



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Wade

Respondents: 1. Governing Body of Wargrave CE Primary School
2. St Helens Borough Council

Heard at: Liverpool

On: 20-28 March 2018
16 April 2018
(in Chambers)

Before: Employment Judge T Vincent Ryan

REPRESENTATION:

Claimant: Ms K Davies, Counsel

Respondents: Mr D Tinkler, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was unfairly dismissed by the first respondent under powers delegated to it by the second respondent on or about 28 July 2016 (upon receipt of a letter dated 27 July 2016) for reasons related to conduct. The second respondent affirmed the first respondent's decision. The claimant's claim that she was unfairly dismissed is well-founded and succeeds.
2. The first respondent breached the claimant's contract of employment with regard to notice pay acting under powers delegated to it by the second respondent. The second respondent affirmed the first respondent's decision. The claimant's claim that she was wrongfully dismissed by the respondents on the above date succeeds.
3. For the avoidance of doubt the claimant's claim in respect of holiday pay, if any had been intimated, is dismissed on withdrawal.

REASONS

1. The Issues

- 1.1 Unfair Dismissal Claim – in circumstances where the claimant, a head teacher accused of maladministration leading to disrepute and unethical practices, was summarily dismissed the issues to be decided were:
 - 1.1.1 Whether she was dismissed for a reason related to her conduct;
 - 1.1.2 Whether the dismissal was fair or unfair in all of the circumstances, depending on consideration of whether the respondent(s) acted reasonably or unreasonably in treating the claimant's conduct as sufficient reason to dismiss her.
 - 1.1.3 In deciding the issues above the tribunal was to, and did, consider whether:
 - 1.1.3.1 the dismissing disciplinary and appeal panels had a reasonable and genuine belief in the claimant's "guilt" of the conduct of which she was accused (and which she denied);
 - 1.1.3.2 in reaching its conclusion the panel took account of and based its decision upon a reasonable investigation;
 - 1.1.3.3 Dismissal, and indeed every step taken by the respondent(s), fell within the range of reasonable responses of a reasonable employer to the circumstances pertaining.
 - 1.1.4 At the parties' request I have not made a formal finding with regard to any deduction to reflect the risk facing the claimant of her being fairly dismissed or of any contributory deductions. Those are issues to be resolved at the remedy hearing. Such matters will fall to be considered at the remedy hearing in the light of the judgment below.
- 1.2 Wrongful dismissal claim: – The issues in respect of the wrongful dismissal claim are different from a statutory unfair dismissal claim. The wrongful dismissal claim must be based upon a breach of contract and the concept of reasonableness is not the primary concern. The issue is whether or not the respondent was entitled to dismiss without notice and to withhold notice pay such as where the claimant's conduct breached the contract in a fundamental way, for example by gross misconduct. The question is whether the parties have respectively abided by the terms of the contract. I must attempt to satisfy myself as to whether the claimant's conduct did in fact breach the contract in such a way as to entitle the respondent to act as it did in the dismissal; this is a different exercise to deciding whether or not the respondent had a reasonable and genuine belief in guilt.

2. The Facts

- 2.1 The first respondent:
 - 2.1.1 The respondent is a Church of England Primary School ("Wargrave"). It is voluntarily controlled by the second respondent.

It has a Governing Body (“the Governors”) with delegated power to dismiss staff albeit they are employed by the second respondent. The Governors meet regularly each term to hold a strategy committee meeting. Wargrave is a Group 3, medium to large, primary school with 338 pupils aged between 3 and 11 years.

- 2.1.2 Wargrave is subject to Ofsted inspections. At an interim inspection on 20 April 2014 the school was adjudged to have sustained good performance as a result of which inspections were to follow every five years rather than every two years (pages 659/660 of the trial bundle; all page references refer to the trial bundle unless otherwise stated).
- 2.1.3 Philip Friend: Mr Friend is a Consultant Educationalist and he carried out a Head Teachers’ Performance Review upon the claimant in 2015 (pages 425-431). Before preparing his report, he visited Wargrave on 19 October, 22 October and 3 November 2015. In respect of a number of areas of schoolwork he considered that Wargrave’s performance was “outstanding”, namely in bookwork, classroom environment, relationships within the school, staffing arrangements and staff work. He considered that the pupils were making appropriate progress and said that Wargrave was well organised. He concluded that the claimant could do no more to improve matters despite her concerns generally over Ofsted inspections. Quoting this as a term of art in this context, Mr Friend reported that Wargrave was “outstanding”.
- 2.1.4 PBM conducted an audit in 2015 of Key Stage 1 and Key Stage 2 subjects (KS1 and KS2) (pages 433-446). The report has a number of appendices. The audit identified nine strengths and five weaknesses in Wargrave’s performance, commenting especially favourably with regard to its work with phonics and concluding that broadly average achievement levels were being reached and achievement was in line with expectation. The audit, however, concluded that attainment at KS1 in all subjects was below average for five years and that the KS1 in Maths was “significantly below average for two years”, with a further mention given to KS2 Maths.
- 2.1.5 The data informing the above reports was all readily available to the Governors, either by request or online through an available portal. Raw data was regularly posted online for consideration by the Governors. In addition to that data, the claimant would provide analysis and summaries at regular intervals. The next such report due after the PBM audit was at the February 2016 meeting (by which date the claimant had been suspended and she was not permitted to attend the Governors’ meetings).
- 2.1.6 As confirmed in the respondents’ ET3 grounds of resistance, and relied upon by the claimant in mitigation with regard to some of the achievement levels quoted, Wargrave is in a Borough Ward

just outside the top 25% of the most deprived Lower Super Output Areas nationally according to the National Indices of Deprivation. It is bordered by two Lower Super Output Areas within the top 10% most deprived nationally.

2.2 The first respondent is the Governing Body that employed the claimant to work at its Primary School, Wargrave CE Primary School ("Wargrave"). The second respondent paid the claimant's wages and provided support to the first respondent. In this case the support included providing not only advisers but an investigating officer and assistance to the Governors that adjudicated at the disciplinary hearing and appeal hearing. These claims are properly made against the both respondents, albeit it is understood that any award of compensation and damages would be made against the second respondent. For the rest of this judgment references to the respondent is a reference to both respondents jointly unless otherwise stated or the context dictates that it is a reference to the first respondent, and as indicated above the school will be referred to where necessary only as "Wargrave".

2.3 The Claimant –

2.3.1 The claimant qualified as a teacher in 1999 and she was a non-teaching Deputy Head between 2006 and 2010 gaining experience in SATs administration, KS1 and KS2.

2.3.2 The claimant was appointed Head Teacher at Wargrave on 31 August 2010 and was employed as such until her dismissal by a letter dated 27 July 2016 (pages 502-503).

2.3.3 Until the matters for which she was dismissed arose, she had a clean disciplinary record and was considered to be a successful Head Teacher.

2.3.4 The 2011 Ofsted report made positive comments about the claimant's leadership skills and she was appreciated.

2.3.5 The claimant produced documents (pages 661-662, 667-670 and 663-666) referencing an exceptional school award, an inclusion mark and quality mark (silver) all of which reports and conclusions were complimentary about the claimant and her leadership performance.

