day to day role, and made clear he was committed to working with her and assisting her to get better and back to work.

[173] Mrs Mowat emailed back later that day thanking Mr Fraser for his support. She described the impact on her health of a tough one and a half years of “being stuck in a constant fight vs flight response when coming to school each day,” among other things. She spoke positively about support from others at CBHS and her return to work. However, she felt nervous that the stress would come back upon her return to work.

[174] Mrs Mowat’s PPTA representative wrote to the Board’s lawyer in a letter dated 26 August 2019. In summary, the letter:

- (a) Requested Mrs Mowat’s personal file believed to be off site based on the letter from the Board’s lawyer dated 5 August 2019.
- (b) Outlined delays in providing information to Mrs Mowat (Mr Hill’s complaints, the handwriting analysis, additional letters and envelopes).
- (c) Referred to the Board being aware as far back as 16 February 2019 of a significant impact of Mrs Mowat’s health due to the Board withholding relevant information (when Mrs Mowat emailed the Board).
- (d) Urged prompt access to the information sought for Mrs Mowat’s wellbeing.

[175] The Board met on 27 August 2019. The relevant PX minutes record under the heading “R Mowat Formal Complaint” that the Board agreed on an action to send Mr Mowat a letter asking if he acted for Mrs Mowat given the employment nature of the issues raised and asking for more information about an aspect of his complaint. The Board appointed a subcommittee to deal with the issues made up of Mr Singleton, Mr Medlicott and the former Board Chair (PI subcommittee).

[176] Mrs Mowat emailed Mr Fraser on 27 August 2019. She thanked Mr Fraser for his support and time to recover. She said she felt nervous about returning to school, particularly

preparing herself for the following term when Mr Hill would return to his role as Headmaster post sabbatical. She then said:

I indicated to CBHS at the start of year formally that I was highly worried about possible backlash as being named as the alleged anonymous letter writer by the Headmaster when I wasn't that and I sought help from EAP at the time. I was then further worried that when the external investigation findings were released to the Headmaster (I was not the writer), I had concern at returning to CBHS at that point and given that issues were not fully resolved. I sought mediation with the Headmaster to work through issues but the BOT did not respond to that request.

[177] Mrs Mowat then outlined four things to support her returning to work:

- (a) Correcting the onsite file CBHS had for her;
- (b) Obtaining a copy of her offsite file (and clarifying what it contained);
- (c) Communicating about a legal fees matter; and
- (d) Addressing Mrs Mowat's reputational concerns.

#### *Communications crossed*

[178] At this point communications crossed when more than one person and advisor for Mrs Mowat and the Board got involved.

[179] Mr Fraser emailed Mrs Mowat on 28 August 2019. He noted he would normally ask about what had caused Mrs Mowat to be unwell but understood she had asked her PPTA representative to address this with the Board, so left that there. Despite that, he wanted to understand more about how he could help Mrs Mowat return to work from 9 September 2019 when she indicated she would be well enough. In short, Mr Fraser asked for more detail about Mrs Mowat's concerns. He also noted he was unaware of any request for mediation made by Mrs Mowat earlier in the year but understood the Board would attend if Mrs Mowat thought it would help. He indicated Mrs Mowat could expect a response to her PPTA representative from the Board's lawyer about her concerns about her personal file but reiterated no off-site file existed.

[180] As foreshadowed by Mr Fraser, the Board's lawyer wrote a letter to Mrs Mowat's PPTA representative dated 28 August 2019. In summary:

- (a) The Board denied it had breached any obligations to Mrs Mowat although it acknowledged the investigation into the anonymous letters caused Mrs Mowat and others stress.
- (b) CBHS held (and had given Mrs Mowat's PPTA representative a copy of) a personal file for Mrs Mowat. The Board's law firm did not hold a separate employee personal file for Mrs Mowat, but had copies of correspondence between the Board and Mrs Mowat which it kept for confidentiality reasons and could provide to Mrs Mowat.
- (c) The Board encouraged Mrs Mowat to work with Mr Fraser and another staff member to support Mrs Mowat to return to work when she was able.
- (d) Concerned about the reasons for Mrs Mowat's sick leave, particularly if it arose out of her role at CBHS, the Board asked for details of the reasons for Mrs Mowat's sick leave, and (if alleged it arose out of her employment) details of the specific current issues and support she needed to return to work.

[181] The letter also said:

The issues raised by [*Mrs Mowat*] in February 2019 were dealt with at the meeting with [*Mrs Mowat*] on 14 March 2019, and the subsequent letter of the same date. The Board at that time took reasonable steps to address [*Mrs Mowat's*] concerns, and requested that she discuss with [*Mr Fraser*] any additional support she required. [*Mrs Mowat*] was also advised that should she have any further formal issues to raise, they needed to be done so through the correct channels. The Board reiterated at that time that [*Mrs Mowat's*] wellbeing, safety and positive engagement at CBHS is important to them.

[182] On 28 August 2019 the former Board Chair emailed Mr and Mrs Mowat about Mr Mowat's complaint. In summary, the Board:

- (a) Tabled Mr Mowat's complaint at its meeting on 27 August 2019.
- (b) Observed that the issues raised in the complaint were "... employment issues, which need to be appropriately raised by [*Mrs Mowat*] in the context of her employment with CBHS."

- (c) Said it could not appropriately deal with the issues raised in the complaint under the complaints policy outside of Mrs Mowat's employment relationship.
- (d) Asked if Mr Mowat raised the issues in an employment context on Mrs Mowat's behalf (the Board anticipated he had) and sought clarity on that from Mr and Mrs Mowat to progress matters.
- (e) Recorded that the Board did not agree to any grievances being raised out of time, however intended to respond generally to the issues and concerns raised and wanted to ensure Mrs Mowat had appropriate support in place to return to work (such as EAP).
- (f) Asked for more information about any connection between Mrs Mowat's employment and the incident involving the unpleasant act on her property (without which the matter could not be progressed).

*Mrs Mowat prepared to return to work*

[183] Mr Fraser made notes of his communications with Mrs Mowat on or around 29 or 30 August 2019. Mr Fraser's notes record he looked forward to Mrs Mowat's return on 9 September 2019 and that they discussed the following:

- (a) Mrs Mowat said her main cause of nervousness about returning to work was Mr Hill returning to the Headmaster role in term four. Mr Fraser told Mrs Mowat she needed to work through that herself as he believed Mr Hill had moved on from the events of 2018 and start of 2019. Mr Fraser offered his support if needed.
- (b) Mrs Mowat said she asked for mediation with Mr Hill at the start of the year and the Board ignored that request. Mr Fraser could not comment as he was not part of the process at the time but noted some meetings with Mr Hill (with support people) had occurred previously.
- (c) Mrs Mowat raised concerns about two inaccurate parts of her personal file. These concerned the backlash she said she experienced as a result of the events around the student forum meetings and a feeling she had she had been formally

disciplined for organising the women's protest. Mr Fraser outlined his views of correspondence around that time about those issues.

- (d) Mr Fraser asked for more information about Mrs Mowat's concerns about her reputation.
- (e) Mr Fraser could not comment on Mr Mowat's complaint to the Board in June/July that Mrs Mowat said outlined again the full circumstances of what she had been through since last year (as the Board deals with all staff matters in a PX session to protect everyone involved while things are resolved).

