Appeal No. UKEAT/0409/13/BA

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 20 February 2014

Before

THE HONOURABLE MR JUSTICE WILKIE

BARONESS DRAKE OF SHENE

MR P GAMMON MBE

A APPELLANT

(1) B
(2) C RESPONDENTS

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR MARTIN PALMER (of Counsel)
For the Respondent	MS ANNA BICARREGUI (of Counsel)

SUMMARY

UNFAIR DISMISSAL

The Employment Tribunal was not wrong in law, or perverse, or in breach of Article 8 to conclude that, in all the circumstances described by the ET, the Respondent decision taker was reasonable in holding a genuine belief that the Appellant's failure to disclose to her employer the fact of her relationship with a convicted sex offender was gross misconduct.

Arising out of that, the finding of the ET that the dismissal was unfair was correctly limited to the circumstances of the internal appeal procedure and the findings under "**Polkey**" and by way of contribution could not be faulted.

THE HONOURABLE MR JUSTICE WILKIE

Introduction

1. There are two preliminary matters with which we have to deal before turning to the substance of this appeal. The first is that, in response to an application made by the Appellant, and the Respondents not opposing, we shall make a permanent order in appropriate terms which Mr Palmer has undertaken to draft, restricting the reporting of this decision in such a way as the identity of the school involved or any of the children at the school may not be revealed directly or indirectly. In practice that means that this judgment will be anonymised. The Appellant will be known as A. The First Respondent will be known as B. And the Second Respondent will be known as C.

2. The second preliminary issue which has been raised is that, although at the time of the Employment Tribunal decision and when the appeal against its decision was implemented, C was an existing body, being the Governing Body of a school, subsequently the school has become an academy. The erstwhile Governing Body has ceased to exist and all liabilities have passed to B, which is a local education authority. Accordingly, although the appeal will nominally be in respect of both B and C, in practice B is the Respondent to the appeal and the body which has liability in respect of any surviving claim made by A against it and arising out of the judgment of the Employment Tribunal and this Appeal Tribunal.

3. A appeals against a reserved judgment of an Employment Tribunal, the Reasons having been sent to the parties on 2 November 2012. The Employment Tribunal found that A was unfairly dismissed by reason of the deficiencies in the appeal process following an initial decision to dismiss. However, the Employment Tribunal concluded that the initial decision to dismiss would have been fair but for the application of an unfair appeals process. In the light of that, the Employment Tribunal considered the position in relation to **Polkey**, concluded that,

had a fair appeal procedure been adopted, there was a 90% chance that A would have been dismissed in any event. It also went on to make an assessment of contribution by A to her unfair dismissal, which it assessed at 100%. The appeal is against those two elements, namely the **Polkey** reduction and the decision in respect of contribution. It is common ground, however, that both of those grounds stand or fall with the main ground, which is an attack on the conclusion of the Employment Tribunal that the first-instance decision to dismiss was a fair one. It is agreed that if the criticisms of that decision are well-founded, then the appeal succeeds in its entirety, and there is no separate argument in respect of **Polkey** and contribution. They fall automatically with the Tribunal's reasoning in respect of the first-instance decision. Conversely if the appeal does not succeed in respect of the criticisms of the first instance decision, then the appeals against the **Polkey** reduction and the contribution finding would similarly fail because there is nothing to be criticised in those conclusions standing the Employment Tribunal's decision in respect of the first instance decision to dismiss.

4. The Amended Grounds of Appeal following an oral rule 3(10) hearing include arguments citing Article 8 of the **European Convention on Human Rights** and at one stage also Article 10 of the Convention. The Article 10 argument is not being pursued, as it is accepted that that is not the appropriate article which is in play. The Article 8 argument is being pursued. The Respondents have taken issue with our considering arguments based on Article 8, pointing that those arguments were never raised before the Employment Tribunal and that the discretion of this Tribunal to admit new grounds of appeal which were not advanced at first instance is a discretion which has to be exercised very sparingly and in a series of particular circumstances.

5. In a sense this is an artificial argument, because both sides agree that the Article 8 dimension does not add materially to the cogency or otherwise of Ground 1, which is the main ground of appeal. In our judgment, it is, however, appropriate that this court should, even if

only formally, admit arguments based on Article 8, because at the heart of the case and at the heart of the appeal are the questions whether the Respondent was reasonable in concluding that there was an obligation upon A to disclose to them certain matters affecting directly her private life. It seems to us that Article 8 is thoroughly embedded in the essence of the issue at the heart of Ground 1 and, accordingly, it is wholly appropriate, given that the decision in question was the decision of a public body, that they should form part of our consideration of this appeal. As we have said, however, Ground 1 is not added to materially by the Article 8 dimension and we therefore turn to consider the substance of Ground 1.

