THE EMPLOYMENT TRIBUNALS

Claimants		**Respondents**
(1) Mr H Peiris	**v**	(1) St Patrick's International College Limited
(2) Mrs R Majuwana Kamkanange		(2) St Patrick's College Limited

Heard at: London Central **On**: 20-26 July 2017
(27 July 2017 in Chambers)

Before: Employment Judge Baty

Representation:
Claimants: Ms A Chute (Counsel)
Respondent: Mr T Perry (Counsel)

RESERVED JUDGMENT

1. **The Claimants' complaints of unfair dismissal and breach of contract in respect of notice pay fail.**

2. **The Claimants' complaints for holiday pay succeed. A remedies hearing has already been listed for 20 October 2017 to determine the amounts due (if the parties are able to settle these complaints, they should notify the Tribunal as soon as possible so that that remedies hearing can be vacated).**

3. **By consent between the parties, the First Claimant's complaint of breach of contract in relation to hosting fees succeeds and an award of £2,182.40 is made, payable to the First Claimant by the Respondents (which are jointly and severally liable).**

REASONS

The Complaints

1. By claim forms presented on 16 February 2017, the Claimants presented complaints of unfair dismissal, breach of contract in relation to notice pay,

unpaid holiday pay and, in relation to the First Claimant, Mr Peiris, for breach of contract in relation to certain "hosting payments" said to be due to him. The claims were presented originally against "St Patrick's College", although this was subsequently amended following presentation of the response form to "St Patrick's International College Limited" (the "First Respondent"). The First Respondent defended the complaints.

The Issues

2. The representatives had liaised in advance and presented to the Tribunal a list of issues agreed between them at the start of the hearing. I was happy to adopt that as the list of issues for this hearing, subject to some further queries which are referred to below. The list of issues was:-

Unfair Dismissal (First and Second Claimant)

1. Were the Claimants dismissed for one of the potentially fair reasons set out in Section 98 ERA 1996, namely conduct?

2. Did the Respondent hold a genuine belief in the Claimants' guilt?

3. Was the Respondent's belief based on reasonable grounds?

4. Did the Respondent conduct as much investigation as was reasonable in the circumstances?

5. Was the decision to dismiss the Claimants within the band of reasonable responses?

6. Did the Respondent follow a fair procedure, namely did the Respondent:

    a. Invite the Claimants to attend an investigation meeting;
    b. Clearly inform the Claimants of the allegations against him/her;
    c. Provide the Claimants with all of the evidence to allow him/her a full opportunity to respond to the allegations;
    d. Invite the Claimants to a disciplinary meeting;
    e. Provide the Claimants with his/her right to representation;
    f. Consider all of the evidence and mitigating factors put forward by the Claimants prior to reaching a decision, whilst taking into account the Claimants' previous disciplinary record and length of service; and
    g. Inform the Claimants of his/her right to appeal and his right to representation at any appeal hearing.

7. Did the Respondent follow the ACAS Code of Practice when dismissing the Claimants?

Unlawful Deduction of Wages (First and Second Claimant)

8. Did the Respondent make an unlawful deduction from the Claimant's wages by failing to pay his/her accrued holiday pay from January 2016 onwards?

Wrongful Dismissal (First and Second Claimant)

9. Was the Claimant's dismissal without notice wrongful?

Breach of Contract

10. Was the Respondent in breach of contract in respect of hosting payments due to the First Claimant?

Remedy

11. Are the Claimants entitled to compensation? If so, how much?

12. If it is found the Claimants' conduct contributed to their dismissals, should basic and compensatory awards be reduced under Sections 122(2) ERA 1996 and 124(6) ERA 1996?

13. Should compensation be reduced following the decision in Polkey v AE Dayton Services Ltd [1987] UKHL 8? If so, how much?

14. Should compensation be increased or decreased under section 207A Trade Unions and Labour Relations (Consolidation) Act 1992 due to any unreasonable failure to comply with the ACAS Code of Practice? If so, how much?

3. There remained some uncertainty as to what the correct Respondent was. Mr Perry maintained that the correct Respondent was "St Patrick's International College Limited". However, Ms Chute pointed out that, whilst that appeared to be the name on the Claimants' contracts (in fact, the name on the contracts is simply "St Patrick's International College"), the payslips under which the Claimants were paid referred to "St Patrick's College Limited" She therefore sought to have "St Patrick's College Limited" added as a Respondent. Mr Perry did not object to this and I therefore agreed that "St Patrick's College Limited" should be added as a second respondent (the "Second Respondent").

4. There was therefore a further issue for me to determine, namely "which of the two named Respondents is the correct Respondent".

5. In relation to the holiday pay complaints, the representatives confirmed that it was agreed that the Respondent's holiday year relevant in relation to the Claimants' annual leave was the calendar year 1 January to 31 December. Ms Chute confirmed that the complaints were in respect of accrued but untaken holiday in relation to the year 2016, which was the holiday year in which their employment terminated. She explained that the First Claimant claimed to be owed 26.5 days' holiday pay and the Second Claimant 25.5 days' holiday pay and that the First Claimant claimed in this respect £1,917.01 and the Second Claimant £1,644.50. During the hearing, I asked the parties if it was possible to agree the figures, such that the only issue for me to determine was whether or not the Claimants had actually taken any holiday during 2016. Mr Perry ultimately said that he did not oppose the figures but could not agree them either. During submissions it became clear that the representatives were not in the position to make submissions as to why there was a discrepancy in the amount of one day's holiday claimed as between the two Claimants when their basic position was that neither Claimant had taken any holiday in 2016 and, I pointed out, barring one typographical error around the words "inclusive of statutory and public holidays" and "exclusive of statutory and public holidays", both Claimants appeared to be entitled to 28 days holiday per year under their contracts (as indeed they would be under the Working Time Regulations 1998). It was therefore agreed that I would only determine, in relation to the holiday pay complaints, the issue of whether or not the Claimants had actually taken any holiday for 2016 (and if so how much) and that, this issue having been

determined, the representatives should be able to liaise to agree the amounts due (if any) and, to the extent that they could not, the issue could be held over to a remedies hearing.

6. In relation to the notice pay complaints, Ms Chute explained that the First Claimant sought 10 weeks' notice pay, amounting to £3,616.80 and the Second Claimant sought 5 weeks' notice pay amounting to £1,612.25. These figures were not agreed at the hearing.

7. Part way through the hearing, Mr Perry confirmed that the Respondent accepted that a payment of £2,182.40 was due to the First Claimant in relation to hosting fees from August 2014 - March 2015 and domain registration costs. It was therefore agreed between the representatives that, in relation to the breach of contract complaint in relation to hosting fees, a judgment by consent should be made in this respect. I therefore made that judgment by consent that the First Claimant's complaint in relation to breach of contract in relation to the hosting fees succeeded and that the Respondents (on a jointly and severally liable basis) should pay to the First Claimant the sum of £2,182.40 in this respect.

8. It was also agreed at the start of the hearing that the issues in relation to contributory fault, Polkey and the ACAS Code would be considered at the liability stage and that, if they wished to, the representatives should make submissions on these issues (issues 12-14 in the list of issues) at the liability stage.

9. In these Reasons, I refer simply to "the Respondent", meaning whichever of the two named Respondents ultimately is deemed to be the employer of the Claimants.

10. In these Reasons, the First Claimant is also referred to as "Mr Peiris" and the Second Claimant, who indicated at the start of her evidence that she was happy to be addressed as "Mrs Peiris" (first name Rebelika), is also referred to as "Mrs Peiris".

The Evidence

11. Witness evidence was heard from the following:-

For the Claimants:

Mr and Mrs Peiris;

For the Respondents:

Mr Tim Rounding, an HR Business Partner of London School of Business and Finance ("LSBF") from March 2016 to present; and

Mr Vincente Fraser, the Chief Information Officer for the Global University Systems Group ("GUS") from 2010 to present.

12. An agreed bundle, in three volumes, numbered pages 1-811, was produced to the hearing. However, it became clear part way through the hearing that there were a reasonable number of documents on both sides which were potentially relevant but had not been disclosed. The representatives liaised with each other about this and, over the weekend in the middle of the hearing (the hearing commenced on a Thursday) collated this extra documentation which was added to the bundle on the following Monday morning. By that stage, Mrs Peiris had completed her oral evidence; however, by agreement, she was recalled so that Mr Perry could put some of the new documentation to her.

13. I read on the first day of the hearing the witness statements and any documents in the bundle to which they referred and, by agreement, any documents referred to on a draft chronology produced by Mr Perry.

14. In addition to the bundle and list of issues, there was produced to the hearing by Mr Perry the draft chronology referred to and a cast list. Ms Chute stated that, whilst the chronology was not agreed, she was happy for me to use it in relation to the documents it referred to for the purposes of my reading. In addition, a document headed "proposed list of companies" was provided at the start of the second day in relation to the issue regarding the correct name of the Respondent referred to above.

15. A timetable for cross examination and submissions was agreed between the representatives and myself at the start of the hearing. This was broadly adhered to. However, there were delays as a result of the disclosure issue referred to above. The timetable was, therefore, adjusted by agreement at certain times throughout the hearing. It was ensured, however, that the evidence and submissions on liability were completed within the 5 day allocation although, as was acknowledged from an early stage, it was likely that there would not be enough time for the Tribunal to give a decision at the hearing and the decision would have to be reserved, which duly happened. A provisional remedies hearing date of one day on 20 October 2017 was agreed at the end of the hearing.