2.3.6 The respondent raised no issue over the claimant's performance at appraisals. The October 2015 performance review is contained in the bundle at pages 425-432 and again is instructive of the appreciation of the claimant's efforts (this the report of Philip Friend referred to above); this review was disclosed by the claimant to the Governors; she hoped that it would assist her in securing a pay increase but it was properly due and disclosable to the governors in any event.

- 2.3.7 The claimant was conscientious in wanting the best results for Wargrave in the best interests of the children, the school as a whole and herself. She was target driven, as seemed to be required by the respondents and the Department of Education. The targets in question are national and/or local and were not of the claimant's making. The claimant was dedicated to school improvement by reference to those targets. The claimant would enthusiastically encourage colleagues directly, during supervisions, during moderation exercises and via referral to mentors with a view to their achieving targets for their pupils and each class. She was intolerant of shortcomings measured against those targets and was anxious to hit all targets set. She made this known to her staff, many of whom felt under pressure from her not only to achieve targets but to do so by cutting corners and worse if necessary (these allegations are addressed below). The claimant was a fairly forceful taskmaster, and I say this on the basis of the evidence produced to the disciplinary panel following investigation. I did not hear any evidence from teachers or classroom assistants, but their evidence to the investigating officers that was considered at the disciplinary and appeal hearings was available to me.
- 2.3.8 The claimant was also involved in extra-curriculum educational activities, for example as an Ofsted inspector. Her activities in the field of education for the purposes of the local Education Authority and/or Ofsted took her off-site frequently and regularly.
- 2.3.9 The claimant regularly reported on the school's performance to the Governors. She would always accentuate the positive to the point, nearly, of eliminating the negative. Her emphasis was always on achievement and aspiration for greater achievement. Her optimism was with a view to driving success and, in a sense, selling both the school and her accomplishments to the governors. There was potential for the claimant to gain financially if the school was successful, but I do not find that this was the claimant's primary motive. Targets were a challenge to be met positively and to be achieved wherever possible so as to show the school and its pupils in the best light. To use a cliché, the claimant was inclined to "put a spin" on some of the data available to her. She did not do that at the expense of altering data but her reports remained relentlessly positive despite some potentially discouraging data. This was in line with her nature as I observed it and the whole target ethos as it was described by her. The claimant believed that she did as she was required to do with regard to getting the best results from colleagues and pupils and by wherever possible painting Wargrave in the best colours.

2.4 Cast list –

Albrecht, Anthony (AA) – Year 3 Teacher

Banks, David (DB) – Chair of Disciplinary Panel/Dismissing Officer

Barker, Tracy (TB) – Principal HR Officer
Bracken, Clive (CB) – Principal HR Officer
Cahillane, Kath (KC) – Year 2 Teacher
Cooke, Frank (FC) – Chair of Governors
Cunliffe, Rebecca (RC) – Year 2 Teacher
Davies, Joanne (JD) – Assistant Director of Education
Dove, Lynn (LD) – School Office Manager
Epstein, Amanda (AE) – Assistant Head
Farrell, Brendon (BF) – Head of HR with R2
Hall, Kathy (KH) – Chair of St Helens Head Teachers' Association
Kamczyk, Amanda (AK) – Year 3 Teacher
Mason, Andrea (AM) – Year 4 Teacher
Miller, Natalie (NM) – Learning Assistant
Rigby, Steven (SR) – Senior Principal HR Officer
Rowe, Andrew (AR) – Chair of Appeal Panel
Shaw, Laura (LS) – Year 3 Teacher
Swann, Matthew (MS) – Year 2 Teacher
Tomkow, Nicola (NK) – Assistant Head Teacher
Wade, Susan (C) - Claimant
Wyatt, Mike (MW) – Strategic Director People Services R2

2.5 Senior Leadership Team –

Claimant
Albrecht, Anthony (AA)
Epstein, Amanda (AE)
Swann, Matthew (MS)
Tomkow, Nicola (NT)

2.6 Investigating Officers –

Cooke, Frank (FC) – Chair of Governors

Farrell, Brendan (BF) – Head of HR with R2

Hall, Kathy (KH) – Chair of St Helens Head Teachers' Association

2.7 Disciplinary Panel –

Banks, David (DB) – Chair

Brookfield, Anne (AB) – Governor

Fisher, Sonjia (SF) – Governor

Carter, Jane (JC) – HR Support

2.8 Appeal Panel –

Rowe, Andrew (AR) – Chair

Dearden, Jane (JD)

Cain, Cheryl (CC)

Ingham, P (PI) – HR with R2

2.9 Acronyms and abbreviations –

SATs – Standard Assessment Tests

STA – Standards and Testing Agency

PBM – A consultancy that prepared a “RAISE online Analysis Service Report” for the respondent.

2.10 Events of 13 May 2015 –

2.10.1 Wargrave and its pupils are subject to regular testing and inspection. Some year groups sit SATs in some key subjects including mathematics. On 13 May 2015 twenty eight Year 6 pupils did their Maths SATs at Wargrave. They were in NT's class and her classroom assistant was NM. Owing to personal circumstances one of the class, referred to throughout the hearing as SPL and whose mother was referred to as Mrs PL, had to also sit a reading test alone, separated from her class. SPL's test was facilitated by a “timetable variation” granted or approved by R2 and the Examining Body, the STA. The plan was for SPL to undergo the reading test in the claimant's office, administered by AA, while NT would manage the Year 6 Maths SAT in the religious education classroom assisted by NM. The twenty eight Year 6 pupils due to sit the Maths test were to be tested in two groups of ten and one group of eight children; each group would be tested using a CD recording while the other two groups waited in a different room supervised by another member of staff. NT handed out the papers on which pupils were to write

their answers and she collected them in from each group in turn. The groups completed the tests respectively at approximately 13:30-13:50, 13:55-14:15 and 14:20-14:40. The first group's completed scripts were collected in and retained by NT in the RE room while the second group was tested; its completed scripts were added to the first group's while the third group was tested; the third group's scripts were finally collected in and added to the other pile of completed scripts. Accompanied by NM, NT took all the completed sheets (there was no separate answer sheet) to the claimant's office at approximately 14:45. Because SPL was undergoing testing in the claimant's office, both AA and the claimant were in the room and NM waited outside while NT left the completed papers from the three tested groups in the claimant's office. NT left the claimant's office.

2.10.2 SPL completed her reading test after NT had left. Upon completion of that test AA left the claimant's office. Subsequently Mrs PL arrived to collect SPL and she was accompanied to the claimant's office by NT. After a conversation about their circumstances Mrs SPL and NT left the claimant alone in her office. She was alone save only for the fact that she kept her office door open and it was generally a busy office with frequent comings and goings. There is no specific evidence of anyone else entering her office before the time that members of the SLT arrived to collate the exam papers in readiness to parcel them off to STA. The Year 6 Maths papers were in the claimant's office with the claimant on her own, subject to any unrecorded or unremembered intrusions, for a period of between five and forty minutes. The difference in timing is dependent on whose estimate was more accurate, either NT or the claimant. I am not able to make a positive finding of fact as to the exact amount of time that the claimant was alone with the exam papers, or indeed as to whether the papers were left by NT on the claimant's desk or were put, as they ought to have been, in a safe and locked. Either way, NT, NT and NM together, and the claimant all had some time in which they had access to the completed scripts before the events described below.