The facts as found by the Tribunal

6. We now turn to deal with the factual background and, in particular, the facts as found by the Employment Tribunal. As will become apparent, the circumstances giving rise to this case are such that the Appellant is entitled to a great deal of sympathy for the position in which she found herself through no fault of her own, and her reactions to which form the subject matter of what ultimately was her dismissal.

7. The Claimant is a long qualified schoolteacher with a significant record in management in the form of being a Deputy Head, her chosen type of school being primary schools. At the end of January 2009 she had submitted an application form to become Headteacher of the school, of which C was the Governing Body and in relation to which B was the relevant local education authority. She had, and may continue to have, a relationship with IS. The precise nature of the relationship was significant, but at the heart of the case was the fact that, on 25 February 2009, IS was arrested at his home. A was present at the time, though not residing there. He was arrested in connection with child sex offences in the form of making indecent images of children. He was convicted on 1 February 2010 of that offence. In the meantime, on 1 September 2009, A commenced employment as Headteacher at the primary school. At the

heart of the case was the fact that at no stage did she disclose to the Governing Body or in any other way to the education authorities her relationship with a man who had been convicted of those child sex offences for which he received a three-year community order. The order included significant elements of supervision and he was subject also to a sex offences prevention order, which contained significant inhibitions upon his freedom of action.

8. It is common ground that at no time prior to his arrest was A remotely aware of IS's criminal activities, and there has never been any suggestion that she was in any way a party to or complicit in his conduct. As Headteacher, her job was subject to a job description. It included a requirement "to advise, assist and inform the Governing Body in the fulfilment of its responsibilities" and "to be accountable to the Governing Body for the maintenance of high standards of care of the school environment and the health and safety of all staff, pupils and visitors to the site". In her evidence before the Tribunal she accepted that there had to be a good working relationship between a Headteacher and the Governing Body. Her contract contained a disciplinary procedure, which was framed by B. It provided for gross misconduct, which it described as "conduct of such a nature that it justified no longer tolerating the continued presence at the place of the work of the employee who commits such an offence". There were a number of specific examples given, none of which are reflected in the facts of this case. In addition, an example of conduct which can lead to disciplinary action was what was described as "neglect of duty" and that included as an example where an employee "(c) fails to report any matter which it is their duty to report". It also included the stricture that in some instances such conduct may be considered sufficiently serious to be gross misconduct.

9. The Tribunal made findings as to the nature of the relationship between A and IS. They had known one another since 1998. They had purchased the residential property in which IS lived in 2003, in which they shared the beneficial ownership. But A did not, and never has,

lived at that property, where IS lives rent-free. As we have indicated, she stayed overnight at the property on 24 February 2009 and was present when IS was arrested. The Tribunal then set out its findings in respect of his conviction on 1 February 2010, the three-year community order and the SOPO. That included him being ordered to participate in a sex offender programme.

10. On 18 June 2010 the Claimant was suspended. The designated officer of B, Diane McKinley, had received a referral from the local authority Children's Services department informing her that A, as it was then said, resided with her partner, IS, who had been convicted in respect of a sex offence and was a registered sex offender. Ms McKinley felt there could be serious child protection concerns and convened a strategy meeting for 17 June 2010, attended by the chair of governors, and it was agreed that A should be suspended.

11. Thereafter investigations proceeded, and her suspension continued until 18 November 2010, when she attended an interview with Ms John-Hynes, the principal investigating officer. That interview was in the presence of her union representative. She was advised that the allegation was that she had a relationship of an inappropriate nature with someone convicted of sex offences and it was said that this had led to certain breaches of policy. It included:

> **"A serious breach of implied terms of contract of employment to perform duties by failing to disclose information that could put the school at risk of failing to uphold safeguarding duties...**
>
> **Neglect of duty - without sufficient cause she had failed to discharge the obligations which her contract placed upon her."**

12. At the Tribunal A accepted that, at least from that point, she knew that the basis of the allegations against her was that she should have disclosed her relationship with IS.