16. Both representatives made oral submissions.

17. At the start of the hearing Mr and Mrs Peiris were present with their young son who, quite understandably, was not able to keep quiet the whole time with the result that the hearing was disturbed. Ms Chute therefore agreed with the Claimants that one of them would have to remain outside the Tribunal room with their son. Otherwise, it would not have been possible to have an undisturbed and fair hearing.

The Law

Unfair Dismissal

18. The tribunal has to decide the following:

19. Whether the employer had a reason for the dismissal which was one of the potentially fair reasons for dismissal within s 98(1) and (2) of the Employment Rights Act 1996 and whether it had a genuine belief in that reason. The burden of proof here rests on the employer who must persuade the tribunal that it had a genuine belief that the employee committed the relevant misconduct and that belief was the reason for dismissal.

20. Whether the tribunal is satisfied, in all the circumstances (including the size and administrative resources of the employer), that the employer acted reasonably in treating it as a sufficient reason to dismiss the employee. The tribunal refers itself here to a 98(4) of the Employment Rights Act 1996 and directs itself that the burden of proof in respect of this matter is neutral and that it must determine it in accordance with equity and the substantial merits of the case. It is useful to regard this matter as consisting of two separate issues, namely:

    (a) Whether the employer adopted a fair procedure. This will include a reasonable investigation with, almost invariably, a hearing at which the employee, knowing in advance (so as to be able to come suitably prepared) the charges or problems which are to be dealt with, has the opportunity to put their case and to answer the evidence obtained by the employer; and

    (b) Whether dismissal was a reasonable sanction in the circumstances of the case. That is, whether the employer acted within the band of reasonable responses in imposing it. The tribunal is aware of the need to avoid substituting its own opinion as to how a business should be run for that of the employer. However, it sits as an industrial arbiter to provide, partly from its own knowledge, an objective consideration of what is or is not reasonable in the circumstances, that is, what a reasonable employer could reasonably have done. This is likely to include having regard to matters from the employee's point of view: on the facts of the case, has the employee objectively suffered an injustice? It is trite law that a reasonable employer will bear in mind, when making a decision, factors such as the employee's length of service, previous disciplinary record, declared intentions in respect of reform and so on.

21. In respect of these issues, the tribunal must also bear in mind the provisions of the relevant ACAS Code of Practice 2015 on disciplinary and grievance procedures to take into account any relevant provision thereof. Failure to follow any provisions of the Code does not, in itself, render a dismissal unfair, but it is something the tribunal will take into account in respect of both liability and any compensation. If the claimant succeeds, the compensatory award may be increased by 0-25% for any failures by the employer or decreased by 0-25% for any failures on the claimant's part.

22. Where there is a suggestion that the employee has by his conduct caused or contributed to his dismissal, further and different matters arise for

consideration. In particular, the tribunal must be satisfied on the balance of probabilities that the employee did commit the act of misconduct relied upon by the employer. Thereafter issues as to the percentage of such contribution must be determined.

23. Under the case of Polkey v AE Dayton [1987] IRLR 503 HL, where the dismissal is unfair due to a procedural reason but the tribunal considers that an employee would still have been dismissed, even if a fair procedure had been followed, it may reduce the normal amount of compensation by a percentage representing the chance that the employee would still have lost his employment.

Breach of contract (notice pay)

24. Where the respondent claims that it was entitled to terminate the contract without notice, it is for the respondent to prove on the balance of probabilities that the circumstances existed, for example gross misconduct on the part of the claimant, which entitled it to do so.

Findings of Fact

25. I make the following findings of fact. In doing so I do not repeat all of the evidence, even where it is disputed, but confine my findings to those necessary to determine the agreed issues.

26. Mr Peiris commenced employment with the Respondent College on 1 August 2005 to assist with the College's library. He was issued with a contract of employment dated 1 August 2007 confirming his role as "System Engineer". He was later issued with a further contract dated 1 February 2010 which stated that his role was "Assistant System Software Engineer" and that he would be responsible to Mr Raj Kumaran. There is no dispute that his duties involved working in software development.

27. At the time when Mr Peiris joined the Respondent and thereafter until 2012 (at which point the Respondent joined GUS, which I will refer to later), it appears that the management of the College was on a very loose and informal basis. Examples of this include the fact that employees, such as Mr Kumaran and later the Claimant, would themselves pay for hosting fees for services in the Respondent's name and then seek repayment of those fees (rather than the Respondent simply paying the fee itself); and the fact that there was no separate HR Department; rather, whatever HR duties were required were overseen by Dr Dinesh Bist, the then Vice-Principal of the Respondent.

28. The Claimant's 1 February 2010 contract contained an error in relation to his continuous employment; the contract simply states that the Claimant's period of employment began with the Respondent on 1 February 2010 and makes no reference to his previous continuous employment with the Respondent, which is clearly incorrect.

29. The Claimant's salary under the 2010 contract was £22,000 per annum, which rose to £23,000 per annum.

30. There was also in the bundle an "offer letter" dated 27 July 2010 and signed both by Dr Bist and Mr Peiris which states his appointment as "Analyst Programmer" and that his gross salary will be £30,000 per annum. It does not appear (and there was no copy in the bundle) that further terms and conditions of employment were issued beyond this two page letter. It appears that the details in this letter, including the £30,000 salary, were used in correspondence with the UK Border Agency in relation to a Tier 2 application in relation to Mr Peiris in August 2010.

31. However, at no point was Mr Peiris paid this salary. Dr Bist, who has since left the Respondent, was not a witness at this Tribunal and there was therefore no opportunity to question him about why Mr Peiris was not paid at this rate. However, whatever the reasons, it does not appear that Mr Peiris raised this as an issue until the events which are the subject of this claim in 2015/2016.

32. Mr Peiris' wife, Mrs Peiris, commenced employment with the Respondent College on 19 September 2011 as a Librarian. She maintains that initially she had no intention of taking a salary but that the College paid her £600 per month. No contract was issued to Mrs Peiris until 1 May 2012 when an offer letter and contract were issued. The offer letter states that her appointment is as a "Librarian" and that her gross salary is £14,000 per annum. The terms and conditions of employment issued at the same time as the offer letter, however, state that she is employed as "Administrator" and responsible to Dr Bist "for the time being". The terms and conditions also state her continuous employment with the Respondent as beginning on 1 May 2012. There is no reference to any previous continuous employment with the Respondent and this too therefore is incorrect.

33. All of the contractual documentation in relation to both Mr and Mrs Peiris makes clear that their place of work is at the Respondent's offices in London.

34. The 1 February 2010 contract for Mr Peiris and the 1 May 2012 contract for Mrs Peiris cross refer to other policies of the Respondent and provide that all staff have a duty to adhere to the Respondent's other policies from time to time in force. The Respondent subsequently in 2013 produced an employee handbook. However no copy of that handbook was given to either of the Claimants until the events which are the subject of these proceedings in 2015/2016. The 2013 employee handbook was not therefore incorporated into their contracts.

35. In 2012, the Claimants worked in different locations within the Respondent's London premises. Mr Peiris was the only employee who worked in the Software Development Department and Mrs Peiris the only employee in the Library Department. Both, however, are qualified Software Engineers. They decided, without any management request, to develop an online library management system for the Respondent and did so out of working hours.

36. In 2012, the library system was recognised as good practice by the Quality Assurance Agency ("QAA") in the UK.

37. In 2012, the Respondent raised Mrs Peiris' annual salary to £20,000.

38. In 2012, the Respondent College was taken over by Global University Systems Group ("GUS"). London School of Business and Finance ("LSBF") is another constituent part of GUS. From that point onwards, various shared services, including HR and IT, which were provided by GUS or LSBF, applied to the Respondent. In other words, HR issues at the Respondent were no longer dealt with at a local level by Dr Bist but were dealt with by the HR team at LSBF. The HR employees within that team have varied over the years since. None of the members of the HR Team referred to in these Reasons remain employed within GUS, with the sole exception of Mr Rounding, who gave evidence at this Tribunal.

39. Similarly, IT services at the Respondent were ultimately overseen by GUS.

40. During the period from 2012 to present, there have been cost cutting exercises which have involved redundancies across GUS. However, these redundancies have not impacted upon the Respondent and its staff.

41. Senior management within the Respondent alone at the time of the take over consisted of Professor Daniel Khan (the Principal of the Respondent), Dr Bist (the Vice-Principal of the Respondent) and Mr Kumaran. All of these individuals have since left the Respondent and were not here as witnesses. However, from the evidence given by the Claimants, there appears to have been a certain amount of friction as between the management at the Respondent and the wider GUS/LSBF Group, in particular concerning IT matters.

42. Although Mrs Peiris remained working in the library as Librarian in 2013, she was also assisting her husband on the software projects which he was carrying out for the Respondent.

43. At the end of 2013, the Respondent's management planned to move the library from the fifth floor to the basement. This would involve a certain amount of lifting and moving of materials for the staff.

44. In January 2014, Mrs Peiris found out that she was pregnant. Although this was at an early stage of her pregnancy, she informed the Respondent that she was pregnant and was particularly concerned not to have to move heavy objects as part of the library move. Around that time, she and Mr Peiris were given a separate office near the library. Mr Peiris carried out software development work and Mrs Peiris assisted him. No changes were, however, made to Mrs Peiris' job title or contract.

45. There are no written documents available to us tracking any of these changes and the above finding reflects the evidence given by the Claimants.

In particular, although LSBF HR had been in place to deal with HR matters for some time by then, there are no records from HR evidencing any of these changes. I therefore find, on the balance of probabilities, that whilst senior management at the Respondent (i.e. Professor Khan, Dr Bist and Mr Kumaran) were aware of these changes, LSBF HR were not informed.