[184] Mrs Mowat emailed Mr Fraser on 4 September 2019. While she felt "... keen and ready to get back into the classroom again," Mrs Mowat noted the following four issues:

- (a) Mrs Mowat referred to her formal communication to the Board dated 16 February 2019, associated with the stress she felt about Mr Hill's return as Headmaster. She said she understood it was up to her to follow up on this with the Board.
- (b) Mrs Mowat felt stressed by Mr Fraser's comment about mediation, particularly given Mr Mowat's complaint had referred to it. She expected her stress to reduce once she received the information held at the law firm acting for the Board.
- (c) She would sort the issues relating to inaccurate information on her personal file at CBHS when she returned to work.
- (d) Mrs Mowat described the circumstances of her reputational concerns and explained how a suggested statement to SLT members could help her recovery.

#### *Mrs Mowat returned to work*

[185] Mrs Mowat returned to work for term four in early September 2019.

[186] An incident at work occurred on 16 September 2019 involving Mrs Mowat and TikTok that became disciplinary in nature (TikTok matter). Beyond discussions about other matters during a meeting about the TikTok matter, the Authority does not need to refer any further to it, because Mrs Mowat said it had no bearing on her decision to resign in December 2019.

*Mrs Mowat asked for more information*

[187] On 17 September 2019 Mrs Mowat's lawyer emailed the former Board Chair and Mr Fraser asking for all personal information held (including public and PX minutes / records) by the Board and CBHS relating to Mrs Mowat's request for mediation assistance in February 2019 and Mr Mowat's complaint dated 23 June 2019.

[188] On 7 October 2019 the Board's lawyer wrote to Mrs Mowat's lawyer responding to the information requests and provided PX minutes from its March, June and August 2019 meetings, heavily redacted. The PI subcommittee dealt with the request for personal information. The letter attached information and noted some information had been redacted or withheld because disclosure would involve the unwarranted disclosure of another's affairs or breach of privilege. The letter also said:

- (a) In relation to Mrs Mowat's 16 February 2019 email:
  - (i) The AL subcommittee had responded on 21 February 2019.
  - (ii) The former Board Chair and AL subcommittee member had addressed the contents of Mrs Mowat's 16 February 2019 email in their 14 March 2019 meeting. This included having an opportunity for Mrs Mowat to discuss her mediation request.
  - (iii) Subsequent correspondence encouraged Mrs Mowat to tell the Board if she required any further support. Mrs Mowat did not raise it again until recent correspondence with Mr Fraser – so the Board did not explore it with Mrs Mowat any further, other than asking what assistance it could provide.
  - (iv) The Board would attend mediation and asked if Mrs Mowat would like it to organise it.
- (b) In relation to Mr Mowat's complaint:
  - (i) The Board received it at the 27 August 2019 meeting.
  - (ii) The former Board Chair responded to Mr Mowat's complaint on 28 August 2019 and had not received a response.

[189] Mrs Mowat emailed the former Board Chair on 29 October 2019 thanking her for her time meeting on 14 March 2019. She referred to the “loose end” from their meeting - addressing Mrs Mowat’s concerns about her reputation. Mrs Mowat recalled the other AL subcommittee member promised the Board would look into sorting that issue for her. Mr Fraser could not help Mrs Mowat and had directed her to approach the Board about this issue.

[190] The former Board Chair emailed Mrs Mowat back the next day, 30 October 2019. She referred to Mrs Mowat’s question (number 28 of 30) from the 14 March 2019 meeting asking what the Board and she could do to resolve the damage to her reputation. The Board’s response was that only those involved in the investigation were informed of it and were asked to keep it confidential. The former Board Chair recalled saying it would not be appropriate to communicate anything further to the SLT as not everyone was involved or privy to that information. She did not recall the comment Mrs Mowat recalled the Deputy Board Chair had made. Finally, the former Board Chair noted Mr Mowat had raised this in his correspondence on which the Board had not received a response. The email then said:

Regardless, we do not intend to re-litigate or provide any further response to issues that have previously been responded to during the course of the investigation and its conclusion, including the 14 March meeting.

[191] Mrs Mowat points to this email as a separate disadvantage claim and a “clear example” of the negative communication ongoing in post-investigation communications on which her grievances are based.

[192] In early November 2019, Mr Fraser addressed the TikTok matter with Mrs Mowat. As noted above, Mrs Mowat says this matter had no bearing on her decision to resign, therefore the Authority only refers to it briefly to place context for comments made during a meeting about it.

*Mr and Mrs Mowat asked for more information*

[193] During November 2019, Mr and Mrs Mowat asked Board members by phone about the Board minutes. Mrs Mowat also made enquires of BoardPro, a Board management software provider.

[194] The former Board Chair emailed Mrs Mowat on 26 November 2019 about her approaches to Board members about accessing the PX minutes. She asked Mrs Mowat to contact her as Board Chair with written detail of her request for information.

[195] Mrs Mowat emailed back the next day (27 November 2019) asking for the date and time of generation of the June PX minutes and the date the June PX meeting took place. The former Board Chair responded on 28 November 2019 confirming the date of 19 June 2019, noting there was no date of creation and that the date of generation reflected when minutes were pulled from BoardPro. She explained the Board was not using BoardPro at the time of the June meeting.

[196] On 29 November 2019 Mrs Mowat emailed Mr Fraser to tell him she could not teach a lesson because of Mr Fraser's comment on 28 August 2019 that he was not aware of her request earlier in the year for mediation. She said it had started a chain of events involving the PPTA and lawyers. Mr Fraser replied later that day clarifying his comment related to his personal knowledge of her request for mediation at that time. He understood the Board and Mrs Mowat were now discussing the matter.

[197] On 2 December 2019 Mrs Mowat emailed the former Board Chair again. She asked for the agendas for the 5 March and 19 June PX meetings. The former Board Chair emailed back on 4 December 2019 attaching the March agenda but explaining there was no agenda for the June meeting because the Board's new secretary had her first meeting then and did not produce one for the PX session.

*Mrs Mowat referred to her concerns again*

[198] Mrs Mowat met with the former Board Chair and Board Members Messrs Singleton and Medicott on 4 December 2019. Although convened to discuss the TikTok matter, the meeting also discussed the 14 March 2019 letter and Mrs Mowat's concerns from around that time.

[199] The notes from the 4 December 2019 meeting record that when asked to what extent she thought about the 14 March 2019 letter, Mrs Mowat said she thought about it every day, it had caused her to take seven weeks leave, and she did not agree with it. The notes record that although Mrs Mowat accepted the March letter did not impose anything not already expected of a teacher, she thought it was appropriate for the anonymous letter writer (not her). Mrs Mowat described it having had a significant impact on her mental health and causing her to

want to resign. When she referred to her request for mediated assistance, the former Board Chair reminded Mrs Mowat about the support offered throughout the investigation, in the March meeting and letter that followed. Mr Singleton asked if there were any issues that remained unresolved and Mrs Mowat said, “not now.”

[200] The notes also recorded under the heading “General comments:”

Concerned about losing trust and confidence in the school given the handwriting issue as part of the investigation. Felt like lost trust in Board. [Mr Singleton] reinforced we need to have mutual trust and confidence.

[Mrs Mowat] went back over many issues covered in the investigation including the ‘missing letters’ and the Terms of Reference, the investigation that took place without her knowing wrt handwriting. She made a comment about something ‘[the former Board Chair] had said during the meeting in March to outline the investigation outcomes regarding [Mr Hill]’. [The former Board Chair] stated she disagreed with this comment.

[The former Board Chair] reinforced that as a Board we have to operate with the legal advice given and that I do not make decisions in isolation, so while the communication might be from me as Chair, it is with the Board’s knowledge and support. I reinforced that our intention is to work through these processes with the objective of moving forward. [Mrs Mowat] said she was now back in at school and doing what she loves.

