



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Hargreaves

**Respondent:** Governing Body of Manchester Grammar School

**HELD AT:** Manchester

**ON:** 1st March 2017  
2nd March 2017  
16th March 2017  
20th March 2017  
(In Chambers)

**BEFORE:** Employment Judge Slater

## REPRESENTATION:

**Claimant:** Ms J McCarthy, Solicitor

**Respondent:** Mr K Ali, Counsel

# JUDGMENT

1. The complaint of unfair dismissal is not well founded.
2. The complaint of breach of contract is not well founded.
3. The remedy hearing provisionally arranged for 15 May 2017 is cancelled.

# REASONS

## Claims and Issues

1. The claimant claimed unfair dismissal and breach of contract in respect of failure to give him notice of termination.
2. The issues were agreed to be as follows:-
  - (1) Was the claimant unfairly dismissed contrary to Section 98 of the Employment Rights Act 1996?
    - 1.1 The claimant has conceded he was dismissed for a potentially fair reason (in this case conduct);
    - 1.2 Did the respondent have a genuine and reasonably held belief that it was entitled to dismiss the claimant for the reason it did;
    - 1.3 Did the respondent operate a fair dismissal procedure, did the respondent carry out as much investigation as was reasonable;
    - 1.4 Was the dismissal within the range of reasonable responses open to an employer in all the circumstances?
  - (2) If the claimant was unfairly dismissed:
    - 2.1 Should there be any reduction to any award of damages on grounds of contributory fault?
    - 2.2 Should there be any Polkey reduction to any award of damages?
  - (3) If the claimant was unfairly dismissed what is his entitlement to damages? Has the claimant reasonably mitigated his losses?
  - (4) Has the respondent breached the claimant's contract of employment entitling him to notice pay?

## Facts

3. The claimant was employed as a Teacher of Art and Design with the respondent school from 1st September 2005 until his dismissal on 17th June 2016. The claimant had not been the subject of any formal disciplinary action before the allegation that led to his dismissal.
4. The respondent is an independent fee paying boys school comprising a Junior School, Senior School and Sixth Form. It currently has 1,530 boys on its roll. The Governing Body of Manchester Grammar School employs approximately 260 staff comprising 160 Teachers and 100 Support Staff. The Governing Body has

delegated the day to day responsibility for all staff to the High Master, Canon Dr Martin Boulton.

5. All schools must have a designated safeguarding lead. At the respondent's school, this responsibility was taken by Mr Andrew Smith, a Deputy Head of the School, who has overall responsibility for safeguarding and pastoral care. Mr Smith has been trained and functioned as a designated person for child protection for over twelve years and became the designated Safeguarding Lead at the respondent's school in 2014. In addition to his work at the respondent school, he also sits on the Manchester Safeguarding Children Board which is a statutory body made up of representatives from the NHS, Greater Manchester Police, Social Care and Education. This board helps coordinate the organisations that work together to safeguard and promote the welfare of children. It is tasked with scrutinising the effectiveness of safeguarding activity across Manchester and making recommendations to the statutory agencies.

6. In the event of any safeguarding issue relating to the behaviour of a member of staff, if it is alleged that a member of staff has behaved in a way that has, or may have, harmed a child, has possibly committed a criminal offence against, or related to, a child or behaved in a way that indicates that he or she would pose a risk of harm, Mr Smith has a duty to inform the Local Authority's Designated Officer (LADO).

7. All schools have an obligation to comply with statutory guidance set out in "Keeping children safe in education". This guidance includes guidance for schools when dealing with allegations of abuse made against teachers and other staff.

8. On 3rd March 2016, there was an interaction between the claimant and pupil A which led to the claimant's dismissal.

9. On Monday 7th March 2016, pupil A approached his Form Tutor, Ger Morris, and told him about an incident. Mr Morris recognised this as a safeguarding issue and went to see Mr Smith in his capacity as DSL. Mr Smith took a handwritten note of his conversation with Mr Morris. He recorded that Pupil A had told Mr Morris that, on Thursday 3rd March 2016, before assembly, he was walking down to assembly and told to turn around; there was a scuffle; Pupil A had his hands on the shoulder of an older boy. Pupil A alleged that the claimant grabbed Pupil A and shoved him against the wall; he then pushed two forefingers against his throat. The notes recorded that Mr Morris said that Pupil A was visibly upset while telling this to Mr Morris. Pupil A also mentioned to Mr Morris that he had been reprimanded by Simon Burch, who may have witnessed the event. Dr Burch is the Proctor at the school.

10. Mr Smith then informed the High Master about the allegation, as he was required to do in his role as DSL. Mr Smith advised Dr Boulton that he was obliged to inform the Local Authority Designated Officer. After his meeting with Dr Boulton, Mr Smith telephoned the LADO, Majella O'Hagan, to seek her guidance. Ms O'Hagan advised Mr Smith that the behaviour, if it took place, would be viewed as a potential common assault and it would be a matter for the Police. She advised that Mr Smith should gather some initial information, seeking evidence from any

witnesses including Pupil A. She advised Mr Smith that he should be careful not to ask any leading questions and he should do nothing which would compromise a Police investigation.

11. Mr Smith spoke first to Pupil A. Mr Smith made a handwritten note of what he was told by Pupil A. Pupil A told him that, on Thursday, there had been a switch of venue for assembly for Year Ten and everyone had had to turn around and go to the Theatre. Pupil A had said he had stumbled and put both hands on Pupil B who had also stumbled. He said the claimant touched him on his shoulder to get his attention and was shouting "don't push". Pupil A said he turned around and took a step towards Mr Hargreaves; Mr Hargreaves pushed him back towards the notice board quite forcefully. Pupil A said that the claimant then pressed his index and middle finger into Pupil A's Adams Apple, Pupil A said this was very uncomfortable, painful and unpleasant and frightening. The claimant was saying "why are you pushing". Pupil A said the claimant started looking for Dr Burch to tell Pupil A off.

12. Pupil B had witnessed the incident and named others who might have seen it as Pupils OB, EB, and GK. Mr Smith then went to see to Dr Burch and asked whether he recollected anything that had happened on Thursday 3rd March 2016 lunchtime, just prior to Assembly. Dr Burch recounted that the claimant had approached him to report a pupil who had made a rugby tackle. Mr Smith asked Dr Burch to provide a written account. Dr Burch provided an initial summary which Mr Smith did not consider fully reflected what Dr Burch had told him so he asked Dr Burch to provide a fuller account of what he could recall, which he provided the next day. In the initial account, Dr Burch wrote that the claimant seemed agitated and told him that he had sent a boy to Dr Burch for making a rugby tackle during movements of two groups of boys. Dr Burch wrote that he had talked to the boy who seemed upset and Dr Burch told him he was being unhelpful. Dr Burch wrote that the boy seemed very relieved and Dr Burch thought it was because he had let him off.

13. In the fuller account, Dr Burch described the claimant as very agitated. He described Pupil A as upset and red faced. He wrote that Pupil A admitted that he had been "pushing and shoving" in the corridor. Dr Burch wrote that he had let off Pupil A with a stern warning and Pupil A seemed very relieved indeed and was almost too grateful. Dr Burch wrote "I felt that the situation was not the normal reaction of an MGS boy in trouble". Dr Burch wrote that the claimant approached him a second time about five minutes later and asked whether he had dealt with the boy.

14. As advised by the LADO, Mr Smith then spoke to Pupil A's parents by telephone. He spoke first with Mrs A and took a handwritten note of their conversation. Mrs A was aware of the incident and gave a description of what Pupil A had told them which Mr Smith recorded as matching Pupil A's account. Mrs A expressed concern that reporting the incident would create further anxiety for Pupil A. She said they did not want to create further problems for Pupil A or the school. Mr Smith told her that he was professionally obliged to pursue the matter through the appropriate reporting procedure. Mrs A asked Mr Smith to speak to Mr A, which he did, making a note of this conversation. Mr A told Mr Smith that he was initially very angry. Mr A said he was worried about Pupil A's welfare if he got involved in giving

any sort of witness statement. He did not want Pupil A to be seen as a trouble maker. He agreed that Mr Smith should do what he needed to do.

15. On the evening of 7th March, Mr Smith sent the LADO an email, updating her on his conversation with Pupil A, Dr Burch and Mrs A.

16. Mr Smith spoke to Pupil B on 8th March. Mr Smith asked if he could remember anything around assembly time. Mr Smith considered that Pupil B appeared reluctant; Pupil B said unprompted that he liked Mr Hargreaves and didn't want to make trouble. Pupil B then told Mr Smith what he recalled. Mr Smith asked Pupil B to write down what he had just told him and Pupil B wrote this in Mr Smith's office. He wrote that everyone was pushing and shoving in the main stairwell area, Pupil A was in front of him and they kept getting pushed by the large crowd behind them. He wrote that Mr Hargreaves was trying to get all the pushing and shoving to stop. Pupil B wrote that the people behind him pushed and Pupil A went flying into the person in front of him. He wrote "then Mr Hargreaves grabbed his shoulders and pulled him back with a lot of force then when Pupil A was facing him he pushed his chest and put him on the wall. Pupil A looked pretty shocked at this and then before Sir started speaking he put two fingers to his neck (voice box area) and then moved it a few seconds after and started shouting at him". He wrote that, after everyone had stopped pushing, he sat Pupil A down on a chair and shouted "wait there".

17. Mr Smith spoke to Pupil OB on 8th March. Mr Smith asked Pupil OB whether he could recall anything in relation to the assembly last Thursday which was unusual or stuck in his mind. Pupil OB had no recollection of anything unusual. Mr Smith decided not to explore the same question with Pupils EB and GK as he was concerned about the risk of speculation and gossip.

18. On 9th March 2016, Mr Smith spoke again with the LADO, Majella O'Hagan. She informed him that she had passed on the information to the Public Protection Investigation Unit and that D S McKee would be investigating and Mr Smith should contact D S McKee to get advice on how to handle the situation. Ms O'Hagan informed Mr Smith that, after he had spoken with D S McKee, then he would need to inform the claimant about the allegation and the referral to LADO and the Police involvement. The LADO asked that they consider suspension and recommended that the school undertake a risk assessment to decide whether suspension was appropriate taking into account any feedback from D S McKee. Mr Smith tried to contact D S McKee but she was not available.

19. On the morning of Thursday 10th March, Mrs A telephoned Mr Smith. She informed Mr Smith that two or three boys had been taunting Pupil A in the butty bar about "being taken out by Mr Hargreaves". She named pupils C and D as being involved.

20. Mr Smith interviewed pupils C and D individually on 10th March, asking if they could recall anything in relation to the assembly the previous Thursday. They both recalled something of the incident and wrote down their accounts at the request of Mr Smith. Pupil C wrote "Mr Hargreaves tapped Pupil A on shoulder after Pupil A was pushing. Pupil A then moved back to middle school office. Mr H then placed finger around top of tie, tapped multiple times". Pupil D "I was in the line with Pupil

A, Pupil B, JS, OB and O and they were pushing each other. When I had turned around and then come back I saw pupil A sat on the chair outside the office holding his neck with Mr Hargreaves stood next to him".

21. Mr Smith spoke to DS McKee on 10th March. She said she had spoken with Mrs A and agreed that DS McKee would visit and meet Pupil A in school. DS McKee informed Mr Smith that the respondent school was permitted to inform the claimant of the fact an allegation had been made but they were not permitted to share the detail of the allegation.

22. Mr Smith and the Deputy High Master, Paul Thompson, undertook a risk assessment to consider suspending the claimant. This risk assessment was not shown to the claimant or to the Dismissing Officers. In the section on "anger management", they wrote: "JH can be volatile in his behaviour and has a history of displaying bad temper. Once he is informed that there is an allegation his judgment could easily be impaired". They concluded, as a result of the risk assessment, that the claimant should be suspended. Whilst there was some confusion in Mr Smith's evidence as to who made the decision to suspend, I accept Dr Boulton's evidence that the decision was taken by Dr Thompson, to whom Dr Boulton delegated this decision. The minutes of the LADO meeting are incorrect insofar as they record that the Headteacher made the decision. We accept Dr Boulton's evidence that he did not look at the LADO minutes for correctness as they arrived just before the disciplinary hearing and he took a deliberate decision not to look at them at that time. The claimant takes issue with the description of his behaviour in the risk assessment but does not dispute that suspension was the correct course of action in the circumstances.

23. Paul Thompson and Mr Smith met with the claimant on 11th March to notify him that an allegation had been made against him by a pupil and that he was being suspended from duties. Mr Smith told the claimant that there had been a complaint that the claimant had been physically aggressive towards a boy. The claimant denied any wrongdoing. Mr Thompson confirmed his suspension in a letter dated the 11th March. The claimant was informed that they had been instructed by the Police that they could not progress an internal investigation into the complaint until such time as the Police told them otherwise.

24. DS McKee interviewed Pupil A on 16th March. Mr Smith attended the interview in his capacity as DSL. Mr Smith recorded that Pupil A gave an account of the incident identical to the one he had given to Mr Smith.