2.10.3 When the SLT arrived in the claimant's office the claimant gave the Year 6 Maths papers back to NT for her to check; that was the claimant's last involvement with those scripts and in her version of events was her only involvement. The claimant made NT responsible to ensure that the frontispiece of each completed paper had been properly completed by each pupil and that there were twenty eight identifiable, completed papers. This task fell to NT as she had the greater familiarity with the class and had administered the SATs test. NT checked and then collated the papers in the claimant's office with the claimant and members of the SLT present including AE and MS who assisted her. NT put the completed collated papers into the STA's regulation envelope and sealed it. It was then sent to STA. In essence,

therefore, NT had distributed otherwise untouched question papers and collected in completed scripts from three groups of children, and had been in the RE room with them (assisted by NM) for a total period of one hour 10 minutes before she took those papers to the claimant's room and she subsequently had the task of checking through them before putting them in a sealed envelope; the claimant was more-or-less alone in the same room as the papers for somewhere between five and forty minutes. NT was the teacher of the class being tested and was in that sense responsible for the pupils' success. The claimant was NT's line manager and was, with the Governors, responsible for the success of the school.

2.10.4 Upon marking the said papers the STA detected fifty three amendments or corrections to eighteen of the twenty eight Year 6 papers. It is accepted by all parties that the alterations were patent and obvious, for example numbers had been written over; the alterations were visible without the need for any special lighting or other testing. The state of the papers was conceded by the claimant who visited STA to examine them with NT. All of the parties accept that the alterations were made at Wargrave on 13 May 2015 and that nobody was entitled to or authorised to make such changes. The fact of the alterations invalidated the pupils' submissions such that eighteen completed Maths SATs were formally annulled by the STA. All parties consider that the only two likely culprits were the claimant and NT; they blame each other. Both the claimant and NT had the opportunity to make amendments to some of the completed scripts (as had NM with NT); both the claimant's (as head teacher) and NT's (as class teacher) performance could be in part judged on the results of that SATs test. The claimant knew, and I infer from her position on the SLT and as class teacher that NT knew or ought reasonably to have known, that there was a need to improve performance in maths.

2.10.5 I heard oral evidence from the claimant and read her statements to the disciplinary investigators and panels. I did not hear evidence from NT or NM but their written statements and a record of any oral answers to the disciplinary investigators and panels were available to me.

2.11 Events after 13 May 2015 –

2.11.1 On 7 January 2016 STA notified the claimant of the discovered alterations to the SATs papers. The claimant called a meeting of the SLT, all of whose members signed a statement that appears at pages 325-320. The claimant asked NM (not a member of the SLT) to countersign the statement because she had been involved in the administration of the test. The statement is exculpatory. It describes all of those involved in the distribution, administration and general handling of the SATs test as following an impeccable procedure to STA requirements with

regard to security. It is a detailed account of the events that the actors unanimously stated at the time had occurred. This version of events left NT with no opportunity to unilaterally alter any of the scripts unobserved; it allowed for the claimant to have been alone in her office with the completed papers some time after SLP had finished her reading test at 3.15pm (after which she was collected by her mother who had a conversation with the claimant) and the first of the SLT to arrive for collation and administrative checking of the scripts between 3.30 and 3.45pm, a maximum period of 30 minutes and a minimum period of less than 15 minutes. The SLT stated that the papers were locked away prior to the test, after completion and prior to initial collation and again prior to collection in the sealed envelope. Clearly some of the SLT signed a statement describing events of which they had no direct knowledge. It is however a unanimous endorsement of both the claimant's and NT's actions written out at the claimant's behest with a view to the SLT showing a united front in the face of serious allegations. The claimant wanted the SLT to close ranks against the inevitable criticism to follow and expressed that wish and intention to the SLT and NM when the statement was produced at her instruction. The alterations to the completed pupil scripts amounted to what STA classed as "maladministration". "Maladministration" is "any act that affects the integrity, security or confidence of the National Curriculum Assessments which could lead to results and/or outcomes that do not reflect pupils' unaided work or actual abilities". The SLT's statement was sent to STA.

- 2.11.2 The test papers were inspected by C, NT and KH on 11 January 2016 and by JD, BF and FC (the investigating officers) on 18 January 2016. Following his visit FC failed to respond to the claimant's messages to him when she wished to discuss the situation. The claimant felt that she was being shunned. In the meantime MW had written to the claimant on 13 January 2016 confirming that BF was to conduct an investigation on behalf of R2 assisted by JD. FC subsequently joined them as part of the panel of investigating officers. The Head of HR, the Assistant Director for Education and the Chair of R2's Governing Body comprised a high ranking investigative panel which reflected how seriously the said alleged maladministration was viewed by R1 and R2.
- 2.11.3 On 19 January 2016 and following his consideration of the completed papers FC advised the claimant to obtain trade union representation and said to her that the person found to have been responsible for the maladministration would not work again at Wargrave.
- 2.11.4 Arrangements were made for the said panel to visit Wargrave on Friday 22 January 2016 to meet with the claimant and commence investigatory interviews, but in fact the investigating

officers visited the school for that purpose on 21 January 2016 when the claimant was absent on self-certified sick leave. The claimant had informed BF that she would be absent from school on 21 January 2016, believing that the meeting would be on 22 January, but the investigators brought forward the meeting and commencement of the investigation; it commenced therefore in her known absence and contrary to the arrangement made with the claimant.

2.11.5 In consequence of the panel's conversations with members of staff on 21 January 2016 (in the claimant's absence and without her input), BF, in consultation with FC, wrote to the claimant (page 686) informing her of "concerns" about her management of the school, which concerns BF said had been brought to his attention; BF said that he was attending a governors' meeting and would be meeting with staff and that she was required to attend for an interview on 25 January 2016 but in the meantime she was not to attend at Wargrave. She was informed of her right to be accompanied by a trade union representative at the forthcoming meeting. The claimant had therefore been singled out for suspicion and formal investigatory interview into the maladministration of SATs and other unspecified management "concerns". On 22 January 2016 BF firmed up on the terms of suspension saying that the governors did not want her to attend Wargrave unless either BF or JD so instructed. She was instructed not to discuss school matters with colleagues or governors but only to raise enquiries via BF or JD. At C's request the interview set for 25 January was re-arranged. From 21/22 January 2016 until the termination of the claimant's employment and subsequent appeal BF's documented involvement at every stage indicates his suspicion of the claimant's guilt of maladministration and mismanagement. BF did not give evidence at the final hearing before me; my conclusions in respect of his involvement are on the basis of reading documentation and the evidence of the claimant and the respondent's witnesses.