46. On 16 May 2014, Mrs Peiris submitted her request for maternity leave to Ms Reena Hirani of HR. From the email evidence in the bundle, there was clearly a meeting between Ms Hirani and Mrs Peiris prior to Mrs Peiris submitting the completed forms (the "Expectant Mother Risk Assessment Form" and the "Request for Maternity Leave Form"); there had therefore been a discussion about what Mrs Peiris wanted. The forms which Mrs Peiris then submitted on 16 May 2014, which she signed, confirmed in a variety of places that: her position was that of "Librarian"; her line manager was Mr Kumaran; the date of her risk assessment was 16 May 2014 and her expected date of confinement 12 September 2014; that her department was the "Library"; that her maternity leave start date was 1 July 2014 and end date 1 July 2015 but that her return to work date was 2 March 2015 and that she was also taking annual leave from 2 June 2014 to 27 June 2014. In other words, although as a matter of law she would be entitled to a year's maternity leave, Mrs Peiris herself confirmed her intention to return to work on 2 March 2015. Furthermore, the culmination of holiday taken in June and the maternity leave would enable her to return to Sri Lanka to have her baby, which was what she intended to do and duly did, leaving the UK at the end of May 2014.

47. On 16 May 2014, Ms Hirani thanked the Claimant for forwarding the documents and copied her in to her email to LSBF payroll which forwarded the documents and stated "Payroll – please find as attached for Rebelika". Although, as I will come to, Mrs Peiris was in fact paid her full pay for the period whilst she was away and not merely maternity pay, I find that, in the absence of any witness evidence to the contrary, the email from Ms Hirani was an instruction to payroll to process Mrs Peiris' pay in accordance with her requested maternity leave dates, in other words to pay her maternity pay. For whatever reason, this was not done and, in the light of this email instruction, I accept the Respondent's contention that Mrs Peiris was in error paid full pay during the period she was away.

48. At some point later in May 2014 (it is not clear precisely when), both Mr and Mrs Peiris had a conversation with their line manager, Mr Kumaran. As noted, Mr Kumaran, who subsequently left the Respondent's employment in September 2014, was not at this Tribunal to give evidence and there is no documentary record of any sort of this meeting. The only evidence before me was the Claimants' witness statements and oral evidence.

49. The Claimants both maintain that, at that meeting, they told Mr Kumaran that they were planning to resign from their jobs and to go back to Sri Lanka for Mrs Peiris to have her baby; Mr Kumaran told them not to leave their jobs but arranged for them to work from home (from Sri Lanka); and that he specifically requested Mrs Peiris to work with Mr Peiris on development work.

In oral evidence they went on to say that the issue of Mrs Peiris' maternity leave was not raised at that meeting. Mrs Peiris also added in oral evidence that Professor Khan was also present at that meeting (which was not mentioned in either of the Claimants' witness statements) (Professor Khan has also since left the College and was not called as a witness by any party). When questioned about this in his evidence (Mr Peiris gave evidence after Mrs Peiris), Mr Peiris said that Professor Khan was only there for part of the meeting. The Claimants' evidence orally was also that they were aware from that meeting that the whole of the management team at the Respondent, including Dr Bist as well, were supportive of this proposal. Mrs Peiris went on to say that, while the permission to work from home in Sri Lanka was clearly not indefinite, Mr Kumaran had indicated that they should take the time they needed and that that could be for up to one to two years. Mr Peiris also agreed that the arrangement was not indefinite. Again, this evidence came out orally and was not in their witness statements.

50. This meeting is obviously key as to what the expectations of the Claimants were in terms of their returning to work in London. I find it surprising that Mrs Peiris (as opposed to Mr Peiris) should tell Mr Kumaran that she was resigning when she had just submitted a maternity leave application in which she had set out a date for her return to work of 2 March 2015, which was in fact even earlier than her legal maternity leave entitlement. Furthermore, if Mr Kumaran had been so specific that they could have one to two years away, it is surprising that such a key fact was neither set out in either of the Claimant's witness statements nor was pointed out to the Respondent later on in February 2015 at the time when the Respondent's HR Department requested them to return to work in London. If he had been so specific, it is far more likely that they would have said something. Furthermore, it is very surprising that there is no contemporaneous documentary reference to any of these alleged arrangements; this is in the context of a case where there is a great deal of email correspondence between the parties.

51. In the light of that, I accept and find that, on the balance of probabilities, Mr Peiris did tell Mr Kumaran at a meeting that he was intending to resign (but not that Mrs Peiris did); and that Mr Kumaran did persuade him not to resign and told him that he could work remotely at least during his wife's maternity leave period (which is evident from the fact that Mr Peiris duly left the UK with his wife at the end of May 2014 and worked remotely in Sri Lanka thereafter). I also find that, on the balance of probabilities, Mr Kumaran either asked Mrs Peiris to work with her husband or at least accepted that she would be assisting him in his software development work (this appears to have been without any consideration, on Mr Kumaran's part, of the fact that Mrs Peiris was going on maternity leave, as the issue of maternity leave was not mentioned at the meeting). It is also almost certainly the case (and I find this as a fact on the balance of probabilities) that neither Mr Kumaran nor anyone else told HR about these arrangements (if he had done so, there would almost certainly be a contemporaneous record of his doing so as management at the Respondent tended, as is evident from the bundle, to communicate with LSBF HR by email).

52. On 27 May 2014, Mrs Peiris emailed Ms Hirani asking if she had received the Mat B1 Form which she had posted. There is further correspondence about this over the course of 28 May 2014. On 28 May 2014, Mrs Peiris confirmed to Ms Hirani that "tomorrow will be my last day at work" and asked if she needed to do anything else before she goes. On the same day, in a further email, Mrs Peiris stated "I have been working for more than 2 years. Am I eligible for the company maternity pay?" Ms Hirani replies on 29 May 2014 "I have received your Maternity B1 Form. Wishing you all the best. As for your company maternity pay, I shall look into this and respond to you."

53. In her evidence, Mrs Peiris stated that these requests regarding company maternity pay were made as a result of the meeting with Mr Kumaran, following which she was not sure whether or not she would receive maternity pay at all and what the pay arrangements would be. However, on the balance of probabilities, I do not consider that this was the case. Firstly, if the concern arose out of that meeting, it is far more likely that Mrs Peiris would have referenced the meeting with Mr Kumaran in her email correspondence with Ms Hirani along the lines of, for example, "I have agreed with Mr Kumaran that I am going to be working during this period – does that mean I still get maternity pay?" However, there is no reference to the meeting. Furthermore, the reference to having worked for more than 2 years must be a reference to a company maternity pay scheme over and above statutory maternity pay (for which one would not require 2 years' service to be eligible). I therefore find that, on the balance of probabilities, at this point, Mrs Peiris is expecting to receive statutory maternity pay and is making an enquiry as to whether or not she will receive "company maternity pay" over and above this.

54. As noted, the Claimants duly left the UK for Sri Lanka at the end of May 2014. During June 2014, there is email evidence in the bundle of correspondence between Mr Peiris and Mr Kumaran amongst others which indicates that not only that Mr Peiris was working but also that Mrs Peiris was working, for example a request by Mr Kumaran on 24 June 2014 to Mr Peiris to ask Mrs Peiris to let him know which software she used to convert PDF to word. Furthermore, Mr Peiris' email refers to the work which "we" have done as opposed to work which "he" had done.

55. Later, in an electronic chat from Sri Lanka, Mr Peiris explains to Ms Hirani that Mrs Peiris "is waiting to hear about her maternity pay". Ms Hirani replies that she will get back to her when she receives information from payroll. Again, there is no mention of the arrangement with Mr Kumaran prompting this enquiry, which would be surprising if it did prompt the enquiry and I find that on the balance of probabilities that this is just a chasing email about whether company maternity pay is payable as opposed to just statutory maternity pay.

56. It appears that there was at no stage any further response from HR to this enquiry.

57. Therefore, I find on the balance of probabilities that, at the point when Mr and

Mrs Peiris left the UK at the end of May, they did consider that the Claimant was on maternity leave (albeit that Mr Kumaran had either asked her to do some work or at least anticipated that she would be doing some work during it).

58. I have seen various emails in the bundle, during the period from the Claimants' return to Sri Lanka at the end of May 2014 until the Respondent's request for them to return to London in February 2015, in which Mr Peiris updates various individuals at the Respondent (variously Mr Kumaran, Professor Khan, Dr Bist) and Mr Fraser at GUS on what they have been doing. The emails are dated respectively 16 June 2014, 1 July 2014, 11 July 2014, 22 August 2014 and 24 November 2014. I find that, during this period, Mr Peiris was carrying out software development work for the Respondent and that Mrs Peiris was assisting him. (Mr Fraser was not part of the LSBF HR Team but was in an IT role and was not privy to any arrangements between LSBF HR and the Claimants regarding maternity leave or between Mr Kumaran and the Claimants regarding working arrangements.)

59. The Claimants' son was born during the period when they were in Sri Lanka.

60. On 26 February 2015, Ms Amy Gadsby of LSBF HR emailed, in separate emails, each of the Claimants. Her email to Mr Peiris attached a letter from her of 26 February 2015, which sets out as follows:-

> "Re: Notification of Requirement to Return to Office Working
>
> You requested that you be allowed to work remotely from Sri Lanka from July 2014 for an undefined period, so as to allow you to travel to Sri Lanka with your wife who was due to commence maternity leave on 1 July 2014.
>
> This request for remote working was agreed on an interim basis, subject to business requirements.
>
> It is noted that your wife is due to return to work from maternity leave on Monday 2nd March 2015.
>
> In the light of the above, and in line with the operational needs of the business, please accept this letter as formal conformation that the Company also requires you to return to the Company's office [in London] from 2nd March 2015.
>
> Failure to comply with the above request will be considered as Unauthorised Absence, and further Failure to Follow a Reasonable Management Instruction; which may result in the Company's internal Disciplinary Procedures being invoked.
>
> If you have any queries in relation to the above, please do not hesitate to contact either myself or Dinesh Bist (Vice-Principle). Otherwise I look forward to seeing you on Monday."

