Neutral Citation: [2014] IEHC 235

THE HIGH COURT

[2011 No. 3819 P]

BETWEEN

UNA RUFFLEY

PLAINTIFF

AND

THE BOARD OF MANAGEMENT ST. ANNE'S SCHOOL

DEFENDANTS

JUDGMENT of O'Neill J. delivered on the 9th day of May 2014

1. The plaintiff in this case sues the defendants, her employers, for damages for bullying and harassment which, she claims, occurred between 14th September 2009, and 27th September 2010, in the course of her work as a Special Needs Assistant (SNA) in the defendants' national school known as St. Anne's located at the Curragh, County Kildare.

2. 'Workplace Bullying' is defined in para 5 of the Industrial Relations Act 1990 (Code of Practice detailing Procedures for Addressing Bullying in the Workplace) (Declaration) Order 2002 (S.I. No. 17/2002) as follows:

> *"Workplace Bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying."*

3. In *Quigley v. Complex Tooling & Moulding Ltd.* [2009] 1 I.R. at 349, it was held by the Supreme Court that for conduct to amount to bullying it had to be repeated, inappropriate and undermining of the dignity of the employee at work. Furthermore, in his judgment, Fennelly J. said:

> *"The plaintiff cannot succeed in his claim unless he also proves that he suffered damage amounting to personal injury as a result of his employer's breach of duty. Where the personal injury is not of a direct physical kind, it must amount to an identifiable psychiatric injury."*

The facts relating to this matter are as follows.

4. The plaintiff, who was born in 1968, was employed by the defendants as a Special Needs Assistant at their school located in the Curragh, County Kildare. This school is a national school but caters exclusively for children with physical and/or intellectual disabilities, and unlike a normal national school, takes children from the age of four up to eighteen years. The school was founded by the KARE Organisation, which is an organisation of parents of children with physical and/or intellectual disabilities and has been in existence for nearly half a century and provides services, including schools, for children with those disabilities. Over the years since its inception, the range of services provided by the organisation has expanded greatly as has the organisation as an institution itself, now employing approximately 350 people. St. Anne's School is under the patronage of the KARE Organisation and the Chief Executive Officer of KARE, Mr. Christy Lynch, is also the Chairman of the Board of Management of St. Anne's School. As patron of the school, KARE also nominates one of the members to the Board.

5. St. Anne's School caters for approximately 70 to 75 pupils and in 2009 had 14 teachers and 26 Special Needs Assistants. In addition, the school has available to it a variety of other quasi-medical services such as Occupational Therapy.

6. In the school there is what is known as the 'Sensory Room'. The purpose and function of this room is to develop the sensory perception of pupils by exposing them to a variety of sensory experiences such as music, vibration, movement, light and colour. There is in the sensory a variety of equipment designed to promote the development of the child's sensory perception. The room in question has been in existence for approximately five years. Prior to that, it had been used as a secure room to store the school's computer equipment. The room is not a particularly large room, described by one witness as about 13ft x 10ft and does not have any windows. There is, apparently, a skylight. The door into the room is a metal door which could be locked from the outside with a key but at all times material to this case that was never used. There was, on the inside of the door, a lock which was described as similar to the lock on the inside of a toilet door which could be secured by twisting the lock to either open or close it. As will be seen, the controversy that arose in this case between the plaintiff and the defendants centred on the use of that lock.

7. Every pupil who used the Sensory Room had a programme designed for him or her by the Occupational Therapist and this would be carried out by a Special Needs Assistant or sometimes two Special Needs Assistants, depending on the pupil in question, under the direction of the class teacher. In general, only one pupil at a time would be accommodated in the Sensory Room, although it would appear sometimes there could be more than one pupil there at a given time. To successfully carry out the programme, it was desirable, if not necessary to ensure that during the programme there would not be distractions such as the intrusion of others, in particular, pupils coming in to the Sensory Room. Thus, it would appear to have been normal for the door to the Sensory Room to be kept closed whilst a pupil inside was going through a programme. At issue in this case was whether or not there was a common practice amongst SNAs of also locking the door whilst a pupil was going through his or her programme in the Sensory Room, using the lock on the inside of the door.

8. The plaintiff was employed by the defendants as a SNA from January 1999. From then until September 2009, it is commoncase that the plaintiff discharged her duty as an SNA in a satisfactory manner, enjoyed good relations with teachers, other SNAs and the Principal, Ms. Dempsey, and had never had any disciplinary issues or grievances during that 11-year period.

9. All of that changed on 14th September 2009.

10. On that day, the plaintiff was in the Sensory Room with a young boy after 1pm. Soon after the programme began, and when this pupil lay on a mat or mattress, he fell fast asleep. This was a most unusual occurrence for this pupil who suffered from ADHD, a condition which predisposed the pupil in question to hyperactivity rather than the reverse.

11. When he fell asleep, the plaintiff went to the telephone outside the Sensory Room a short distance away and telephoned the class teacher, Ms. Rachel Bramhall, for instructions. Ms. Bramhall instructed the plaintiff to allow the pupil to continue sleeping for a further period of 20 minutes before bringing him back to the class. In the meantime, Ms. Bramhall, being alarmed at this unusual development, rang the Principal, Ms. Dempsey, and asked her to check out the situation. Ms. Dempsey did that and when she approached the Sensory Room, she found the door locked and on her third attempt to gain entry, the door was opened by the plaintiff who readily accepted that the door had been locked. The question of the door being locked or otherwise was not discussed then. Ms. Dempsey confirmed the instructions given by Ms. Bramhall to allow the pupil to continue sleeping for a short period. This, the plaintiff did, and in due course brought the pupil back to the classroom in time for departure from school that day.

12. The following day, 15th September 2009, when the plaintiff came in to work, she was requested by the Principal, Ms. Dempsey, to come to her office which she did. When the plaintiff went to the Principal's office, she was informed by the Principal that she was handling the matter in the context of the disciplinary procedure. The plaintiff's evidence was that she was told she was being investigated. The plaintiff's initial response, as noted by the Principal, was that she thought this was because the pupil was asleep but the Principal informed her that it was because she had locked the door with the pupil inside.

13. It would appear from the Principal's note of this discussion that the plaintiff's response to this was to say that she hoped that the Principal would be dealing with all the SNAs who did this. The Principal's note of her response to this was that that was another issue for another time. The plaintiff was informed to come back to the Principal's office at 2.30pm and she was advised by the Principal to bring somebody with her to the meeting.

14. The plaintiff, in her evidence, described herself as being shocked by this encounter, as it was her evidence, corroborated by other SNAs who gave evidence, that it was a common practice amongst the SNAs to lock the Sensory Room door whilst conducting a pupil's programme and that no instruction had ever been given not to do this, and neither had any instruction been given to do this.

15. The plaintiff came to the meeting with the Principal at 2.30pm as arranged. The plaintiff was accompanied by Ms. Louise Webb, a colleague SNA, and the Principal had arranged for Rachel Bramhall, the teacher to whose classroom the plaintiff was attached at that time, also to attend.