2.12 BF did not give evidence to the Tribunal but from his documented involvement, in the investigation, at the disciplinary hearing and at the appeal, I infer that he had prejudged the claimant's guilt and sought to persuade R1 of the claimant's guilt of misconduct. Ms Davies emphasised in her written submissions examples of BF's actions, errors and language illustrating bias (paragraphs 20.1, 20.2, 28.1, 28.2, 40, 76, 79.1, 80, 81, 84, 85 and 88), inconsistency (paragraphs 20.3, 20.4, 20.5) and his omissions (paragraph 74 and 83). Although those examples are relied on by the claimant in submissions I find as a fact that BF's attitude and the panel's report contains the said errors, prejudicial language, and inconsistencies and the submitted omissions, and that these matters were as set out by Ms Davies in the paragraphs to which I have referred. The formal investigation by the investigatory panel gives every appearance of being pre-judged and prejudicial to the claimant, seeking to obtain condemnatory evidence and

avoiding consideration of exculpatory evidence in respect of the claimant. Witnesses were asked leading questions and witnesses were told of the allegations and comments made by others; suggestions were made to witnesses of matters they might wish to raise in that an allegation would be put to the witness for comment rather than the witness making an allegation unprompted in reply to general open questions. Witnesses were misled as to what the claimant was supposed to have said (such as that she had said a witness who made an accusation was lying when she had not) and they were given opportunities to comment on the claimant's explanations. All of these matters are as listed by Ms Davies comprehensively at length in her submissions on the investigation.

- 2.13 The claimant was suspended by FC by a letter dated 27 January 2016 pending investigation (pages 293-294). The claimant was forbidden from contacting her colleagues or governors without FC's prior consent. She did not seek consent. She did not approach colleagues or governors for support during the disciplinary procedures. The claimant erroneously believed that she was not allowed to make such contact; she did not question this or challenge what she believed was a total prohibition. It was not one; she was mistaken. The disciplinary and appeals panel understood that the claimant would have called supportive witness evidence if she had wanted to and believed she chose not to do so. The claimant did not return to work.
- 2.14 On 5 February 2016 FC wrote to the parents and carers of children attending Wargrave confirming that maladministration had taken place as a result of which some KS2 mental arithmetic SATs results had been annulled, that an investigation was underway, that the claimant had been suspended routinely and that NT and AE would assume leadership and management of the school supported by JD.
- 2.15 In fact NT (the only other person identified as a co-suspect by all parties in respect of alterations to the SATs scripts, and the teacher who was responsible for management of the SATs tests in question and collation of the forms) was appointed to run training meetings for external and internal SATs moderators at the school. NT remained at her work in her enhanced role as Acting Head Teacher throughout the investigation into the claimant's conduct; she continued to have unconditional access to colleagues and governors during this time. The investigatory panel did not treat her as a co-suspect at any time.
- 2.16 When NT was interviewed by the investigatory panel the meetings were conducted in accordance with R2's confidential reporting policy/whistle-blowing policy having been reassured that all employees making disclosures would receive the protection so afforded. In contra-distinction the claimant was interviewed under the respondent's disciplinary policy. NT was first formally interviewed on 25 January 2016 (pages 329-332) as were AE, AA, MS, KC and LD. The claimant's interview was postponed at her request and was held on 28 January 2016; the claimant was warned that it was a formal interview that could be used in disciplinary proceedings and that it may be used in any referral to the National College for Teaching and Leadership ("NCTL"), an Executive Agency at the Department of Education.

The claimant was not further interviewed until the disciplinary hearing on 25 May 2016. NT was interviewed on subsequent occasions, such as 24 February 2016, and she provided a supplementary statement on 21 April 2016 (page 370). Every member of the staff interviewed on 25 January 2016 was re-interviewed following the claimant's formal interview and some members of staff were interviewed for the first time after the claimant's formal interview. SR, AA, MS, CB and JD were also invited to provide statements in April 2016. All witnesses were given opportunities to comment on the claimant's evidence. The claimant was only given the reciprocal opportunity to comment on the other witnesses' statements at the disciplinary hearing. The claimant was cast by the respondents as the culprit from the earliest stages.

- 2.17 The claimant made requests for access to emails and documents. She was given opportunities to attend at the school, the Town Hall, and an annexe to the Town Hall for the purpose of inspection. The respondent attempted to arrange dates and venues acceptable to the claimant. The claimant imposed restrictions on her availability for personal reasons and would not attend the school premises. Any failing or omission in respect of disclosure and inspection of documents was attributable to the claimant's reservations. The respondent did not impede the claimant's preparation. The respondent granted various extensions of time and postponement of interviews and of the disciplinary hearing until ultimately it refused and expected the claimant to re-arrange a personal appointment, which she did, so as to facilitate the disciplinary hearing.
- 2.18 The claimant prepared and submitted a statement of events on 24 January 2016 (pages 95-100), and an email regarding her concerns (pages 110-112). She amended the minutes of her interview. The claimant was given the opportunity to, and did, prepare very detailed documentation in rebuttal of the allegations.
- 2.19 R1 and R2 obtained evidence to support seven disciplinary allegations as follows:
 - 2.19.1 Maladministration of KS2 Mental Arithmetic tests.
 - 2.19.2 Failing to follow STA guidance in the administration of SATs.
 - 2.19.3 Unprofessional and unethical conduct with regard to the accuracy of assessment data.
 - 2.19.4 Unprofessional and unethical conduct with regard to recording work in children's books ("the World of Glass allegation").
 - 2.19.5 Falsification of documents regarding the claimant's attendance at work on ten dates between June 2014 and December 2015 ("the A1 forms").
 - 2.19.6 Misleading governors about school performance.
 - 2.19.7 In the light of the first allegation, bringing Wargrave into disrepute.

- 2.20 With regard to each of the above allegations the respondent received evidence on the following matters:
- 2.20.1 That only NT had been seen to handle the completed KS2 Mental Arithmetic scripts on 13 May 2015 and only C and NT had any opportunity or motive for amending them, and that only the claimant, and NT with NM, were otherwise alone and unobserved with them.
- 2.20.2 STA produced guidance on security for KS2 tests that did not specify mandatory rules but gave only practical advice such as storing materials “in a secure locked cupboard in a separate room and with a high quality lock if possible”. Wargrave stored its materials in a cupboard in the claimant’s office because of lack of space. The storage cupboard’s lock was unreliable in that it did not lock or unlock easily, but it was capable of locking securely if care was taken. The key was kept in LD’s office. There was a written signing in and out procedure but the investigating officers failed to locate it. The SLT confirmed compliance with the Guidance save that the lockable storage cupboard was in the claimant’s office.
- 2.20.3 Teachers assessed performance with the aid of their mentors and a system of moderation then involved mentors and the claimant. Teachers were expected to justify their assessments. Moderation could be robust. Satisfactory assessments, ones showing pupil progress and achievement, were beneficial to the school’s standing especially when compared to local school grading. MS felt C exerted “extreme pressure” on teachers to report children at age related expectations even if contrary to some teachers’ own feelings, relying on statistics rather than the children’s actual ability and that she acted in an unreliable and blinkered way; he gave no specific details but referred to fear of the claimant and her “forceful nature”. This was partially corroborated by AA (page 339) who in answer to a question from BF agreed “KS1 data was over-inflated”. His experience was that some children in his classes who had previously been taught and assessed by RC and MS were not performing to their assessed levels and both teachers had felt the same (page 344); he did not, however, specifically blame the claimant in that statement. In her statement (page 349) AM “agreed” that data was over-inflated throughout the school which she disliked, and said that the claimant had asked her “to reconsider the levels and submit them” albeit she gave no examples. RC stated that two unnamed pupils had inflated assessments at C’s suggestion as pupils ought not to have regressed, when in fact RC felt that they had regressed. RC gave those pupils an inflated assessment. LS made non-specific allegations of teachers’ concerns of over-inflation and that she understood why some teachers might say that they felt bullied by the claimant and would change data and amend school books. A number of teachers reported feeling pressure and fear or that they understood why others could report feeling that they were bullied