61. Separately, Ms Gadsby emailed Mrs Peiris on 26 February 2015 as follows:-

> "… I note from our records that your period of maternity leave as requested by you on 16 May 2014; is due to end on Sunday 1st March 2015.
>
> In light of such, and as we have received no formal request from you to change the dates of your maternity leave, it is anticipated that you will return to the office from Monday 2nd March 2015 as previously agreed.

If you have any issues with the above, please contact me to discuss such immediately."

62. Ms Gadsby copied in Dr Bist to both of these communications.

63. Mr Peiris replied to Ms Gadsby on the same day, copying Dr Bist and Professor Khan. He thanked the Respondent for making the special arrangement for them to work from Sri Lanka; stated that unfortunately they did not have their passports in order to return to London on 2 March 2015 as they had to send those with their son's visa application to Chennai in India; and stated that they would make sure they continued all the development work they were doing "until we get back to London soon".

64. Mrs Peiris replied by email to Ms Gadsby of the same day, copying Dr Bist and Professor Khan and stating:-

"Sorry, I did not request an extension for the return date as I assumed I am **not on Maternity Leave** but on **"Working from home"** because of the following reasons.

1. I did not receive any formal email/letter from HR after submitting my Maternity Leave forms.

2. Our former Line Manager (Raj Kumaran) wanted us to further develop and maintain the Online Library Management System and two new systems … which I am working on the Engineering part while Ravi does the development …

3. I received the full salary, not the Maternity Pay.

4. I am not able to return to work on 2nd March 2015 as we have had to send our Passports and Biometric Residence Permits (BRP) to India along with Baby's documents in order to get his VISA. Please advise me for the next step."

65. Ms Gadsby replied to both Claimants that she would need to discuss their responses with Professor Khan and Dr Bist. She also confirmed to Mrs Peiris that, in relation to her maternity leave, she could confirm that the Respondent did view her as being on maternity leave and that her receipt of full pay was a genuine error in the processing on the part of the company. She went on to say that they would therefore need to calculate the maternity leave payments that Mrs Peiris was entitled to receive and then seek to recover from her any overpayment amounts (in actual fact, the Respondent chose not to seek to recover any payments from Mrs Peiris and the Claimants remained on full salary). Ms Gadsby copied Dr Bist and Professor Khan in on these emails.

66. It was, therefore, clear from those emails that the Respondent expected the Claimants to return to work in London and, as Mr Peiris' response indicates, he was aware of this from those emails because he indicated that they would be getting back to London "soon".

67. Ms Gadsby also requested details of the work which the Claimants had been doing in the interim period. Mr Peiris replied giving these details. From this point onwards, through well into the middle of 2016, Mr Peiris sent weekly emails to the Respondent summarising the work that they had done each week (with the exception of two weeks in early December 2015, which I will

return to later).

68. The Respondent did not pursue matters relating to the Claimant's return to London further at that point.

69. However, in the absence of any further progress, Ms Farydeh Dadgar of LSBF HR sent further letters dated 21 May 2015 to each of the Claimants. These tracked the fact that the previous request for them to return had been made on 26 February 2015, that it was now 3 months on, and that the Claimants were required to return to the Respondent's London Office by 1 June 2015 and that failure to comply with the above request would "result in unpaid leave from 1st June 2015 until your return, and will further be considered as Unauthorised Absence and Failure to Follow a Reasonable Management Instruction; which may result in the Company's internal Disciplinary Procedures being invoked". (In fact, the Respondent did not put either Claimant on unpaid leave from 1 June 2015 or at any other time, notwithstanding the fact that they did not return to London by then.)

70. There then followed a protracted email correspondence between Mr Peiris and, variously, Dr Bist and Ms Dadgar with frequently Professor Khan and Mrs Peiris copied in. Mr Peiris explained to Dr Bist on 21 May 2015 that the application for their son's visa was a postal one which, according to their representative in Colombo, took 3 to 4 months to get a decision. Dr Bist replied stating, amongst other things, that the decision to allow him to travel to Sri Lanka with his wife during her pregnancy was an "exceptional" decision and indicated his expectation that they should return to the UK, stating that, whilst he appreciated that their son's passport was not ready, he expected at least that Mr Peiris would have made the effort to come and work in the UK and Mrs Peiris could have come later once the child's passport was ready. Mr Peiris then explained that he was the main sponsor for his son's passport and therefore it was compulsory for him to send his passport with the application. Dr Bist then stated he appreciated that Mr Peiris could not travel without his passport but that he should have spoken to HR or to himself before sending his passport to the British Embassy in Chennai, India for processing or could have informed HR or himself that his return would be delayed and requested some evidence, for example an acknowledgement from the Embassy, stating that his passport was with the British Embassy in Chennai. Mr Peiris stated that he did not realise he was supposed to inform HR or himself prior to sending the documents to Chennai and apologised for the inconvenience caused. Dr Bist stressed in reply that every employee needed to inform his or her employer of the reasons which could cause delays in attending or resuming their work. Mr Peiris again apologised for not informing him of the delay, and emphasised that were doing their duties well and on time.

71. Ms Dadgar, on 26 May 2015, asked both Claimants by email if they had received evidence confirming that their travel documents were with the Embassy and the date of when the visa application would be finalised and the documents returned to them. Mr Peiris then replied by email stating that he felt that he was being mistrusted by HR and the management of the

College and suggested that he hand over his existing development work and end his 12 year career with the College. Ms Dadgar replied stating that it was not an issue of trust and stressed that the issue was that the Respondent needed both of them physically back in the office. She also stressed that, whilst Mrs Peiris may be assisting Mr Peiris, she was a Librarian and should be based in the physical library.

72. By email of 27 May 2015, Dr Bist explained to the Claimants that they needed to understand that no employee could work from abroad for such a long period of time but that he appreciated that without travel documents they could not travel. Therefore he suggested that they keep HR and himself posted on that and that until the time when they could travel they could agree an arrangement with them to work in Sri Lanka should HR permit.

73. In a separate email to HR on 28 May 2015, Dr Bist explained that, as the Claimants did not have passports, the Respondent could not force them to come back on 1 June 2015 and suggested that HR "hold it for a while". He also expressed a concern that, because Mr Peiris was holding the password for the Respondent's online library, if the Respondent suspended them on 1 June 2015 (HR were in fact proposing that they be deemed to be on unpaid leave from 1 June 2015) they would stop development work and Dr Bist feared that the online library might stop working which would create unnecessary issues for the Respondent and cause students to complain about the online library.

74. On 2 June 2015, in an email to Ms Dadgar of HR, Dr Bist explained that there was no agreement with the Claimants as they were not in a position to give a definitive date of return but that he had asked them to carry on with the work at the moment but submit to him the communications between their lawyer and the UK Immigration Authorities and had given them 2 weeks to submit the correspondence to HR and him. He had also offered them to remain on reduced pay, which they were not keen on and which was never implemented. He also noted in that email that they had both told him that they wished to return to the UK in any event as staying longer could bring complications to their residence status in the UK. He asked HR to set a reminder for 2 weeks' time.

75. On 22 June 2015, Ms Dadgar duly emailed Mr Peiris, copying Dr Bist and Professor Khan, stating that it was now 4 weeks since her last email requesting an acknowledgment letter from the Embassy confirming that the Claimants' travel documents were with them and that she had not yet received anything. She asked for that information to be provided by 24 June 2015. This was not forthcoming. On the same day (22 June) Ms Dadgar emailed Mr Peiris to provide the immigration advisor's contact details so that the Respondent could contact them directly to understand why there was a delay. These were not forthcoming and Ms Dadgar chased again both Claimants on 24 June 2015.

76. On 2 July 2015, Mr Peiris forwarded email correspondence with the immigration advisors, "Sam Immigration".

77. Ms Dadgar attempted to contact the immigration advisors twice but the emails bounced back and the number provided did not connect. Ms Dadgar expressed concern at the Claimants failing to provide any evidence to support their reason for unauthorised absence. She emailed the Claimants stating this on 3 July 2015.

78. On the same day, Mr Peiris replied stating that the immigration firm in question was a bogus one and that they never knew about this before and had wasted their time and money. He said that luckily they were able to get their passports back from the firm with the help of a Government Officer and their next step was to make a new application in Colombo. No documentation was ever provided despite requests over the following weeks from the Respondent.

79. On 15 July 2015, in an email to Ms Dadgar, Mr Peiris explained that they were introduced to Sam Immigration by one of their relatives and the firm was new in the sector and they never kept them informed. Having been asked earlier by Ms Dadgar to provide written correspondence with the Government Official which stated that they would reclaim their passports and return them to them, Mr Peiris explained that they had not been dealing with a Government Officer in an official manner and the individual they used to get their passports back was part of the Police service known to Mr Peiris' father who got involved in getting their passports back.

80. Ms Dadgar asked for some correspondence from the Police Officer on 21 July 2015. Mr Peiris emailed Ms Dadgar to state that the Police Officer came with them to Sam Immigration to recover the passports and that they did not make a formal complaint to the Police regarding the case and the Officer was a friend of his father. No letter confirming this was forthcoming.