25. A strategy meeting called by the LADO was held on 7th April 2016, during the school's Easter Holiday shutdown period. Dr Boulton attended the meeting along with Mr Smith and Clair Vaughan, HR Manager for Grammar School, as well as DS McKee, the LADO and another person from Children's Services. By the time of this meeting, DS McKee had interviewed the claimant.

26. Prior to the Police interview, the claimant was given a pre-interview briefing. This briefing described the incident as follows: "On March 3rd 2016 there was an incident in the main stairwell of the school. It was about 12.45 hours. There were a large number of students in the stairwell area. Pupil A who was 15 years old is a

pupil at the school. He states that on this date the pupils were asked to turn around and this caused him to stumble - he used a fellow pupil, Pupil B to steady himself. A states that Mr Hargreaves got his attention and tapped him on the shoulder. A then states that Mr Hargreaves put his hand on his shoulder and took him to a nearby notice board. Mr Hargreaves it is alleged then put two fingers into his Adams Apple area of this throat and asked him why he was pushing. The pressure on his throat caused a pain and he was shocked by the incident. A felt upset about the incident. A was then told to sit down and the Procter Dr Burch was called over." The briefing also recorded that they had an account from A and from B who witnessed the incident and there were accounts also from two other pupils.

27. In the strategy meeting, DS McKee is recorded as saying that the claimant had said that he had seen A rugby tackling another boy and so had got hold of him by his rucksack. She wrote that the claimant denied grabbing the boy or holding him with his fingers at his throat and that he believed the accounts given by other students as well as A to be malicious lies. DS McKee said that the case would not be going to the CPS as the parents did not want the matter to be taken any further by the Police. DS McKee said that the claimant had commented that the school secretary may have been a witness to what had happened. Andrew Smith said that the school secretary was due back at school next week and that he would speak to her. DS McKee advised that the case would have been progressed if the parents had wanted this but there was insufficient evidence for Police to proceed alone and the parents had also shown concern around their son and his schooling.

28. The LADO asked if there had been any previous concerns about the claimant in regards to the way that he disciplined pupils. Mr Smith replied that the only cause for concern was the way in which Mr Hargreaves spoke to children; he could be very rude and insensitive towards them and he was sometimes blunt and critical and could be very impatient. Dr Boulton said that there were no formal records on file in respect of any concerns. It had been planned, however, to speak to Mr Hargreaves about his attitude and behaviour when speaking to children following a recent concern raised in relation to such behaviour. The LADO said that they must wait for the formal outcome from GMP as to how they would proceed; the matter would then be left in the hands of the employer to conduct their own internal investigation. Dr Boulton commented that it was hard to understand the claimant saying that the allegations were malicious as he had not taught this particular student.

29. As requested by DS McKee, Mr Smith spoke to two potential witnesses identified by the claimant: Melissa Ivory and Gemma Balamoody, who work in the middle school office. He asked if they could recall anything in relation to the change in venue in Assembly on 3rd March. Gemma told him that she had not been in the area at the relevant time and, therefore, could not recall anything, Andrew Smith reported to DS McKee that Melissa Ivory remembered that the corridor was very crowded and noisy. She remembered that one of the senior Prefects was marshalling the pupils. She recalled seeing the claimant at some stage but she did not witness any unusual incident nor did she see him attempting to manage the crowd. DS McKee asked whether the Senior Prefect could be spoken to. Mr Smith spoke to the prefect, pupil OK, and reported to DS McKee twenty three minutes after her request. He wrote that OK did not see the incident and had seen one of the boys who gave a witness statement pushing and goofing around but did not mention the

claimant at all. DS McKee informed Mr Smith that same day that there would be no further Police action regarding the incident, due to the fact that Pupil A did not wish to proceed further and neither did his mother. She wrote that she had informed the claimant and would be sending him a letter in due course and had informed him that the school may now proceed through the discipline route but that was for the school to address further actions.

30. Dr Boulton asked Mr Smith to conduct the internal investigation.

31. By a letter dated 14th April 2016, Mr Smith asked the claimant to attend an investigation meeting on 20th April. The letter set out the allegation as follows "it is alleged that on 3rd March 2016 at approximately 12.40 to 12.50 pm you used unreasonable force to restrain a 15 year old male pupil in the corridor by pushing him up against the wall and poking your fingers into his Adams Apple". The letter noted that, whilst there was not a statutory right to be accompanied to an investigation meeting, given the very serious nature of the allegation and in the spirit of the statutory guidance on handling allegations of this nature, they were extending that right to him and encouraged him to utilise it. Mr Smith wrote that the claimant could be accompanied by a work colleague or an accredited trade union representative and that that person could either act as the claimant's representative and address the meeting or merely attend as his witness but could not answer questions on his behalf. Mr Smith wrote that he was enclosing a copy of the school's disciplinary procedure. However, it appears from an email from the claimant dated 19th April, that the disciplinary procedure was not included and the claimant asked that Mr Smith bring a copy to the meeting on Monday. The letter did not note that there were any other enclosures. Mr Smith has given evidence that he provided the claimant with copies of all the statements he had taken in his DSL capacity. The claimant denies that these were provided prior to or at the investigation meeting. Whilst I accept that Mr Smith honestly believes that he provided the claimant with the statements before the investigation meeting, I find, on a balance of probabilities, that Mr Smith is mistaken. If these statements had been enclosed, I consider they would have been listed as enclosures to the letter. It was suggested that the claimant's familiarity with the account of Pupil A at the investigation meeting indicated that he had received the statements. However, I find that the details referred to could equally have been taken from the pre-interview briefing provided by the Police.

32. The date of the investigation meeting was re-scheduled to 25th April to accommodate the availability of the claimant's trade union representative. Clair Vaughan, HR Manager, e-mailed to the claimant a copy of the MGS disciplinary rules and discipline and dismissal policy and staff code of conduct on 19th April.

33. The investigation meeting took place on 25th April 2016. The claimant was accompanied by his trade union representative, Mr Hulse. The meeting was conducted by Mr Smith with Clair Vaughan present to take notes. The version of notes in the bundle is the final version, incorporating amendments suggested by the claimant. The claimant gave his account of events on 3rd March. He described Pupil A as crouching as if to rugby tackle someone. He said he felt he had to intervene and described himself as being "very cool, calm and collected" in his thought process. The claimant said he held on to the central handle at the top of Pupil A's rucksack and pulled him back saying "stop pushing now". He said it took

three times before he pulled pupil A up. The claimant said he walked Pupil A towards the double doors leading to the High Master's corridor. He said he was not still holding Pupil A's bag, he had simply ushered Pupil A to the wall, Pupil A denied that he had been pushing and the claimant said he told him "never ruin an apology with an excuse," which appeared to make Pupil A angry. The claimant said he walked towards the stairs and, when he was on the stairs, he saw Dr Burch coming from the direction of the Memorial Hall. The claimant said he told Dr Burch that Pupil A was pushing. The claimant said he did not touch Pupil A, only his backpack. He accused Pupil A of lying. The claimant suggested some questions for Pupil A. The claimant said he had no history with Pupil A and considered that he got on well with Pupil B. The claimant said he had only taught Pupil A in Year 7 and described him as "nothing special either way" although the claimant now says he confused the claimant with another boy and had not taught Pupil A. The claimant said that Pupil A was furious when he had spoken to him and described Pupil A as "clearly damaged". It appears that the claimant was shown Dr Burch's notes of the incident. The claimant disagreed that he was agitated. He said he had no memory of returning to Dr Burch. The claimant described Pupil A as "nowty, furious, red faced". The claimant accepted in cross examination that, at the investigation meeting, he was able to raise all the points he wished to raise.

34. In an email dated 26th April 2016 to Clair Vaughan, Andrew Smith summarised further avenues of investigation he considered they needed to follow.

35. Mr Smith spoke again to Ger Morris, Pupil A's Form Tutor. There are typed notes of this meeting. Mr Morris said he was not aware of any ill feeling or history between Pupil A and the claimant. Mr Morris said that form periods only take place on Mondays and Wednesdays so this was the first form tutor session since the incident. Pupil A had asked to speak to Mr Morris after the other boys had gone. Mr Morris described again what Pupil A had told him about the incident. He said that when Pupil A told him that the claimant had shoved him against the wall and put his fingers in A's throat, A's voice started to crack and he started to cry.

36. Mr Smith spoke again to Dr Burch and typed up notes of the conversation. Dr Burch described the claimant as "red faced and agitated" when he was asking Dr Burch to deal with Pupil A. Dr Burch said that Pupil A was standing by Melissa's desk. He said A was very subdued. Dr Burch asked Pupil A what he had done and Pupil A said he was pushing in the corridor and was very sorry. Dr Burch let him off with a warning as he had never had to deal with the boy before. Dr Burch said that A walked out of the recess, the claimant re-appeared and asked "have you dealt with that". Dr Burch described A as very subdued, scared and frightened. Andrew Smith asked if A was angry and red-faced. Dr Burch said no, it was the claimant who was very red faced, very agitated and that he had never seen him so agitated. Dr Burch said that Pupil A was not angry, he was extremely relieved. Dr Burch believed this was because Dr Burch did not shout at A. Dr Burch said that A's reaction was unusual as he seemed more scared than an MGS boy would normally be.

37. Mr Smith asked Pupil A's parents to come into the school and he met with them on 4th May. Mr Smith produced typed notes of the meeting. Mr Smith asked how A had informed his parents of the alleged incident with the claimant. Mrs A said that A had been subdued when he came home that Thursday; eventually he told her

"I better tell you about something that happened today". He was hesitant and reluctant. He told her what had happened. He told her that there had been a middle school Assembly and there was a change of venue, A had his hands on Pupil B's shoulders and was guiding him, A then stumbled, the claimant grabbed him by "scrabbling at his shoulder" and pushed him against a wall. A said the claimant pushed his fingers into A's Adams Apple. The claimant called Dr Burch over. A said it did not hurt but it was firm. Mrs A and A talked again later. Mrs A wanted to know A's views on what A wanted to happen with the information. A felt uncomfortable but did want someone to know. Mrs A and A decided it would be a good idea to tell his Form Tutor. Mrs A wanted A to do this himself so there would be no "third person filter" on the information. Mrs A told Mr A what had happened when he got home and how A proposed to raise it with Mr Morris. Mr A said his family were very invested in the school with two boys who were very happy there and Mr A was angry but wanted to let the school manage the situation; Mr A felt that it had been handled professionally. Mr Smith asked if Mr and Mrs A had any sense that A had "business" with the claimant. Mrs A said she had never previously heard the name; the claimant had not taught either of her sons. Mr A thought neither of his sons knew the claimant. Mrs A said that A was very shocked and shaky at the time of the incident. Mrs A said that A was very flat and very factual when he told her about the incident and said that A was truthful. Mrs A said she had overheard A telling his brother and all the details were the same.

38. Mr Smith interviewed Pupil A again on 4th May. There are typed notes of this interview taken by Clair Vaughan. Pupil A said he had his hands on Pupil B's shoulders. He insisted he was not messing about and that his hands were high up, he then stumbled and pushed into Pupil B. He denied he was bent over in a rucking position. A said the claimant grabbed his left shoulder then turned him to face him, pushed him with both hands and put fingers in his throat. Mr Smith asked if the claimant had grabbed A's backpack or his shoulder. A said he had no back pack on, it was on the bag rack. He denied he was cross or aggressive and said that the claimant left him alone to wait for Dr Burch; he was sitting opposite the counter in the middle school waiting room. Mr Smith asked if A was holding his neck. A said he was rubbing his neck slightly and Dr Burch sat down next to him. Mr Smith asked if A had made this up. A replied that he had not and that he had nothing against the claimant.

39. Mr Smith interviewed Pupil B again on 5th May. Typed notes were made by Clair Vaughan, Pupil B said that Pupil A had his bag on, the claimant pulled A's bag then his shoulder. He said the claimant pushed Pupil A to the wall then held him against the wall. He said the reason he remembered was that the claimant prodded A's neck, that the claimant pushed A with some force and put fingers in his throat. B said that A was on the wall by the middle school notice board with the claimant, then the claimant told A to sit down on chairs near the counter. Mr Smith asked if he had made up a story to get the claimant into trouble. B replied "no that he got on with the claimant really well". He did not think that A had ever been taught by the claimant.

40. Mr Smith interviewed Pupil C again on 5th May. Typed notes were made. C said he saw A push someone and thought A did this deliberately. The claimant tapped A on the shoulder and A went to the wall; the claimant put two fingers near A's tie; he was not sure whether A was wearing a backpack. Mr Smith asked C if the

incident had struck him as inappropriate, C said "yes I've never seen it before. I wouldn't expect a teacher to do that. I was surprised. It seemed excessive".