13. As a result of that interview, a statement was produced, which formed part of the investigation record. In it she described the financial nature of the relationship with IS, the fact that she did not reside fully or in part at that address but stayed there occasionally as there were jobs to be done by way of maintenance etc. They had bought the house as an investment. She also, in her statement, said that she went on holiday with IS in April 2010. She was a named driver on his car insurance. She had set up an e-mail address for IS so that he could receive references sent from previous employers to help him with regard to his arrest and conviction. In that statement, she had said that, in connection with the question of disclosure, she had sought advice from a police officer, inferentially at the time or shortly after the arrest, in February 2009 because she was in the process of applying to schools for posts and had already applied for that of Headteacher at the school C. She wondered if his arrest needed to be disclosed. She was informed that all that was needed was an enhanced CRB check. A also said that she had subsequently made inquiries of senior officers with the Probation Service and various local authorities and been in touch with Stop It Now and the Lucy Faithfull Foundation. She had made general enquiries, not providing her name, but providing a scenario that she had a financial relationship with IS. She said that she had been told that, as she was not under suspicion and had not been arrested, she did not need to disclose anything to anybody. She also described contact with the Probation Service. She named Richard Green, a senior probation officer, who had since retired; Nigel Byford, the Head of Public Protection; and stated that he, Nigel Byford, "could not understand why I would need to disclose anything to any governing bodies". She referred to a letter that she had evidencing that advice and to notes that she had made at the time. She had also enquired of friends to speak with governors at other schools, all of whom had said they could see no problem. She had telephoned the CRB, who told her that as she had no conviction what she had reported to them was not a concern. She said that she had not disclosed to the Governing Body that she was in a financial or any relationship with IS

or that he had been arrested or convicted in connection with the child sex offence because, based on the information she had gathered, there was no need.

14. The Tribunal then record, at paragraph 4.10, the following:

> **"Her evidence under cross-examination about what information she had presented in order to seek advice was far from clear nor was there any cogent explanation about why she had not disclosed it to [the] Chair of governors other than she did not know whether they would have known what their responsibilities as far as data protection were concerned and she was concerned about preserving confidentiality."**

15. A disciplinary hearing was convened, which took place on 30 March 2011. A number of attempts were made to formulate what the allegations were to be that she would face. Ultimately the formulation which was put forward was as follows:

> **"Serious Breach of implied terms of contract of employment, in relation to the breach of the implied term of trust and confidence, a subsection of which is the duty of honesty and loyal service to perform your duties by failing to disclose information that could put the school at risk of upholding safeguarding duties, and obligation which is inherent on your client, by way of inclusion in the policies to which you refer.**
>
> **Professional Misconduct by not demonstrating honesty and integrity and upholding public trust and confidence in relation to allegation 1.**
>
> **Neglect of duty – without sufficient cause failed to discharge the obligations which a contract basis upon her."**

16. The disciplinary hearing took place on 6 May, and it lasted from 10am until 5pm. On the disciplinary panel was a Mr Griffin, who chaired it, who was the Chair of Governors at another primary school, and two other persons who were governors of C. The management case was presented by Ms John-Hynes, already referred to, and the Claimant was represented by a solicitor.

17. The only live witness was Diane McKinley, but there was an investigatory report compiled by Ms John-Hynes. It is clear that, in the course of the hearing, Ms John-Hynes cited as an example of an offence of gross misconduct the terms of the first two allegations already

referred to. But it was accepted by all that, within the disciplinary rules, they were not included in the specific examples of gross misconduct set out in the rules. However, reference was also made to the passage in the disciplinary rules, to which we have already referred, that some instances of misconduct may constitute gross misconduct if sufficiently serious, one example of which is the neglect of duty in the form of failing to report any matter which is the employee's duty to report.

18. The Employment Tribunal then set out part of the investigatory report. At paragraph 4.15 it included a statement from Richard Green, Head of Complaints at the relevant probation trust. In his statement he had said:

> **"He had met the claimant on 12 May 2010 because she had made a complaint against IS's sex offender manager, who was a member of the Trust's staff, and he had been appointed to investigate it. Part of her complaint concerned a discussion between the sex offender manager and IS about the possible need to make a disclosure to the claimant's employer about IS's relationship with her. [A] felt that she was being punished because of her association and the situation which could have serious implications for her was one over which she had no control. [Mr Green's] statement stated that [A] had wanted to know whether there would be a disclosure to her Governing Body by the Trust. If so, she would prefer to advise them herself first. [Mr Green] agreed to look into it. He concluded following exchanges with Nigel Byford and Mr G Bates [the Trust's Director of Operations and Performance] that he did not think the trust should disclose but that the level of risk should be discussed at a joint agency (MAPPA)...meeting and any recommendation about disclosure would be made at that meeting. He therefore told the claimant she should speak to Mr Byford about the role of MAPPA which he understood she did. He had subsequently confirmed to her that the issue of disclosure was not a matter for the [Probation Trust] but the police."**

19. The investigation report also contained an information leaflet about the role of MAPPA which explained that every meeting would consider whether disclosure should take place to protect the public, especially children and, if it were decided to disclose, it would agree who would give the information, by whom, how it should be done, and when.