[Mrs Mowat] mentioned that her clear advice from both [Mrs Mowat’s lawyer] and the PPTA was that she had been badly treated. [Mr Singleton] noted that both sides will have received advice and may have quite different views of this but the Board was open to listening and seeking to resolve any issues. He noted for that to happen they need to hear from [Mrs Mowat’s lawyer] as they had not.

[201] Hours after the 4 December 2019 meeting, Mrs Mowat forwarded an email to Mr Singleton that the former Board Chair had sent her on 30 October 2019, highlighting the phrase “Regardless, we do not intend to re-litigate or provide any further response to issues that have previously been responded to during the course of the investigation and its conclusion, including the 14 March meeting.”

[202] Mr Singleton emailed Mrs Mowat on 6 December 2019. This email is also subject of a separate disadvantage claim. He referred to Mrs Mowat raising the issue of trust and confidence in the Board and that the investigation into the letter writing had undermined it. Mr Singleton recalled telling Mrs Mowat the Board remained open to listening to how any matters Mrs Mowat considered to be unresolved could be addressed. He noted that Mrs Mowat had expressed the view the Board had declined to mediate to date and referred to the phrase above in the email from the former Board Chair. Mr Singleton then reiterated that the Board was open

to listening to what specific issues Mrs Mowat believed remained outstanding, noting the investigation had been concluded for some time. For the Board to respond, he said it needed specifics about what lay at the heart of the problem. He referred to recent requests for information that Mrs Mowat was entitled to make, but that it took time and resources to respond. Mr Singleton encouraged Mrs Mowat and her advisors to come back to the Board on their offer (to mediate) and to be clear about what she wanted from the Board. He hoped they could hear from her soon so everyone could enter the 2020 school year with a clear and positive pathway forward. He encouraged her to continue to access EAP through CBHS and to approach Mr Fraser about any additional support she may require.

[203] Mrs Mowat emailed Mr Singleton on 10 December 2019 thanking him for his email. She indicated her lawyer would contact Mr Singleton the following week.

[204] On 16 December 2019 Mrs Mowat emailed Mr Singleton with more questions about the minutes. She asked why the PX minutes looked different from the public minutes for June. She also enquired about why the PX minutes had the wrong day of the week (Tuesday, not Wednesday), when the new secretary started, when the Board started using BoardPro and whether an agenda existed for the June PX meeting.

[205] Mr Singleton emailed back the next day, 17 December 2019. He referred to the former Board Chair's prior responses and that the Board had provided copies of relevant documents. He explained the secretary had corrected the date and that her engagement terms were personal. Although the Board began using BoardPro in May 2019, it only started storing PX documents in it from July 2019. He asked if Mrs Mowat's lawyer would be in touch as she had indicated.

[206] Mrs Mowat emailed back the following day (at 9:48am), 18 December 2019. She outlined the May and June meetings at which the new secretary took minutes and said the former Board Chair was mistaken in saying her first meeting was in June 2019.

[207] The former Board Chair emailed later that day (at 4:51pm) apologising for the error, and confirming the new secretary started in the capacity of secretariat in May 2019 (and not June 2019 as previously stated).

*Mrs Mowat resigned*

[208] Mrs Mowat later resigned by email to Mr Hill (at 4:52pm) on 18 December 2019. The content of her resignation is as outlined above.

### **Did the Board unjustifiably disadvantage Mrs Mowat?**

[209] With that context in mind, the Authority has considered Mrs Mowat's four disadvantage grievances.

#### *Unjustifiable disadvantage a broad concept*

[210] The Act defines an unjustifiable disadvantage personal grievance as any grievance an employee may have against their employer (or former employer) because of a claim (among other things) that:<sup>26</sup>

... the employee's employment, or 1 or more conditions of the employee's employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee's disadvantage by some unjustifiable action by the employer.

[211] The Employment Court has referred to disadvantage as a broad term:<sup>27</sup>

A personal grievance for unjustifiable disadvantage is one that alleges that the employee's employment, or one or more conditions of the employee's employment, is or are affected to the employee's disadvantage by some unjustifiable action by the employer. In that context, "disadvantage" is a broad term. There is no restriction on the type of disadvantage that may fall for consideration. The Court or Authority considers the actual effect of the decision under challenge on the employment. Whether the employment is affected to the employee's disadvantage by some unjustifiable action necessarily involves focussing on what has occurred, and then assessing the impact on the employee's employment.

The "conditions of the employee's employment" are broader than just contractual terms and conditions; they include the rights, benefits and obligations arising out of the relationship as well as conditions which were understood and applied by the parties in practice or habitually.

[212] A broad approach to disadvantage factors in good faith:<sup>28</sup>

Such a broad approach leads to a conclusion that there are many ways in which disadvantage may arise. In my view, such a conclusion is reinforced by the overarching obligations of good faith which may fall for consideration when assessing whether a disadvantage grievance is established.

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<sup>26</sup> Section 103(1)(b).

<sup>27</sup> *Wiles v the Vice-Chancellor of the University of Auckland* [2024] NZEmpC 123 at [98] and [99].

<sup>28</sup> *Johnson v Chief of the New Zealand Defence Force* [2019] NZEmpC 192 at [78] to [79], and [87].

A failure to comply with good faith obligations could found a disadvantage grievance where a fair and reasonable employer could be expected to comply with the law. It is therefore necessary to elaborate on the meaning of the good faith references in the Act.

[213] Good faith requires parties to at least not do anything likely to mislead or deceive the other as well as being active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative.

[214] When determining whether the Board has unjustifiably disadvantaged Mrs Mowat, the Authority has considered the duty of good faith and whether the Board has acted in a way a fair and reasonable employer could in all the circumstances at the time.<sup>29</sup>

*Mrs Mowat alleges four different disadvantages*

[215] In summary, Mrs Mowat says the Board unjustifiably disadvantaged her by:

- (a) Releasing PX minutes for March, June and August 2019 on 7 October 2019 that appeared altered (altered minutes allegation).
- (b) Releasing to Mrs Mowat on 7 October 2019 an email between the former Board Chair and another person in which the former Board Chair referred to Mrs Mowat's Privacy Act requests as "harassment" (harassment comment).
- (c) Telling Mrs Mowat it did not intend to respond to issues it considered it had previously responded to during the investigation (into the anonymous letters) and the 14 March 2019 meeting, in an email on 30 October 2019 (shutdown approach).
- (d) Refusing to mediate Mrs Mowat's concerns as set out in her 16 February 2019 email when on 6 December 2019 the new Board Chair emailed Mrs Mowat asking her to identify issues that remained outstanding noting the investigation had been concluded for some time (mediation matter).

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<sup>29</sup> Act, s 4 and s 103A.

## **Altered minutes allegation did not disadvantage Mrs Mowat**

[216] Mrs Mowat says the Board unjustifiably disadvantaged her by releasing PX minutes for March, June and August 2019 on 7 October 2019 that appeared altered. Mrs Mowat implies the Board's approach to minutes was dishonest.

[217] Prior to resigning, Mrs Mowat made enquiries of the Board about aspects of the PX minutes she had questions about. She received responses from the Board that confirmed the following anomalies:

- (a) The PX minutes contained a mistake about the day of the week for the for the 19 June 2019 Board meeting (it said a Tuesday, not a Wednesday);
- (b) Although the Board started using BoardPro in May 2019, it only started storing PX documents in it from July 2019;
- (c) The former Board Chair made a mistake in her recall about when the new secretary started (which she later apologised for);
- (d) There was some uncertainty about creation dates; and
- (e) The secretary did not make an agenda for the 19 June 2019 PX meeting.