41. Mr Smith also interviewed Pupil D on 5th May and typed notes were made. D described seeing A on a chair opposite the counter holding his throat. He said A had both hands on his own neck. D said that, after assembly, he had asked A why he had been holding his neck and A replied that the claimant grabbed him. D said A was "pretty freaked out, shaken up". D thought Pupil B had seen the incident and maybe Pupils E and JS.

42. Mr Smith also interviewed Pupil E on 9th May. Notes were made. E said that he had not seen anything. He said he knew that Pupil B had seen the incident. E thought another boy, OB, was around but didn't know if he saw anything. E said he was only aware of the incident as Pupil B had told him about it.

43. Pupil D had referred to JS possibly being there. I accept that Mr Smith decided not to interview JS because he made a judgment that it was extremely unlikely that JS had witnessed anything and questioning him would only create another opportunity for gossip and speculation. Mr Smith wanted to keep the matter as confidential as possible.

44. Mr Smith produced an investigation report which he presented to the High Master. Appendices to the report included the notes of Mr Smith's interviews with Pupils A, B, C, D and E, Mr Morris, Dr Burch, the claimant and Mr and Mrs A. The report summarised the allegation, the investigation, points of disagreement and dispute and set out concluding remarks over four pages. He concluded "this investigation has identified two polarised accounts of the incident. Either there has been a malicious allegation of physical abuse levelled against JH or he has acted in a way that could be viewed as serious professional misconduct. The boys' witness accounts report that JH thrust/pushed his fingers into A's throat and SJP reports that JH was angry, red faced and agitated. JH denies this. In my role as Investigating Officer my recommendation is this incident is progressed to the disciplinary stage for further consideration by the High Master". The report was dated 17th May 2016.

45. Dr Boulton accepted the recommendation made in the investigation report and invited the claimant to a disciplinary hearing by a letter dated 20th May 2016. Dr Boulton required the claimant to attend a disciplinary hearing on 7th June and wrote that he would be conducting the meeting together with their Academic Deputy Head Neil Smith and that Clair Vaughan would be in attendance to take notes. The letter enclosed a copy of the investigation report and the appendices. The allegations were set out as follows:-

- (i) That on 3rd March 2016 you engaged in unwanted and unreasonable physical conduct in your actions against a 15 year old male pupil by pushing him up against the wall and poking your fingers into his Adam's Apple;
- (ii) That this physical contact is in breach of your duties as a Teacher and in breach of the school's Code of Conduct for Staff; and

(iii) You have breached the trust and confidence placed in you as an employee".

46. The claimant was advised that they considered allegations one and two may potentially amount to gross misconduct and, if the allegations were proved, the outcome could be summary dismissal. The claimant was reminded of his right to be accompanied. Dr Boulton informed the claimant that witnesses would not be present at the hearing. However, if the claimant wished a relevant witness to attend the hearing the claimant should let him know. He wrote "please bear in mind the limited scope at paragraph 18 [of the respondent's policy] and that from a welfare point of view it is not normal practice for pupils to attend as witnesses; but any reasonable questions can be explored with them by way of further investigation (via our designated safeguarding lead) if the meeting reveals this to be necessary".

47. Prior to being asked to hear the case alongside Dr Boulton, Neil Smith had no prior knowledge of the allegation that Pupil A had made against the claimant. He read the investigation report and the Appendices in advance of the disciplinary hearing.

48. The date of the disciplinary hearing was re-scheduled from 7th to 10th June to accommodate the availability of the claimant's trade union representative. Prior to the disciplinary hearing, the claimant's representative sent in documents on the claimant's behalf consisting of a personal statement and five character references. Dr Boulton and Mr Smith read these in advance of the disciplinary hearing. Dr Burch attended the disciplinary hearing as a witness at the claimant's request.

49. At the disciplinary hearing, Mr Andrew Smith provided a summary of the investigation. The claimant and his representative asked Mr Smith questions. Mr Hulse asked Mr Smith if he accepted that it was possible that there was collusion; Mr Smith replied that it was at least possible. The claimant said that Pupil B was the key as the main witness and that Pupil C had introduced B as having been expelled from Stockport Grammar. Dr Boulton said he was not aware of an expulsion but he would check with Stockport Grammar and, if B had been expelled, it would be relevant. The claimant said that C and B had sat very close to each other in his class; he wondered if they wanted to take Art and they had something against him. Dr Boulton asked who the claimant remembered seeing at the time of the incident. The claimant said only B; he couldn't identify anyone that he knew other than Pupil B. Dr Burch was questioned by the claimant's representative. The claimant's representative pointed out some contradictions between statements. Dr Boulton said that he and Mr Neil Smith would look into the possibility of collusion. The claimant said he accepted that there was no obvious motive. Neil Smith and Dr Boulton asked questions of the claimant. Dr Boulton asked if there was anything they would like to ask the boys, Mr Hulse said he would like to know why A had changed his story from he was pushing to he was not pushing. Dr Boulton said he would have to come to a conclusion if A was pushing. Dr Boulton asked if the claimant and Mr Hulse were happy if they did not talk to the boys again, Mr Hulse and the claimant agreed that they were.

50. The claimant accepted in cross examination that, at the disciplinary hearing, he had Pupil A's statement naming OB, EB and GK as potential witnesses and

agreed he had every opportunity to ask for statements to be taken. He did not ask for any further statements to be taken. The claimant said in cross examination that he was not in a fit state to deal with matters at the disciplinary hearing but agreed that he had not told the respondent that he was too unwell to take part, thinking that he could soldier through. The claimant had a full opportunity to raise any issues at the disciplinary hearing as did his representative.

51. Following the disciplinary hearing, Dr Boulton and Mr Neil Smith carried out some further investigation relating to matters raised at the disciplinary hearing. The credibility of pupil B, who was the main witness other than the alleged victim of the alleged assault, had been called into question. It had been suggested that pupil B had been expelled from Stockport Grammar School. Dr Boulton telephoned the Headmaster of Stockport Grammar School to ask about the reason for pupil B leaving. The Headmaster of Stockport Grammar School looked into the matter and called back to say that pupil B had not been expelled and that there had been no serious disciplinary issues during his time at Stockport Grammar.

52. A suggestion had been made that pupil B and pupil C were ill disposed to the claimant because of not being able to pursue a GCSE in Art. Dr Boulton and Mr Neil Smith accessed the school reports and went through them together; they found that pupils B and C had been taught by the claimant in Year 9. They reviewed the boys' reports from this period and their grades and could find nothing to indicate that there would have been any ill feeling; they could see no reason from the reports why either boy would have been prevented from taking Art had they wished to do so.

53. Dr Boulton and Mr Neil Smith also checked pupils A to E's punishment school records from September 2012 onwards to identify if there was any history indicating that any of the boys might be pre disposed to being untruthful and/or colluding. I have been shown the disciplinary records which show that all the pupils had some detentions recorded. I accept the evidence of Dr Boulton that, in the context of the type of behaviour typically exhibited by boys at the school, the punishment school records for these pupils did not give them cause for concern. At the LADO meeting, Dr Boulton is recorded as having said that pupil A had no detentions. We accept Dr Boulton's evidence that he was referring to pupil A's record for that academic year, that he had checked the record for that year before the meeting and pupil A had no detentions. This is confirmed by the print out of pupil A's record which shows that he had no detentions in the academic year 2015/2016 until 21st April 2016, which was after the LADO meeting. The records do not suggest any dishonest behaviour except for an entry for pupil C for 30th June 2015 recorded as "theft and lying to a member of staff". In his witness statement, Dr Boulton wrote that there was no history of dishonesty in the case of any of the boys, I accept Dr Boulton's evidence that, having looked at the details of this detention, he did not consider it to indicate a history of dishonesty. The incident related to the boy having a school lunch that he wasn't entitled to, since payment had not been made in advance. After initially saying that he was entitled to the lunch, he admitted to the Catering Manager that it had not been paid for and the parents subsequently paid for the lunch. Dr Boulton took the view that this did not suggest that pupil C was a devious individual and did not consider that this would make him into a person who would make something up. Pupil C had only one other detention on his record for a completely different type of matter: he had the fewest detentions of pupils A to E.

54. It had been suggested at the disciplinary hearing, that Dr Burch was an unreliable witness because it was alleged that Dr Andy Hunter, another member of staff, had informed the claimant that, following an incident on the previous Russia trip, Dr Burch had changed his version of events. Dr Boulton and Mr Neil Smith spoke to Dr Hunter about this claim and he said he had no recollection of the conversation or of Dr Burch changing his version of events over any incident. Dr Boulton and Mr Smith, therefore, took the view that Dr Burch was a credible witness.

55. Dr Boulton and Mr Smith came to the conclusion, after careful consideration over the whole of the afternoon of the day of the disciplinary hearing, that, on a balance of probabilities, the allegations against the claimant were proven. The claimant has not challenged that Dr Boulton and Mr Neil Smith formed a genuine view as to his guilt. Dr Boulton and Mr Smith set out their conclusions in a nine page letter to the claimant dated 17th June 2016. The letter informed the claimant that he was summarily dismissed with effect from the day of the letter, 17th June 2016, and the reason for the dismissal was that they found all the allegations set out in the letter of 26th May 2016 to be found proven, that is:-

"(1) that on 3rd March 2016 you engaged in unwarranted and unreasonable physical conduct in your actions against a 15 year old male pupil by pushing him up against the wall and poking your fingers into his Adam's Apple;

(2) that this physical contact was in breach of your duties as a Teacher and a breach of the school's code of conduct for staff; and

(3) you have breached the trust and confidence placed in you as an employee".

56. Copies of the minutes of the disciplinary hearing were enclosed with the letter.

57. The letter set out in detail why Dr Boulton and Mr Neil Smith came to the conclusion that the allegation made by pupil A was not false and they took A's account of events to be substantially true. They described the way in which the allegation came to their attention, with pupil A talking to his tutor about what had happened, rather than making a formal complaint. They referred to his form tutor, Mr Morris's, description of the claimant as upset at the point of disclosure. They stated that they did not feel this was the action of a boy making a false allegation against a member of staff but of a boy quite shaken up by events. They noted that, if pupil A was lying, it would appear that he must either have deceived his parents or they too were colluding. The letter set out why they discounted the possibility of collusion in the matter by the parents. It also set out why they considered it hard to believe that pupil A was deceiving his parents into believing something that was false: the evidence suggested pupil A was reluctant to tell his mother; his mother also reported overhearing him relating an almost identical account to his brother without realising she was in the earshot. The letter commented that this could be a very elaborate route to pulling the wool over his mother's eyes. If it were the case, it painted A as an incredibly manipulative individual and there was no history of this sort of behaviour. The letter recorded the conclusion that the account of other boys supported A's version of events and contradicted the claimant's account. Dr Boulton

and Mr Smith noted that this could be because they were describing events as they happened or because they had colluded to create a fictional account. They acknowledged that there were some differences in the accounts but not with the main point that Mr Hargreaves held A against the wall and put his fingers at A's throat. They expressed the view that, if the story had been made up, they would have expected the pupils to have told an almost identical story. They noted that, despite being interviewed a number of times, none of the boys had retracted their version of events and there had been very little change in the detail of what they had said. They noted that the pupils suggested different names when asked if others had seen what had happened and they would have expected, if the group of boys had got together to concoct the story, they would have named each other and not offered the names of boys who were not part of the collusion. Pupil E had been named but, when interviewed, said he had not seen anything. The letter recorded that there was no history of dishonesty or of any of these boys making any sort of complaint about the teacher, the respondent school or, in the case of pupil B, at Stockport Grammar School. Based on this evidence, they felt, on balance, the boys' accounts were genuine. Dr Boulton and Mr Smith felt that Dr Burch's account supported the view that the claimant was agitated rather than cool, calm and collected.

58. Dr Boulton and Mr Neil Smith could not find any motive for a false allegation by A or any of the other boys. A had not been taught by the claimant or had any dealings with him. His brother, also at the respondent school, had also not been taught by the claimant. They did not think that simply being caught pushing would be anything like sufficient motive for making a false allegation against a member of staff. They noted that B and C had been taught by Mr Hargreaves in Year 9 and they could find nothing in the boys' reports from this period and their grades to indicate there would be any ill feeling. They could not see any reason why either boy would have been prevented from taking Art had they wished. They noted the possibility that A was bullied or coerced by another boy but, since they could find no ill feeling from any of the other boys involved, this seemed very unlikely. They noted the possibility that a third party could be coercing A and all of the other boys, but considered it would be difficult to maintain this level of influence over such a long period and over so many boys so they discounted this as not credible.

59. Dr Boulton and Mr Neil Smith concluded "in summary we believe on balance of probability that A is telling the truth in his claim and Mr Hargreaves used excessive force in dealing with him, including putting his fingers to his throat. We have reached this conclusion by taking account of the other boys' version of events, all of which seemed to agree with A's account and contradict the account given by Mr Hargreaves. Dr Burch described Mr Hargreaves as being agitated, rather than cool, calm and collected as he described himself. We have considered the possibility of collusion between the boys but do not find any convincing evidence that this is the case. Most importantly, there seems to be no motive for A, or any of the other boys, to make a false allegation".