20. At this point it is apposite to record that, in fact, in November 2010, MAPPA did decide to make a disclosure to the Governing Body in relation to IS's relationship with A. However, that decision, coming as it did long after the disciplinary proceedings against A had

commenced, could not form part of evidence to the effect that A was aware of her duty to disclose because of a decision made by MAPPA to disclose, as that decision had not been taken until after the disciplinary process against her had commenced.

21. At paragraph 4.17 the Tribunal commented on certain evidence the Claimant had given to the Tribunal, which was that she had not linked her suspension to her relationship with IS, but had attributed it to an allegation that she had hurt a child. The Tribunal did not accept her evidence in that respect. The Tribunal pointed out that the meeting with Mr Green had taken place as recently as 12 May 2010, during which she had wanted to know whether there would be a disclosure to her Governing Body by the Trust, and the Tribunal considered it highly likely, at the time that she was suspended, that she was immediately aware that it related to the situation with IS, though she may have been taken by surprise that there had been a disclosure.

22. The Tribunal also records, at paragraph 4.18, further items included in the investigation report, in particular a statement from Mr Byford, who had spoken to the Claimant by telephone on 23 June 2010. He denied having given any specific advice about disclosure of IS's conviction to her employer or telling her that it should have no impact on her role as Headteacher. In his statement he stated that he had explained that maintaining any type of relationship with IS, a convicted sex offender, would be problematic, as there would always be an issue of concern. He had never told her it was acceptable to maintain the relationship and remain in the position of Headteacher at a primary school. Their discussion had been about her concerns for IS's well-being but he had tried to point out to her that the perception of others would lead to others questioning her judgment. He had invited her to consider, in relation to her own position, the previous occasions in her own career when concerns had been raised with her about parents and about others.

23. At paragraph 4.19 the Tribunal also records that the investigation report contained a letter dated 17 February 2010 from Mr G Bates to the Claimant. He had received her original letter of complaint and, having told her that her complaint would be investigated, he said:

> **"I do not know the nature of your relationship with this man (IS) and whether or not it extends to more than friendship. I do believe however that, if you have not already done so, it would be wise for you to disclose this relationship to the Education Authorities whether by way or discussion with your Chair of Governors or some other route."**

24. In dealing with the disciplinary hearing itself, the Tribunal made certain adverse comments on the way in which the case against the Claimant was presented by Ms John-Hynes, and it is clear from certain passages which are quoted in the ET's decision that the manner and the substance of the submissions made by Ms John-Hynes went far beyond what is appropriate in such a situation and was rightly the subject of concern and criticism by the Tribunal. However, the Tribunal heard from Mr Griffin, the Chair of the Disciplinary Panel, and he gave evidence in relation to the content of the investigation report and the contrast between that document and the way in which the matter had been advanced orally at the disciplinary hearing by Ms John-Hynes. He indicated that he too was aware of the shortcomings in her approach, and his evidence was that he and his colleagues were able to put to one side that approach. That was a piece of evidence which the Tribunal accepted.

25. Mr Griffin's evidence, as recorded in the Employment Tribunal decision at paragraph 4.21, was that the Claimant's stance throughout the disciplinary hearing was that she did not consider that, in her judgment, having taken advice, she needed to make a disclosure. At the hearing she made it clear that she had chosen not to contact the First Respondent, B, and that, as far as the advice of Mr Bates was concerned, she had not ignored it but had wanted to know how much she was able to say under data protection with regard to IS.