81. In the light of the time period, the fact that any information only came back after the Respondent's HR Team chased for it and the complete absence of any documentation to corroborate the story, the Respondent's HR Team were apparently becoming somewhat suspicious of the reasons given by the Claimants for the delay. Furthermore, whether or not the reasons given by the Claimants were correct, in the light of the narrative presented to them above, the Respondent's HR Team had some justification in being suspicious.

82. In the meantime, the Claimants had via the UK Border Agency applied for a visa for their son. This was (wrongly) refused by the UK Border Agency and the Claimants informed the Respondent of this.

83. On 29 July 2015, the Claimants appealed against the decision of the UK Border Agency. The decision was overturned in October 2015. The relevant documents were forwarded to the Claimants on 22 October 2015. However, the Claimants son's entrance clearance visa was valid from 15 November 2015 and he could not therefore enter the UK before that date.

84. I have not seen any evidence in either the form of the Claimants' witness statements or in the documents to indicate that, once the Claimants had been informed by the UK Border Agency that their son had a visa and that that visa would be valid from 15 November 2015, they informed the Respondent. In the absence of such evidence, I find that they did not do so.

85. Notwithstanding that the Claimants had received the travel documents on 22 October 2015 and therefore knew at what point they would be able to return to the UK, they did not return to the UK until 10 December 2015.

86. In the interim, they investigated where they might stay in the UK as they had previously used to live in a double room at some relatives' house in London but that was no longer an option as the relatives were no longer in possession of that property. The Claimants' evidence is that they took the view, having investigated two bedroom properties in London, that they could not afford to live there and so, through a friend of Mr Peiris, arranged an affordable place to live in Derby. They did not, however, inform the Respondent about these issues.

87. Although there had been no written communication specifically requiring the Claimants to come back to work in London since May 2015, it was absolutely clear from all the correspondence surrounding that that the Claimants were expected to return to work in London as soon as they were able to travel to the UK having obtained the relevant visas. The Claimants suggest that, in the absence of any further communication from the Respondent telling them they were required to come back to work in London, they considered that there was no such requirement. However, I do not accept that. It is quite clear from the documentation that they were expected to return to work in London as soon as they were able to come back to the UK and I find on the balance of probabilities that the Claimants knew that.

88. As noted earlier, during 2 weeks at the beginning of December 2015, there was no weekly update email from Mr Peiris to the Respondent about what work the Claimants had been doing. Mr Perry submitted that this was because the Claimants were not working during this period as they were in the process of travelling back to the UK and that they were therefore deemed to have taken holiday during that period. However, the Claimants' evidence, which I have no reason to doubt, is that they were working and, on days when the needed to travel, they would make up their work at other times. Furthermore, there are no records of them having requested holiday or it being granted during that period and I find that the Claimants did not take any holiday during that period. (This is, in any event, not relevant to the Claimants' complaints regarding holiday pay, which relate not to whether holiday was taken during the calendar year 2015, but only to the calendar year 2016.)

89. Even when the Claimants did return to the UK on 10 December 2015, they did not inform the Respondent that they were back. Their first communication with the Respondent in which they did inform the Respondent that they were back in the UK was not until 8 January 2016.

90. On 10 December 2015, Ms Dadgar emailed Dr Bist and Professor Khan regarding the Claimants stating:-

> "As you know we held back on pursuing the disciplinary route with Ravi and Rebelika Peiris for their continued absence due to the QAA audit in early December.
>
> Can you please confirm that HR can now begin disciplinary proceedings with them both?
>
> Please respond as soon as possible as we have already delayed this process."

91. The emails from Professor Khan and from Mr Fraser (who is later copied in) in relation to this request detail that Professor Khan is still concerned about the E-Library at this point and any perceived damage that could be done to that by taking disciplinary action against the Claimants. He states, for example, that HR can start the disciplinary process but that it has to be in tandem with Mr Fraser building or purchasing a replacement system that is fully operational before their employment is terminated. The email chain concludes with Professor Khan indicating to Ms Dadgar of HR that they need to hold on the disciplinary process until the replacement system is developed and that he has been assured that this will be by 31 March 2016 at the latest.

92. In the light of this email chain and others, I find on the balance of probabilities that HR, who had long since had suspicions about the reasons why the Claimants were not returning to work in London, had for some time been wishing to start disciplinary proceedings, particularly in light of the fact that they had not had any updates from the Claimants since they had informed the Respondent back in July/August 2015 that the original visa application had been rejected and that they were appealing; and that the only reason HR were holding off issuing disciplinary proceedings was the concern at the Respondent's management about the E-Library and what might happen if disciplinary proceedings were brought against the Claimants. Whether or not they should or should not have had grounds for this concern, this was the reason why disciplinary proceedings were not brought earlier.

93. Mr Peiris spoke to Dr Bist by telephone on 8 January 2016. Dr Bist, as is clear from his contemporaneous email, thought that Mr Peiris was still in Sri Lanka. He was surprised to be informed by the Claimant that he had been in the UK since 10 December 2015. The Claimant gave several reasons for not coming back to work and informed Dr Bist that he was living in Derby due to no accommodation being available in London. Dr Bist, as is evident from his contemporaneous email of that day to Ms Dadgar, assumed that Mr Peiris was in fact looking for a job and would send a resignation but was happy to be paid by the Respondent on an ongoing basis in any case.

94. Mr Peiris' evidence at this Tribunal was that, on that call, Dr Bist did not tell him to come back to work in London. However, even if that is correct, it was, as I have already found, absolutely clear from previous correspondence that that was the expectation of the Respondent, that the Claimants would come back to work in London as soon as possible.

95. Mr Peiris then emailed Sabir Yuksel of LSBF HR and informed him that he and Mrs Peiris were back in the UK.

96. Notwithstanding the fact that HR appeared to be frustrated with the Respondent's management not being able to proceed with disciplinary action against the Claimants, no action was taken at this point because of the Respondent's management concerns about the E-Library and, in particular, the access to the server for it, the administrative rights of which were in Mr Peiris' name.

97. Mr Peiris' witness statement gives evidence that he called Dr Bist in mid January 2016 and explained to him that they wanted to settle down in London with the baby and reminded him about pushing his salary up to the right figure of £30,000 according to the employment offer made in 2010 and that Dr Bist did not ask them to return to London or question their plans to return to London and appeared happy with the work that they were doing and that therefore the Claimants presumed that they could continue working from home. There is no contemporaneous record of this conversation, for example in the form of an email from Dr Bist to HR confirming the call. Given that, in previous email correspondence, Dr Bist had been so emphatic about the Claimants' returning to work in London, it is highly surprising that he would give the Claimant the impression that it was fine for them to work outside London at that point. Furthermore, it is also highly surprising that Mr Peiris should raise a point about the alleged £30,000 salary then, some 5½ years after the offer letter document of 2010 relating to that £30,000 salary, having never done so in the interim therefore. On the balance of probabilities, therefore, I find that this alleged conversation did not happen.

98. Furthermore, the Claimants and their mortgage lender (Halifax) communicated with the Respondent's HR Team in April 2016 to get confirmation of their employment and payslips. The Respondent was therefore aware that the Claimants were going to buy a property in Nottingham and provided the necessary information to the Halifax. Whilst Mr Peiris, in his statement, concludes that if the Respondent had any concern about their returning to the office, they would have questioned them before providing the details, the truth is far more likely that, as indicated by Dr Bist's email of 8 January 2016, he and everyone else at the Respondent simply assumed that the Claimants were never going to come back to work in London and just provided the salary details to the Halifax anyway, whilst assuming that the Claimants would either resign or, once the server issue was sorted out, they would take disciplinary action which was likely to lead to the Claimants' dismissal.

99. On 8 June 2016, Ms Liz Geary, the then HR Director at LSBF, emailed Mr Fraser to talk about the E-Library at the Respondent. She indicated to him that she was going to meet Mr Peiris the next day to get to the bottom of the situation that they were in and try to find a way forward and stated that she really could not continue to have them on the payroll beyond the end of June at the very latest. Again, I find that on the balance of probabilities that the final reference is made out of frustration at not being able to proceed matters

given that such a long period had now elapsed since the first request to the Claimants to return to London, and in particular because the operational problem regarding the server identified by other management was getting in the way of HR proceeding. Again, similar concerns are reiterated by Mr Fraser in the response to Ms Geary about worries regarding disruption to student services if disciplinary action is taken, in particular, the concern that the administrative rights in relation to the server were with Mr Peiris through his personal email.

100. In the email correspondence on 8 June 2016 between Ms Geary and Mr Fraser, in preparation for the meeting on 9 June 2016, Ms Geary's initial email in which she says "I really cannot continue to have them on the payroll beyond the end of June at the very latest" is sent just to Mr Fraser. In his reply, Mr Fraser also copies in Ms Beverley Stewart and another individual (it is not clear why). They remain copied in on further emails in the chain. Ms Stewart, therefore, had the opportunity to see that sentiment expressed by Ms Geary.

101. On 9 June 2016, Ms Geary did not meet the Claimant but spoke to him by phone. Mr Peiris had cited lack of childcare as a reason for him not attending the meeting in London with Ms Geary and the meeting on 9 June 2016 between Ms Geary and Mr Peiris, with Mr Rounding attending, was therefore conducted electronically via "Lync". The conversation did not focus on the issue of the Claimants returning to work. It focused on the issue of the server.

102. On 30 June 2016, the Respondent wrote to Webhost UK Limited, with whom the server was, and instructed it to, in summary, change the administrative rights so that Mr Peiris no longer had access but others at the Respondent did. This was done and Mr Peiris only realised that it had been done when he received an automatic email on 13 July 2016 that the primary contact had been changed and that, thereafter, his access was blocked.