60. The letter then dealt in some detail with points raised by the claimant and his representative at the hearing. These included the allegation that B's credibility was in question because he had been expelled from Stockport Grammar School and that Dr Burch was an unreliable witness. They dealt with inconsistencies in the accounts

of the boys, including that there was some difference in some of the detail but they thought they were broadly describing the same event. They noted there was some agreement that the claimant did hold pupil A's bag but wrote "what we are investigating is whether or not there was further contact so the holding of the bag is not of itself of particular relevance". They considered the point that pupil A seems to have changed his story about whether or not he was pushing, having admitted this to Dr Burch but denying it in other statements. Dr Boulton and Mr Smith wrote "on balance, we believe that A was pushing and this is supported by C's account. Does the fact that A seems to want to hide this fact or that his story changed called in question the reliability of the rest of his account? It could be argued that A might have made the allegation up to avoid or negate a sanction awarded for his poor behaviour. In reality this would not have carried a high tariff, perhaps a detention. When A spoke to his tutor about what had happened he knew that he had not been sanctioned for pushing (as Dr Burch had already dealt with this on the day in question) so it does not form a credible reason for making a false allegation. Other than providing a motive, we don't think that this has great bearing on the description of what happened next. We don't therefore feel that this undermines all of A's testimonies." They considered whether there could have been inadvertent collusion and wrote "there are differences in the stories and they all described seeing different parts of the events. If they were relaying a story they had heard they would all have been more likely to describe the same thing and the full set of events. We do therefore think that 'inadvertent collusion' is a reasonable exclusion [sic – it is clear that a "not" has been omitted]".

61. Dr Boulton and Mr Neil Smith recorded that they had carefully read through the character references provided by the claimant and taken into account the claimant's ten years' service with the school and considered whether another sanction would be appropriate. They wrote "however the seriousness of the force used by you in your capacity as a teacher against a pupil, outweigh the character references and long service and we do not believe that a sanction less than dismissal is appropriate in the circumstances. Further, the school has lost trust and confidence in you and we cannot expose our pupils to risk".

62. They notified the claimant that, because the allegation had been upheld, the school had to make a serious misconduct referral to the National College for Teaching and Leadership and would also need to refer to the Disclosure and Barring Service. They advised the claimant of his right of appeal.

63. The claimant appealed against the decision to dismiss him by letter dated the same day, 17th June 2016. He wrote

"I am of course very disappointed with the recent decision to uphold the boys' allegation against me. I do concede that there is no explanation for their malicious claims. I do think that it is important for all concerned to realise the devastating effect, personally, financially and professionally, that this miscarriage of justice is having on me and my partner. My hard won career is potentially now in ruins.

Consequently I wish to take the school's decision to an appeal. I know for certain that my version of events is factual, truthful and honest. I would like

an opportunity to present my case to the Governors in the hope that they will believe me".

64. The claimant wrote again on 23rd June 2016 setting out three grounds for appeal:

- \* "that I do not believe that sufficient weight was given to the inconsistencies in the evidence presented to the hearing from the boys in reaching a conclusion on its reliability. I believe that these inconsistencies in their evidence, particularly that of Pupil A himself, cast doubt on the reliability of the evidence as a whole.
- \* that the timescales for collecting information from the witnesses involved did allow collusion between the boys concerned. I believe that such collusion took place.
- \* that although consideration has been given to the credibility of the boys involved, no such consideration of my integrity is evidence - I submitted testimonials and have a previous good record. If the allegation were true, my alleged reactions during the incident would be completely out of character".

65. The claimant was invited by letter dated 23rd June to an appeal hearing scheduled for 29th June to be chaired by two Governors Peter Wainwright (incorrectly referred to in the letter as Peter Ainsworth) and Clair Bolton.

66. The respondent, as it was required to do, made referrals to the National College for Teaching and Leadership and the Disclosure and Barring Service. The NCTL notified the school by letter dated 13th September 2016 that the determination panel considered that the matter had been addressed appropriately at the local level and that any further action would be disproportionate and the case was closed with no further action. The NCTL wrote "whilst not condoning Mr Hargreaves' alleged conduct, the panel did not consider that his conduct was of such a high level of seriousness to warrant him being barred from the profession. Therefore, the panel decided that there was not a realistic prospect of a professional conduct panel imposing a Prohibition Order and closed the case with no further action". The DBS has informed the claimant that they have decided it is not appropriate to include him in the children's barred list or the adults' barred list.

67. The appeal hearing was heard on 29th June 2016. The claimant was accompanied by his trade union representative, Noel Hulse. The claimant had an opportunity to raise any points that he wished to raise at the appeal hearing. Points made on the claimant's behalf included that neither A nor his brother had been taught by the claimant; it could be that pupils B and C, who had been taught by the claimant, were aggrieved. The claimant said they were all teenage boys and teenage boys had a tendency to act in an unreasonable fashion. He alleged that hundreds of pounds had been stolen from blazers, that excrement was on the walls and that I-Phones had been stolen. Mr Hulse said it was possible that A could be angry that he was singled out when lots of people had been pushing and shoving and Mr Hulse questioned how Mr Smith had chosen whom to approach as

witnesses. Mr Hulse put forward the possible motivation for the allegation was A's hurt pride. Mr Hulse noted that A raised the issue with his form tutor on the following Monday and the claimant believed that A was "savvy enough to know that it would be logged". Mr Hulse noted that A did not mention any incident to Dr Burch and Dr Burch had said that A did not look injured. Mr Hulse asked, based on character, "who do you believe?" Mr Hulse pointed out that false allegations do happen and sometimes boys do not realise the impact it will have on the life of the adult. The claimant raised an incident two years previously when he said Tan Ahmed, a Chemistry Teacher, was accused of hitting a boy in the same year group. The claimant said the accusing boy got a witness to back him up but the witness withdrew his story; he said that the boys involved were still at the school and that a bad precedent had been set. In relation to the point of appeal that there had been collusion between the boys, Mr Hulse said it was impossible to avoid discussing such incidents and, if A had been teased over it, then it must have been a topic of conversation. He said "sometimes when things are discussed they become "facts" and it is inadvertent collusion". Mr Hulse pointed out that there was a month between the first and second interviews of the boys and that said that Pupils A and B were friends; the opportunity for collusion was there. The claimant said that Pupil E was involved with the Tan Ahmed case. Mr Hulse said the claimant could not say what the boys motivation was. Mr Wainwright asked if they were looking for himself and Ms Boulton to find that the conclusion of the High Master and Neil Smith was wrong. Mr Hulse said "yes". Mr Hulse addressed inconsistencies in the evidence of the pupils. He contended that A's evidence was unreliable and that, at some point, he had been less than truthful with his parents and the Police. Mr Hulse said that the claimant protested his evidence and there was lots of speculation as to the motivation of the boys. He contended that the dismissal decision should be reversed as the allegations were made up. The claimant said the dismissal letter hadn't been mentioned why he would usher Dr Burch to a boy he had allegedly just assaulted and walk away. He said that the total extent of contact with A was pulling on the handle of his rucksack.

68. Mr Wainwright asked some questions about the position of pupils and the time of the alleged incident, the incident generally, about Dr Burch and what the claimant had done. The claimant went through his version of events again. The Governors asked some further questions in clarification. Ms Bolton asked the claimant and his representative if they had anything to add. They did not, so the meeting concluded. The meeting had lasted one hour and twenty minutes.

69. Following the appeal meeting, the Governors sought further information in relation to points which had been raised. They obtained a copy of the file containing details of the unfounded allegation against the Chemistry Teacher. They learnt that, in November 2012, two boys, Pupils E and JS, had been messing around during the chemistry teacher's class and one may have tripped up the other. As a result, the chemistry teacher issued each of them with a punishment school slip. Pupil E accepted the punishment but pupil JS told the chemistry teacher that he would not take the punishment school slip because the teacher had punched him. The chemistry teacher immediately notified the then DSL who reported the incident to the LADO. Pupil JS's parents made a complaint, the Police were informed and Pupil E was identified as a potential witness. Pupil E did not support Pupil JS's version of events; pupil E gave a factual account, saying that the exchange between the

chemistry teacher and pupil JS had been limited to the giving of the punishment school slip. The governors concluded that the claimant was misinformed in his belief that Pupil E had supported Pupil JS as a witness to an alleged assault. They noted that, in any event, Pupil E was not a relevant witness to Pupil A's allegation because Pupil E reported he had not observed anything, pupils A, C and D were not in that chemistry class in 2012 and Pupil B was not yet a pupil at the respondent school. The Governors found that there had not been any experience of the unfounded allegation in 2012 triggering unfounded allegations against staff since then. Pupil A's disclosure on 7th March 2016 had been the only other allegation against a teacher since 2012.

70. The Governors asked Andrew Smith to explain how he had selected the boys for interview. He explained that Pupil A had said that Pupil B saw the incident. He explained that Pupils C and D had been identified by Pupil A's mother as two boys who had teased Pupil A about the incidents he had spoken with them.

71. Mr Wainwright and Ms Bolton reached the conclusion that Mr Hargreaves was guilty of the alleged conduct and dismissal was the appropriate sanction so did not uphold his appeal. It has not been suggested that Mr Wainwright and Ms Bolton were not genuine in their belief that the claimant was guilty of misconduct. I find that Mr Wainwright and Ms Bolton carefully and conscientiously considered all the information before them and the points raised on the claimant's behalf before reaching their decision. They set out their decision in a six page letter to the claimant dated 6th July 2016. In the letter, they addressed the grounds of appeal raised by the claimant in advance of the hearing and additional matters raised during the course of the appeal hearing. These included the 2012 incident involving the Chemistry Teacher. In relation to the claimant's assertion that teenage boys had a tendency to act in an unreasonable fashion and his specific allegations about things which had happened at the school, they wrote: "the boys who have given statements in relation to the allegation against you have no record of being involved in the type of "bad things" that you describe. We do not believe that your generic reference to "teenage boys tended to act unreasonably" substantiates that the boys have made up their statements". In relation to the point as to why the claimant would usher Dr Burch to a boy who he had allegedly just assaulted and then walked away, they wrote "we have considered this and we cannot answer your motivation for referring Pupil A to SJB, but this does not detract from the evidence we have considered which we believe supports that the alleged incident occurred".

72. In relation to the three grounds of appeal which the claimant had set out in his letter, they concluded as follows. In relation to the first ground (sufficient weight not given to inconsistencies in the boys statements) they wrote

"There are in fact some inconsistencies in all of the statements but we do not think the fundamental element of what the boys are saying differs.

We have considered the inconsistencies and find that the weight of evidence despite some inconsistencies is against you. We have heard nothing to make us believe that the boys' accounts are not genuine".

73. In relation to the second appeal ground (the boys colluded) they wrote:

\*It is acknowledged that there was delay between speaking to the boys at the time of the incident and speaking to them again once Greater Manchester Police had given Andy Smith permission to do so. However what the boys say does not fundamentally change in this time and we note that none of them have withdrawn their statements. We do not believe that there is evidence that collusion has taken place between the boys.

We have also considered your companion, Noel Hulse's point regarding the boys' statement that "sometimes when things are discussed they become "facts" and it is "inadvertent collusion" and we do not believe that there has been "inadvertent collusion". We have also considered your suggestion that "fingers to neck would be very simple to get right (if the boys had colluded)" and we do not believe that there has been such collusion".

74. In relation to the third appeal ground (no consideration of the claimant's integrity/testimonial/good record) they wrote "we are not questioning your previously good record". They referred to the dismissal letter and stated that they agreed with Martin Boulton and Neil Smith's decision that only dismissal was appropriate. They wrote "whilst it is true that false allegations can occur, we do not believe it to be the case here". Equally it is also true that individuals in trusted positions, on occasion behave in a manner which is seriously contrary to their position of trust". They wrote that they had not taken the matter lightly and had thoroughly read through all the documents submitted at the hearing and appeal and had carefully considered all of the claimant's grounds of appeal.

### **Submissions**

75. There was insufficient time within the original listing of the case to hear the parties' submissions. The hearing, therefore, was re-convened on 16th March 2017 for the representatives to put their arguments. In accordance with my orders, the representatives prepared written skeleton arguments which were exchanged and sent to the Tribunal on 15th March. The representatives expanded on their written skeleton arguments in oral submissions.

76. In summary, in relation to the complaint of unfair dismissal, the claimant accepted that the potentially fair reason for dismissal was misconduct, that the alleged conduct was the reason for dismissal and that the respondent had a genuine (but not reasonably held) belief that it was entitled to dismiss the claimant for the reason it did and that the sanction of dismissal for the alleged offence would have fallen within the band of reasonable responses in the circumstances. The claimant did not accept that the respondent had a reasonably held belief that they were entitled to dismiss the claimant and that they operated a fair procedure and that they had carried out as much investigation as was reasonable in the circumstances.