[218] It is unfortunate some mistakes in date and recall as well as a change of software and secretary happened during a period Mrs Mowat wanted answers about anomalies in the PX minutes. However, the Authority does not accept the above anomalies reasonably support a conclusion the Board altered the PX minutes in an untoward or dishonest way. The Board did not disadvantage Mrs Mowat, unjustifiably or otherwise, in its release of the PX minutes on 7 October 2019.

[219] For completeness, the Authority notes that since Mrs Mowat resigned, further information has explained some of the discrepancies. For example:

- (a) CBHS did not have the ability to use BoardPro for the June PX meeting until 17 July 2019 when it added a feature to its software (potentially accounting for the different appearance in the PX minutes for 19 June 2019);
- (b) Consistent with its usual process, minutes were checked for accuracy at times resulting in amendments between draft and final versions;

- (c) The Board discussed Mrs Mowat's request for mediation in the 5 March 2019 PX part of the meeting, but did not record it in the minutes;
- (d) The method of entry influenced which icons appeared in BoardPro - the absence of running man and hammer icons suggested information had been entered in the notes section, rather than as a decision; and
- (e) Modifications to metadata and versions of the PX minutes may have occurred due to processes like redacting, resaving and forwarding before being provided to Mrs Mowat.

[220] In addition to the above, the Board says the Office of the Privacy Commissioner (OPC) investigated a complaint from Mrs Mowat. The OPC closed its file, satisfied Mrs Mowat had received all information she was entitled to.

### **Harassment comment did not disadvantage Mrs Mowat**

[221] Mrs Mowat says the Board unjustifiably disadvantaged her when it released an email to her on 7 October 2019 in which the former Board Chair referred to Mrs Mowat's requests for information as "harassment." The email is part of a chain between the former Board Chair and another person on 1 August 2019 explaining a delay in responding to Mr Mowat's email due to the email not coming to her until that day. The former Board Chair then says:

Just so you know [*Mrs Mowat*] is actively working with the PPTA and sending regular requests for information on [*Mrs Mowat's*] personnel file – all of which have been responded to. We have today passed this back to our lawyers to try and put a stop to this harassment.

[222] The Authority did not have the benefit of evidence from the former Board Chair about what she meant when she used the word "harassment." Despite that, one interpretation might be that the former Board Chair felt frustrated about Mrs Mowat's requests and shared that sentiment with another person (without considering Mrs Mowat may end up reading her comment). It certainly suggests a strong desire for the requests to stop.

[223] The use of the word "harassment" to describe Mrs Mowat's requests could be considered uncharitable but must be seen in context. The Board responded to Mrs Mowat's requests. It provided her with the information she had an entitlement to request. It may have been disconcerting for Mrs Mowat to read the former Board Chair's characterisation of her requests to another person at that point in time – but not every unkind comment to an employee

amounts to an unjustifiable disadvantage.<sup>30</sup> The same can be said regarding comments made about an employee to another person.

[224] The Board did not unjustifiably disadvantage Mrs Mowat when she received a copy of the email containing the harassment comment.

### **Mediation matter did not disadvantage Mrs Mowat**

[225] Mrs Mowat says the Board refused to mediate her concerns as set out in her 16 February 2019 email when on 6 December 2019 Mr Singleton (then a member of the PI subcommittee and a Board member) emailed Mrs Mowat asking her to identify issues that remained outstanding noting the investigation had been concluded for some time.

[226] Whilst Mr Singleton did not directly say the Board would mediate Mrs Mowat's concerns as outlined in her 16 February 2019 email, he did not say they would not. Mr Singleton said the Board was opening to listening to what specific issues Mrs Mowat believed were outstanding, and that the Board's lawyer had confirmed that to Mrs Mowat's lawyer in October. The letter dated 7 October 2019 specifically said the Board would attend mediation with the Ministry of Business, Innovation and Employment, and asked if Mrs Mowat would like the Board to organise it. The Board did not place any conditions on what could or could not be discussed at mediation.

[227] Mrs Mowat said she did not want to attend mediation only to have the Board offer to pay for her resignation with the benefit of confidentiality. She also said she wanted to mediate with Mr Hill, not the Board.

[228] The Act aims to promote mediation as the primary forum for resolving employment relationship problems.<sup>31</sup> The Act does not require mediation to take a particular form except to generally require confidentiality.<sup>32</sup>

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<sup>30</sup> See the Employment Court's comments in *DBM Medical Ltd v Gaarkeuken* [2025] NZEmpC 209: "Not every imperfect communication between an employer and an employee amounts to an unjustifiable action, and they must be seen in context..." at [74].

<sup>31</sup> Act, s 3(a)(v).

<sup>32</sup> Act, s 144 – 149. Exceptions to mediation's flexible format include where parties ask for a recommendation (s 149A) or decision (s 150).

[229] The nature of mediated disputes means parties may continue to disagree about how to resolve matters. One cannot assume what the Board or Mrs Mowat may or may not have discussed or proposed to resolve matters.

[230] Although the Board had previously shutdown Mrs Mowat when she wanted to raise issues from her 16 February 2019 email (such as in the 14 March 2019 meeting), that did not mean the Board's offers to mediate much later were hollow. Mrs Mowat's reading of Mr Singleton's email may have been coloured by prior events (outlined in the shutdown allegation below). Another reading of the email is that it signalled a subtle shift to being open (rather than shutdown) to what Mrs Mowat had to say (which may have included discussions about her 16 February 2019 email) following the discussions during the 4 December 2019 meeting. It indicated a more constructive approach by the Board to listening to and resolving Mrs Mowat's concerns.

[231] For these reasons the Authority does not find the Board unjustifiably disadvantage Mrs Mowat in the way alleged.

### **Shutdown approach disadvantaged Mrs Mowat**

[232] Mrs Mowat says the Board unjustifiably disadvantaged her when it told her it did not intend to respond to issues it considered it had previously responded to during the investigation (into the anonymous letters) and the 14 March 2019 meeting, in an email on 30 October 2019. Specifically, the former Board Chair said at the end of her email that:

Regardless, we do not intend to re-litigate or provide any further response to issues that have previously been responded to during the course of the investigation and its conclusion, including the 14 March meeting.

[233] This email formed part of a pattern of dealings and communications by the Board with Mrs Mowat that she says were negative and ongoing at the time she resigned.

#### *Mrs Mowat made a complaint*

[234] Mrs Mowat's 16 February 2019 email outlined two primary concerns she wanted to discuss with the Board:

- (a) Perceived flaws in how the Board had conducted itself regarding the investigation(s) into the anonymous letters; and

- (b) A pattern emerging of Mr Hill blaming her unfairly for things she did not do (like the anonymous letters and the events of 2018).

[235] The complaints policy defined a complaint as a serious concern that a complainant wished to be investigated and resolved. The complaint had to be in writing, provide detailed reasons, be based on specific and factual information (with all information provided), and identify the complainant. Complaints about the Headmaster had to go to the Board via the Chair who would table it at the next meeting.