103. On 14 July 2016, Mr Rounding drafted two versions of potential disciplinary letters in relation to the Claimants but these were never sent.

104. On 14 July 2016, Ms Geary sent to Mr Peiris copies of both of the Claimants' contracts of employment along with the employee handbook. She stated that the handbook was "contractual". This, as already noted, was incorrect, as a copy had never been provided previously to the Claimants. Ms Geary, however, was relatively new to the HR Department and did not, therefore, necessarily know this.

105. Ms Geary and Mr Peiris had a further conversation on 15 July 2016. In that conversation, she explained that there were only two options available to the Claimants: firstly, the option of resigning from their positions with the Respondent and secondly that the Respondent proceed with a disciplinary hearing to take place the following week. At this point, issues of whether or not there was any misconduct on the part of Mr Peiris in relation to control of the server were also present in the mind of HR and had been discussed

between Ms Geary and the Claimant on one of the telephone calls.

106. Mr Peiris therefore subsequently sent a "timeline" in some detail, setting out the history in relation to server control, to Ms Geary on 18 July 2016.

107. However, he also sent another timeline to Ms Geary on 22 July 2016. This timeline was entitled "working from home timeline" and set out a history of the issues surrounding working from home. The fact that he chose to do this is indicative that, whether or not Ms Geary had said to him that he needed to return to the office, he was well aware that one of the issues for the disciplinary hearing was the Claimants' failure to return to the office in the UK and that there was, and always had been, an expectation on the part of the Respondent that the Claimants would return to the London Office once they were able to come back to the UK.

108. By email of 31 August 2016, Ms Geary told Mr Peiris that she felt she had no alternative but to return to the idea of going through the disciplinary process following the Claimants' failure to return to work when requested.

109. There was further extensive email correspondence on 1 and 2 September 2016 between the Claimant and Ms Geary regarding the disciplinary action. It is clear that the issue (or one of the issues) is the failure to return to work in London by the Claimants.

110. On 2 September 2016, Mr Joshua Karl, a temporary member of the LSBF HR Team, emailed Mr Peiris enclosing an invitation to a disciplinary hearing the following week, together with supporting documentation. The invitation was for both Mr and Mrs Peiris. The charges set out in the letter were:-

> "1. Failure to return to work following maternity leave (Rebelika) and agreed remote working (Ravi) and subsequent return to the UK despite a number of management requests.
>
> 2. Failure to submit immigration documents despite a number of management requests."

111. The letter emphasised that the matters were very serious and considered as gross misconduct and, if proven, the outcome could be summary dismissal from the Respondent. It informed them that Ms Stewart would chair the hearing and that Mr Karl would be present for HR advice. Furthermore, it informed them of their right to be accompanied by a "work colleague or an employee representative". The letter asked the Claimants to confirm their attendance at the hearing, emphasised that their attendance was essential and they were reminded that they were required to take all reasonable steps to attend, but stated that, if they were unable to attend, the company would consider written representations from them. In the light of the fact that neither Claimant had attended the office since they had arrived in the UK some 9 months previously and that Mr Peiris had previously turned down invitations to meetings in London on the basis of childcare commitments, I find that the inclusion of this alternative was most likely to have been in anticipation of the strong perceived possibility that the Claimants would not want to attend.

112. The meeting was put back until 13 September 2016. Neither Claimant attended. However, Mr Peiris submitted lengthy written submissions at 12.53 pm on 13 September 2016 itself to Mr Karl and Ms Stewart. These submissions were divided up by reference to the two charges. In amongst those submissions were complaints about the Respondent, albeit most of them were related to the two charges in some way, for example, complaining that the Claimants did not really think that Mrs Peiris was actually on maternity leave. However, they also raised issues of alleged salary arrears, breach of IP rights and holiday entitlements and not giving them suitable job titles. There is nothing, however, in the written submissions which indicates either that the Claimants were intending to return to work in London or when or that they might return if any preconditions were arranged to enable them to do so.

113. The disciplinary hearing took place in their absence at 2pm that day. (The outcome letter of 18 October 2016 states that the meeting was held at 10am. However, this point was picked up on appeal and investigated and was found to have been a typographical error. In any event, there is evidence in the bundle, in the form of an email of 22 September 2016 from Mr Karl, of further investigation of some of the issues raised by the Claimants having been carried out, such that a decision was not taken on 13 September 2016 and certainly not, as was suggested by the Claimants in their evidence, before the Claimants written submissions had even arrived at 12.53 pm on 13 September 2016.) No minutes of the 13 September 2016 disciplinary meeting were taken.

114. As noted, the 22 September 2016 email from Mr Karl evidences that further investigation was done in relation to the allegation in the Claimants' written representations that Mr Peiris should have a salary of £30,000 and various other allegations. In response to the salary allegation Dr Bist was asked about it. His response, as recorded in the 22 September 2016 email, was that he was asked to sign the letter and did, but did not draft the letter and was also not aware of any discussions regarding Mr Peiris' salary as he had not line managed him and that the content of the letter would have been agreed by others, for example Mr Kumaran. By that stage Mr Kumaran had left the Respondent and the Respondent did not, apparently, seek to get in touch with him to discuss it. The matter was left at that.

115. Ms Stewart came to a decision and the outcome of the disciplinary hearing was sent to the Claimants, at Mr Peiris' address, by a further member of the HR Team, Ms Diana Piccolo (Mr Karl had left the Respondent by then).

116. Ms Stewart upheld both charges and considered that both were gross misconduct. She dismissed both Claimants with immediate effect from 18 October 2016. The outcome letter contained the following:-

> "Allegation 1 – Failure to return to work following maternity leave (Rebelika) and following the agreed remote working (Ravi) and subsequent return to the UK despite a number of management requests.

> Rebelika – Although there was an administrative error with your maternity leave and pay processing, any agreement to allow you to work abroad would have been a temporary arrangement, with the expectation that you return to work in London, however, you have failed to do this. Your substantive job title is Librarian and this requires a physical presence and therefore cannot be done effectively remotely.
>
> Ravi – Although the original decision maker who agreed to you working abroad no longer works for the Group, what is evident is that this was an exceptional arrangement and a temporary one from the outset, with the expectation that you return to work in London. You have failed to do this.
>
> Ravi and Rebelika – Several requests were made for you to return to the UK and your place of work including two formal requests by letter sent via email from HR dated 26 February, where your return to the UK was expected to coincide with the end of Rebelika's maternity leave on 2 March 2015 and a further letter dated 21 May 2015. Dr Dinesh Bist made contact with you on 8 January 2016 which was the first time you notified the organisation of your return to the UK – a month after you had arrived. Since then you have advised that you are unable to commute to London due to living costs and therefore, effectively unable to carry out your full duties at your contractual base of work. This means that your ongoing absence from your contractual place of work continues to be unauthorised.
>
> Based on the evidence this allegation is proven against you both and constitutes gross misconduct. …"

117. Ms Stewart also upheld the allegation of failure to submit immigration documents despite a number of management requests.

118. The letter informed the Claimants of their right to appeal.

119. On 19 October 2016, Mr Peiris emailed Ms Piccolo and Mr Rounding, copying various others in. He suggested that the disciplinary process should have been temporarily suspended in order to deal as a grievance with the various other issues raised in the Claimants' representations for the disciplinary hearing. He also raised/reiterated certain other issues, again including the £30,000 salary, IP Law in relation to the Library system, allegedly breaching Mrs Peiris' right to maternity leave, Mrs Peiris' job title and others. He submitted a further email on 21 October 2016. Ms Piccolo replied by email of 21 October 2016. She responded to all of the points which he had raised in his previous email.

120. By email of 25 October 2016 to Ms Piccolo and Mr Rounding from Mr Peiris, the Claimants appealed against their dismissal. Their email attached a five page document. It included many of the points which had been made either in the disciplinary hearing submissions or in the subsequent emails from Mr Peiris. At no point did it state that they would return to work in London or when or whether they could return to work in London if any conditions were met.

121. The Claimants were invited to an appeal hearing by letter of 27 October 2016. The letter stated that it would be chaired by Professor Richard Blackwell and reminded them of their right to be accompanied.

122. By email of 1 November 2016 to Ms Piccolo, Mr Peiris confirmed that the Claimants would not be attending the appeal meeting on 7 November 2016

and that they would like the Respondent to proceed with the hearing by considering the documents that they had already submitted.

123. The appeal hearing commenced on 7 November 2016 and was chaired by Professor Blackwell. It was, however, adjourned in order to gather some additional information requested by Professor Blackwell following his review of the Claimants' submissions. It recommenced on 10 November 2016. Ms Piccolo confirmed this to the Claimants by email.

124. I have seen the minutes from the hearing, which took place over 2 days as indicated. Although this was not pursued in submissions, both Claimants gave evidence that they thought that the minutes were a forgery. Their only evidence for this is that the minutes were not disclosed to them until the disclosure process in the Tribunal and, other than that, speculation on their part. Whilst it would have been better practice to disclose them with the outcome letter, I do not accept that this is evidence to suggest that the entire document is a forgery, particularly given the level of detail that it goes into. I therefore accept that the minutes of the appeal hearing are a genuine document representing what Professor Blackwell did at the time.