77. In summary, the respondent submitted that there was nothing unreasonable about the dismissing and appeal panel concluding that, on the balance of probabilities, the claimant did physically assault Pupil A as alleged. They were entitled to weigh up the evidence and come to that conclusion. The respondent

argued that the respondent followed a fair procedure and that the investigation fell within the band of reasonableness.

78. In relation to the notice pay claim, the claimant argued that the Tribunal had sufficient evidence to decide that, on the balance of probabilities, it was unlikely that the claimant carried out the alleged assault and, therefore, the respondent was not entitled to dismiss without notice. The respondent referred to the evidence on which the respondent had reached its conclusion as to the claimant's guilt, arguing that the evidence clearly indicated that, on a balance of probabilities, (perhaps in a moment of madness or because of a loss of temper or control) the claimant physically assaulted Pupil A by placing two of his fingers into his neck and, therefore, the respondent was entitled to dismiss the claimant without notice.

### The Law

79. There is no dispute between the parties as to the legal principles applying in this case.

80. In relation to unfair dismissal, the starting point is the relevant statutory provisions in the Employment Rights Act 1996. Section 94(1) of this Act provides that an employee has the right not to be unfairly dismissed by his employer. The fairness or unfairness of the dismissal is determined by application of Section 98 of the 1996 Act. Section 98(1) of this Act provides that, in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason for dismissal and, if more than one, the principal one and that it is a reason falling within Section 98(2) of the 1996 Act or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. Conduct is one of these potentially fair reasons for dismissal.

81. Section 98(4) provides that, where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair, having regard to the reasons shown by the employer, depends on whether, in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissal and this is to be determined in accordance with equity and the substantial merits of the case.

82. In considering the reasonableness or unreasonableness of the dismissal, the Tribunal must consider whether the procedure followed and the penalty of dismissal fell within the band of reasonable responses. The burden of proof is neutral in deciding on reasonableness.

83. In relation to a conduct dismissal, the Tribunal is guided by the authority of *British Home Stores -v- Burchell 1979 IRLR 379*. When considering whether the respondent has shown a potentially fair reason for dismissal, the Tribunal must decide whether the respondent had a genuine belief in the claimant's guilt. In considering the fairness or otherwise of the dismissal, the Tribunal must consider the other parts of the *Burchell* test: was this belief based on reasonable grounds and was it formed after a reasonable investigation?

84. The parties also referred me to the case of *A v B* [2003] IRLR 405 EAT and the Court of Appeal decisions in the cases of *Salford Royal NHS Foundation Trust against Roldan* 2010 IRLR 721 and *Crawford and Another -v- Suffolk Mental Health Partnership NHS Trust* [2012] IRLR 402. In considering the standard of reasonableness required, the EAT wrote at paragraphs 60 and 61 of the decision in *A v B* the following:

"60. Serious allegations of criminal misbehaviour, at least where disputed, must always be the subject of the most careful investigation, always bearing in mind that the investigation is usually being conducted by lay men and not lawyers. Of course, even in the most serious of cases, it is unrealistic and quite inappropriate to require the safeguards of a criminal trial, but a careful and conscientious investigation of the facts is necessary and the investigator charged with carrying out the enquiries should focus no less on any potential evidence that may exculpate or at least point towards the innocence of the employee as he should on the evidence directed towards proving the charges against him.

61. This is particularly the case where, as is frequently the situation and was indeed the position here, the employee himself is suspended and has been denied the opportunity of being able to contact potentially relevant witnesses. The employee found to have committed a serious offence of a criminal nature may lose their reputation, their job and even the prospect of securing future employment in their chosen field, as in this case. In such circumstances anything less than an even handed approach to the process of investigation would not be reasonable in all the circumstances".

85. I was also referred to part of the decision under the heading "failure to gather and make available relevant evidence, where the EAT noted that the allegation that formed the basis of the case against the appellant all derived from the claimant Ms B who was, at the relevant time, young and very vulnerable and appeared to be potentially an unreliable witness. They noted that particular care was necessary in testing the veracity of her evidence and that the task was made more difficult by the fact that the Local Authority had a policy, for perfectly understandable reasons, that children in her situation should not be questioned in the disciplinary process. They wrote:

"76. We recognise that there is a real dilemma for an employer in a situation of this kind. On the one hand it is highly undesirable to subject a young girl, who may already have been subject to abuse, to questioning from the defendant which could cause yet further distress and even damage to health. On the other hand, the consequences for the defendant are extremely serious and there is no doubt that the difficulty he faces in convincing a disciplinary body that the allegations are untrue is compounded where he is not able directly to face and challenge the complainant."

86. There was also discussion by the EAT in paragraphs 83 to 88 about the effect of failure to provide all relevant statements. They noted that statements which were

taken and may have been of some assistance to the applicant were not provided to him. At paragraph 84 they wrote:

"84. If an employer reasonably forms a view that certain evidence is immaterial and cannot assist the employee, then of course a failure to disclose that material will not necessarily render a dismissal unfair. Ultimately fairness is a broad concept and must be considered in the rounds".

87. In paragraph 88 they wrote

"88. We accept that there is no hard and fast rule that statements should always be provided. Often it is enough for an employee to know the gist of the case against him and in such cases it will not infringe the principles of fairness to fail to provide the detailed evidence: see *Hussain -v- Elonex 1999 IRLR 430*. *Hussain* was the case where there was a failure to provide the statements of four independent eye witnesses to several incidents; plainly the gist of their failure could be communicated orally. By contrast in this case the material, if provided, may have helped to undermine the credibility of the complainant whose evidence was fundamental to the decision".

88. In *Salford Royal NHS Foundation Trust v Rolden*, in paragraph 60, the Court of Appeal referred with approval to the decision in *A v B*. They wrote "in my judgment, therefore, the Employment Tribunal were entitled to find, subject to the Section 98(A)(2) issue, that the dismissal was unfair for the reasons they gave. This is particularly so given that here was a women who had given service to the employers over four years, apparently without complaint, and there was a real risk that her career would be blighted by this dismissal. It would certainly lead to her deportation and destroy her opportunity for building a career in this country. In my judgment, the case of *A -v- B*, not specifically referred to in the EAT's judgment, reinforces the justification for the Tribunal's conclusion".

89. In *Crawford and Another -v- Suffolk Mental Health Partnership NHS Trust* Lord Justice Elias wrote, at paragraph 27, "Moreover, as I observed in the Court of Appeal in *Salford Royal NHS Foundation Trust -v- Rolden 2010 IRLR 722* Paragraph 13, it is particularly important that employers take seriously their responsibilities to conduct a fair investigation where, as is the case here, the employee's reputation or ability to work in his or her chosen field of employment is likely to be affected by a finding of misconduct. The Court was approving a passage to that effect in *A -v- B 2003 IRLR 405*".

90. At paragraph 53 he wrote "Nor do I accept that the error was corrected as a result of the appeal hearing. It is for the employer to ensure that a fair procedure is adopted. It is true that the union representatives conducting the appeal on behalf of these appellants could have made a complaint about this procedural defect, and it does not appear as though they did. It is a matter of pure speculation whether the appeal panel would have remedied the wrong had their attention been drawn to it or what the outcome would have been if it had. In my judgment, however, it cannot be

enough for an employer to say that although a fair procedure was not adopted, the responsibility for failing to remedy it lies at the door of the employee for failing to alert him to the error".

## Conclusions

### Unfair dismissal

91. It has been conceded by the claimant, properly and fairly in my view, that the alleged conduct was the reason for his dismissal and that the respondent had a genuine belief that the claimant was guilty of that misconduct. The respondent has, therefore, shown a potentially fair reason for dismissal.

92. The focus of dispute is whether the respondent acted reasonably in all the circumstances in dismissing the claimant for that reason. In particular, did the respondent have reasonable grounds for the belief in the claimant's guilt and was that belief formed after a reasonable investigation?

### *The fairness of the investigation*

93. I will deal in turn with the claimant's arguments about the investigation.

### *Was the investigation biased against the claimant?*

94. Ms McCarthy points to the risk assessment notes which refer to the claimant as being volatile, with a history of bad temper, being angry and making threats. She argues that the investigation must have been carried out with this view in mind which was not shared with the claimant so that he could comment on it. Ms McCarthy pointed to confusion in the evidence about who made the decision to suspend the claimant, suggesting that either Mr Andrew Smith or Dr Boulton was not being truthful about this.

95. The risk assessment notes indicate that Mr Andrew Smith had a view of the claimant based on his experience of the claimant. The notes were compiled for the purpose of assessing risk and whether the claimant should be suspended during the investigation and disciplinary process. The notes were not shared with the claimant. There was no suggestion that this would be normal practice in carrying out such an assessment. The notes were not shown to the dismissing officers so this assessment would not be in the minds of Dr Boulton and Mr Neil Smith in making their decision. I have accepted the evidence of Dr Boulton that he delegated the decision whether to suspend the claimant to the Deputy High Master, Paul Thompson, who was not involved in the investigation or the disciplinary process. The remaining question is whether Mr Andrew Smith's view of the claimant, as expressed in the risk assessment notes, affected the way in which he conducted the investigation so that the investigation fell outside the band of a reasonable investigation. I must examine what Mr Smith did in practice and whether this complied with the standard of a reasonable investigation. If it fell within the band of a reasonable investigation, then it was a reasonable investigation, whatever view Mr Smith may have had of the claimant prior to the investigation. In any event, I do not consider that the view of the claimant as expressed in the risk assessment notes

necessarily suggest that Mr Smith would be inclined to consider the claimant predisposed to acting in the way alleged against Pupil A; there is a difference between being volatile, angry and bad tempered and being likely to physically assault a pupil.

96. Ms McCarthy also refers to strong views being expressed at the LADO meeting about the claimant's teaching practices and demeanour, from both Mr Andrew Smith and Dr Boulton.

97. Mr Smith and Dr Boulton were required to attend the LADO meeting and expressed the views which they did in answer to questions from the LADO. The comments from Mr Smith about being concerned about the way the claimant spoke to children does not, I consider, indicate that Mr Smith would not be able to conduct a reasonable investigation. Again, I must examine what Mr Smith did in practice and whether this complied with the standard of a reasonable investigation. If it fell within the band of a reasonable investigation, then it was a reasonable investigation, whatever view Mr Smith may have had of the claimant prior to the investigation. Dr Boulton advised the LADO that, following a recent concern raised, he had intended to speak to the claimant about his attitude and behaviour when speaking to children. He referred to the claimant's manner and teaching style tending to be brusque and overly critical. These are concerns of a completely different nature from the alleged conduct towards Pupil A. They do not lead me to conclude that Dr Boulton did not approach the disciplinary matter with an open mind.

98. Ms McCarthy referred also to complaints about the claimant referred to at this tribunal hearing which were not to do with anger management and which, she argued, demonstrated that a negative view of the claimant was held by the respondent and carried into this hearing, but was not shared with the claimant. The claimant had stated in his witness statement that, if he was critical in his capacity as a teacher, it was only ever in a constructive way. The matters put to the claimant, which included that he tore up a pupil's work in front of the pupil, suggest, at the least, that the accuracy of this statement by the claimant is a matter of debate. I consider it was legitimate of the respondent to question the claimant on these matters, given the contents of the claimant's witness statement. I do not consider that this indicates that the respondent was predisposed to construct a case against the claimant or reach a conclusion other than on the evidence.

99. For these reasons, I reject the claimant's submission that the investigation was biased against him.

*Did Andrew Smith fail to submit information taken from relevant witnesses to the disciplinary panel and the claimant?*

100. Ms McCarthy submitted that the investigation was unfair because Mr Smith interviewed three witnesses who said they did not see anything and did not submit information from these witnesses to the claimant and the disciplinary panel. She referred to OB who had been mentioned by pupil A as a possible witness. Mr Smith had interviewed OB who recalled nothing unusual. I accept that Mr Smith genuinely formed the view that OB did not see anything relevant; he could have been anywhere in the queue.

101. Ms McCarthy referred to OK, suggesting that OK saw the claimant. This was the prefect who Melissa Ivory, who works in the school office, recalled marshalling pupils in the crowded corridor. Mr Smith interviewed OK who recalled pupil B pushing and “goofing around”. OK had seen no interactions between pupils and teachers. There is no evidence that OK recalled seeing the claimant.

102. The third person referred to by Ms McCarthy was Melissa Ivory. She had informed Mr Smith that she had not been in the area at the relevant time and could not recall anything. The office she works in is in an alcove out of view of where the encounter between the claimant and pupil A took place.

103. Ms McCarthy argued on behalf of the claimant that, on the claimant’s version of events, the interaction between the claimant and pupil A was innocuous and there was nothing to see whereas the version of pupil A was such that anyone in the vicinity would have noticed this. She argues that it would have assisted the claimant and undermined A’s allegation for the claimant to know that people had been interviewed who had not seen anything.