26. Mr Griffin's evidence was that he had told the Claimant that he would expect a headteacher to report to him as the Chair of Governors, but the Claimant replied that, as she was Acting Head at the time, she did not have that relationship. Mr Griffin had asked the Claimant whether there was anything in hindsight which she would have changed, and she confirmed that her view remained unchanged. The Tribunal then summarized the essence of Mr Griffin's evidence. At paragraph 4.26 it makes the following finding of fact:

> **"He was able on the basis of the facts which he considered had been presented to him to conclude that it should have been obvious to [the Claimant] that she needed to disclose information such as her friendship with IS to the Governing Body once it was clear that he was to be charged and convicted of a child sex offence and that the claimant was guilty of gross misconduct. Her role was that of a head teacher and was to assist the Governing Body in discharging its functions, one of which was the safeguarding and child protection. He concluded that she should have and would have known safeguarding and child protection were key issues for a Governing Body and any concerns or issues no matter how small which impacted on those issues should be disclosed. Had the claimant accepted her error, Mr Griffin would have considered an alternative sanction to dismissal. However in the absence of any change of position, he decided that, having had due regard to her hitherto blameless disciplinary record, dismissal was the appropriate sanction."**

27. The Tribunal then went on, having summarized the statutory provisions and the relevant cases, to remind themselves of what their role was, in the following terms, at paragraph 9:

> **"We remind ourselves that our task in relation to a claim of unfair dismissal is not to decide whether the claimant did or did not commit the misconduct alleged. Our role is to judge the reasonableness of the employer's conduct. If the decision to dismiss was one available to a reasonable employer...we cannot find the dismissal was unfair. To do so would be to substitute our view for that of the employer."**

28. They then went on, at paragraph 10, to describe the implied term of mutual trust and confidence, that is that:

> **"...the parties will not without reasonable and proper cause conduct themselves in a manner calculated or likely to destroy or seriously damage the contractual relationship."**

29. Having then recorded certain other matters of law and summarised the contentions of the respective parties, they then came, at paragraph 25, to set out their conclusions in the following terms:

> **"We find that the reason for the claimant's dismissal was the genuine belief by Mr Griffin and [the person who conducted the appeal] that the claimant, a head teacher, had failed to disclose the relationship she had with IS a convicted sex offender to her board of governors and that this was misconduct."**

30. They went on, later in that paragraph, to say:

> **"...we are satisfied on the balance of probabilities that the non-disclosure was the principal reason for the dismissal which related to the claimant's conduct and is a potentially fair reason for dismissal under section 98(2)(b) of ERA."**

In so doing, they concurred with the Claimant's counsel's submission that an alternative ground of some other substantial reason was not established.

31. At paragraph 26 they then addressed the question whether C had reasonable grounds on which to sustain that belief and they said as follows:

> **"The essential facts are not in dispute. The claimant did not deny that she had not disclosed anything to her Governing Body about her relationship with IS or his conviction. It is not surprising that the obligation to disclose this particular information is not to be found expressly set out in the Claimant's contract of employment. We consider that it is obvious that for a head teacher to have failed to disclose such information to her Governing Body whether it is expressed in her contract of employment is a matter of misconduct. The claimant herself knew that she was subject to a duty to disclose because she would not otherwise have made enquiries as to the circumstances in which disclosure was triggered. That she recognised the importance of such information as far as her employment was concerned was demonstrated by her complaint when she expressed concern about the implications for her if the Trust disclosed it."**

32. At paragraph 27 they then addressed the question of the investigation and concluded that it was reasonable in all the circumstances and, in so doing, they were able to separate out, as they found Mr Griffin was able to separate out, the investigation report and the way in which the case was orally presented at the disciplinary hearing, and there is no complaint about their

conclusions in that respect. Finally, they considered whether dismissal was fair or unfair, and they concluded that no criticism could be made of Mr Griffin in reaching the decision to dismiss. They expressed it in the following way:

> **"Having regard to the context of the head teacher of a primary school and the nature of the information and the relationship with IS, to fail to disclose that information amounted to gross misconduct, and dismissal, having given due regard to the claimant's previous good record and failure to recant, was within the range of reasonable responses to a reasonable employer."**

33. As we have indicated, they then went on to conclude that the decision to dismiss was unfair because of the deficiencies in the appellate process. They then went on to come to their decision on **Polkey** and contribution, to which we have referred.

The Appellant's case

34. At the heart of the Appellant's case are the contentions that at no point has the duty to disclose been sufficiently articulated or placed within the context of contractual obligation and other obligations forming part of the employment relationship. It is also said that the conclusion to which the Tribunal came in paragraph 26, that there were reasonable grounds upon which to sustain a genuine belief that her failure to disclose was an act of gross misconduct, has been insufficiently articulated or insufficiently founded in the evidence. It is said that merely to say that it is obvious that there was such a duty to disclose in the circumstances of this case is a wholly insufficient basis of reasoning to support a conclusion which was at the heart of the decision that the first-instance dismissal was fair.