by the claimant to inflate pupil assessments. Some teachers admitted to amending assessments or school books despite their misgivings. A number of staff felt pupil data was inflated and unsatisfactory, albeit they were responsible for the assessments and subsequently signed them off. The investigators and the disciplining/appeal panels received no specific allegations relating to named individual pupils whose work and assessments they then checked. C did not complete the pupil assessments. The claimant in fact moderated assessments as required and in accordance with procedures and referred teachers to their mentors as appropriate; the teachers completed the assessments; no teachers were investigated for providing false or misleading assessments of pupil achievement; the claimant urged positive assessment where possible; she provided leeway for pupils returning from holidays to improve within line with her expectations over weeks following resumption of term in the belief that it was beneficial generally to assume the best for pupils and that they would quickly catch up to their true potential after holidays. C sought the best assessments for the pupils. She encouraged staff to achieve this. Without hearing evidence from other staff members I was unable to find that C had bullied anyone, or put them in fear, or had instructed anyone to make false and misleading assessments.

- 2.20.4 RC alleged that she had been told to make up science work to show in pupils' books for December 2015 because there was an absence of any. RC took it upon herself to pass off a field trip to The World of Glass that was undertaken in January 2016 as if it had occurred in December 2015. Initially the claimant was accused of instructing RC to re-date the trip to The World of Glass in her pupils' books to state that it occurred in December 2015 when in fact it occurred in January 2016 but it was established that the claimant was absent from school on and after the date of that trip and she could not have given the alleged instruction. RC maintained that the claimant instructed her to make something up. The claimant explained that she had encouraged teachers to think carefully as to whether any of the work that they had undertaken in December 2015 had been science related and, whilst not a formal science project or assignment, could nevertheless count as science input. It was important for the pupils to have science work each month and that was monitored on inspection; it was important to correctly label and record work undertaken even if informally and minimal. There was no evidence that the claimant told the staff specifically to lie about any particular science project, trip or assignment. I find that she did not do so; she did instruct staff effectively to use their imaginations so as to describe some science related activity in December 2015 when there was a lack of specific dedicated science activity. She wanted them only to describe actual activities that touched on science matters as such as this might satisfy the need for monthly engagement in science. RC felt she could not do that and she took it on herself to re-date

the World of Glass trip in the books of all of her pupils. RC was not investigated or disciplined.

- 2.20.5 Wargrave uses a form entitled "A1" to record absences, and this information is used by R2 to effect the payroll. LD completed forms and the claimant signed them off. LD was concerned at the number and frequency of the claimant's absences from Wargrave, albeit JD confirmed in a statement to the disciplinary panel that her level of absence was commensurate with JD's as a head teacher. Various reasons for absence, including personal appointments and extracurricular activities, and work related appointments were relevant. LD started keeping detailed records exclusively in respect of the claimant's comings and goings, devising a code/codes specific to the claimant's activities. LD said that ten A1 forms had been changed, only one of which she had changed on the claimant's instructions and the other nine must have been changed by the claimant. The claimant had challenged LD as to why she was keeping a record of her comings and goings, and LD deleted the coded information from the A1 forms. LD raised the matter of the A1 forms with NT on 6 January 2016, the day before the respondent was notified of the maladministration of the SATs. The claimant denied improper conduct and making any amendments. Her electronic diary was available to the assistant head and Chair of Governors; it was not checked during the disciplinary investigation or process. The panel did not check LD's form keeping generally or investigate the accuracy of the alterations made to the A1 forms. The panel chose to believe LD over the claimant when she alleged that the claimant had made improper alterations to forms submitted in support of wage calculations. LD was not investigated over her unauthorised coded record keeping in respect of C or her deletions to and amendments of those records when she was challenged; neither was she investigated as the keeper of the key to the storage cupboard in C's office and any opportunity or motive she might have had to gain access to stored pupil test papers using her access to and custodianship of the key.
- 2.20.6 Allegation of misleading governors: This allegation was made on the basis that the claimant was said to have relied on Mr Friend's report (see 2.1.3 above) to support a pay rise but did not disclose PBM's report (2.1.4). She was accused of only submitting positive news and not negative news. Whilst raw data was available to governors, summaries and analysis were only provided by the claimant and only periodically. The claimant was suspended before due disclosure of the PBM report. There is no evidence that the claimant misled governors by providing false data or lying about the data that was available. The evidence before the disciplinary and appeal panels was that the claimant put a positive spin on data. The panel chose to disbelieve the claimant's innocent explanation.

- 2.20.7 Disrepute: On the basis of its finding that the claimant was responsible for maladministration, favouring NT's word over the claimant, the panels concluded also that the claimant had brought the school into disrepute.
- 2.21 The parties agreed a chronology (C4). The only amendment to the typed version of C4, which was also agreed, is in respect of 21 January 2016 which should have referred to page 293 stating that the claimant sent a text to NT saying that she had self-certified her absence for seven days. As the chronology has been agreed and is not controversial, there are no issues of fact with regard to any of the dates cited, and I endorse it in full without repeating it; I adopt it by reference.
- 2.22 The claimant attended the disciplinary hearing as the sole accused. NT had not been interviewed under the disciplinary procedure or dealt with as if the investigating officers ever considered her to be a genuine co-suspect, notwithstanding her responsibility for the administration of the maths test in question. MM's role was discounted from the outset. In his evidence Mr Banks, who chaired the disciplinary panel, stated that the panel considered all of the evidence objectively and weighed up which of the two potential co-suspects could have been responsible and that it concluded on the weight of the evidence that the claimant was responsible. He was not convincing as to any objective and robust consideration of the actions of NT, and there was none. He accepted in cross-examination that there were errors and omissions in BF's investigatory report. He also accepted in evidence that questions put to witnesses and the claimant by BF could be interpreted, as suggested by Ms Davies, as showing bias and a mindset prejudicial to the claimant although that is not what the panel considered at the time of its decision. The panel saw nothing untoward about the investigatory process and report, notwithstanding its errors, omissions, inconsistency and language as found above (2.15 above). The panel accepted the report at face value; it approached the matter from the standpoint that the claimant alone was responsible for maladministration and was guilty of the charges against her. I find this on the basis of my reading of the documents, and the oral evidence of the claimant and Mr. Banks. Where they conflicted I found the claimant to be clear cogent and credible, having clearly thoroughly researched matters and prepared her rebuttal by reference to available evidence. On the other hand I found Mr Banks to be committed to his decision and that the panel approached the disciplinary hearing and its decision with a visceral sense that the claimant was more than likely guilty as confirmed by BF, and that would be the panel's finding whatever the claimant said in her defence or mitigation. The panel did consider the evidence made available to it by BF and staff members, accepting BF's report and all condemnatory evidence at face value, dismissing out of hand what the claimant submitted. Mr Banks could not explain coherently and credibly why the panel chose to disbelieve the claimant by reference to what she said and her detailed evidential submissions or how she did so but he relied only on saying that the panel considered the evidence and found as it did. I find that he and his colleagues genuinely believed that the claimant was guilty as charged on the basis of BF's flawed report and the circumstances in which Wargrave

found itself (with the claimant suspended for a long time and NT acting up as Head Teacher), which it felt was corroborated and vindicated by oral evidence of some disquiet from some staff members.