104. I reject the claimant’s argument. I conclude that it was within the band of a reasonable procedure for Mr Smith not to inform the claimant and the disciplinary panel about the interviews with OB, OK and Melissa Ivory because Mr Smith reasonably believed that they provided no relevant evidence. It did not necessarily follow that, because these people had not seen anything, nothing happened. Knowing about these interviews would not have been of material assistance to the claimant.

*Did the respondent fail to interview potential witnesses as part of the disciplinary process without proper excuse?*

105. Ms McCarthy argued that, once the disciplinary investigation was in progress, Mr Smith should have gone back and interviewed pupils OB and OK and Melissa Ivory; when they were interviewed, this was not yet a disciplinary investigation.

106. I reject this argument. Mr Smith’s initial interviews with OB, OK and Melissa Ivory had led him to believe that they had seen nothing of relevance. In these circumstances, it was within the band of a reasonable investigation not to interview them again.

107. Ms McCarthy argued that Mr Smith should have interviewed others who were named as potential witnesses. She suggested that Mr Smith could have asked the claimant whether he wanted him to interview others named as potential witnesses; the claimant would have preferred to risk gossip than put his career at jeopardy.

108. Pupil A had mentioned that OB, EB and GK might have seen something. Pupil A was so equivocal about the names that Mr Smith had little confidence that these pupils were actually witnesses. His training as DSL was that he should confine the details of any incident to as few people as possible and should not take action which might fuel unnecessary speculation which could be prejudicial to the member of staff in question. The guidance of the LADO had been to minimise disclosure. Mr Smith

interviewed OB but, after finding he had witnessed nothing, decided not to interview EB and GK as he was concerned about the risk of speculation and gossip.

109. Pupil D suggested that pupils E and JS may have seen the incident. Mr Smith interviewed pupil E who had not seen anything but was aware of it because pupil B had told him about it. Mr Smith decided not to interview JS because pupil D's reference to JS was very speculative and equivocal that he might have been there. Mr Smith made a judgment that it was unlikely that JS had witnessed anything and questioning him would create another opportunity for gossip and speculation.

110. There has been no suggestion that Mr Smith's reasons for not interviewing EB, GK and JS were other than as he explained.

111. The claimant would have seen the references to these people in the statements of pupils A and D provided to the claimant in the pack before the disciplinary hearing. The claimant was aware from discussion at the investigation interview that Mr Smith had spoken to the secretaries and they had not seen anything. Neither the claimant nor his representative suggested that these pupils, the secretaries or any other people, should be interviewed. Whilst the onus is on the respondent to ensure that it follows a fair procedure, I consider it relevant to the determination of reasonableness that the claimant and his representative did not consider, at the time of the disciplinary process, that others should be interviewed or potential witnesses re-interviewed. If the claimant or his representative had suggested that these pupils, the secretaries or others should be interviewed or re-interviewed, I would have expected the respondent to do so unless there was a compelling reason not to do so. However, in the absence of such a suggestion, I consider that respondent could reasonably feel confirmed in their view that they had interviewed such witnesses as it was reasonable to do.

112. I conclude that Mr Smith's decisions as to who to interview and who not to interview fell within the band of a reasonable procedure.

*Did Mr Smith fail to ask proper questions of the witnesses who were interviewed?*

113. Ms McCarthy said it was clear that the interview with OK must have been very brief since it was conducted within the 22 minutes between the emails from and to DS McKee.

114. Whilst the interview clearly was brief, it appears that this was long enough to establish that OK had not seen anything of relevance. I conclude that the interview of OK fell within the band of a reasonable investigation.

115. Ms McCarthy argued that, once the investigation was a disciplinary investigation, a different approach to the questioning of pupils A, B, C and D should have been taken, putting inconsistencies to the witnesses and, at least, putting the claimant's version of events to them for comment.

116. It was clear from Mr Smith's evidence that he took seriously the task of trying to get the best evidence from the witnesses and his training as a DSL led him to believe that asking open questions and letting the witness give their own account,

without seeking to lead them, was likely to achieve the best result. Whilst there were other questions which could have been asked, with the benefit of hindsight, a reasonable investigation does not require every possible question to be put. As is clear from the case law, the questioning by lay people in investigations is not to be held against a standard that would be expected of competent lawyers in a court or tribunal. It is notable that the claimant and his representative did not suggest that any further questions should be put to the pupils, although Dr Boulton and Mr Neil Smith asked if there was anything they wished to be put. I conclude that the approach taken by Mr Smith fell well within the range of a reasonable investigation.

*Did the investigation brush over the inconsistencies in evidence?*

117. Ms McCarthy pointed to inconsistencies within pupil A's evidence about pushing and inconsistencies between pupil A's evidence and other witnesses' accounts. She suggested that inconsistencies should have been explored more and the respondent should have been concerned about the level of inconsistency.

118. It is apparent from Mr Smith's investigation report that he was alive to the inconsistencies in witness accounts. Mr Smith lists points of disagreement/dispute. He comments that, although there are a number of inconsistencies, the accounts are fairly consistent in reporting that the claimant pushed A to the wall and they all describe the claimant as thrusting or pushing his fingers into A's throat. He wrote: "The smaller inconsistencies are not decisive as I know from previous disciplinary investigations eye witness accounts are often erratic on detail and the incident happened quickly. This should not lead to the conclusion that the witnesses are unreliable or mistaken. In fact exact consistency between eye witness accounts is, in my opinion, suspicious and indicative of collusion and a rehearsed narrative." I conclude that Mr Smith did not brush over the inconsistencies in evidence but noted these and explained why, despite these inconsistencies, he took the view that the matter should be progressed to the disciplinary stage for further consideration by the High Master. It was then for the disciplinary panel to take a view on the significance of the inconsistencies in evidence and I return to this later in these reasons.

*Did the respondent fail to provide the claimant with information prior to the investigation but rely on the fact that they had?*

119. Ms McCarthy refers here to Mr Smith's evidence that he provided the claimant with copies of statements taken up to that point prior to the investigation interview. The claimant said he did not have copies of the pupils' statement and the information he refers to at the investigation interview came from the police briefing. I have found, on a balance of probabilities, that the claimant did not have the statements at this point, although I found that Mr Smith honestly believed that he had provided the claimant with these statements due to the claimant's apparent familiarity with them at the investigatory interview.

120. I do not consider that not providing the claimant with the statements prior to the investigation interview took the procedure outside the band of a reasonable procedure. The claimant understood the allegation at the investigatory interview and was able to provide his account of events. The claimant was provided with the statements in good time before the disciplinary hearing.

*Was there incorrect information contained within the investigation report provided to the disciplinary panel?*

121. Ms McCarthy refers in this argument to the report failing to mention that Mr Smith had spoken to OB, OK and Melissa Ivory and that they had not seen anything. This is the same argument as failure to submit evidence from relevant witnesses to the disciplinary panel and the claimant. For the reasons given above, I conclude that this does not take the procedure outside the band of a reasonable investigation.

122. Ms McCarthy refers to Mr Smith mentioning that three witnesses, A, B and C, give a broadly similar account where C's is very different. I do not consider that Mr Smith's summary is misleading; in relation to the central allegation, there was a broadly similar account. In any event, the report was accompanied by the statements of the witnesses so the disciplinary panel and the claimant and his representative were able to examine in detail for themselves the evidence given by the witnesses.

123. Ms McCarthy refers to Mr Smith mentioning that direct witnesses report the claimant shouting and acting aggressively when only A and B say this. Ms McCarthy is referring to one of the bullet points setting out points of disagreement/dispute. Whilst it may have been more accurate to write "direct witness accounts report..." rather than "the direct witness accounts report..." I do not consider that the report as a whole, which appended the witness statements, sought to, or would have, misled the panel and the claimant as to what the witnesses had said.

124. Ms McCarthy refers to Mr Smith mentioning that all accounts are consistent in mentioning that the claimant pushed A to the wall, whereas only A and B say this. Mr Smith writes that, although there are a number of inconsistencies, the accounts are "fairly consistent" in reporting that the claimant pushed A to the wall. He makes a distinction by writing that they all describe the claimant thrusting or pushing his fingers into A's throat. I do not consider this part of the report to be misleading, particularly given that the statements themselves are appended to the report.

125. Ms McCarthy refers to Mr Smith saying that all witnesses say that the claimant thrust or pushed his fingers into A's throat whereas only A and B say this. C's description is slightly different, in that he refers to the claimant putting 2 fingers near A's tie. He also, however, referred to the claimant's behaviour as seeming excessive. Taking the report as a whole, which appended the witness statements, I do not consider that this was inaccurate information.

126. Ms McCarthy refers to Dr Burch describing the claimant as red faced and angry, noting that it was A who Dr Burch described in initial statements as red faced and that Dr Burch never said that the claimant was angry. It is correct that Dr Burch referred to A in an early statement as red faced but he did, in a later statement refer to the claimant as red faced. He described the claimant consistently as "agitated". Dr Burch's statements do not use the word "angry" in describing either the claimant or pupil A. The report is inaccurate to this extent but, given that the statements were appended to the report, I do not consider the report as a whole to be inaccurate. The essence of what Mr Smith was saying at this part of the report is contrasting the

claimant's account of himself as calm, with Dr Burch's description which is consistent in presenting a different picture of the claimant, whatever the exact words used.

127. Ms McCarthy argues that Mr Smith acted inappropriately for an investigating officer by offering opinions. I do not consider that Mr Smith acted inappropriately by the way he presented his findings. I consider that Mr Smith was even handed in his approach, seeking to present the evidence in a fair manner, and giving his reasons for recommending that the matter be progressed to a disciplinary stage.

*Overall conclusions on the reasonableness of the investigation up to and including the investigation report*

128. I conclude that Mr Smith carried out his duties as an investigating officer in a conscientious way, making decisions as to who to interview and how to conduct interviews in a way which clearly fell within the band of a reasonable procedure. The only lines of investigation which he did not follow, which had been suggested by other evidence, were interviewing other pupils named as possible witnesses. I consider his reasons for not following these potential "leads" were such that his decision not to do so fell within the band of a reasonable procedure.

*Whether the respondent had a reasonably held belief that it was entitled to dismiss the claimant for the reason it did*

129. I now turn to the claimant's arguments in relation to the reasonableness of the respondent's belief in the claimant's guilt. I will deal in turn with what Ms McCarthy suggests, on behalf of the claimant, were significant flaws in the disciplinary hearing and appeal hearings and subsequent decisions.

*The respondent did not conduct the disciplinary hearing with an open mind*

130. Ms McCarthy refers to Dr Boulton's attendance at the LADO meeting and the discussion of the case at that meeting. She suggests it was then difficult for Dr Boulton to go into the meeting with an open mind. She refers to negative comments made by Dr Boulton at that meeting.

131. I have already addressed the issue of comments made by Dr Boulton at the LADO meeting in the context of the claimant's criticisms of the investigation. I concluded that they did not lead me to conclude that Dr Boulton did not approach the disciplinary matter with an open mind.

132. It was unavoidable that Dr Boulton should be in attendance at the LADO meeting and then be on the disciplinary panel. He, therefore, had some knowledge of the allegation before he and Mr Neil Smith conducted the disciplinary hearing. However, the way the disciplinary hearing was conducted and the explanations given in detail in the outcome letter for the decision of Dr Boulton and Mr Neil Smith, do not suggest to me that Dr Boulton approached the matter with a closed mind. Indeed, the contrary is suggested to me by the detailed consideration of the matter evidenced by the outcome letter. I consider that Dr Boulton and Mr Neil Smith acted conscientiously in assessing the evidence and reaching their conclusions. They showed themselves willing to conduct any further investigation suggested by the

claimant e.g. into pupil B's reasons for leaving Stockport Grammar, which is not indicative of having approached the matter with a closed mind.

*The respondent did not take into account witness evidence in support of the claimant*

133. This appears to refer to the disciplinary panel not considering evidence of the witnesses who Mr Smith had interviewed and concluded had no relevant evidence to give. I reject the argument that the evidence of these witnesses supported the claimant; it is too great a leap to say that, because they saw nothing, this supported the claimant's account that the interaction with pupil A was innocuous. They may well have seen nothing because they were not looking in the relevant place at the relevant time or did not have a clear sight line to the claimant and pupil A.

*They failed to take into account the inconsistencies in evidence*

134. Ms McCarthy referred in particular to the outcome of the appeal hearing, arguing that the respondent did not explain their rejection of the claimant's arguments about inconsistencies in evidence.

135. I conclude that the dismissing officers and the appeal officers did not fail to take into account the inconsistencies in evidence. It is apparent from the outcome letter after the disciplinary hearing that Dr Boulton and Mr Neil Smith were aware of inconsistencies in evidence but focused on agreement on the main point, that the claimant held A against the wall and put his fingers at A's throat. They set out inconsistencies in the accounts of the pupils and reached the conclusion that the inconsistencies did not call into account the truthfulness of the accounts. This was a conclusion which was clearly open to them on the evidence before them.