125. The minutes evidence that Professor Blackwell looked at a significant number of documents to investigate the things that the Claimants asked him to investigate. Any investigation would have been hampered by the fact that, by that stage, many of the individuals with whom Professor Blackwell would want to speak had left the organisation, both in terms of management and in terms of HR and by the absence of documentation, in particular any documentation which might evidence a change in Mrs Peiris' role from Librarian to Software Engineer or which might evidence that she was not in fact on maternity leave, or which shed any light on precisely what arrangements Mr Kumaran had made with the Claimants before they went back to Sri Lanka. In addition, he was hampered by the fact that neither Claimant was present to ask any further questions. As it was, he appears to have gone through the various issues in some detail and asked relevant questions about what documentation there was. Some of his conclusions, such as that Mrs Peiris was on maternity leave and that her job title was Librarian, are, in the light of the evidence before him, unsurprising.

126. In relation to the issue about whether the complaints raised in the disciplinary written representations should have been considered separately from the disciplinary process, he noted that these were brought within the disciplinary submissions and not as a separate formal grievance or headed as a grievance and concluded that there was no formal grievance raised but that there may have been some dispute (which is correct). He does not appear to have answered the question as to whether or not these issues of dispute should have been separated from the disciplinary process and the disciplinary hearing suspended pending a formal grievance investigation.

127. Professor Blackwell's outcome letter of 14 November 2016 was issued to the Claimants, via Mr Peiris' email address, on 15 November 2016. He upheld the appeal in relation to the second allegation regarding failure to submit

immigration documents on the basis that he did not consider that it constituted a sufficient stand alone ground for gross misconduct and dismissal. However, he did not uphold the appeal in relation to the first allegation regarding a failure to return to work and concluded that there was ample evidence of a failure to return to work despite numerous requests to do so dating from February 2015.

128. He did not in his appeal outcome letter set out the majority of the extensive reasoning in relation to the issues raised by the Claimants which he looked at as part of his investigation, as evidenced in the notes of the appeal meetings.

129. In their oral evidence, both Mr Rounding and Mr Fraser gave evidence that it was necessary for the Claimants to be present in the London Office to do their jobs properly. In particular, Mr Fraser acknowledged that, whilst remote working for a software engineer was something that could technically be done in the short term, it was not appropriate in the long term because there are certain aspects of the job that are less effective in isolation, including holding meetings with other colleagues and speaking to the business and meeting colleagues. It was never submitted by the Claimants that their jobs could be done effectively on a long term basis remotely and, as I have no reason to doubt the evidence of Mr Rounding and Mr Fraser in this respect, I accept it.

130. When asked by me during his evidence, Mr Peiris stated that the Claimants would not have gone back to work for the Respondent in London anyway.

131. The findings of fact which I have made above are at variance with the interpretation of the facts which Ms Chute set out in her submissions, and the facts that I have found are as they are for the reasons set out above. In two respects in particular, I have made findings which are at variance with those which Ms Chute would have had me make. In particular, I have found that the Claimants were at all material times aware that they were expected to return to work in London as soon as practicably possible. Secondly, whilst it is not in dispute, even on the Claimants own account, that their stay in Sri Lanka was never intended to be indefinite and that they were expected back at some point, I do not accept that they thought that the period of working in Sri Lanka was intended to be beyond the end of Mrs Peiris' maternity leave. Furthermore, I consider that, notwithstanding Mrs Peiris' email response to the letter from Ms Gadsby of 26 February 2015, on the balance of probabilities she and her husband were aware that she was on maternity leave, regardless of the fact that she may have been assisting her husband in his work and that the Respondent had, inadvertently, continued to pay her full pay.

132. In addition, in assessing the likelihood of those parts of the Claimants' account which are not backed up by documentary evidence, I also take into account the fact that, in their evidence, both Claimants appeared evasive at times, not answering even simple questions put to them; Mrs Peiris, in particular, appeared at times desperate to get into the evidence at any

opportunity issues which were helpful to their case, such as the alleged agreement with Mr Kumaran, even when the question not about that. There were elements that came out in oral evidence which were so significant that it was highly surprising that they were not in the witness statements (for example the suggestion by Mrs Peiris that the promise by Mr Kumaran was that they could stay for 1 to 2 years in Sri Lanka and the suggestion that in fact Professor Khan was also at that significant meeting with Mr Kumaran); and Mrs Peiris continued to insist that a whole range of documents produced by the Respondents which were helpful to the Respondent's case were in fact forgeries, even after, in some cases, the metadata behind those documents was provided which showed that they were not. For these reasons as well, as well as those in my findings of fact above, I find that, where there is no documentary evidence to back up the Claimants' evidence, one should exercise a degree of caution before accepting it wholesale.

Conclusions on the Issues

133. I make the following conclusions, applying the law to the facts found in relation to the agreed issues.

Unfair Dismissal

134. The dismissal in respect of the second charge of failure to submit immigration documents was overturned on appeal. Therefore, the sole reason, as set out in the decision letter, for the dismissal of the Claimants was for failure to return to work following maternity leave (Rebelika) and agreed remote working (Ravi) and subsequent return to the UK despite a number of management requests.

135. This Tribunal hearing was unusual in that neither the individual who took the decision to dismiss, nor the individual who held the appeal, were present as witnesses, both individuals having left the Respondent. However, the outcome letters in relation to the Disciplinary Hearing and the Appeal are both clear. Furthermore, it has never been disputed that the Claimants did not come back to work at any stage. In the light of that, there is no reason to doubt that Ms Stewart dismissed the Claimants for the reasons set out in the outcome letter. These were conduct reasons as the Claimants were under their contract obliged to work at the Respondent's London Offices. Whilst Mrs Peiris was entitled to be in Sri Lanka on maternity leave and Mr Peiris had been given a dispensation to work in Sri Lanka in connection with this and for a time which, if not precisely specified, was agreed not to be indefinite, they were in breach of their employment contracts by failing to return to work. The reason for dismissal was therefore their conduct, which is a potentially fair reason for the purposes of Section 98 of the ERA.

136. Furthermore, Ms Stewart and the Respondent clearly held a genuine belief in their guilt. Self evidently, they had not returned to work in London. Whilst Ms Chute has submitted that there were no specific requests for them to return to London after the various requests in 2015, I have found that, notwithstanding this, there was a clear expectation, following those requests,

that the Claimants would return to work and were expected to return to work and that the Claimants knew it. In the light of the documents which she would have had before her, Ms Stewart would almost certainly have been of the same opinion. Furthermore, there was no question of the Claimants not knowing that they were expected to return once they received the invitation to the disciplinary hearing containing the disciplinary charges on 2 September 2016. Ms Stewart and the Respondent therefore had a genuine belief in the Claimants guilt.

137. As to the reasonableness of that belief, again the fact that they had not returned was indisputable, as is the fact that they were requested to return, as evidenced by the documents in 2015. I reiterate my finding that the Claimants were aware of the ongoing requirement that they should return to work in London. The belief was therefore on reasonable grounds.

138. Ms Chute has spent a lot of time criticising the investigation carried out by the Respondent. However, the primary fact in terms of what an investigation might produce was not in dispute; the Claimants had not returned to work in London and they had been asked to in a number of management requests. In terms of investigation carried out up to the point at which the invitation to the disciplinary hearing was sent on 2 September 2016, I do not consider that the Respondent could reasonably be expected to have done more investigation than it did.

139. Furthermore, it is clear that, having received the written representations from the Claimants for the disciplinary hearing, Ms Stewart and Mr Karl did carry out further investigation, as is evident from the email of 22 September 2016. That email evidence is that they investigated issues raised which may have been relevant to the disciplinary issue before them and other issues raised by the Claimants as well. This included investigating the assertion that Mr Peiris' annual salary was actually £30,000. They clearly spoke to Dr Bist about this and were told that, whilst Dr Bist signed the letter, he did not draft it and was not responsible for any content of it and was not aware of any discussions regarding salary with Mr Peiris, which would have been the responsibility of others. The answer to the issue of whether or note Mr Peiris was indeed entitled to a salary of £30,000 was therefore inconclusive.

140. However, as there was no suggestion that the salary issue was something which stopped the Claimants coming back to work or that, if they could have that increased salary they would come back to London, the salary issue is something of a red herring in terms of investigation. The fact of the matter was that there was no indication that they were going to come back to London.

141. In terms of establishing a reasonably held belief that the Claimants had not come back to London despite management requests, therefore, I do not consider that the investigation undertaken was unreasonable.

142. I reiterate the same points in relation to the more extensive investigation carried out in the context of the points raised by the Claimants in their

appeal.

143. Issue 6 of the list of issues sets out a number of specific criticisms of the procedure adopted by the Respondent and I refer to those using the numbering set out in the list of issues:-

(a) The Respondent did not invite the Claimants to attend an investigation meeting. However, for the reasons set out above, this was not necessary in the circumstances of this case. It was not therefore unreasonable not to do so.

(b) The Respondent did clearly inform the Claimants of the allegations against them, as set out in the invitation to the disciplinary hearing sent on 2 September 2016.

(c) The Claimants were provided with relevant documentation in relation to the allegations with the invitation letter of 2 September 2016. This documentation comprised much of the correspondence between the parties in 2015 regarding the requests for them to return to work in London. To the extent that any documentation was missing, that does not render the dismissals unfair. The Claimants had all of the evidence available to the Respondent which they needed in order to be able to respond to the allegations.

(d) The Respondent did invite the Claimants to a disciplinary meeting, by letter of 2 September 2016.

(e) Both the disciplinary meeting and appeal meeting invitation letters set out the right for the Claimants to be accompanied.