[236] Mrs Mowat addressed her 16 February 2019 email to the Board. It outlined a serious concern about Mr Hill, the Headmaster (she said he had unfairly blamed her for things she did not do), as well as her concerns about the Board's behaviour during the investigation. Mrs Mowat had already provided information supporting her complaint in the 29 August 2019 meeting with the AL subcommittee. Her 16 February 2019 email provided further information. It identified her as the complainant. Mrs Mowat asked to discuss her concerns in detail and obtain some sort of mediated assistance. She did not ask for an investigation into her complaint, but that was one of a number of options the Board could have explored with Mrs Mowat in responding to her complaint.

[237] It was unreasonable for the Board not to acknowledge that Mrs Mowat's 16 February 2019 email was substantively a complaint under the complaints policy. Failing to recognise that her email had triggered obligations under the complaints policy coloured how the Board communicated with Mrs Mowat about her concerns, including incorrectly saying they had already been addressed.

[238] The Board made it clear it did not wish to reopen or revisit the findings of the investigation into the anonymous letters. That was reasonable. But Mrs Mowat had not asked for the Board to do that. She wanted to raise concerns about Mr Hill. She wanted to discuss the Board's behaviour during the investigation and since. That did not require the Board to reopen or revisit the findings of the investigation into the anonymous letters. It required the Board to constructively discuss Mrs Mowat's concerns and explore in good faith with her how to resolve them which may have included some sort of mediated assistance as suggested by Mrs Mowat.

*The Board had not adequately addressed Mrs Mowat's concerns*

[239] It is necessary to deal with the Board's stance that it had already addressed Mrs Mowat's concerns directly through the investigation, the 14 March 2019 meeting or through Mr Hill. It is helpful to place that claim in context.

[240] Mrs Mowat first learned of an investigation into the anonymous letters when the former Board Chair emailed all staff on 13 August 2018 asking for the writer to come forward. Feeling anxious Mr Hill would try to blame her as part of a pattern of blaming her for things she did not do, Mrs Mowat met with the former Board Chair and another AL subcommittee member on 29 August 2018 to tell them about her fear. She provided emails and other information supporting her concerns.

[241] At the meeting on 29 August 2018 the Board did not tell Mrs Mowat:

- (a) Her fear was well placed - Mr Hill had already blamed her, in writing, three times, on 31 May, 4 July and 24 August 2018;
- (b) The Board had already sent her handwriting to the Police on 8 June 2018 for comparison with and analysis of handwriting associated with the anonymous letters; and
- (c) The Board intended to investigate (or had started to investigate) Mr Hill's complaint about Mrs Mowat that she had written the letters.

[242] The next thing the Board tells Mrs Mowat is that it has closed its investigation in an email on 17 September 2018 from the former Board Chair. The carefully worded email does not address the concerns Mrs Mowat raised in the 29 August 2018 meeting. It did not suggest the Board intended to open (or had already opened) another investigation that would focus on Mrs Mowat.

[243] Two days later the former Board Chair emailed Mrs Mowat to tell her Mr Hill had made a complaint about Mrs Mowat and the Board had engaged an external person to investigate.

[244] With Mrs Mowat's agreement, the Board gave the investigator the information Mrs Mowat had provided it on 29 August 2018. The TOR set the scope of the investigation and

asked the investigator to conclude who wrote the letters (if possible) or was involved in writing them.

[245] The TOR did not require an investigation into Mrs Mowat's concerns alleging a pattern of behaviour by Mr Hill of blaming her unfairly.

[246] During the investigation, Mrs Mowat's lawyer asked for her handwriting to be analysed. The Board disclosed it had already done so. Mrs Mowat's lawyer criticised the reactive (rather than proactive) provision of that and other information which he claimed did not comply with the duty of good faith.

[247] In the report released as a draft in December 2018 and in final form in March 2019, the investigator could not conclude Mrs Mowat wrote the letters. While waiting for the final form of the report, Mrs Mowat emailed the Board on 16 February 2019 raising red flags about how she felt about work, perceived flaws in the investigation, and her belief Mr Hill had unfairly blamed her (the most recent example of blaming her for the anonymous letters). Among other things, Mrs Mowat asked to discuss her concerns and some sort of mediated assistance.

[248] The Board met on 5 March 2019. The PX minutes recorded the Board's agreed key messages for Mrs Mowat following the investigation. Whilst grateful to Mrs Mowat for her cooperation throughout the process, the Board wanted to help Mr Hill and Mrs Mowat improve their relationship.

[249] The PX minutes do not record receiving Mrs Mowat's 16 February 2019 email for the full Board to discuss. Mr Singleton could not recall discussing it (but trusted the AL subcommittee to manage the matter and update the Board as appropriate). He recalled the Board discussing but declining a suggested mediation between Mr Hill and Mrs Mowat, believing it would not benefit either person. He also noted Mr Hill had tried to "resolve tensions" with Mrs Mowat, had been impacted by the letters, and that Mr Hill and Mrs Mowat did not work closely together at that stage.

[250] On 14 March 2019 the former Board Chair and another AL subcommittee member met with Mrs Mowat to discuss the outcome of the investigation. In this meeting Mrs Mowat wanted answers to 30 questions she had asked in advance, many of which focussed on concerns about the investigation (like the delayed provision of the handwriting analysis) and Mr Hill's

behaviour towards her. The documents record a reluctance and reticence by the former Board Chair to fully answer most questions. For example:

- (a) the Board repeated its position that the investigation was fair, it would not be appropriate to discuss concerns Mrs Mowat had about the investigation, or it had responded to many of Mrs Mowat's questions through her lawyer;
- (b) if Mrs Mowat felt unfairly treated she should raise her concerns with Mr Fraser (then Deputy Headmaster) or through the complaints process; and
- (c) the Board was not prepared to speculate about Mrs Mowat's perception of Mr Hill's behaviour and this had been part of the investigation.

[251] The Board then gave Mrs Mowat a letter recording the discussions and outcomes. The letter did not record a warning. Mrs Mowat accepted the letter outlined reasonable expectations. The Authority does not accept the Board warned Mrs Mowat in this letter but that does not mean the approach taken by the Board was fair.

[252] The letter did not mention Mrs Mowat's concerns as outlined in her 16 February 2019 email. It glossed over them by telling her to raise any concerns through the correct processes – with Mr Fraser or the complaints policy. It did not acknowledge Mrs Mowat had already substantively raised concerns under the complaints policy and that Mrs Mowat had raised concerns three times by then - in the 29 August 2019 meeting, in her 16 February 2019 email and during the meeting on 14 March 2019.

[253] Mrs Mowat's husband then sent a comprehensive email to the Board on 16 June 2019, highlighting how the 14 March 2019 meeting impacted Mrs Mowat (negatively), and provided more detail about Mrs Mowat's concerns. It went as far as referring to Mr Hill's behaviour as bullying.

[254] The Board met on 19 June 2019. The PX minutes record that the AL subcommittee's recollections of the March meeting were that Mrs Mowat had not raised anything new and that many of the issues raised were already covered during the investigation. It also recorded that the AL subcommittee told Mrs Mowat her concerns must go through the complaints policy, and they had not heard anything.

[255] The former Board Chair emailed both Mr and Mrs Mowat on 19 June 2019 responding to Mr Mowat's complaint. She said the AL subcommittee were already aware of many of the issues Mr Mowat had raised and that:

- (a) The Board had responded directly to Mrs Mowat as an employee or through her lawyer during the investigation; or
- (b) The issues had been directly addressed during the meeting on 14 March 2019 or during the meeting on 29 August 2019; or
- (c) The issues had been brought to the attention of the Board by Mr Hill and where it was deemed required, the Board had sought further information and clarification.
- (d) When Mrs Mowat raised any new information or questions, the Board told Mrs Mowat to make a formal complaint through the proper process and the Board had not received a complaint following that meeting. Mrs Mowat had to adhere to the complaints policy and that required supporting information about anything new over and above what had already been raised. The Board would only review an investigated complaint if satisfied the investigation process was unfair or where the complainant provided new information.