136. The appeal officers referred back to the disciplinary panel's reasoning before noting that there were some inconsistencies but writing that they did not think the fundamental element of what the boys were saying differed and they had heard nothing to make them believe that the boys' accounts were not genuine. This was a conclusion which was clearly open to them on the evidence before them.

*They failed to take into account the significance of pupil A lying*

137. Ms McCarthy referred to the disciplinary panel's finding that A was probably pushing and wearing a rucksack.

138. Dr Boulton and Mr Neil Smith found that A was pushing. They noted the change in his story on this point. The outcome letter refers to them asking themselves the question whether the fact that A seemed to want to hide this fact or that his story changed called into question the reliability of the rest of his account. The dismissing officers decided that this did not undermine all of A's testimony. In circumstances where the central allegation was supported by other witnesses and the dismissing officers could find no evidence of collusion, it was clearly open to them to reach this decision. The fact that they reached a conclusion other than the one the claimant was inviting them to reach does not mean that they failed to take into account the significance of pupil A lying. They considered the possible

implications of the lie and reached a conclusion that was open to them on the evidence.

139. The dismissing officers reached the conclusion that A was probably wearing a bag but concluded that the conflict in recollection on this point did not make them disbelieve the eventual excessive force. In circumstances where the central allegation was supported by other witnesses and the dismissing officers could find no evidence of collusion, it was clearly open to them to reach this decision.

*They unreasonably maintained that the accounts of all the pupils were broadly similar*

140. Ms McCarthy submitted that pupil C's account was entirely different to A and B's and that D's account did not bear any resemblance to the other accounts.

141. I conclude that the accounts of pupils A, B and C were broadly similar in relation to the central allegation, although C uses different words to describe the claimant's alleged actions in putting his fingers at A's throat. The outcome letter from the disciplinary hearing refers to "the boys' accounts" supporting A's version of events and that they do not differ with the main point that the claimant held A against the wall and put his fingers at A's throat. It would perhaps have been clearer had the letter expressly made a reference to the different perspective of D's evidence, but this is a counsel of perfection with the benefit of hindsight. It is apparent from the statements of pupil D that he did not see the encounter between the claimant and pupil A. However, what he says about seeing A holding his throat and subsequently telling him that the claimant grabbed him is consistent with the accounts given by pupils A, B and C. I conclude, therefore, that the respondent did not unreasonably maintain that the accounts of all the pupils were broadly similar.

*They failed to properly consider disciplinary record of pupils*

142. I reject this argument. Dr Boulton and Mr Neil Smith accessed the records of the relevant pupils. I have accepted the evidence of Dr Boulton that, in their experience, the records were not serious. Dr Boulton explained his view of the incident involving C, which is the only incident in the records that, on its face, suggests possible dishonesty. The dismissing officers properly considered the records but formed the view, which I consider was open to them on reasonable grounds, that the records were not such that they caused them to doubt the truthfulness of the boys' accounts.

*They failed to consider that the witnesses came only from or via pupil A; and the relationship between the witnesses*

143. Ms McCarthy noted that Mr Smith had denied the pupils were friends and said that the claimant is clear that they are and there is a dynamic between them.

144. The claimant's evidence is that he had had no previous dealings with pupil A. He had taught B and C in the past.

145. The claimant suggested at the disciplinary hearing there was a strange dynamic between B and C and that they may have dropped Art because of poor grades given by the claimant and this could be a reason for fabricating the story. Dr Boulton and Mr Neil Smith looked into the suggestion of a motive on the part of B and C and found no evidence for this in the records; on the basis of their grades, they would have been allowed to carry on with Art had they so wished and there was only one negative comment, in a report for B, which the dismissing officers did not consider sufficiently critical to prompt a vendetta against Mr Hargreaves. The claimant did not suggest any basis for a dynamic between A and the other boys.

146. The claimant has included in the hearing bundle letters from colleagues or former colleagues making adverse comments about the behaviour of A, B and D. These statements post date the disciplinary process and were not before the dismissing or appeal officers.

147. The outcome letter indicates that Dr Boulton and Mr Neil Smith considered carefully whether there was any evidence of collusion between the relevant pupils and could not find any. I reject the suggestion that they failed to consider whether there was a relationship between the witnesses that should have caused them to doubt the truthfulness of their evidence.

*Inappropriate reliance on Dr Burch's evidence*

148. It does not appear that the respondent relied on Dr Burch's evidence other than to the extent that it supported the view that the claimant was agitated rather than cool, calm and collected. It was not inappropriate for the respondent to rely on Dr Burch's evidence to this extent. There was no suggestion that Dr Burch was a witness to the encounter between the claimant and pupil A. Dr Boulton and Mr Neil Smith dealt in some detail in the outcome letter with matters relevant to the reliability of Dr Burch's evidence because of suggestions made by the claimant that he was an unreliable witness.

149. I reject the argument that the respondent placed inappropriate reliance on Dr Burch's evidence.

*Bias towards pupil A and against the claimant*

150. Ms McCarthy submitted that Dr Boulton tested whether pupil A's evidence was credible but never tested whether the claimant's evidence seemed credible. She submitted that the respondent did not consider whether the alleged conduct was out of character and why the claimant would have been so angry.

151. I do not consider that the fact that the disciplinary panel preferred the evidence of pupil A to that of the claimant indicated bias towards pupil A and against the claimant. It is clear from the outcome letter that Dr Boulton and Mr Neil Smith considered carefully all the evidence and, on a balance of probabilities, preferred the evidence of pupil A, which was supported by the evidence of other witnesses, to that of the claimant. The outcome letter referred to having read the character references carefully. The outcome letter does not record that they took them into account in assessing whether the claimant did the act alleged, rather than in relation to deciding

on sanction. However, even if they did not consider the claimant's character in assessing the likelihood of the allegation being true, I do not consider this took the decision making outside the band of a reasonable procedure, given the other evidence before them.

152. At the appeal stage, the governors expressly stated that they did not question the claimant's previously good record and recorded that they had taken into account that false allegations do happen, although they did not believe that to be the case here. They wrote: "Equally it is true that individuals in trusted positions, on occasion behave in a manner which is seriously contrary to their position of trust." This indicates that they considered the argument that the conduct was out of character but, nevertheless, on the basis of the evidence found, on a balance of probabilities, that the claimant acted as alleged.

*Failing to take into account important points raised by the claimant*

153. Under this heading, Ms McCarthy referred to the claimant's point that he would not have ushered the pupil to Dr Burch if he had assaulted him. She noted that the outcome letter does not address this. Ms McCarthy pointed out that the dismissal and appeal outcome letters do not deal with the possibility that the claimant may have appeared agitated because he was projecting his voice over the stairwell.

154. It is correct that the dismissal letter does not expressly deal with the claimant's argument that he would not have ushered the pupil to Dr Burch if he had assaulted him. I do not consider that this omission takes the decision making outside the band of a reasonable decision. Dr Boulton and Mr Neil Smith went into considerable detail in explaining why they reached the decision which they did. I do not consider that a reasonable procedure or decision making process requires them to expressly refer to every point taken by a party. In any event, this point was expressly addressed at the appeal stage. The governors wrote: "We cannot answer your motivation for referring A to SJB, but this does not detract from the evidence we have considered which we believe supports that the alleged incident occurred."

155. Dr Boulton and Mr Neil Smith do record the claimant saying in his latest statement that he was not agitated but just trying to project his voice across a busy stairwell. They were clearly aware of this evidence of the claimant but, nevertheless, found, on the basis of a consistent description on this point from Dr Burch, that Dr Burch thought the claimant was agitated at least. Dr Burch was not a witness to the alleged encounter between the claimant and pupil A. His opinion of the claimant's demeanour was relevant only in contrast to the claimant's description of himself as cool, calm and collected. The claimant's evidence as to why Dr Burch may have considered him, wrongly, to be agitated, did not have any impact on the direct evidence about the alleged conduct.

*Unreasonable emphasis on potential motive for pupil A to lie*

156. Ms McCarthy submitted that it was unreasonable to conclude that, because pupil A had no obvious motive, the allegation must be true.

157. I consider this description fails to do justice to the reasoning of the dismissing officers. It is clear from the outcome letter that their consideration of a potential motive for A to lie was only part of the assessment of the evidence. This included consideration of any possible motive for a false allegation by pupils B and C who were witnesses to events.

158. Ms McCarthy submitted that the respondent failed to consider the respondent's suggestion that being singled out was A's motive to lie, rather than being caught pushing.

159. It appears to me that the reference in the outcome letter to "being caught pushing" as a possible motive for making a false allegation is potentially wide enough to include the claimant's suggestion that A was angry because he was "singled out". In any event, for reasons explained in the letter, the dismissing officers found that A was not "very cross" or otherwise in rage. It appears that they did consider, therefore, whether A would have been motivated to make a false allegation because of anger at what had taken place.

160. I conclude that the dismissing officers did not place unreasonable emphasis on a potential motive for pupil A to lie.

*Unreasonable focus on whether there was a "malicious conspiracy"*

161. Ms McCarthy submitted that the respondent did not appreciate that collusion did not have to be malicious.

162. It is clear from the outcome letter (point xiv at p.276 of the bundle) that the dismissing officers considered not only whether there was a malicious conspiracy but also whether there was inadvertent collusion.

163. Where a number of pupil witnesses told broadly the same story about the central allegation, it was important for the dismissing officers to consider why this could be the case, which necessarily involved considering whether there was malicious or inadvertent collusion. I do not consider, on the basis of the reasoning of the dismissing officers as explained in the outcome letter, that they placed unreasonable focus on whether there was a malicious conspiracy. It was not unreasonable for the dismissing officers to reach the conclusion which they did, on the basis of the evidence before them.

*The respondent failed to properly take into account the potential relevance of a previous allegation against a teacher*

164. Ms McCarthy submitted that it was the same year group as were involved in the previous allegation. The claimant said that JS had been involved in the previous incident. There had been no undue consequences for pupils involved in the previous allegation. The respondent failed to appreciate this could be the next incident which had occurred.

165. The claimant did not raise this issue at the disciplinary hearing stage but raised it at appeal level. The governors addressed the issue. A, B, C and D, were not

in the class where the incident occurred (and B had not even joined the school at that point). Pupil E had been in the class but the evidence showed that E had not initially backed up the complainant's story, as the claimant believed. The governors expressed the view that they did not consider there to be any link between that incident and this one.

166. The governors considered the argument but reasonably dismissed it. I reject the submission that the respondent failed to properly take into account the potential relevance of the previous allegation. The relevance of this allegation was very limited and the governors gave it appropriate weight.

*The respondent was influenced by pressure from pupil A's parents*

167. Ms McCarthy refers to a statement that the family were very invested in the school and submitted that there was a strong likelihood that the respondent would feel pressure.

168. I conclude that there is no evidence that the dismissing officers or the appeal officers felt under any pressure from the parents to reach the decision which they did.

*Did the respondent have a reasonably held belief?*

169. Ms McCarthy submits that, taking into account the failings she referred to, the answer to this is no.

170. I disagree with Ms McCarthy. I conclude that the respondent had reasonable grounds for their belief that the claimant put his fingers to Pupil A's throat and that this belief was reached after a reasonable investigation.

171. I conclude that Mr Smith carried out a careful and conscientious investigation into the allegation, interviewing appropriate witnesses and taking decisions within the band of a reasonable procedure, not to interview other pupils who he considered had been mentioned in a speculative way, to avoid the spread of gossip.

172. I conclude that Dr Boulton and Mr Neil Smith and the governors, Mr Wainwright and Ms Bolton, also carried out their duties as dismissing officers and appeal officers in a careful and conscientious way. They considered all the evidence before them, followed up other lines of investigation which were suggested by the claimant, and reached decisions which were explained in detail in the outcome letters. They were faced with different versions of events: on the one hand, there was the allegation from pupil A which was supported in the central aspects by pupils B and C; on the other hand, there was the claimant's denial. They took a careful approach to assessing the credibility of the evidence of the pupils. They considered the inconsistencies in evidence but reasonably reached the view that these did not undermine the credibility of the central allegation. They considered whether there was any evidence of a motive to make a false allegation and any evidence of malicious or inadvertent collusion but were unable to find any.

173. I conclude that it was clearly within the band of reasonable responses for the respondent to reach the conclusion that the allegation of misconduct was proven.

174. The procedure followed by the respondent was clearly within the band of a reasonable procedure. The respondent held an investigation meeting and disciplinary and appeal meetings with the claimant. They gave the claimant all relevant material before the disciplinary hearing. The claimant was given the right, which he exercised, to be accompanied to meetings. The claimant and his representative had a full opportunity at each meeting to raise issues and put whatever points they wished to make. The claimant had the opportunity to call witnesses. The investigation carried out by Mr Smith and further investigation by the dismissing and appeal officers fell well within the band of a reasonable investigation.