- 2.23 Mr Banks as Chair of the disciplinary panel wrote to the claimant with its decision dismissing her summarily on 27th July 2016 for the reasons set out in its letter at pp 502-503. The effective date of dismissal was upon receipt of that letter, believed to be 28th July 2016. The reason for the dismissal was a reason related to the claimant's alleged conduct. Fuller reasons were given by Mr Banks in a letter to the claimant dated 8th August 2016 (504 – 511).
- 2.24 I find the same facts as above in relation to the appeal panel and its deliberation. Neither panel carried out an objective forensic analysis of the evidence or gave due account to exculpatory or mitigating circumstances; the appeal panel failed to address the claimant's grounds of appeal in an objective and analytical way. The appeal was heard in the claimant's absence. Neither panel however seems to have reflected on the potential of the claimant's innocence or the guilt of anyone else, such as NT or NT/NM. Mr Rowe also accepted in cross-examination that there were deficiencies in BF's report and inconsistencies in the management case put forward which were not considered at the appeal hearing; I find that the appeal panel, consistently with the disciplining panel, failed to take account of apparent errors, omissions and inconsistencies in BF's report and it failed to question the language used which appeared on cross-examination to raise potential issues. If anything the appeal panel's consideration was cursory and I was unconvinced by the evidence of Mr Rowe that it did more than accept the disciplinary outcome at face value and dismiss the appeal out of hand. Mr. Rowe and his colleagues believed what was put before them by BF and the disciplinary panel and chose to dismiss the claimant's case without due scrutiny and consideration.
- 2.25 The second respondent wrote to the claimant on 11 October 2016 confirming that her appeal had been dismissed (p.193) and a brief explanation for that outcome was provided by Mr. Rowe by letter dated 14th October 2016 (p.194). The panel concluded, as it believed at the time, that the investigation had been reasonable and that the panel had been entitled to find as it did on the balance of probabilities based on the evidence before it.

3. The Law

- 3.1 Section 94 Employment Rights Act 1996 (ERA) states that an employee has the right not to be unfairly dismissed, while s.98 ERA sets out what is meant by fairness in this context in general. Section 98(2) ERA lists the potentially fair reasons for an employee's dismissal, and these reasons include reasons related to the conduct of the employee (s.98 (2) (b) ERA). Section 98(4) provides that once an employer has fulfilled the requirement to show that the dismissal was for a potentially fair reason the Tribunal must determine whether in all the circumstances the employer acted reasonably in treating that reason as sufficient reason for dismissal

(determined in accordance with equity and the substantial merits of the case).

- 3.2 Case law has established that the essential terms of enquiry for the Employment Tribunal are whether, in all the circumstances, the employer carried out a reasonable investigation and, at the time of dismissal, genuinely believed on reasonable grounds that the employee was guilty of misconduct. If satisfied of the employer's fair conduct of the dismissal in those respects, the Employment Tribunal then has to decide whether the dismissal of the employee was a reasonable response to the misconduct. The Tribunal must determine whether, in all of the circumstances, the decision to dismiss fell within the band of reasonable responses of a reasonable employer; if it falls within the band the dismissal is fair but if it does not then the dismissal is unfair.
- 3.3 Questions of procedural fairness and reasonableness of the sanction (dismissal) are to be determined by reference to the range of reasonable responses test also (**Sainsbury's Supermarkets Ltd v Hitt [2002] EWCA Civ 1588** and **Iceland Frozen Foods Ltd v Jones [1983] ICR 17**).
- 3.4 The Tribunal must not substitute its judgment for that of the employer, finding in effect what it would have done, what its preferred sanction would have been if it, the Tribunal, had been the employer; that is not a consideration. The test is one of objectively assessed reasonableness. In **Secretary of State for Justice v Lown [2016] IRLR 22**, amongst many others, it was emphasised how a tribunal can err in law by adopting a "substitution mindset"; the point was made in **Lown** that the band of reasonable responses is not limited to that which a reasonable employer might have done. The question was whether what this employer did fell within the range of reasonable responses. Tribunals must assess the band of reasonable responses open to an employer, and decide whether a respondent's actions fell inside or outside that band, but they must not attempt to lay down what they consider to be the only permissible standard of a reasonable employer.
- 3.5 Under the **Polkey** principle it may be appropriate to reduce an award by applying a percentage reduction to the Compensatory Award to reflect the risk facing a claimant of being fairly dismissed or to limit the period of any award of losses to reflect this risk, estimating how long a claimant would have been employed had he not been unfairly dismissed, in circumstances where the respondent would or might have dismissed the claimant. I must consider all relevant evidence, and in assessing compensation I appreciate that there is bound to be a degree of uncertainty and speculation and should not be put off the exercise because of its speculative nature.
- 3.6 Where a Tribunal finds that a complainant's conduct before dismissal was such that it would be just and equitable to reduce a Basic Award it may do so (s.122 ERA). Where a Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce any compensatory award by such amount as it considers just and equitable having regard to that finding (s.123 ERA). In doing so a Tribunal

must address four questions (**Steen v ASP Packaging Ltd [2014] ICR 56 EAT**):

- 3.6.1 What was the conduct giving rise to the possible reduction?
 - 3.6.2 Was that conduct blameworthy?
 - 3.6.3 Did the blameworthy conduct cause or contribute to the dismissal?
 - 3.6.4 To what extent should the award be reduced?
- 3.7 When a claimant argues that a respondent's disciplinary decisions were inconsistent and that this gives rise to unfairness, it is important that the dismissing and/or appeals officers who are accused of being inconsistent are actually aware of the comparator cases. It is also essential that the comparators relied upon are in comparable situations to the claimant. Because of the need for respective facts to be truly comparable, arguments of inconsistency are difficult to maintain. That said, inconsistency of treatment in truly comparable situations may give rise to a finding of unreasonableness and unfairness on the part of the respondent, such as to render the decision to dismiss unfair.