16. In the course of this meeting, the plaintiff accepted that she had locked the Sensory Room door and that she had done this over several years. She explained that the reason for doing this was to prevent other children from entering the Sensory Room door whilst she was conducting a session with a pupil and also to prevent a pupil described as "a runner" from running out of the room while the programme equipment was being set up. She explained that she had not been told to lock the door by any teachers, nor had she ever been instructed not to lock the door. An issue arose in the discussion concerning a visit by the Principal to the Sensory Room in April 2009, when the Principal came into the room with a number of visitors. The plaintiff contended that the door had been locked on that occasion as well and that the plaintiff at that time was accompanied in the room by another SNA, Ms. Una O'Connell. The Principal asserted that the room had not been locked or that she was not aware that it was locked on that occasion, as if she had been so aware, she would have raised the matter with the plaintiff then.

17. It would appear from the Principal's note of the meeting that the discussion then went on to consider the suitability of the programme for the child who was in the room asleep the previously day and who was "a runner". There appears to have been some discussion as to what might happen in the event of an emergency.

18. The plaintiff's evidence was that after this meeting, she felt greatly relieved because she felt her explanation of why she had locked the Sensory Room door had been accepted by the Principal and that was the end of the matter. The Principal's note of this meeting, apart from mentioning, apparently in the course of the discussion, the suitability of the child's programme and that it might need to be changed with an OT referral, does not make any mention of any contemplation of further action arising out of the matters discussed in the meeting. Specifically, the note makes no mention at all of any complaint by the plaintiff of any inadequacy in her training in the use of the Sensory Room or any need for further training in that regard or of any plan for such training.

19. The evidence of Ms. Dempsey, the Principal, was to the effect that at a meeting on 18th September 2009, with the plaintiff and the teacher, Rachel Bramhall, a process of training was settled. This involved a four-week period, during which the plaintiff, in carrying out the programme of the child who was the "runner", would, on a weekly basis, fill in a form, indicating by a tick, the activities in the Sensory Room which this child accomplished, and at the end of the four-week period, there would be a review.

20. Ms. Dempsey gave evidence of handing to the plaintiff a letter dated 18th September 2009, which was in the following terms:

> *"Dear Una,*
>
> *Further to our meeting regarding the incident during which you locked the door to the Sensory Room whilst you were inside with a pupil. The evidence has been reviewed and the situation has been considered.*
>
> *You appear not to be clear about the protocol around the use of the Sensory Room. Because of that, we are not going to take disciplinary action. However, this is a serious situation and one for concern. You were informed that you are being formally counselled with regard to the incident.*
>
> *To ensure that it does not happen again, we will put in place a series of procedures which will include the following:*
>
> *1. The class teacher will discuss and work with you on the effective use of the Sensory Room. This will include a list of activities and procedures which you will carry out when using the room.*
>
> *2. Activities performed be logged on a recording sheet.*
>
> *3. The situation will be reviewed with you by the class teacher for a period of three months and this will be recorded on the staff review form.*

If the required improvement is not made or if there is any such breach of discipline in any aspect of your work performance, this may result in disciplinary action.

I am available, should you wish, to discuss any of the above.

Yours sincerely,

Pauline Dempsey

Principal."

21. The meeting which took place on 18th September 2009 was for the purpose of going through the programme of the child in question in the Sensory Room. It would appear from Ms. Bramhall's evidence that the plaintiff brought this written programme to the meeting and the meeting seems to have consisted of taking the child through the programme to ascertain the suitability for the child of the various parts of the programme. In the course of doing this, it became apparent, as it had already been the experience of the plaintiff that the child was unwilling to get on the swing, notwithstanding that this was part of the programme. Ms. Bramhall's evidence was to the effect that this failure or omission did not matter. Apart from the swing, it would appear that this child was able and willing to do all other parts of the programme, and thus, it was considered that there was no need to consult the Occupational Therapist for a change in the programme. It was agreed that there would be a four-week period during which the operation of the programme of this child by the plaintiff would be reviewed. Over the weekend, Ms. Bramhall drew up forms which listed all of the activities in the programme and it provided for the ticking of these activities on a daily basis, depending on whether or not they had been accomplished by the child.

22. At the end of the first week, namely, the Friday, and the following Monday, the plaintiff was out sick and was replaced by another SNA. In discussion with Ms. Bramhall, this SNA disclosed that she had succeeded in getting the child to use the swing. When the plaintiff returned, Ms. Bramhall told her of this development and encouraged the plaintiff to continue with it. According to the evidence of Ms. Bramhall, the plaintiff initially reported to Ms. Bramhall that she was not able to do this, but later, in the third week of the programme, she told Ms. Bramhall that she had persisted in trying and had succeeded in getting the child onto the swing, but it would appear sitting on it only and not standing or lying on it, the other two prescribed activities relating to the swing.

23. At the end of the four-week period, when Ms. Bramhall was conducting the anticipated review with the plaintiff, she noticed that the plaintiff had ticked the box on the forms for lying on the swing and she queried this with the plaintiff who, it would appear, promptly confirmed that this was wrong and sought Ms. Bramhall's permission to change the form so as to make it accurate. Ms. Bramhall refused to allow her to do this and recorded this result on the review of the plaintiff's performance as a "miscommunication".

24. It is difficult to comprehend this refusal on the part of Ms. Bramhall, given that what was being recorded were the activities accomplished by the child in question with a view to assessing or reviewing the suitability of the programme for him, including the capacity or performance of the plaintiff in implementing that programme.

25. On 19th October 2009, a further meeting took place between the plaintiff, Ms. Bramhall and Ms. Dempsey for the purposes of considering Ms. Bramhall's review of the plaintiff, recorded on an SNA staff assessment form. This form was completed by Ms. Bramhall at that time and it is not entirely clear from the evidence of Ms. Bramhall if she was doing this simply because she was leaving the school shortly, or whether it was for that reason and also, as the completion of a review of the plaintiff's performance after this four-week period.

26. Whilst the plaintiff, in her evidence, described the events that occurred at this meeting as occurring at a meeting on 12th November 2009, I am satisfied that she is incorrect in that, and what she described as occurring at the meeting on 12th November 2009, occurred at the meeting on 19th October 2009. I am satisfied on the evidence that in the course of that meeting, the plaintiff was challenged by Ms. Dempsey for having initially recorded the child as using the swing, as erroneously, Ms. Dempsey thought he was not supposed to use the swing, and secondly, for filling out the form inaccurately.

27. I have no doubt that the plaintiff, having been treated in this way, was afflicted by an acute sense of unfairness and grievance and probably did react in a combative way by raising other issues with Ms. Dempsey. I am quite satisfied that the plaintiff felt she was being treated unfairly in this review and she made that apparent.

28. At this point, one must go back in time to 18th September 2009, and the letter of that date which Ms. Dempsey said she handed to the plaintiff on that date. In the context of the meeting of 15th September 2009, and also the meeting on 18th September 2009, at which the programme of the child was reviewed, the letter of 18th September 2009, both in its tone and content, seems strangely out of place. I am satisfied that the meeting of 15th September 2009 did not give rise to any kind of general consideration of a re-training of the plaintiff in the use of the Sensory Room. Insofar as any problem emerged from that meeting, apart from the locking of the door, it concerned solely the suitability of the programme of the child in question and whether or not it was the unsuitability of that programme that impelled the child to attempt to run from the Sensory Room. At this time, the plaintiff had been a SNA in the school for eleven years and no issues had arisen relating to her competence or training in the use of the Sensory Room. Given that the only issue which emerged in the meeting of 15th September 2009, related to the suitability of the child's programme, it would seem remarkable if the overall competence and training of the plaintiff in the use of the Sensory Room arose for discussion. I am quite satisfied it did not and the Principal's note of the meeting, although detailed, makes no mention of the plaintiff's training or the lack of it in the use of the Sensory Room.