[256] Mr Mowat emailed back expressly asking for his complaint to be made formal on 23 June 2019. At that stage the Board had considerable detail about Mrs Mowat's concerns, from both her and her husband.

[257] On 26 August 2019 Mrs Mowat's PPTA representative wrote to the former Board Chair raising further concerns about Mrs Mowat's personal file and the investigation.

[258] The former Board Chair emailed Mr Mowat on 28 August 2019 acknowledging his formal complaint and asking if he had raised the issues on behalf of Mrs Mowat.

[259] The Board's lawyer wrote to Mrs Mowat's PPTA representative on 28 August 2019. The letter responded to concerns about Mrs Mowat's personal file and reiterated the Board's view that:

- (a) It had addressed the concerns raised by Mrs Mowat in her 16 February 2019 email at the meeting on 14 March 2019 and the letter following.

- (b) The Board took reasonable steps at that time to address Mrs Mowat's concerns and asked her to discuss any additional support she required with Mr Fraser.
- (c) The Board told Mrs Mowat she must raise any further formal issues through the correct channels (Mr Fraser or the complaints policy).

[260] The Board's lawyer wrote to Mrs Mowat's lawyer on 7 October 2019 responding to personal information requests. It referred to what it said in the 28 August 2019 letter in relation to the concerns in Mrs Mowat's 16 February 2019 email – that they had been addressed in the 14 March 2019 meeting.

[261] Mrs Mowat followed up on a question about her reputation (a topic discussed in the 14 March 2019 meeting) in an email on 29 October 2019. The former Board Chair responded the next day (on 30 October 2019) effectively saying they had not made promises, then: "Regardless, we do not intend to re-litigate or provide any further response to issues that have previously been responded to during the course of the investigation and its conclusion, including the 14 March meeting."

[262] The Authority does not accept in the above context that the Board had adequately addressed Mrs Mowat's concerns (particularly her concerns about Mr Hill).

*Shutdown approach unjustifiably disadvantaged Mrs Mowat*

[263] By not adequately addressing Mrs Mowat's concerns, yet maintaining that the Board had, the Board seemed to be trying to shutdown Mrs Mowat's concerns in a way that was unfair. It started when the Board did not recognise Mrs Mowat had made a complaint about the Headmaster under the complaints policy. It continued with the communications and interactions with or on behalf of the Board that incorrectly maintained Mrs Mowat's concerns had already been addressed. These communications and interactions were not constructive to resolving Mrs Mowat's concerns in a good faith way. The Board's approach unjustifiably disadvantaged her.

[264] When Mrs Mowat first approached the Board in August 2019 to tell them she feared Mr Hill would blame her, it was not consistent with the duty of good faith to stay silent about the complaints from Mr Hill against her, the Board's intention to investigate, and the steps it had already taken to compare her handwriting. That silence lulled Mrs Mowat into a false sense of security, particularly when the Board emailed her to tell her it had closed its investigation.

Mrs Mowat reasonably became upset when she received an unwelcome surprise only days later when the Board said it would investigate Mrs Mowat as the alleged anonymous letter writer.

[265] Mrs Mowat then had to defend the very allegation she had hoped to avoid – that she had written the anonymous letters containing content critical of her Headmaster, Mr Hill. This allegation arose in the context of her having come forward to the Board expressing fear Mr Hill would blame her for it, based on a pattern of behaviour in which she says he blamed her for things she did not do. After cooperating with the investigation, receiving a draft report that could not conclude she wrote the letters in December 2018, then spending a summer waiting for the final report, Mrs Mowat could not wait any longer to write the 16 February 2019 email. Her complaint warranted a more active and constructive response than it got.

[266] When meeting with Mrs Mowat on 14 March 2019, the Board provided dismissive responses to probing questions from Mrs Mowat who wanted to more extensively discuss her concerns about perceived flaws in the investigation and the concerns she had about Mr Hill. Rather than explore Mrs Mowat's concerns further and attempt to find a way to resolve them, the Board incorrectly said it had addressed Mrs Mowat's concerns through the investigation or responses through her lawyer. Despite correspondence saying otherwise:

- (a) The Board had not addressed Mrs Mowat's concerns about Mr Hill through the investigation. The TOR and report focussed on Mr Hill's complaint, not Mrs Mowat's.
- (b) Mrs Mowat's concerns were not adequately addressed at the 14 March 2019 meeting (from Mrs Mowat's perspective). The recorded dismissive responses to many of Mrs Mowat's questions support that view.
- (c) Mrs Mowat's concerns were also not addressed by the Headmaster reporting to the Board about matters and trying to resolve tensions himself. Even if he had, Mr Hill did not have the necessary impartiality to address concerns involving a complaint about himself.

[267] Even if the Board and Mrs Mowat held different views about any perceived flaws in the investigation that may not have changed through further discussion, the Board still had an obligation to engage in an open-minded way with Mrs Mowat's concerns and attempt to constructively resolve them. Even if Mrs Mowat was out of time to raise a grievance about the

investigation into the anonymous letters, the duty of good faith still required a more proactive approach to resolve Mrs Mowat's concerns as an existing employee. That did not occur and missed an opportunity to resolve Mrs Mowat's concerns earlier.

[268] Setting aside Mrs Mowat's concerns about the investigation, the Board's approach to Mrs Mowat's complaint about Mr Hill alone was problematic. Directing her to raise her complaint under the complaints policy did not recognise she had already in substance done that. The complaints policy distinguished between complaints about staff/students and the Headmaster, recognising the Board should deal with the latter. The duty of good faith required a more proactive approach to Mrs Mowat's complaint than the overly technical response directing her to the complaints policy.

[269] The Board's approach continued in subsequent communications including correspondence on 28 August, 7 October and 30 October 2019 in which the Board repeated its view Mrs Mowat's concerns had already been addressed and told her the Board would not relitigate or revisit her concerns about the investigation and the 14 March 2019 meeting.

[270] Collectively these communications comprised the shutdown approach the Board took to Mrs Mowat's concerns. This approach unjustifiably disadvantaged Mrs Mowat who felt unheard and her concerns minimised by the Board during a vulnerable time for her following the investigations. It was not consistent with the duty of good faith that required a more active, constructive, responsive and communicative approach. Nor was it what a fair and reasonable employer could have done in all the circumstances at the time.

[271] The shutdown approach also missed an opportunity to potentially resolve matters much earlier. Mrs Mowat gave evidence her conflict resolution training taught her to try to resolve things at the lowest level. During its March 2019 meeting the Board decided against mediation or meeting between her and Mr Hill (or even the Board) at that stage. Although the Board offered mediation later in the year (such as the offer in a letter dated 7 October 2019), it could have offered to do so earlier.

[272] The Authority recognises the Board took other steps to support Mrs Mowat, such as offering her access to EAP sessions, support from Mr Fraser and other staff members, and later offering to mediate. That support is relevant to Mrs Mowat's constructive dismissal claim.

## **Did CBHS unjustifiably (constructively) dismiss Mrs Mowat?**

*What is a constructive dismissal?*

[273] Each unjustified (constructive) dismissal case is unique and must be determined on its facts with regard to relevant legal principles.