175. The claimant has, fairly and correctly in my view, accepted that the sanction of dismissal for the alleged offence fell within the band of reasonable responses in the circumstances. The alleged conduct against a pupil was clearly a very serious matter which warranted dismissal, regardless of the previous good record of the claimant.

176. For these reasons, I conclude that the complaint of unfair dismissal is not well founded.

#### Wrongful dismissal – breach of contract

177. The claimant was dismissed without notice. If he was guilty of gross misconduct, the respondent was entitled to dismiss him without notice. If he was not guilty of gross misconduct, the respondent was in breach of contract by not giving him the notice of termination required by his contract.

178. To decide whether the respondent was in breach of contract by dismissing the claimant without notice, I have to decide, on a balance of probabilities, whether the claimant was guilty of gross misconduct.

179. The evidence before me is very largely the same evidence that was before the dismissing and appeal officers.

180. The respondent has, unsurprisingly, not called the relevant pupils to give evidence in this tribunal. I have, therefore, heard no live witness evidence in support of the allegation against the claimant. I have the written statements of pupils A, B, C and D. I have the other material that was before the respondent, including Mr Smith's notes of his conversations with pupil A's parents and the statements of Dr Burch. I am conscious that the witness evidence in support of the allegation has not been tested in cross examination in this tribunal. I must give it the weight I consider appropriate, having regard to the totality of the evidence.

181. I have, of course, heard the claimant's evidence in the tribunal which has been the subject of cross examination.

182. The claimant has been consistent in his denial of the allegation. There is nothing I have heard evidence about in the claimant's conduct prior to this incident which would cause me to think that the claimant would have a tendency to behave in

the way alleged. Any concerns about the way he conducted himself as a teacher were in relation to quite different behaviour to the alleged assault. However, in my judicial experience, people do sometimes act in an unexpected and unwise manner. The fact that the alleged misconduct would appear to be out of character is a factor to be considered in the overall assessment of the evidence, but may be outweighed by evidence which points to the claimant's guilt. The fact that the claimant drew Dr Burch's attention to pupil A could be a factor pointing towards the claimant's innocence. However, it is not necessarily incompatible with the claimant's guilt. It is a factor to be considered in the overall assessment of the evidence.

183. This is not a case where Pupil A or the claimant can be mistaken about whether the claimant put his fingers against Pupil A's throat, although their memory as to peripheral details may not be reliable. One of them is not telling the truth about the central allegation. If the allegation is not true, A, at the least, must have knowingly constructed a false case against the claimant.

184. A's account is backed up by pupils B and C in relation to the central allegation and pupil D provides evidence from a different point in time, more consistent with A's evidence than that of the claimant.

185. The evidence of each of these pupils in relation to the central allegation taken from the statements in the bundle is as follows.

186. Pupil A's account to his form tutor, Mr Morris, was that the claimant grabbed him and shoved him against the wall and then pushed two forefingers against his throat.

187. Pupil A, when first interviewed by Mr Smith, said that the claimant touched his shoulder to get his attention. When pupil A turned around, the claimant then pushed him back towards the notice board, quite forcefully, both hands on both shoulders, pushed him back against the notice board then pressed his index and middle fingers into Pupil A's Adam's apple.

188. DS McKee interviewed pupil A. She recorded, in the pre interview briefing given to the claimant, what pupil A said to her about the central allegation as follows:

*"A states that Mr Hargreaves got his attention and tapped him on the shoulder. A then states that Mr Hargreaves put his hand on his shoulder and took him to a nearby notice board. Mr Hargreaves it is alleged then put 2 fingers into his adams apple area of this throat and asked him why he was pushing. The pressure on his throat caused A pain and he was shocked by the incident. A felt upset about the incident."*

189. Mr Smith, interviewing Mr and Mrs A on 4 May 2016, recorded Mrs A saying that pupil A had told her that the claimant had grabbed A by "scrabbling" at his shoulder and pushed him against a wall. The claimant pushed his fingers into A's Adam's apple.

190. Pupil A, interviewed again by Mr Smith on 4 May 2016, told Mr Smith that the claimant had grabbed his left shoulder then “turned me to face him, pushed me with both hands then put fingers in my throat.”

191. Pupil B, when first interviewed by Mr Smith, said that the claimant grabbed pupil A’s shoulders and pulled him back with a lot of force. When pupil A was facing him, the claimant pushed his chest and put him on the wall. The claimant put two fingers to A’s neck (voice box area).

192. Pupil B, when interviewed again by Mr Smith on 4 May 2016, told Mr Smith that the claimant had “Grabbed A bag and then got his shoulders and pushed him to the wall then held him to the wall.” He added “it must have been forceful or I wouldn’t have remembered. The reason I remember is that he (JH) prodded his (A’s) neck. If someone was just getting told off I wouldn’t remember.”

193. Pupil C when first interviewed by Mr Smith, said that the claimant tapped A on the shoulder, A then moved back to the Middle School office and the claimant then “placed finger around top of tie – tapped multiple times.”

194. Pupil C, when interviewed again by Mr Smith on 4 May 2016, told Mr Smith that the claimant had tapped A on the shoulder and A went to the wall. The claimant put 2 fingers near A’s tie. When asked if this seemed like an unusual incident, C said: “Yes, a teacher touching a child. I’ve never seen that before. It wasn’t routine obviously.” When asked if the incident had struck him as inappropriate, C said: “Yes, I’ve never seen it before. I wouldn’t expect a teacher to do that. I was surprised. It seemed excessive.”

195. When first interviewed by Mr Smith, pupil D said he saw pupil A sat on the chair outside the office holding his neck with the claimant stood next to him.

196. Pupil D, when interviewed again by Mr Smith on 5 May 2016, said he had seen pupil A on a chair opposite the counter. A was holding his throat. The claimant was nearer to the counter. A had both hands on his own neck. D said that, after assembly, he had asked A “why were you holding your neck?” and A replied: “Mr Hargreaves grabbed me.”

197. I note that there are inconsistencies in the accounts about other details e.g. whether the claimant was pushing and whether he was wearing a rucksack.

198. I note that DS McKee informed Mr Smith that there would be no further police action regarding the incident due to the fact that Pupil A did not wish to proceed further and neither did his mother. It appears that the police did not pursue the matter further for this reason rather than because the police took the view that there was no case to answer.

199. If A’s allegation is false, either B, C and D are knowingly assisting in making a false allegation or they have come to believe the truth of what they are saying, based on what A has told them or by some other means.

200. If the allegation was false, the method by which the allegation is pursued against the claimant is a complicated one. The allegation first came to the attention of the school after A spoke to his form tutor, having raised the matter with his parents. No one has suggested that the account given to Mr Smith by A's parents as to how A revealed matters to them and their discussions was not truthful and I agree with the reasons given by Dr Boulton and Mr Neil Smith in the dismissal letter for discounting the possibility of knowing collusion by A's parents in this matter. If A was making a false allegation, this was not done in the heat of the moment (which is in contrast to the false allegation by another pupil against a chemistry teacher in 2012). Instead, A raised the matter first with his mother at home in such a way that she believed him to be hesitant and reluctant and telling the truth. If it is a false allegation, A lied first to his parents and separately to his brother and must have done so in anticipation that his parents' response would be to make a complaint to the school or to encourage him to raise the matter with the school.

201. B's involvement came about because A named him as a potential witness. Pupil A also suggested some other potential witnesses, including OB. OB, when interviewed by Mr Smith, gave no relevant evidence. If pupil A is making a false allegation, he must have either sought to involve OB and OB reneged on an agreement to join in the conspiracy, or A was so sophisticated in his plans that he considered his story would be more credible if not all those he named turned out to have relevant evidence to give. If the latter is the case, either OB was briefed to give no relevant evidence, or A was confident that OB would not have seen the innocuous encounter between A and the claimant and, therefore, would not give evidence harmful to A's false allegation.

202. Pupils C and D came to Mr Smith's attention as potential witnesses because A's mother named them as pupils A had told her teased him in the Butty Bar about "being taken out by Mr Hargreaves". If this was part of a scheme by A, it is an elaborate and uncertain way of introducing supportive evidence. Pupil A had to tell more lies to his mother, then anticipate that she would feed this further information to Mr Smith.

203. If pupils B, C and D knowingly colluded in a false allegation against the claimant, there is a high level of sophistication about the accounts they gave. Pupils A, B, C and D all gave accounts which are sufficiently consistent in the core details for the allegation to be believable, but not so similar that they are suspiciously alike. Pupil A gave inconsistent accounts about whether he was pushing and denied wearing a rucksack, contrary to accounts by others. If this was part of a strategy of making the central allegation more believable because the accounts are not too perfect, it was a risky one, since it risked his evidence being considered not credible.

204. If A was telling lies but the other witnesses were not knowingly colluding with the falsehood, it is hard to see how the witnesses came up with their varying accounts.

205. The claimant accepts that there was no prior history of ill feeling between the claimant and A. Although, at first, the claimant thought he might have taught pupil A in the past, the claimant accepts now that he had never taught him. There is no evidence of any prior encounters between them. There is no evidence of any reason

for A to make a false allegation, except, potentially, because he was aggrieved at the claimant's treatment of him during the incident in question.

206. The claimant thought he had a rapport with pupil B and pupil B said in his statement that he got on well with the claimant. There is no evidence of any possible reason for B to make a false allegation except, potentially, to support A. It appears from their interactions whilst heading for assembly on the day in question that A and B were at least friendly, although I have no evidence on which to make a finding as to the extent of their friendship.

207. The claimant said in evidence that there has to be a dynamic between A, B and C that he does not understand. There is no evidence in support of a dynamic that would cause them to conspire to make a false allegation against the claimant.

208. There is no evidence to suggest why D should knowingly collude in a false allegation. If what he says is truthful, but based on pupil A rubbing his neck and falsely telling him that the claimant grabbed him, that would mean that pupil A had begun to concoct his scheme at a very early stage. If A deliberately fed information to D to support a false allegation to be made, it is surprising that A did not name D as a potential witness when first interviewed by Mr Smith but "saved" D to be introduced as a witness by telling his mother later about being teased by D in the Butty Bar.

209. I do not consider that the evidence of Dr Burch in his statements is of much assistance in deciding whether or not the allegation is proven on a balance of probabilities. His evidence could be consistent with either version of events. The claimant may well have appeared agitated whether or not guilty of the assault.

210. The claimant, in preparation for this hearing, has had a considerable amount of time to reflect on events and has had the benefit of advice from a very experienced employment lawyer. Despite this, he has not been able to suggest in this hearing any lines of enquiry not undertaken by Mr Smith or the disciplinary or appeal panel which appear to me would be necessary to gather information on which a decision could fairly be made as to whether he was, on a balance of probabilities, guilty of gross misconduct.

211. I am conscious of the seriousness of the allegation for the claimant and its possible impact on his future career. I cannot entirely discount the possibility that Pupil A, alone, or with others, has made a false allegation against the claimant. If this were to be true, then the claimant will justifiably consider himself to be a most unfortunate victim of a course of action started by Pupil A, whether or not Pupil A realised or intended that his actions could have such consequences. However, I am required to assess the likelihood of the allegation being true on a balance of probabilities.

212. Set against the denial of the claimant and his previous good conduct, I have the witness accounts of A, B, C and D. A, B and C all give evidence of the claimant having his fingers against A's throat. D did not witness the incident but gave evidence that, subsequently, A was rubbing his throat and that A told him that the claimant had grabbed him. There are inconsistencies in other details but these do not lead me to conclude that I cannot rely on the parts of the statements which relate

to the central allegation. It is not unusual that witnesses' recollections are not wholly reliable in all details. I consider that the witnesses are more likely to remember with some accuracy an unusual event such as the central allegation, than peripheral details such as whether the claimant was wearing a bag.

213. I conclude that it is more likely than not that A did not make a false allegation, taking into account the implausibility of A devising the sophisticated scheme for pursuing this allegation that this would have involved. I conclude that, on the evidence available, it is more likely than not that B, C and D did not knowingly or unwittingly collude in making a false allegation against the claimant. There is no evidence of any motive for B, C and D to involve themselves in a knowing conspiracy and I consider it unlikely that an inadvertent collusion would have resulted in the evidence given by them.

214. On the evidence before me, the only possible motive for Pupil A to make a false allegation would be anger at the claimant's treatment of him on 3 March 2016.

215. The claimant would have an obvious motive for denying the alleged misconduct since he would have realised that this was a serious matter which could lead to his dismissal.

216. Weighing up all the evidence, I come to the conclusion that it is more likely than not that the claimant did, on 3 March 2016, engage in unwarranted and unreasonable physical conduct by pushing Pupil A up against a wall and pushing his fingers against Pupil A's throat.

217. This was gross misconduct. The respondent was not, therefore, in breach of contract by dismissing the claimant without notice. I conclude that the complaint of wrongful dismissal is not well founded.

Employment Judge Slater

Date: 29 March 2017

RESERVED JUDGMENT AND REASONS  
SENT TO THE PARTIES ON

30 March 2017

FOR THE TRIBUNAL OFFICE