29. The meeting of 18th September 2009, I am quite satisfied on the evidence of Rachel Bramhall, was solely concerned with the suitability or otherwise of the child's programme and I would infer from the evidence that the discussion at this meeting was largely conducted between the plaintiff and Ms. Bramhall and the conclusion of the meeting was, as already indicated, to conduct a review of the programme, but over a four-week period. In all of this, there is not the slightest hint of any threat to the plaintiff, disciplinary or otherwise. The concern seems to have been solely focused on getting the child's programme right. In this context, everything was focused on this particular child and his programme, and there was no mention whatsoever of how the plaintiff dealt with any other child or children in the Sensory Room.

30. Thus, the content and tone of the letter of 18th September 2009 seem oddly heavy-handed and unrelated to what actually was happening in the meetings of 15th September 2009, and 18th September 2009. There is a specific reference in the letter to a review after three months which was never mentioned in either of these two meetings.

31. When the letter of 18th September 2009 was put to the plaintiff in cross-examination, she immediately and emphatically denied

ever having got that letter or of having seen it before it was put to her in cross-examination. I believe the plaintiff in this regard and am quite satisfied that she was not given that letter then or since.

32. The evidence of Ms. Dempsey, the Principal, was to the effect that notwithstanding the invocation of the disciplinary procedure as set out in the letter of 18th September 2009, and as indicated in that letter, no further disciplinary action would be taken because of the training deficiencies of the plaintiff highlighted in the meeting of 15th September 2009. In the first instance, in light of the above, I find this suggestion to be contrived as it bore no relation to what was actually happening at that time.

33. Ms. Dempsey went on, in her evidence, to express dissatisfaction with the outcome of the review process conducted over the four-week period, and specifically with Ms. Bramhall's review of the plaintiff's performance during that time. From this, Ms. Dempsey concluded that there had been no improvement and, worse than that, the inaccurate completion by the plaintiff of the form drawn up by Ms. Bramhall which Ms. Dempsey characterised as "falsification" raised, in her view, an additional disciplinary issue.

34. I found the evidenced of Ms. Dempsey with regard to all of this, strange, to say the least. Against a background where there was no doubt but that, firstly, there was no question of the door being locked again, and secondly, the child in question was not only participating in his programme so that his tendency to "run" had not reoccurred, but in fact, had advanced in his programme and was now accomplishing more than had been the case at the start of the four-week programme, the conclusion that there had been no improvement is not only groundless but seems to have wandered into the realm of irrationality.

35. The treatment of the plaintiff's request to Ms. Bramhall to change the filling out of the form so as to make it more accurately conform to the undoubted reality, which was never in doubt, as "falsification", can only be said to be extreme and utterly removed from what right-thinking people would consider to be a reasonable conclusion in that regard. It has to be remembered that the forms in question were designed by Ms. Bramhall, on her own initiative, for the purpose of reviewing the suitability of this child's programme. Forms of this kind had never before been used for this child or any other child in the school. Thus, the plaintiff, as the only SNA ever asked to use this type of form, was, up until their introduction, entirely unfamiliar with them, and one would have thought that the plaintiff's mistake in completing the form might, in the first instance, have been permitted to be rectified by Ms. Bramhall, and secondly, treated by Ms. Dempsey as no more than an honest mistake, and in the interest of ensuring a proper recording of the child's participation in the programme for the future, ought to have been corrected to reflect the true position. Instead, the form and the plaintiff's error in the completion of it appear to have been used by Ms. Dempsey as a trap for the plaintiff.

36. Arising out of all of this, the evidence of Ms. Dempsey was to the effect that because of the failure of the plaintiff to improve and her "falsification" of the forms, the disciplinary process needed to be revived and the matter brought to the attention of the Board for what she described as "advice" as to how to proceed.

37. About that time, she also raised the matter with Mr. Lynch, the Chairman of the Board of Management of the school, and he readily assented to the matter being brought to the attention of the Board. In his evidence, however, he seems to have been only concerned about the locking of the door, which he saw as wholly unacceptable because of the child protection implications involved. Although Ms. Dempsey saw the unsatisfactory outcome of the four-week review process as the factor now necessitating a revival of the disciplinary process and a recourse to the Board, Mr. Lynch, in his evidence, did not seem to be alert to all of that, but seemed solely focused on the locking of the door in the context of child protection.

38. A further meeting was held between the plaintiff and Ms. Dempsey on 12th November 2009, the purpose of which was to move the plaintiff into the class of the Deputy Principal, Ms. Mary Fleming. The evidence of Ms. Dempsey was that this was not precipitated by the recent review, but was necessitated by other staff changes, specifically, the departure of Ms. Bramhall from the school in the first week of November 2009, to whose class the plaintiff had been attached, and the necessity to move another SNA who was pregnant into a different position. The evidence of Ms. Fleming was that the plaintiff's performance as an SNA attached to her class was entirely satisfactory from then until the plaintiff left the school at the end of September 2010.

39. The next meeting of the Board was scheduled for 23rd November 2009. A few days before that meeting, and I accept the plaintiff's evidence in this regard, the plaintiff was informed by Ms. Dempsey that the matter was going to be raised with the Board at its meeting on 23rd November. The plaintiff was not told by Ms. Dempsey any detail whatsoever concerning the material that was to be put before the Board or what proposal, if any, the Board was to be asked to consider or what possible outcome there might be insofar as the plaintiff was concerned. The plaintiff was given no written material concerning what might transpire at the Board meeting. The plaintiff was not told that there might be any adverse disciplinary outcome so far as she was concerned, nor was she told that it was the intention of the Principal to seek a disciplinary sanction against her. Ms. Dempsey, in her evidence, accepted that the plaintiff was merely told that "it" was going to the Board, and no more.

40. In the two months that had elapsed since 15th September 2009, I am quite satisfied from the evidence that Ms. Dempsey did nothing to investigate the plaintiff's contention that other SNAs locked the door of the Sensory Room, in effect, that it was a common practice amongst SNAs. Ms. Dempsey gave evidence of having regular meetings with teachers and SNAs over the school year so that over that time she would probably meet each member of staff once. Whist this process continued in the two-month period between 15th September 2009, and the 23rd November 2009, during which time she would probably have met four or five SNAs in this way, I am quite satisfied from the evidence that she did not elicit their views on whether or not there was a practice amongst the SNAs of locking the Sensory Room door. At a general meeting of SNAs on 20th October 2010, she did give an instruction that the Sensory Room door was not to be locked, but it is quite clear that she did not conduct any inquiry at this meeting to ascertain whether or not there was a common practice amongst SNAs of locking the door.

41. The evidence of the other SNAs who gave evidence in the case, and also the evidence of the plaintiff, which I accept in this regard, establishes to my satisfaction that there was a general practice amongst many of the SNAs, probably a majority, of locking the Sensory Room door for the same reasons that the plaintiff locked it from time to time.

42. I would readily accept that it was reasonable of the defendants, both for health and safety reasons and, more probably, for reasons of child protection, to insist on a prohibition on locking the Sensory Room door. It is extraordinary that until 14th September 2009, no issue arose concerning the locking of this door at all. Notwithstanding that the defendants had a comprehensive safety statement prepared with the help of appropriate experts, no-one addressed the locking of this door or the presence on it of a lock on the inside, in the context of health and safety issues or child protection issues, at all. Because no one considered the matter, no instruction was given, either to lock this door or not to lock it. The matter was simply overlooked by the defendants. Mr. Lynch, in his evidence, put the matter clearly and succinctly when he said that he expected all members of staff, simply because of their training and experience, to have been aware that the locking of this door was unacceptable and that it was unnecessary for there to have been a specific instruction in that regard.