[274] The Arbitration Court has defined a dismissal as an employer-initiated termination covering constructive and actual dismissals both with or without notice.<sup>33</sup> When considering a case of constructive dismissal and distinguishing it from a voluntary resignation, causation is key:<sup>34</sup>

If the real source of the initiative for termination is the employer, or the basic causation comes from the employer, then the case is one of constructive dismissal.

[275] When deciding where the cause of a termination stems from, it is useful to ask:<sup>35</sup>

- (a) What were the terms of the contract?
- (b) Was there a breach of those terms by the employer of a seriousness sufficient to warrant the termination action actually taken by the employee?

[276] The Court of Appeal put it this way:<sup>36</sup>

... the first relevant question is whether the resignation has been caused by a breach of duty on the part of the employer. To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of the notice or other communication whereby the employee has tendered the resignation. If that question of causation is answered in the affirmative, the next question is whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing: in other words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach.

[277] All the circumstances of a case inform the assessment of whether a breach is serious enough to justify an employee resigning in response:<sup>37</sup>

It is essential to examine the actual facts of each case to see whether the conduct of the employer can fairly and clearly be said to have crossed the border line which separates inconsiderate conduct causing some unhappiness or resentment to the employee, from dismissive or

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<sup>33</sup> *Wellington, Taranaki and Marlborough Clerical etc IUOW v Greenwich (T/A Greenwich and Associates Employment Agency and Complete Fitness Centre)* [1983] ACJ 965 at [103]. Many cases refer to and rely on this definition and the sending away concept also described.

<sup>34</sup> *Greenwich* above n 33 at [104].

<sup>35</sup> *Greenwich* above n 33 at [113].

<sup>36</sup> *Auckland Electrical Power Board v Auckland Provincial District Local Authorities Offers IUOW Inc* [1994] 1 ERNZ 168 (CA) at [172].

<sup>37</sup> *Greenwich* above n 33 at [104].

repudiatory conduct reasonably sufficient to justify the termination of the employment relationship.

[278] The Employment Court has recently reiterated the objective nature of the reasonable foreseeability assessment under s 103A:<sup>38</sup>

When considering whether there is a substantial risk of resignation which is foreseeable, the question must be approached from an objective perspective rather than from the subjective perspective of the employer. As the test is objective, it follows that reasonable foreseeability depends not only on what the defendant knew at the time but also upon what it ought reasonably to have known.

[279] Three categories of constructive dismissal are commonly referred to. Mrs Mowat alleges the following two categories apply:<sup>39</sup>

- (a) An engineered result: Did the Board follow a course of conduct with the deliberate and dominant purpose of coercing Mrs Mowat to resign?
- (b) A repudiatory breach: Did a breach of duty by the Board lead Mrs Mowat to resign (and was the breach of a sufficient seriousness to warrant her reasonably foreseeable resignation)?

[280] Where a series of events over a period of time is said to lead to a resignation, cases about “final straw” events may be relevant. For example, in *O’Boyle v McCue* [2020] NZEmpC 175 the Employment Court said:<sup>40</sup>

The Court of Appeal in England and Wales first enunciated the applicable principles in *London Borough of Waltham Forest v Omilaju*, subsequently summarised by the English Employment Appeal Tribunal as follows:

[32] We derive the following principles from *Omilaju*:

- (1) The final straw act need not be of the same quality as the previous acts relied on as cumulatively amounting to a breach of the implied term of trust and confidence, but it must, when taken in conjunction with the earlier acts, contribute something to that breach and be more than utterly trivial.
- (2) Where the employee, following a series of acts which amount to a breach of the term, does not accept the breach but continues in the employment, thus affirming the contract, he cannot subsequently rely on the earlier acts if the final straw is entirely innocuous.
- (3) The final straw, viewed alone, need not be unreasonable or blameworthy conduct on the part of the employer. It need not itself amount to a breach of contract. However,

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<sup>38</sup> *Ling v Super Cuisine Group Ltd* [2023] NZEmpC 106 at [12] and *O’Boyle v McCue* [2020] NZEmpC 175 at [181], both referring to *Edmonds v Attorney-General* [1998] 1 ERNZ 1 (EmpC) at [13]-[14].

<sup>39</sup> Summarised from the categories described in *Auckland etc Shop Employees etc IUOW v Woolworths (NZ) Limited* (1985) ERNZ Sel Cas 136 at [139].

<sup>40</sup> At [183] to [185].

it will be an unusual case where the “final straw” consists of conduct which viewed objectively as reasonable and justifiable satisfies the final straw test.

(4) An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely (and subjectively) but mistakenly interprets the employer’s act as destructive of the necessary trust and confidence.

In *Pivott v Southern Adult Literacy Inc*, Judge Ford noted that although overseas authorities need to be approached with a degree of caution, there was no reason in principle as to why these statements should not have equal application to constructive dismissal cases in this jurisdiction. I respectfully agree.

For present purposes, these principles show that last straw events may not in and of themselves provide a justification for an employee to resign constructively; rather, such events need to be assessed carefully in the context in which they arose, with a view to determining whether or not a series of events has ultimately resulted in a breach of duty.

*The Board did not constructively dismiss Mrs Mowat*

[281] Turning to the first kind of constructive dismissal claimed, the engineered result. The Authority does not accept the Board followed a course of conduct with the deliberate and dominant purpose of coercing Mrs Mowat to resign. Although the Board took a shutdown approach to Mrs Mowat’s concerns at a point in time, the evidence does not show the Board intended for this to force Mrs Mowat to resign.

[282] That leaves the repudiatory breach kind of constructive dismissal claimed: Did a breach of duty by the Board lead Mrs Mowat to resign (and was the breach of a sufficient seriousness to warrant her reasonably foreseeable resignation)?

[283] The strongest indicator that Mrs Mowat chose to resign for her own reasons (and not because of a breach by the Board) was the fact she resigned months after returning to work and saying she was back at work doing what she loved.

[284] During the meeting on 4 December 2019, although Mrs Mowat spoke strongly about the events of March that year, and there were clearly different views about what had happened, Mrs Mowat assured the Board she was back at school doing what she loved. That is a testament to Mrs Mowat’s resilient and positive nature. But it also meant by the time she resigned, her concerns as outlined in her 16 February 2019 email could no longer be an operative reason for resigning. Even if they were, the Authority would have found Mrs Mowat had affirmed any breach (if it was sufficiently serious).

[285] The reasons referred to in Mrs Mowat's resignation were insufficiently serious on their own or collectively to warrant resignation. The Authority does not accept the Board acted unfairly by undertaking an investigation into the anonymous letters and Mr Hill's complaint, or in its provision of Mrs Mowat's personal information. Even when viewed through a final straw lens, the confusion over mediation and the anomalies in the minutes were matters Mrs Mowat subjectively but incorrectly understood to be dishonest behaviour by the Board.

[286] The Authority does not accept the Board constructively dismissed Mrs Mowat. For completeness, each of the events Mrs Mowat referred to in her resignation emails have also been considered.

*What did Mrs Mowat say caused her resignation at the time?*

[287] When Mrs Mowat resigned, she gave the following reasons:

- (a) Being the subject of investigations as the alleged writer of the anonymous letters (she was not); and
- (b) Although the investigation showed she was not involved, during the investigation period Mrs Mowat experienced "... considerable negative dealings with the board / sub-committee / management in relation to the handling of the anonymous letter post-investigation communication." At the time she resigned, she said this was ongoing (matters the Authority has characterised as the shutdown approach).