(f) Both Ms Stewart and Professor Blackwell considered the evidence before them and the representations of the Claimants prior to reaching their respective decisions. This included any mitigating factors put forward by the Claimants. However, notwithstanding the reasons set out by the Claimants for not returning, this did not detract from the fact that they had not returned to work in London and there was no indication from them that they would. There is no indication in the outcome letters of either of the disciplinary or appeal hearing that the respective decision makers took into account the Claimants previous disciplinary records and length of service. In the absence of Ms Stewart and Professor Davidson at this Tribunal, I do not make a finding that they did not take these issues into consideration (and, whilst this is a point in the list of issues, it is not one that has been pursued either in cross examination or submissions by Ms Chute). In any event, if they did so, it is inevitable that, in the light of the fact that the Claimants had not returned and had given no indication that they would return, these factors would not amount to mitigating factors such that dismissal would not have been the outcome.

(g) As touched on at (e) above, the Respondent did inform the Claimants

of their right to appeal (in the disciplinary outcome letter of 18 October 2016) and the right to be accompanied at the appeal hearing (in the appeal hearing invitation letter of 27 October 2016).

144. It is also worth noting that it was the Claimants own choice not to attend either the disciplinary or appeal meetings. They were also aware that, if they did not attend, written representations would be considered instead. There was no objection to this approach and the Claimants duly sent written representations. The fact that the hearings took place without the Claimants being present was not therefore a procedural failure and does not render the dismissal unfair.

145. Therefore, there were no procedural failings which rendered the dismissal unfair.

146. Furthermore, no unreasonable breach of the ACAS Code of Practice has been identified in relation to the dismissal of the Claimants.

147. Ms Chute has made some additional points about the nature of the dismissal. In particular, she submits, as the Claimants did in their appeal, that the disciplinary proceedings should have been suspended and put on hold so that the Respondent could separately investigate the various additional points set out in the Claimants' written representations for the disciplinary hearing which the Claimants now say amount to a separate grievance. However, whilst I was taken to the Respondent's policy on grievance procedures (which it is submitted by Ms Chute and which I have accepted was not contractual) and the section which says that the Respondent may chose to do this if there is a separate grievance to investigate, there is no compulsion on the Respondent to do so. Most of the extra points raised in those written representations were ones which, to the extent they were relevant to the issue of whether the Claimants should have been dismissed, could quite properly be looked at in the context of the disciplinary hearing. To the extent that there were any others separate from this, it was open to the Respondent to put the disciplinary hearing on hold and deal with them separately. However, I do not consider that the fact that the Respondent chose not to do so was unreasonable or renders the dismissal unfair.

148. The issue was looked at in the context of the appeal when the Claimants suggested that the disciplinary should have been put on hold. Professor Blackwell looked at the issue and concluded that there was no formal grievance raised in the disciplinary hearing but that they may have had some dispute. This was correct; the written representations for the disciplinary hearing did not set out factors as a separate grievance. However, to reiterate the point already made that, whilst the Respondent could have chosen to put the disciplinary hearing on hold and investigate some of these matters separately, the fact that it did not do so does not render the dismissal unfair.

149. Ms Chute has referred to the email of 8 June 2016 from Ms Geary to Mr Fraser in which she says "I really cannot continue to have them on the

payroll beyond the end of June at the very latest." Ms Chute says that this shows that the decision to dismiss the Claimants was a forgone conclusion. However, I accept Mr Perry's submission, as borne out by the evidence given by Mr Rounding, that this line in an email by Ms Geary simply expressed her frustration at not being able to progress, as an HR professional, a situation where two employees had failed to return to the London Office for over a year beyond the period when the Respondent expected them to return and, in particular, that she was being held back from progressing matters expeditiously and properly by others at the Respondent who, because of their concerns about the server, had for some time prevented her from taking action. I do not consider that it amounts to a forgone conclusion. Furthermore, it was not Ms Geary who took the decision to dismiss.

150. In a similar vein, Ms Chute submits that a dismissal is unfair because the allegations are historic in the sense that the demands for the Claimants to return to work were in 2015 and yet disciplinary action was not taken until September 2016 and that the Respondent has somehow "affirmed the breach". However, firstly, there was a good reason why HR did not take disciplinary action when they did, namely management's concerns about the potential damage to the business if the server were not secured before disciplinary action was taken. Whether or not, as Ms Chute submits, this was based on paranoia on the part of the Respondent's management, it was not unreasonable for them to be concerned about this risk and it was not unreasonable of Ms Geary to hold off disciplinary action against the Claimants at their request. Once the server was secured, disciplinary action was expedited relatively shortly afterwards. Furthermore, I do not accept that the Respondent had "affirmed" the breach. As I have already found, although the specific written requests to return were in 2015, there was nothing from the Respondent to the Claimants indicating that they now did not have to return to work in London. They were given a dispensation whilst they sorted out their immigration issues. However, the expectation, of which I have found the Claimants were fully aware, was that as soon as they had done this they would return to work in London expeditiously. There was no affirmation of the contract.

151. Finally, Ms Chute has submitted that, because Ms Stewart, the disciplinary decision taker, was copied into the 8 June 2016 email exchange in a later email by Mr Fraser (the chain which starts with Ms Geary's comment about "I really can't continue to have them on the payroll beyond the end of June at the very latest") she as decision maker knew what HR wanted as an outcome and could therefore not be independent and fair, rendering the dismissal unfair. However, I do not accept this. It was not Ms Geary who brought Ms Stewart into the email chain; rather it was Mr Fraser. There was therefore certainly no intention that Ms Geary should be expressing a view and making sure that Ms Stewart heard about it. Furthermore, I refer to the findings I have already made as to what Ms Geary's comment amounts to; it does not, as I have found, amount to a statement that Ms Geary intends the decision to be a foregone conclusion; if, for example, the Claimants had said "sorry we have not come back yet but we should be able to do so within the

next few weeks", the decision may have been a different one; however, in the light of the fact that they had not come back for such a long time and had expressed no intention of doing so, it is fair to say that it is always likely that the outcome of the hearing would be that they were dismissed. I do not, therefore, consider that Ms Stewart was not able to and did not make an independent decision on the merits of the case because she was copied into this email and, whilst it is unfortunate that she was, the fact that this happened does not render the dismissal unfair.

152. Finally, given that the Claimants had not returned to work in London and there was no indication from them that they would return or when or that they might return if certain conditions were met, I consider that the decision to dismiss in these circumstances was within the reasonable range of responses open to a reasonable employer and that the decision to dismiss was therefore not unfair.

Polkey/Contribution

153. As I have found that the dismissal was not unfair, it is not technically necessary to consider these issues. However, for completeness, I do.

154. In relation to Polkey, firstly, whilst I have not found that there were any procedural failures, I accept Mr Perry's submission that, had there been any, the Claimants would nonetheless have been fairly dismissed in any event at the time that they were dismissed. This is because none of those procedural failures, such as they may have been, detract from the fact that the Claimants had not come back to work in London and there was no indication that they would.

155. Secondly, Mr Peiris in his evidence admitted that the Claimants would not be coming back to work in London. Therefore, even if the dismissal had been technically unfair, it would have taken place fairly at the point that it did on the basis that the Claimants were never going to return to London anyway. Therefore, had the dismissal been unfair, I would have made a 100% reduction in the compensatory award for unfair dismissal. Given Mr Peiris' admission, the Claimants either would have resigned or would have been fairly dismissed for gross misconduct.

156. In terms of the Claimants' contribution, Mr Perry has made a number of submissions as to why there should be a reduction for the Claimants' contributory conduct. Suffice it to say, the fact that they themselves did not come back to work in London contributed 100% to their dismissal and, had the dismissal been unfair, I would have made a 100% reduction in both the basic and compensatory awards.

Breach of Contract (Notice Pay)

157. I do not reiterate all of the findings of fact made above. However, the Claimants were contractually obliged to work in London and, having been told to return, they had not done so and were therefore in breach of contract.

That breach was a fundamental one, not working at the place of work at which they were obliged to work. It is also worth noting that, as per the Respondent's witnesses' evidence, whilst it was possible to carry out the technical duties of a software engineer remotely for a limited period of time, it was not possible properly to carry out the whole duties of the job. It is not therefore a breach of contract without consequences and was a fundamental one entitling the Respondent to terminate the Claimants' contracts summarily.

158. There was, therefore, no breach of contract by the Respondent and the breach of contract complaints in relation to notice pay therefore fail.

Holiday Pay

159. As per my findings of fact, I found that the Claimants did not take any of their 2016 holiday entitlement. They are therefore entitled to be paid whatever accrued holiday pay is due to them in relation to the 2016 holiday year up to the date of dismissal. As noted, whilst this matter can be resolved at the remedies hearing listed, it is hoped that the parties will be able to agree these calculations between themselves and that the remedies hearing can be vacated as soon as possible.

Identity of Respondent

160. Mr Perry has submitted that the correct Respondent is "St Patrick's International College Limited" because that is the name on the contracts (albeit the name on the contracts is actually "St Patrick's International College"). Ms Chute has submitted that, because the payslips have the name "St Patrick's College Limited" on them and it is therefore not possible to determine which is the correct employing company, any awards should be made jointly and severally against both.

161. I accept Ms Chute's submissions. From the evidence before me, I am unable to determine which of these two companies is the correct employing company. I therefore confirm that the awards in relation to holiday pay and the hosting fees are made jointly and severally against both St Patrick's International College Limited and St Patrick's College Limited. It has not been submitted that control of these two entities is separate and I therefore infer that both entities are related to the College. It is therefore appropriate that any awards be made on a joint and several basis.

Tribunal Fees

162. In the light of the recent Supreme Court decision quashing the fees order, no order is made in relation to any fees paid by the Claimants in relation to this claim (if any).

_____
Employment Judge Baty
8 September 2017