43. However, the daily task of carrying out the programmes of the various children in the Sensory Room fell to the SNAs and they had to cope with the practicality of that situation. Part and parcel of that practicality was the problem of intrusions by other children, for whom the Sensory Room was a great attraction, and also, apparently, a teacher, which had a disruptive effect on the work being done in the Sensory Room. There was also the problem, particularly with one particular child, of restraining that child from running out of the room. In addition, there was yet another problem, of which Ms. O'Connell gave evidence, of a particular child who liked to lock the room himself while he was in there.

44. With the benefit of due consideration and also hindsight, it can easily be said that notwithstanding these practical reasons for locking the door occasionally, the overriding necessity to observe appropriate child protection standards and also to ensure appropriate health and safety provision meant, unequivocally, that regardless of the practical considerations, this door should never be locked. Once the problem came to light, as it did in September 2009, it was easily resolved by way of appropriate instruction and the evidence establishes to my satisfaction it never occurred again. In addition, the obvious precaution of removing this lock from the inside of the Sensory Room door was attended to. It is difficult to understand why this had not happened much earlier.

45. When the matter came before the Board meeting on 23rd November 2009, it did so, not as an item on the agenda or as part of the Principal's report, but under 'Item 7: AOB' (Any Other Business). The minutes record the following:

> *"Issue with SNA's performance. Pauline outlined issues she had with an individual SNA. She has linked in with HR in KARE. She wanted the support of the Board to issue a verbal or written warning under the term of the SNA's contract. Pauline to link in with HR in KARE to discuss the severity of the warning allowed for the presenting issues. All agreed to support the recommendation. Also, there is a mechanism to suspend an increment if there is dissatisfaction with an SNA's performance. It was proposed that this should happen in this case in light of the situation Pauline outlined."*

46. Under the heading 'Action', the following is recorded in the minute:

> *"Pauline to liaise with HR in KARE and proceed with disciplinary action. Notify DES of deferral of next increment for this individual."*

47. Evidence was given by Ms. Dempsey and Mr. Lynch of what transpired at the Board meeting. There would appear to have six members present including Mr. Lynch and Ms. Dempsey. It would appear that having heard what Ms. Dempsey had to say on the matter, the other four Board members, apart from Ms. Dempsey and Mr. Lynch, wanted the plaintiff to be instantly dismissed. It took some persuasion from Mr. Lynch and Ms. Dempsey to dissuade them from that course. However, it is clear from the evidence of Ms. Dempsey and Mr. Lynch that the majority of the Board, if the plaintiff was not to be dismissed, required the imposition of the disciplinary sanction immediately below dismissal, and also, that the plaintiff would have any increment in salary due to her deferred. Whilst all of this was being considered, it is extraordinary to realise that the identity of the plaintiff was never revealed to the Board and was known only to Ms. Dempsey and Mr. Lynch.

48. The evidence of Ms. Dempsey was that she outlined the full history of the matter to the Board. The extreme, if not, downright intemperate, reaction of the Board to whatever they were told, suggests that as a matter of probability, the account given by Ms. Dempsey to the Board of the history of the matter was almost certainly untrue, highly biased, coloured, and grossly and unfairly damnified the plaintiff. Whilst I would readily accept that the members of the Board would be hyper-vigilant on all issues relating to child protection, and rightly so, as a group of probably fair-minded people, I do not think they would have reached conclusions so adverse to the plaintiff, unless grossly misled as to the true circumstances prevailing.

49. Specifically, it is quite clear, that what they were asked to consider was the gross misconduct of a single SNA as distinct from a common practice amongst many SNAs, albeit unacceptable. Insofar as Ms. Dempsey gave a history of the review process discussed above, it is probable she presented this, as she did in her evidence, as a failure of training, culminating in the falsification of a document, a presentation of matters which was undoubtedly untrue, unreasonable and grossly unfair to the plaintiff.

50. The extraordinary feature of all this is that the plaintiff knew nothing in advance of these proceedings and was given no opportunity to represent herself in any way. The purported representation of her by Ms. Dempsey was, in fact, a gross misrepresentation. To say that the conduct of Ms. Dempsey in relation to the lead up to this Board meeting and what happened at it was a departure from all of the norms of natural justice is a feeble understatement.

51. After this Board meeting, nothing was said to the plaintiff who remained in blissful ignorance of what had happened to her for a period of four weeks until 21st December 2009, when, again, strangely, Ms. Dempsey decided to tell the plaintiff just before the Christmas break that she was going to get a Part 4 Final Warning which would be given to her formally in the New Year. It is quite clear that in the discussion between the plaintiff and Ms. Dempsey, the plaintiff enquired how long this would be on her record. I am quite satisfied that she was told six months.

52. On 18th January 2010, whilst doing yard duty, the plaintiff was asked by Ms. Dempsey to come to a meeting in her office with Mr. Lynch. The plaintiff was accompanied at that meeting by Ms. Una O'Connell, a colleague SNA. At that meeting, she was told by Mr. Lynch that she was to receive a Final Stage Part 4 warning for a breach of health and safety, the grounds of which were the locking of the Sensory Room door. She was told that this would be on her record for 18 months. This shocked her, in view of the fact that immediately prior to Christmas, she had been told the warning would last for six months. The evidence of Mr. Lynch and Ms. Dempsey satisfies me that the 18-month period was chosen because this is what was provided for in the disciplinary policy of the defendants and the six months mentioned in December was based on a mistaken belief.

53. A meeting of the Board of management of the defendants took place on the evening of 18th January 2010, and under 'Item 8', again, 'AOB' (Any Other Business), the following is said:

> *"Issue with SNA performance*
>
> *Met with the individual who was accompanied by another SNA. Talked through the issues and concerns and issued a formal written warning. Draft letter read out to BOM. Pauline will liaise with HR re wording about building in reviews into the letter etc. Deferral of increment was not applicable."*

Under the heading of 'Action', the following is recorded in the minute:

> *"Pauline to liaise with HR in KARE and proceed with letter."*

54. I am quite satisfied on the evidence that at the meeting on 18th January 2010, that there was no general discussion, merely an announcement to the plaintiff of that which had already been intimated to her before Christmas, namely, that she was to get a Part 4 Final Warning. Notwithstanding that it may have been recorded in the minutes, I am quite satisfied that the issues were not "talked through". I accept the plaintiff's evidence that she indicated dissatisfaction and that she had been in touch with IMPACT, her union, seeking advice and support, and that she wanted to appeal the decision.