[288] In her second email, Mrs Mowat explained her decision to resign originated from:

- (a) An email from Mr Fraser on 28 August 2019, the day after the August Board meeting he had attended;
- (b) Mrs Mowat's 16 February 2019 email to the Board;
- (c) The meeting between Mrs Mowat, the Board Chair and another Board member on 14 March 2019; and
- (d) Subsequent Board communication as a result of the 28 August 2019 email.

*The Board had an obligation to investigate Mr Hill's complaint*

[289] Mrs Mowat gave emotional evidence about the impact on her of being accused of being the anonymous letter writer, and that the behaviour by the Board during the investigation and subsequently suggested to her that the Board believed she was the letter writer even though the report could not conclude she was.

[290] I do not underestimate the depth of distress Mrs Mowat felt about facing the allegation she had written the anonymous letters. Investigations are inherently stressful for everyone involved but especially for the person facing allegations of inappropriate behaviour. However, investigations are a necessary process that ensures fairness for both a complainant and the person facing a complaint. It was reasonable and appropriate for the Board to engage an external person to investigate Mr Hill's complaint. Although Mr Hill's complaint was not upheld it did not come out of nowhere - the report described the circumstances that suggested Mrs Mowat was connected to the letters. The Board could not draw any conclusions until the investigation had been completed. The investigation ultimately helped show Mrs Mowat had not written the letters and in that sense was in Mrs Mowat's interests.

[291] Although the Authority has found the Board disadvantaged Mrs Mowat in how it responded to her concerns about Mr Hill and aspects of the investigation into the anonymous letters (as described above), by the time Mrs Mowat resigned, the investigation had been concluded for more than nine months, and any disadvantage caused by the shutdown approach insufficiently serious to warrant Mrs Mowat's resignation. Mrs Mowat had by then shifted her focus from Mr Hill and the investigation to the Board's behaviour in relation to other matters such as her perception about the minutes being altered and aspects of her personal file.

[292] It was not unreasonable for the Board to undertake the investigations it did. However, even if it was, Mrs Mowat had affirmed any breach by the time she resigned.

*Mediation comment confused*

[293] On 28 August 2019 Mr Fraser emailed Mrs Mowat asking about how he could support her return to work in September 2019. Among other things he said he was unaware of any request for mediation made by Mrs Mowat earlier in the year but understood the Board would attend if Mrs Mowat thought it would help. Mrs Mowat took this to mean that despite

everything she had said and done up to that point, the Board was pretending it had not received her request for mediation in her 16 February 2019 email. Mr Fraser later explained to Mrs Mowat that he had referred to his personal knowledge of Mrs Mowat's request for mediation at the time, not the Board's. He had not attended the Board meeting at which Mr Singleton recalled the Board discussing the possibility of mediation (the March meeting).

[294] Mrs Mowat's belief Mr Fraser's email confirmed her suspicions the Board had hidden or dishonestly denied knowing about her request for mediation was genuine but mistaken. That Mr Fraser did not have personal knowledge of her request at that point in time is more consistent with the Board not having disseminated that information further than necessary. Mr Fraser had not attended Board meetings until he became Acting Headmaster for term three of 2019. That the March PX minutes had not recorded the Board's discussion about mediation exacerbated that confusion.

[295] Mr Fraser's mediation comment was an unfortunate misunderstanding. It was not a breach of any obligations by the Board that would support a constructive dismissal whether as a final straw event or otherwise.

#### *Communications about the Board minutes and other matters*

[296] Mrs Mowat's interest in perceived anomalies about the minutes was misplaced. Before Mrs Mowat resigned, Mr Fraser's response about not knowing Mrs Mowat had requested mediation fuelled her belief the Board had altered the minutes in an untoward way. It stemmed from a confusion about what Mr Fraser knew (or did not know) and how, because he had not attended the meeting at which Mrs Mowat's request was discussed and it was not recorded in the minutes. That is unfortunate but falls into the category of events genuinely but mistakenly believed by Mrs Mowat to be dishonest. Acting on that mistaken belief did not create a final straw situation that could support her constructive dismissal claim.

#### *Shutdown approach a disadvantage only*

[297] Mrs Mowat's references to her 16 February 2019 email, the meeting on 14 March 2019 and negative dealings and communications with others around the investigation(s), are all matters the Authority has collectively considered under the shutdown approach. However, events had overtaken any disadvantage Mrs Mowat experienced by the time she resigned. Even

if that had not occurred, the disadvantage was not sufficiently serious to warrant Mrs Mowat's resignation, particularly in circumstances where the Board had offered to attend mediation and softened its stance on hearing from her about her outstanding concerns in more recent correspondence.

*Not constructively dismissed*

[298] Mrs Mowat does not succeed in her claim for unjustifiable (constructive) dismissal.

**What (if any) remedies should the Authority award?**

[299] Where the Authority determines an employee has a personal grievance, it may provide for one or more remedies under s 123 of the Act.

*Compensation awarded*

[300] Mrs Mowat seeks an award of compensation in the highest band (\$50,000 or over). She has described a range of mental and physical symptoms caused by what happened at CBHS during her final few years.

[301] For example, Mrs Mowat described feeling shocked and distressed at the approach taken to the meeting on 14 March 2019. Mr Mowat described a "look of dismay" of his wife's face following that meeting. Mrs Mowat later described feeling unwell, sleepless, suffering from stomach pains, prone to crying and feeling flat, among other things.

[302] Medical information supports a connection between Mrs Mowat's work situation and a negative impact on her health.

[303] It is difficult to distinguish between the impact of the disadvantage grievance made out and the effect of events subject of claims not made out. In the circumstances, and after considering the evidence, what has been awarded in other cases and trends generally,<sup>41</sup> the Authority awards Mrs Mowat \$25,000 under section 123(1)(c)(i) of the Act.

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<sup>41</sup> Such as *GF v Comptroller of the New Zealand Customs Service* [2023] NZEmpC 101 at [161] to [162].

*No contribution*

[304] I do not accept Mrs Mowat contributed to the situation giving rise to her grievance in terms of s 124 of the Act.

*Orders*

[305] The Authority orders the Board to pay Mrs Mowat \$25,000 compensation under s 123(1)(c)(i) of the Act within 28 days of the release date.

[306] The Authority has also made a permanent non-publication order set out in paragraph [24] above.

*Direction*

[307] At the request of and with the consent of counsel and their clients, the Authority directs that this determination not be released to the parties or in any other way until 19 January 2026 (release date). This means the determination will remain sealed and in the custody of the Authority until the release date.

*Costs are reserved*

[308] The Authority reserves costs and encourages the parties to resolve that issue themselves.

[309] If the parties ask the Authority to determine costs for them, then the party who believes they are entitled to costs may lodge and serve a memorandum within 28 days of the release date. From the date of service of that memorandum the other party will then have 14 days to lodge any reply. Upon request, the Authority may grant an extension to the timeframe for parties to lodge memoranda.

[310] For the purposes of costs, the investigation meeting lasted for four and a half days. Counsel provided substantive submissions following the investigation meeting and were involved in several procedural matters. If the parties ask the Authority to determine costs, the usual daily tariff will likely apply unless circumstances require an adjustment.<sup>42</sup>

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<sup>42</sup> See “Costs in the Authority” at page 5 of the [Practice Direction of the Employment Relations Authority](#).

[311] Section 177(2) of the Senior Courts Act 2016 applied to extend the Member's warrant to allow her to complete this determination. As the extension ends on 30 December 2025 another Member will deal with any costs application.

Lucia Vincent  
Member of the Employment Relations Authority