Conclusions

35. In our judgment, the contention that the duty to disclose was insufficiently articulated is one which has not been established. As we have pointed out, the neglect of duty as constituting potentially an item of misconduct is expressly provided for in the disciplinary rules and it is

said to be limited to a failure to report any matter which it is their duty to report. Furthermore the nature of the relationship between the head teacher and the Governing Body and, in particular, her role of advice, assistance and information in order to enable the Governing Body to fulfil its responsibilities, amongst other things for the safety of pupils, is embedded in the person specification for the role of Headteacher. As the Tribunal found, albeit surrounded to an extent by some verbiage, at the heart of this matter was an allegation that she had failed to disclose to the Governing Body her relationship with IS, a convicted sex offender and that it was said that this was a breach of her obligation as Headteacher to keep the Governing Body informed of any relevant matter which might affect the Governing Body's ability to assess and address any issue of possible safeguarding of children for whom they were ultimately responsible. The Tribunal found that she was aware that this was the essence of the allegation against her, really from very shortly after her suspension, if not immediately upon her suspension, and that this was what Mr Griffin found to have constituted the misconduct.

36. In our judgment, at the various points in the ET's decision, to which we have referred, it is made clear what the misconduct alleged amounted to and how it came to have the level of seriousness, both contractually and in relation to the relationship between Headteacher and Governing Body, to which the Employment Tribunal and the Respondents gave it. Whilst it is right to say that the Tribunal, at paragraph 26, do say that it was obvious that there was an obligation, which she had failed to discharge, to disclose such information, they then went on, in the remainder of that paragraph, to identify what it was that persuaded them that she must have been aware or ought to have been aware of such an obligation. She had acknowledged that she had been engaged in conversations with two different sources of potential advice, one which she initiated across a range of people described by the Employment Tribunal, arising almost from the moment when IS was arrested, with her enquiry of the police and a second, much more pointed, engagement with the Probation Trust when it became apparent to her that,

after IS had been convicted and was subject to supervision by the Probation Service, a serious and ongoing issue had arisen, whether her relationship with IS was something which ought to be disclosed to her Governing Body by the statutory bodies conducting the supervision of IS.

37. It is of some significance, in our judgment, that the ET recorded in some detail what the outcome of that second string of engagement produced. It produced specific and direct advice from a senior member of the Probation Trust, Mr Bates, that she should, if acting wisely, disclose the nature of her relationship with IS to the Governing Body, and Mr Byford, far from giving her a green light, as she had sought to suggest, in his statement to the investigatory panel had made clear that, inferentially, her position was one which gave rise to possible perceptions of risk and, inferentially, could be read as clear encouragement to her to have made the necessary disclosure. True it is that the Claimant had at no time accepted that she was subject to a duty to disclose, but the Tribunal was entitled, at paragraph 26, to conclude that she must have known that she was subject to such a duty because of the intensive lines of engagement to which we have referred and which they described in the findings of fact section of their decision.

38. In our judgment, the Employment Tribunal was entitled to come to the view, having conducted this intensive scrutiny of the investigatory process and the documentation, that the belief of Mr Griffin and his panel in her misconduct, was not only genuine, but was a reasonable one and, for the reasons which they properly and sufficiently articulated, they were also entitled to conclude that Mr Griffin, in deciding with his colleagues to dismiss the Claimant, not just because of her failure initially to disclose, but because she had manifested, throughout the process and at the disciplinary hearing, an inability to perceive or acknowledge the obligation to disclose the nature of her relationship with IS to the Governing Body, was

entitled to conclude that, notwithstanding her long years of good and impeccable service, this was a case in which dismissal did fall within the range of reasonable responses.

39. In our judgment, therefore, this Employment Tribunal's decision that, at first instance, the dismissal would have been fair had it been supported by a fair appellate procedure cannot be properly criticised. It therefore follows that ground 1 of this appeal does not succeed. The Article 8 ground adds nothing to it, and therefore the appeal fails on that ground as well. And, as is acknowledged, that necessarily is fatal to the separate grounds of appeal directed specifically at the **Polkey** reduction and the finding of contributory fault.

40. Accordingly this appeal is dismissed. The finding of unfair dismissal, subject to the limitations to which we referred to earlier, remains and the matter must henceforth be dealt with by the Employment Tribunal by way of remedy.