55. Two days later, on 20th January 2010, the plaintiff was again summoned to the office of Ms. Dempsey, and there she was handed a copy of a letter from the Board of management of the defendants, signed by Mr. Lynch, as Chairperson, and which was in the following terms:

> *"Dear Una,*
>
> *Further to our meeting on 18th January which was attended by Pauline Dempsey, Principal, Una O'Connell, SNA (at your request), myself, as Chairperson of the Board of management and yourself. I wish to confirm that you are being issued with this final written warning as per Stage 4 of the disciplinary procedure.*
>
> *This warning is being issued as a result of the investigation that was carried out at the request of the Board of management into an incident that occurred on 14th September 2009, whereby you locked yourself and a child into the Sensory Room. On conclusion of the investigation, the matter was discussed at the Board of management meeting on 23rd November 2009, and it was agreed at this meeting that you be issued with this warning.*
>
> *The Board of management views any breach of health and safety procedures as a very serious matter and wishes to inform you that a further breach of this or any other school policy could result in further disciplinary action, up to and including dismissal.*
>
> *This warning will remain on your file for a period of 18 months.*
>
> *If you have any queries on the above, please contact me.*
>
> *Yours sincerely,*
>
> *Christy Lynch*
>
> *Chairperson"*

56. It is to be observed immediately that the statement in the letter that an investigation was carried out at the request of the Board of management is simply not correct. The Board of management knew absolutely nothing of the locked door incident on 14th September, or of any other issue concerning the plaintiff, until the meeting of 23rd November 2009, when, for the first time, they were given Ms. Dempsey's account of the matter. It is plainly obvious that after the Board of management meeting on 23rd November 2009, there was no further investigation other than queries addressed by Ms. Dempsey and Mr. Lynch, one to the Department of Education and Science with a view to deferring any increment in salary due to the plaintiff, and the other to KARE, solely with regard to the terms of the final written warning.

57. It transpired, on inquiry to the Department of Education and Science, that the plaintiff was not due an increment for three or four years, and therefore the defendants were unable to activate that penalty.

58. It useful to reflect on what had happened to the plaintiff up to this point in time. The plaintiff was subjected to a disciplinary sanction of a severe kind which was unmerited. By this, I mean that the offence of locking the Sensory Room door, which the defendants were entitled to regard as unacceptable, was undoubtedly a common practice amongst the SNAs, and had the defendants, and in particular, Ms. Dempsey, carried out the appropriate enquiries after 14th September 2009, at that time, that would undoubtedly have been readily ascertainable. She did not do that. As a consequence, the picture presented to the Board on 23rd November 2009, was of individual misconduct on the part of the plaintiff.

59. Had the Board been told the true position, whilst they might well have been shocked that such a practice existed and directed steps to prohibit it, they could not have singled out the plaintiff to suffer punishment for it, alone. In addition, it was commoncase that the issue of the locking of the Sensory Room door had never arisen for consideration and therefore no instruction had ever been given in relation to it, and neither had it been considered in the context of the defendants' Health and Safety Statement. In these circumstances, notwithstanding the training and experience of SNAs, it was unfair to impose a severe disciplinary sanction on an SNA for doing something that in the circumstances in which it was done, had practical merits and where no instruction was given not to do it.

60. The manner in which the disciplinary process with regard to the locking of the Sensory Room door was handled by Ms. Dempsey was grossly unfair to the plaintiff and utterly denied her the benefit of her constitutional right to natural justice and fair procedures.

61. The conjuring up by Ms. Dempsey of the additional offence of failing to improve during the review process and of the "falsification" of the review forms was, as discussed earlier, at best, irrational, in the sense of there being a complete lack of any real basis for such conclusions. It is hard to understand how an educated, sophisticated person, such as Ms. Dempsey, could arrive at such conclusions without an element of bad faith.

62. But, according to her own evidence, it was her conclusions in this regard that prompted her to invoke the disciplinary process by taking the matter to the Board with all that ensued therefrom. In my view, the plaintiff should not have been subjected to this disciplinary process. When it came to light that the Sensory Room door was locked, and when the plaintiff responded by indicating that other SNAs did it, the appropriate and immediate response of Ms. Dempsey should have been to ascertain the truth or otherwise of the plaintiff's contention. If, having done that, and have ascertained, as she undoubtedly would have if she did conduct an appropriate inquiry, that there was a common practice of doing this, she should have, as she did in October, prohibit the practice, but it would have been entirely unfair and inappropriate to have initiated a disciplinary process against the plaintiff alone. The addition of what might be described as the "trumped up" charge of failing to improve and the falsification of a form, given the complete lack of any basis for it, was reprehensible, and as this is what led to the matter being brought to the Board, I am quite satisfied that this disciplinary matter should not have been advanced to the Board for the purposes of disciplining the plaintiff.

63. I am quite satisfied that the treatment of the plaintiff throughout this process by Ms. Dempsey was entirely "*inappropriate*" within

the meaning of the definition of bullying in the workplace.

64. After the meeting on 20th January 2010, the plaintiff was asked to come to a meeting with Ms. Dempsey on 27th January 2010. I accept the plaintiff's evidence that the purpose for this meeting, as expressed by Ms. Dempsey, was to get "*closure*" on the matter. There is a total conflict of evidence between the plaintiff and Ms. Dempsey as to what happened in this meeting. There were no other parties present. It was the plaintiff's evidence that during the meeting, she was subjected to a considerable variety of denigration which belittled, humiliated and reduced her to tears. Ms. Dempsey denies all of the plaintiff's allegations in this regard, apart from mentioning to her that she had exhausted her use of sick leave and to be more careful on that matter in the future.

65. I accept the plaintiff's evidence as to what happened in this encounter.

66. Thereafter, the plaintiff sought the advice and support of the union, IMPACT, and in due course, a meeting was arranged for 23rd March 2010, which was attended by Mr. Lynch, Ms. Dempsey, the plaintiff and her union representative, Mr. Mullen. Mr. Mullen sought to persuade the defendants to remove or withdraw the final letter of warning and advocated that the closing of the door had been common practice amongst the SNAs. At this meeting, the plaintiff mentioned an occasion in April 2009, when she was in the Sensory Room with Ms. O'Connell, her colleague, when Ms. Dempsey came to the room with a number of visitors. The plaintiff's evidence, and also that of Ms. O'Connell, was that the door was locked on this occasion. Ms. Dempsey contended on this occasion, and on the previous occasion, on 15th September 2009, that she was not aware that the door had been locked. The outcome of this meeting would appear to have been that Mr. Lynch requested that enquiries be made of the SNAs to ascertain whether or not there was a practice to lock the door. It would appear that at the meeting, Ms. Dempsey said that she had conducted enquiries of approximately 70% of the SNAs, none of whom admitted locking the door.

67. This meeting had been brought about by a letter dated 29th January 2010, from Mr. Philip Mullen of IMPACT to Mr. Lynch, in which the following was said:

> *"Re. Ms. Una Ruffley - Special Needs Assistant*
>
> *Dear Mr. Lynch,*
>
> *I refer to the final written warning issued to Ms. Ruffley on 18th January relating to an incident that occurred on 14th September 2009. We wish to appeal against this sanction on the following grounds:*
>
> *1. Process: We believe that the process applied to the investigation did not accord Ms. Ruffley the right to adequately defend herself.*
>
> *2. The procedures in place in St. Anne's had not made it clear that locking the Sensory Room was a health and safety breach. That is not to say that it was acceptable, but rather, that the practice was known and had not been objected to previously.*
>
> *3. Sanction: We believe that, given the circumstances, a final written warning is too severe a sanction in this case.*
>
> *I would very much welcome an opportunity to elaborate on these points at your convenience and would appreciate if you would let me have copies of relevant documentation (disciplinary procedure, original complaint, minutes of meetings, etc.).*
>
> *I would also appreciate if you could confirm if any other disciplinary matters relating to Ms. Ruffley are outstanding.*
>
> *I look forward to your early response."*

Following the meeting on 23rd March 2010, the plaintiff devised a questionnaire which was put to her SNA colleagues. This contained two questions, the first being:

> *"Have you ever locked the Sensory Room door?"*

The second question was:

> *"Have you ever been asked by Pauline Dempsey 'have you ever locked the Sensory Room Door?"*

68. This questionnaire was answered by four of her colleagues, all four of whom answered 'yes' to the first question. These colleagues were Ms. Angie Kearney, Ms. Liz McDonnell, Ms. Una O'Connell and Ms. Catriona Daly. Insofar as the second question was concerned, only one SNA, namely, Angie Kearney, answered 'no'. The evidence of the plaintiff and her colleagues who gave evidence before me was that many more of the SNAs were willing to answer the questionnaire in the affirmative but only if they could do so anonymously. I accept their evidence in this regard. Insofar as any enquiries were made by Ms. Dempsey after January 2010, it would seem to me that such enquiries were likely to be ineffective as it was unlikely, having regard to what had happened to the plaintiff, which was well known in the school, that many of the SNAs who had locked the door would admit doing this.