4. Application of Law to Facts

The claimant was dismissed on six allegations of gross misconduct, one of which led to a finding that she had brought Wargrave into disrepute (a seventh allegation of gross misconduct which was held to have been proven). In respect of those allegations I find:

4.1 Maladministration –

- 4.1.1 It has not been proven, on the balance of probabilities to my satisfaction that the claimant altered the year 6 SATs papers on 13 May 2015. She may have done so; she was one of six people (the SLT and NM included) who had some dealings with the papers and/or who were in close proximity or handled them following completion. NT and NM were in a room with some completed papers while successive groups of pupils completed their tests; they took them to the claimant's office when they were ready. Not all of the completed scripts had been amended or altered, which could have indicated either than NT and/or NM/NT had an opportunity to amend the first two tested groups' papers, or that the claimant did not have the time available to amend all of the papers. The completed scripts were in the claimant's office when only the claimant was present. Members of the SLT collated the completed test papers. The claimant gave them to NT to check, which I consider would have been strange if the claimant had made apparent alterations to them. Whoever altered the papers needed time to ascertain the correct answers, find pupils' errors and to correct them. Realistically there was evidence that only NT, NM and C had the opportunity to do so. All denied it. NT and NM gave

each other supportive evidence and there was no serious investigation into or consideration that they may have done so because they were in cahoots, or that either just failed to fully observe the other continuously. Of those involved in the administration of the test I only heard evidence from the claimant. She was clear, cogent and credible in her denial of any maladministration. She may have been guilty but without being able to satisfy myself by hearing the other people involved and having to rely on the investigating officer's report and minuted submissions made by BF I could not conclude that the claimant acted in such a way as to breach her contract entitling the respondent to dismiss her summarily. Why anyone intent on cheating would do so in such a maladroit and obvious way is a mystery; detection was inevitable; this was not investigated nor the possibility that someone was being framed.

- 4.1.2 Failure to follow STA guidance: The SLT statement indicated that the SLT members and NM acted in a way commensurate with the guidance save that the storage cupboard was in the claimant's room and the lock was tricky. In 2016 no-one was able to find the written signing in/out procedure that was in operation and the documentation which was used in May 2015 at the time of the SATs tests in question. There had been a written procedure which all relevant parties said they had followed it; it could not be evidenced by documentation. Although it was not ideal to store test papers in the claimant's office, I accept the claimant's evidence that in view of the lack of space this was the least bad option, and as LD retained the key it could provide sufficient security. The lock did work but was difficult to engage; clearly therefore provided whoever attempted to lock the cabinet persevered and engaged the lock it would be difficult to quickly and surreptitiously unlock it; there was a risk, however, that careless locking-up might inadvertently leave the cabinet unsecured. There ought to have been a better lock. In any event witnesses to the events on 13 May 2015 were at pains to absolve themselves from blame, each effectively saying they followed guidance and procedures save where there was a doubt as to whether NT locked the completed scripts away or left them on the claimant's desk for her to do so (which in the circumstances would have been a lapse in security by NT). The STA guidance was followed in principle although security could have been better as shown by the fact that someone wilfully tampered with the papers. Any of those involved in the administration of that SATs test could have gained access to the papers at some stage on 13 May 2015 even if when stored the papers were in a different room, and even if the lock was not tricky to engage; the allegation of maladministration is an allegation of a wilful act by a professional being entitled to handle and supervise the completed tests. It has not been established to my satisfaction that any weaknesses with regard to adherence to the guidance amounted to gross misconduct by the claimant. The security system could have been tighter but the guidance did not set out mandatory requirements

and there was no evidence that the claimant flouted either the spirit or substance of the guidance, notwithstanding that someone breached security.

- 4.1.3 Unprofessional/unethical conduct regarding the accuracy of assessment data: Wargrave was under pressure to produce good SATs results according to targets set for it. The claimant was to deliver results. The claimant had put in place or maintained a system for teachers to assess pupils' work periodically and for those assessments to be moderated. Assessment involved professional judgment. Teachers had mentors to assist them. The claimant was involved in encouraging and exhorting teachers to get the best out of their pupils and to record achievements in the best light. She frowned on compromise, or what she may have considered to be backsliding. There is evidence that the claimant took a robust approach in the hope to persuade teachers with doubts to accentuate the positive, to take relevant factors into account and to work on assessments with mentors in the hope of stretching pupils' efforts and achieving targets. Staff felt that this was pressure; it was pressure. There was no specific, concrete, attributable (that is to particular schoolwork and identified pupils) evidence that the claimant had either manipulated or falsified final assessments for any pupil or had herself falsely recorded achievements so as to artificially reflect set targets. There was some evidence teachers feared that this was the effect of the claimant's intervention, but the assessments were done by teachers and not the claimant. The claimant referred teachers to their mentors as she felt appropriate. I was not provided with evidence of schoolwork or from teachers that contradicted the claimant's cogent and credible denials. The respondent has failed to prove to me that the claimant acted as alleged and by so doing breached her contract.
- 4.1.4 Unprofessional/unethical conduct recording work in children's books "World of Glass": This allegation commenced as one that the claimant instructed "a young teacher...to falsify work with the intention of misleading a statutory body such as Ofsted". The allegation was in connection with a visit made in January 2016 to World of Glass recorded by RC as having taken place in December 2015 when no science work was done by her class. As RC clarified to the disciplinary panel, the claimant did not instruct a member of staff to mis-record the World of Glass event in her class's books. The claimant instructed RC to consider what, if any, science work that had been touched on in December could be recorded in books when no such record had been made at the time. She wanted a record of science work for December. The claimant instructed RC to consider the absence of any recording. It was for RC to complete her class's books; she did so falsely by re-dating the World of Glass trip. The respondent has not proved this allegation against the claimant. The claimant's actions as she described did not

amount to a breach of contract and gross misconduct. The claimant was credible. I heard no evidence from RC.

- 4.1.5 Falsification of A1 records: Again I did not hear evidence from LD or any other staff member (bar the claimant) about the completion of A1s and the practice of altering them, if any. The claimant gave a credible denial of falsification. She also gave a credible description of suspicious surveillance of her movements by LD leading to the use of codes on A1 forms which LD subsequently deleted. It appears that LD was concerned at the claimant's absences from site, that the claimant had a number of valid reasons for being and/or for working off site, and the respondent has failed to prove on the balance of probabilities that the claimant falsified her A1 attendance sheets. There was no evidence before me that proved the claimant changed the ten A1 sheets between January 2014 and December 2015, or that any changes made were false.
- 4.1.6 Misleading governors concerning school performance: By her nature and in line with what she perceived was part of her remit in driving the school ahead to success, the claimant tended to put a positive spin on Wargrave's performance. This was to reflect well not only on her but the pupils and staff. She wanted to show the school in a good light. That said she could not honestly ignore some poor performance in areas such as mathematics as was evidenced from data known by staff available to the governors and analysed in the BPM report which was due for presentation in February 2016. The claimant was suspended before the February governors' meeting and she was de-barred from attendance. This is far short of "misleading". I have not seen or heard evidence that available data and reports were falsified or manipulated or that the claimant lied to the governors on any specified date or occasion. If with hindsight the governors felt the claimant must have overemphasised the good and been silent about the poor performance, then those governors maybe did not take the time and trouble to consider the data on which the claimant was reporting. They gained an impression based on a positive interpretation of available data; they could have spun it negatively. They would have received BPM's report in due time as a counter to the claimant's ebullience. The respondent has not proved this allegation on the balance of probabilities.
- 4.1.7 Disrepute: In view of my findings above the claimant cannot have brought Wargrave into disrepute. The respondent relied on it establishing the allegation of maladministration to support this allegation.
- 4.2 All that said I must consider whether the respondent acted fairly and reasonably in dismissing the claimant, having come to different conclusions to me as to what actually may have happened.
- 4.2.1 The investigating officers prejudged the outcome of the investigation and prepared a report that appeared designed to