69. In a further letter dated 22nd April 2010, from Mr. Mullen to Mr. Lynch, the following was said:

> *"Re: Ms. Una Ruffley - Special Needs Assistant*
>
> *Dear Mr. Lynch,*
>
> *I refer to our appeal against disciplinary action taken against Ms. Ruffley and our meeting with you and Ms. Pauline Dempsey.*
>
> *For your information, I attach a copy of a questionnaire relating to the locking of the Sensory Room door which backs up our contention that this practice had not been unique to Ms. Ruffley.*
>
> *I would appreciate if, taking account of our submissions, you could let me have your decision in relation to the matter.*
>
> *Yours sincerely."*

70. The minutes of the meeting of the Board of management of 26th April 2010, at 'Item 1.4' record the following:

> *"SNA Performance*
>
> *Christine and Pauline met with IMPACT. Letter just received in relation to that meeting. They contend it was custom and practice to lock the Sensory Room door. They had a questionnaire attached which four staff had signed to say they had locked the door. They say it was reasonable practice for the SNA to do so as she was reasonable practice for the SNA to do so as she was not told not to do so. The 18-month disciplinary was extreme. It had been agreed at the meeting that Pauline would speak to all SNAs."*

Under the heading of 'Action', the following is recorded:

> *"Pauline to speak with SNAs.*
>
> *Pauline and Christy to discuss options with Conal Boyce."*

71. By a letter dated 20th May 2010, Mr. Lynch responded to Mr. Mullen as follows:

> *"Thank you for your letter of 22nd April 2010.*
>
> *The Board of management considered the contents of your letter and have decided to stand over their original decision with regard to this matter."*

72. The next meeting of the Board of management took place on 8th June 2010. The minutes of that meeting, at 'Item 1.3' record the following:

> *"SNA Performance*
>
> *Following advice from Conal Boyce, a letter was sent to IMPACT. They replied, and having reviewed the letter, the Board stand by the original decision. All agreed."*

73. Although this foregoing passage from the minutes would seem to suggest that there was a further reply from IMPACT to the defendants after the letter of 20th May, 2010, no such letter has been located.

74. As is apparent, the letter of 20th May 2010 seems to have been despatched before the Board had an opportunity to consider the results of Ms. Dempsey's intended enquiries with all of the SNAs. There was no evidence to suggest that on foot of the decision taken by the Board on 26th April 2010 that Ms. Dempsey did specifically, at that stage, conduct the enquiries as envisaged by the Board with all of the SNAs. In the meantime, before the next Board meeting, the decision was taken by somebody, not the Board, to reject the plaintiff's appeal grounded on evidence that the locking of the door was a common practice amongst SNAs. At its meeting on 8th June 2010, the Board appears to have ratified that decision, and in the minute, there is no reference to any consideration of the outcome of enquiries amongst the SNAs as to what was the position with regard to locking the door.

75. I am quite satisfied that the Board did not give any meaningful consideration to the case being made by the plaintiff, namely, that the locking of the door was a common practice amongst the SNAs. At this late stage, when the Board had been alerted to the plaintiff's case in this regard, they declined to give it any due consideration. The plaintiff's appeal to them, insofar as it could be said to be an appeal in the normal sense, as the appeal was to the same decision maker as had made the decision appealed against, thereby demonstrably offending the maxim *Nemo iudex causa suam*, in the event, fell on deaf ears.

76. Following on this, the plaintiff consulted a solicitor and this gave rise to a letter from her solicitor, Burns & Nowlan & Company, to the defendants, setting out in detail the plaintiff's complaint. There was some dispute as to when that letter was sent. The plaintiff relied upon a copy of that letter dated 27th May 2010, whereas, for the defendants, it was contended that the letter they received was dated 22nd June 2010. It is commoncase that regardless of the date of the letter, the content of it was identical in either case. This letter finished with the following two paragraphs:

> *"We would be obliged if, within a period of ten days from the date hereof, you would reply to us with the following:*
>
> *1. Kindly acknowledge that you have received confirmation from other members of staff and it was common practice that the Sensory Door was locked.*
>
> *2. In light of the aforementioned information, why has a letter of apology not issued to our client?*
>
> *3. Kindly acknowledge that our client and all members of staff have been issued with health and safety procedures.*
>
> *4. Please confirm whether or not there have been previous complaints made against our client. If such complaints exist, why were they not dealt with in the appropriate manner?*
>
> *5. Please confirm that there is no issue with the sick leave that our client has taken over the last fourteen years.*
>
> *We are aware that the IMPACT union did represent our client in the latter part of the matter set out above. Please note that we now represent Ms. Ruffley. Our client is very anxious to have this matter resolved prior to the closure of the current academic year and therefore we look forward to hearing from you by return."*

This letter was replied to by a letter of 28th June 2010, from Mr. Lynch to the plaintiff's solicitor in which he said the following:

> *"Thank you for your letter dated 22nd June 2010 with regard to Ms. Una Ruffley. The issues raised in your correspondence are a matter for the Board of management of the school.*
>
> *As the school is now closed, these issues will be discussed by the Board at its next meeting on 20th September 2010.*
>
> *Following discussion at the meeting, we will respond to you."*

77. The next step in the correspondence was a letter of 24th September 2010, from Mr. Lynch for the defendants to the plaintiff's solicitor in which he said the following:

> *"Dear Madam,*
>
> *I refer to the above Ms. Ruffley and to your letter dated 22nd June 2010 which has been received by the Board of management at St. Anne's School, the Curragh. It is regrettable indeed that your client was occasionally unaccompanied at certain of the meeting which were held in relation to these matters as, had she chosen to have a third party with her, as advised, there might not be quite so much inconsistency in the versions of these matters which have from time to time been recounted to various parties.*
>
> *In the first instance, it is absolutely denied that there was any question of bullying or harassment of your client who has at all times been treated with the utmost sensitivity and has been afforded all of the entitlements due to someone in her position.*
>
> *Whilst it may very well be that from time to time it would appear that certain members of staff have, on very rare occasions, seen fit to lock the door of the Sensory Room at St. Anne's School, this is not the policy of the school and it strongly advised that members of staff not do this, for reasons as we are sure you will understand, that include the safety and wellbeing, not only of the children, but also the staff member concerned. We presume your client will accept that there may very well be circumstances where it is inadvisable for a staff member to be locked in an inaccessible room, alone with any child, and for many possible reasons.*
>
> *In the light of the foregoing, your client is not entitled to, nor has she ever sought a letter of apology and this letter is not to be construed as such an apology. We regret very much that your client seems to have taken offence at being advised that the advice contained in the preceding paragraph is indeed that of the Board of management, but that is the case and your client might note the position.*
>
> *The Safety Statement of St. Anne's School has been made available at all times to the staff. It is a substantial document, is freely available to all members of staff and has from time to time been on display in the staff room. Should your client have any issue with this, then she may contact any member of staff, but most particularly the Principal, with a view to inspecting the document. It is the case that all staff were appraised of the document's content at meetings held on 5th May and 12th May 2006. Your client is recorded as being present in the school on that date.*
>
> *We are surprised to discover that, in this context, you are instructed to raise the question of your client's annual reviews. These have always been available to your client and your client knows well that there have from time to time been issues which have arisen and been dealt with as the Board understood it to the satisfaction of all parties. It was a matter that was raised by our client at a meeting with the school Principal, and, so we are instructed, dealt with. If your client has issues in relation to our annual reviews, then of course she may take these up with the Principal as she sees fit.*
>
> *As part of the reviews referred to above, it has been necessary on a number of occasions over the past several years to raise with your client the question of her uncertified absences on sick leave. Again, this is something of which your client has at all stages been fully aware and we are surprised to find the matter raised in the context of the Sensory Room. Your client's record of uncertified sick leave has been at all stages available to her, but she, of course, knows this better than anyone else herself.*
>
> *You are correct in saying that IMPACT represented your client at various points in the course of correspondence about this matter. It is indicated to your client at that time that so long as everything ran smoothly there should be no reason to revisit these matters. The fact that they are now being revisited is a matter entirely for your client who failed to see what, if anything is to be gained at this stage in continuing with this correspondence."*

A number of things are to be noted in passing with regard to this letter. Firstly, reference to an apparent reliance upon the Safety Statement is curious, given the fact that it was commoncase that the Safety Statement was entirely silent on any health and safety aspects relating to the locking of the Sensory Room door, or to the presence on that door of an internal lock. The surprise at the matter of the plaintiff's sick leave being raised in the context of the Sensory Room is also curious, given that the only thing that Ms. Dempsey admitted raising with the plaintiff in the meeting of 27th January 2010, was her sick leave, in respect of which she advised her to keep an eye on it.

78. The final paragraph in this letter appears to be a further rebuff by the defendants of the plaintiff's primary assertion, namely, that the locking of the Sensory Room door was a common practice amongst SNAs, a practice which the third paragraph of that letter appears to implicitly, if not expressly, acknowledged to have existed.

79. The next letter in the correspondence is a letter dated 12th October 2010, from the plaintiff's solicitor in reply to the defendants' letter of 24th September 2010, in which the following is stated:

> "(a) First of all, we are in receipt of the letter which you issued to our clients on 18th January 2010, wherein the second paragraph therein recites as follows *'this warning is being issued as a result of the investigation that was carried out at the request of the Board of management into an incident that occurred on 14th September 2009 whereby you locked yourself and a child into the Sensory Room. On the conclusion of the investigation, the matter was discussed at the Board of management meeting on 23rd November 2009, and it was agreed at this meeting that you would be issued with this warning'.*
>
> (b) The writer herein is at a loss to reconcile the contents of your letter of 24th September with the contents of this letter. In your letter of 24th September 2010 it is admitted by the Board of management that members of staff have on occasion seen fit to lock the door of the Sensory Room, and yet our client was singled out in relation to one incident of locking the Sensory Room and was furnished with a final warning letter that was to remain on her employment file for a period of 18 months. It is on this basis alone that we requested that a letter of apology and acknowledgement that indeed the warning letter was going to be removed from her personnel file;
>
> (c) Further, our client has instructed us that recently, on Friday 24th September 2010, the Principal of the school explained to the staff that it was now acknowledged and aware that at certain times members had locked the door. Our

client finds it incredulous that if this was acknowledged by the school and by the Board of management, how our client was issued with a warning letter in respect of the matter;

(d) In respect of the annual reviews, once again we have taken our client's instructions and have been informed that never in her 14 years of being employed by KARE had she any uncertified sick absences. Rather, she has confirmed that she was never made aware of any other 'issues' regarding her work and we would be obliged if, by return, you would identify these 'issues' so that our client can reply to same;

(e) Further, please note that our client is currently out of work. Her doctor has certified her leave of absence as work related stress. In light of same, we would be obliged if all matters pertaining to our client were directed through our offices . . ."

80. No reply was received to this letter and the solicitor for the plaintiff sent a reminder letter of 11th November 2010.

81. By a letter of 20th December 2010, Mr. Lynch, on behalf of the defendants, wrote, saying the following:

"Dear Madam,

I refer to your letter dated 12th October 2010 which was presented to the Board of management at its meeting in St. Anne's School.

Further to extensive debate, it was felt that this was a matter that requires considerable further discussion by the Board of management."

82. The minutes of the Board of management meeting on 9th November 2010, were put in evidence. These disclose no consideration by the Board of the plaintiff's situation. At this stage, the Board were well aware of the fact that the plaintiff had been out of work since 27th September 2010 on sick leave, and, as had been advised by the defendants to the plaintiff in a letter of 14th December 2010, the plaintiff's entitlement to incremental salary would expire on 19th December 2010, and thereafter, the best that was available to her was to apply for a period of unpaid sick leave. All of this would convey to any reasonable Board that there was considerable urgency in resolving the plaintiff's situation and they were being pressed for such a resolution in the correspondence from the plaintiff's solicitor.

83. The next meeting of the Board was on 18th January 2011.

84. By a letter of 17th January 2011, the plaintiff's solicitors wrote to the defendants as follows:

"We refer to the above and to previous correspondence herein.

Please note we are writing on behalf of the above named client in respect of correspondence which you sent to her in December 2010.

Kindly note our client now wishes to apply for sick leave.

We look forward to hearing from you in this regard."

85. 'Item 1.6' in the minutes of the Board meeting of 18th January 2011, states the following:

"SNA PERFORMANCE

Letter received dated 6th January 2001 from Burns & Nowlan Solicitors.

SNA has been informed by the DES that entitlement to incremental salary will cease on 19th December 2010. After this time, SNA must write to the Board requesting unpaid SL on a monthly basis.

Christy proposed that a letter is sent advising of current situation.

Seconded: Conal."

Under the heading of 'Ongoing' related to the item, there is the following said:

"Sub-group to meet on 24th January 2001. Group to include Christy, Conal, Pauline.

Letter advising of this to be sent out."

86. By a letter of 19th January 2001, the solicitors of the plaintiff for the first time wrote a standard letter intimating proceedings claiming damages for personal injuries sustained by the plaintiff. No further correspondence appears to have been received from the defendants relating to any further discussion by the Board of the plaintiff's situation. Notwithstanding the letter of 19th January 2001, threatening proceedings, by a letter of 24th March 2011, the solicitors for the plaintiff wrote, saying:

"We refer to the above and to previous correspondence, and in particular to your letter of 20th December, wherein you refer to our letter of 12th October 2010 which was presented to the Board of management meeting at St. Anne's School. Thereafter, you say you required further extensive debate before you could reply to same. The writer herein is dictating this letter on 24th March and would respectfully submit that any such debate should have taken place by now.

We look forward to a reply at your earliest convenience."