justify the claimant's dismissal and to leave the disciplinary panel with no obvious alternative finding. Interviews included disclosure of evidence to the witnesses, leading questions and the creation of an impression of the claimant's guilt. In fact BF's reactions to the claimant from the date he and the other panel members examined the altered scripts portrayed her as the guilty party. The sequence of interviews and re-interviews are suggestive of building a case against the claimant as opposed to being an impartial and objective consideration of events. Once the investigation into maladministration came to light it seems from the correspondence and investigatory report that BF was looking for ammunition to fire at the claimant to ensure that she was dismissed. Concerns voiced by colleagues became allegations of instructions to falsify documents. The investigation contained so many errors, overstatements and indications of bias that it is not a reasonable report. While portraying the claimant as the guilty party, others implicated as possible suspects for maladministration, unethical recording of data and unethical assessment of pupils went without investigation let alone disciplinary action. The whole investigation was one-sided. It presented the disciplinary panel and subsequently the appeal panel with a caricature of the claimant accentuating the negative and eliminating the positive. It is unbalanced and therefore misleading. It does not take account of exculpatory evidence and mitigating factors.

- 4.2.2 Armed with such a report it was relatively easy for BF to persuade the disciplinary and appeal panels of the claimant's guilt as charged. The investigating officers were high ranking. BF's arguments carried weight. I can make no finding as to BF's motivation or indeed whether he was just acting unfairly in error, as I heard no evidence from him and saw nothing to suggest that he had any ulterior motive. All of the evidence I heard and read, however, is suggestive of his having a mindset that was prejudicial to the claimant from the outset, for whatever reason of his own. The disciplinary panel heard from witnesses, many of whom corroborated parts of the report while drawing back on others (such as the alleged instruction in respect of the World of Glass trip). Having been presented with a caricature of the claimant as guilty on all charges (having been treated alone as if guilty from the time the STA raised the alarm) it would have been difficult for the panel to view her in a different guise, and the panel did not try to do so. It accepted what it was fed without due further enquiry, consideration of the claimant's rebuttals or objective scrutiny of the evidence as a whole. The panel convinced itself of the claimant's guilt but DB could only say that he disbelieved the claimant because of the evidence presented and he could not adequately explain how or why the panel completely discounted everything the claimant said despite the glaring omissions, errors and bias in BF's report. The panel accepted the report (submitted against the background of C's suspension and NT's advancement) and held a genuine but

unreasonable belief in the claimant's guilt based on an unreasonable investigation.

- 4.2.3 Dismissal would have fallen within the range of reasonable responses of a reasonable employer if the disciplinary and appeal panels had had a reasonable belief in the claimant's guilt based on a reasonable investigation.
- 4.2.4 It is open to the parties to make submissions at the remedy hearing regarding both contributory fault and the extent to which due account should be taken of the risk facing the claimant of a fair dismissal. As requested I have not come to any conclusions. If it assists the parties may I mention that the claimant was legitimately considered as one of the suspects of the maladministration, she had lost the confidence of some of her staff because of her target driven approach and at least some of the governors had concluded that her dealings with them did not enlighten them sufficiently on the school's performance. These and possibly other factors may be relevant to those remedy issues.

5. Conclusions

5.1 ***Unfair Dismissal Claim – in circumstances where the claimant, a head teacher accused of maladministration leading to disrepute and unethical practices, was summarily dismissed the issues to be decided were:***

5.1.1 ***Whether she was dismissed for a reason related to her conduct:*** Yes she was.

5.1.2 ***Whether the dismissal was fair or unfair in all of the circumstances, depending on consideration of whether the respondent(s) acted reasonably or unreasonably in treating the claimant's conduct as sufficient reason to dismiss her:***
The dismissal was unfair (see below).

5.1.3 ***In deciding the issues above the tribunal was to, and did, consider whether:***

5.1.3.1 ***the dismissing disciplinary and appeal panels had a reasonable and genuine belief in the claimant's "guilt" of the conduct of which she was accused (and which she denied):*** The panels genuinely believed the claimant was guilty but they did so on the basis of a flawed report, presented in prejudicial circumstances that identified C as the guilty party from the outset, which they did not properly consider having unreasonably discounted all and everything that the claimant had to say and without properly considering the facts as they ought to have considered. It is important to bear in mind the finding (2.11.3) that FC (the chair of the investigatory panel and of the governing body) had predetermined the

outcome for the perpetrator, and that his dealings with C indicated his suspicion, if not firm belief, that it was C.

5.1.3.2 *in reaching its conclusion the panel took account of and based its decision upon a reasonable investigation:* The investigation was not a reasonable investigation. The panel unreasonably accepted it without due scrutiny whilst discounting any alternative versions of events. The panel based its decision on the report and the contrasting circumstances pertaining regarding C and NT, all of which coloured consideration of the evidence adduced at the hearings. There was, as submitted by Ms Davies “a trajectory” leading to C’s dismissal that started as soon as STA notified Wargrave of its findings.

5.1.3.3 *dismissal, and indeed every step taken by the respondent(s), fell within the range of reasonable responses of a reasonable employer to the circumstances pertaining:* Save for criticism of the investigation in the context of the way that C had been treated from the outset, and singled out, and the way in which the panels considered the claimant’s defence to the allegations, the procedure was otherwise fair and reasonable. That is in respect of general administration and notifications. Dismissal would have fallen within the range of reasonable responses of a reasonable employer but for the deficiencies mentioned above.

5.2 *Wrongful dismissal claim: – The issues in respect of the wrongful dismissal claim are different from a statutory unfair dismissal claim. The wrongful dismissal claim must be based upon a breach of contract and the concept of reasonableness is not the primary concern. The issue is whether or not the respondent was entitled to dismiss without notice and to withhold notice pay such as where the claimant’s conduct breached the contract in a fundamental way, for example by gross misconduct. The question is whether the parties have respectively abided by the terms of the contract. I must attempt to satisfy myself as to whether the claimant’s conduct did in fact breach the contract in such a way as to entitle the respondent to act as it did in the dismissal; this is a different exercise to deciding whether or not the respondent had a reasonable and genuine belief in guilt:* The respondent has failed to prove that the claimant breached her contract such as to justify summary dismissal. The claimant’s denials were clear, credible and cogent. The respondent did not call evidence from those other parties who made allegations against the claimant for their evidence to be tested. The respondent failed to prove its case whereas on the balance of probabilities C has proved hers.

6. The claimant was both unfairly and wrongfully dismissed. Her claims succeed. Remedy is yet to be considered. The parties shall write to the tribunal with their

joint estimated length of remedy hearing and their non-available dates for the six months period commencing with the date that this judgment is sent to the parties.

Employment Judge T Vincent Ryan

Date: 16.05.18

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

30 May 2018

FOR THE TRIBUNAL OFFICE

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