There does not appear to have been a reply to this letter and there is no evidence of any further discussion, as intimated in the defendants' letter of 20th December 2010, by the Board of the plaintiff's situation, and in particular, the case made on her behalf by her solicitor in correspondence culminating in the letter of 12th October 2010. It would seem to me that the plaintiff, through her solicitor, did her utmost to pursue her grievance through the internal procedures of the defendants, but the defendants wholly failed to respond to her in that context, and thus, she was left with no option but to pursue these proceedings

87. Up until March 2010, it may have been the case that the Board were not aware of the merits of the case being made by the plaintiff, namely, that it was a common practice among SNAs to lock the door of the Sensory Room, notwithstanding that Ms. Dempsey, the Principal, was well aware of the plaintiff's case. However, from March 2010, onwards, there can be no doubt but that the Board were clearly alerted to the plaintiff's case, and from not later than April 2010, were also aware that several other SNAs also occasionally locked the Sensory Room door. The rejection of the plaintiff's appeal by the Board in May 2010, without any meaningful consideration of the merits of the plaintiff's case, and the subsequent failure or refusal of the Board in the autumn 2010, when given a fresh opportunity, on foot of the correspondence from the plaintiff's solicitor, to at all, consider the merits of the plaintiff's case at this late stage when they were aware of the impact that their now erroneous and unjust decision was having on the plaintiff was, in my view, a persistence by them in their unfair and inappropriate treatment of the plaintiff.

88. Thus, in my opinion, the plaintiff has demonstrated to my satisfaction that the inappropriate behaviour of the defendants was not merely an isolated incident but was persistent over a period of in excess of one year. There can be no doubt but that this persistent, inappropriate behaviour of the defendants wholly undermined the plaintiff's dignity at work.

89. The next question to be considered is whether or not the plaintiff has, as a result of the conduct of the defendants, suffered an identifiable psychiatric injury as indicated in the passage from the judgment of Fennelly J. in the *Quigley Complex Tooling & Moulding Ltd.* case quoted above.

90. The plaintiff has given evidence to me, which I accept, that from October/November 2009, she began to experience high levels of stress caused by what she perceived as the unfair treatment of her by the defendants, and in particular, Ms. Dempsey. As time went on, and not only was the problem not being resolved but it was getting worse, as she saw it, I have no doubt that these symptoms of stress became much worse, and I accept that from around March 2010, she was suffering constantly from headaches, insomnia, diarrhoea and high levels of anxiety. All of this persisted through the summer months of 2010, and she eventually attended her General Practitioner, on 19th August 2010, complaining of frontal facial temple headaches all summer, that she could not think straight, all related to a bullying issue at school. Her General Practitioner diagnosed muscle contraction headache and prescribed medication for her. She attended her General Practitioner again on 28th September 2010, with similar complaints, with the addition of some neck pain. The General Practitioner put all this down to stress related to bullying.

91. I have no doubt that the imminent return to school after the summer holidays had a heightening effect on her stress and anxiety at that time. On her return to school, a further episode with the Principal, Ms. Dempsey, occurred on 27th September 2009. The plaintiff's evidence was that she arrived for school in good time but had to move her car in the car park because of car park lining work going on there. That, notwithstanding, when she got into the school at 8.55am, she encountered Ms. Dempsey and was reprimanded by her for being late. Ms. Dempsey acknowledged in her evidence that it was not unusual for her to challenge or remind staff whom she believed were not on time, in these circumstances. The plaintiff felt particularly aggrieved because she felt she was in good time and that the rest of the staff were still in the staff room having breakfast. This incident, in the ordinary course, would not have been of any great consequence, but for the plaintiff, it was the last straw. She felt she could bear it no more and found the stress of continuing in the school intolerable. I have no doubt that at that stage, she had a heightened sense of apprehension in all her dealings with Ms. Dempsey, having regard to all that had happened in the previous year. As a direct consequence of this incident, the plaintiff felt she could no longer continue in the school and she went out on certified sick leave due to work-related stress.

92. Prior to 2009, the plaintiff had two previous episodes of Depression, one of which was a postpartum Depression and the other a reaction to bereavements. She required anti-depressive medication for these but she recovered fully on both occasions. However, and the evidence of Dr. Byrne, a psychiatrist called for the plaintiff, satisfies me in this respect, having suffered previous episodes of Depression, she was predisposed to further depressive illness. I am satisfied on the evidence of Dr. Michael McDonnell, her GP, and Dr. Byrne that the plaintiff suffered an Anxiety and Depressive Disorder resulting from her reaction to what had happened to her in St. Anne's School from September 2009 through to September 2010. This resulted in a high state of anxiety, low mood, loss of confidence and self-esteem and an inability to cope with everyday life. All of this rendered her incapable of returning to work in the defendants' school, and all of that, allied to her fear that she would not have a good reference, inhibited her from seeking employment elsewhere. As a result, she has not worked since 27th September 2010.

93. She has been on anti-anxiety and anti-Depression medication since late 2010, and she attended the Kildare Mental Health Services in Newbridge on a regular basis where she was prescribed anti-Depression medication. Her situation has not improved over the intervening period. An examination of her by Dr. McDonnell in February 2014, included the completion of two questionnaires, namely, the General Anxiety Disorder Assessment and the Patient Health Questionnaire, the results of which indicated she was suffering from a severe anxiety state and severe Depression. I think it probable that the impending litigation was, at that stage, worsening her symptoms, but that notwithstanding, there can be no doubt that she has, since late 2010, suffered from a significant anxiety and depressive disorder and that continues to afflict her.

94. Dr. Byrne's evidence was to the effect that she has to continue with her medication and other forms of support and therapy which should enable her to recover her whole sense of personal safety and her sense of self-worth, and to enable her to have a feeling of control of her life. With all of that, she could look forward to a gradual reintroduction to a work situation. It would seem to me to be probable that when this litigation is concluded, there is likely to be a significant improvement in her anxiety and depressive state. I would think it probable, having regard to Dr. Byrne's evidence, that she will have the capacity, in due course, to return to fulltime, gainful employment.

95. I am satisfied that the plaintiff has suffered a definite and identifiable psychiatric injury from which she still continues to suffer significantly and will continue to do so for some time into the future. Therefore, she must be compensated for her pain and suffering in that regard to date and into the future. In my opinion, the appropriate sum to compensate the plaintiff for her psychiatric injury to date is the sum of €75,000. Insofar as the future is concerned, as already mentioned, the probability is that she will improve and go on to recover over time, particularly when this litigation is finalised. With that in mind, in my opinion, the appropriate sum to compensate her for her psychiatric injury for the future is the sum of €40,000, making a total for general damages of €115,000.

96. The plaintiff's loss of earnings up to 6th March 2014 was agreed in the sum of €93,276.39. There was some suggestion that there may have been some deductible benefits which would reduce that figure, but the court was not told if that was so or what the amount thereof should be. That being so, I must proceed on the basis that there are no deductible social welfare benefits.

97. In my view, the plaintiff is entitled to recover the foregoing sum, and as it is clear she will probably not be able to return to gainful employment for some time yet, is entitled to recover damages in respect of future loss of earnings. I think it probable that with appropriate treatment, she will be fit for such employment in the relatively near future, and accordingly, I would award her half the foregoing sum again in respect of future loss of earnings, namely, €47,000, making a total of €140,276 in respect of loss of earnings past and future.

98. Accordingly, there will be judgment for the plaintiff in the sum of €255,276.