



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Mannix

**Respondent:** Plymouth CAST

**Heard at:** Exeter **On:** 17-21 December 2018

**Before:** Employment Judge Matthews

**Representation:**

**Claimant:** Ms A McColgan of Counsel

**Respondent:** Mr I Ahmed of Counsel

## RESERVED JUDGMENT

1. Mr Mannix was unfairly dismissed.
2. Dates will be offered for a remedy hearing with a time allowance of one day.

## REASONS

### INTRODUCTION

1. Mr John Mannix claims that he was unfairly dismissed by the Respondent Trust. The Trust says that Mr Mannix was fairly dismissed for a reason related to capability (skill and/or aptitude) or for some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. The “some other substantial reason” put forward is, in essence, a loss of trust and confidence. If the dismissal is found to be unfair, the Trust raises “Polkey” arguments. Whilst the Trust pleaded contribution, this was not pursued by Mr Ahmed, in the Tribunal’s view, rightly so. It was agreed that, at this stage, the Tribunal would decide liability only, to include any level of contribution and any “Polkey” arguments.

2. On the Trust's side the Tribunal heard evidence from The Right Reverend Mark O'Toole (Bishop of Plymouth - Plymouth is a City by virtue of its Roman Catholic Cathedral - it has no Cathedral belonging to any other denomination), Mr Denis Anderson (Vice Chair and from 9 November 2016 Chair, of the Trust's Board), Father Mark O'Keefe (from 2015, Episcopal Delegate for Schools for the Diocese of Plymouth and a member of the Trust's Board from 9 November 2016), Ms Maria Edwards (from 9 November 2016, a Director of the Trust's Board), Mr Graham Johnson (a member of the Trust's Board) and Mr Nick Appleby (from 17 October 2016, a member of the Trust's Board). Each produced a written statement.
3. The Tribunal heard from Mr Mannix who produced a written statement. In Mr Mannix's support the Tribunal heard from Ms Teresa Cummings (HR professional) and Doctor Peter Merrin. A statement from The Right Reverend Hugh Budd (Bishop Emeritus of Plymouth) was also produced in support of Mr Mannix. Bishop Hugh was unable to attend the Hearing. In light of that, the Tribunal has noted the content of Bishop Hugh's statement but cannot attach any weight to it. The statement amounts to a character reference for Mr Mannix. Mr Mannix's integrity is not in issue in these proceedings.
4. There was an agreed bundle of documentation which was supplemented on several occasions during the Hearing. The Tribunal's copy is complete. Ms McColgan produced an agreed short supplemental bundle. All references in this Judgment are to pages in the bundle unless otherwise specified.
5. An agreed list of issues was produced. Ms McColgan handed up written argument to support oral submissions. Mr Ahmed relied on oral argument.
6. The Tribunal reserved Judgment to better consider the evidence and its conclusions. As it transpired, this was justified. The order of events and their significance is not particularly complicated but it is not easily understood without a proper reading of the bundles. The result has been a lengthy fact find but, in the Tribunal's view, this is a case where a lengthy fact find is fair and just.
7. There is a lot of contemporaneous documentation and, in the end, not much room for factual dispute. Where there is a dispute, it is usually over what the facts mean. Where facts are in dispute and the Tribunal has to resolve that dispute to perform its task, the finding is on the balance of probabilities.

**FACTS**

8. Mr Mannix started work as the Diocesan Director of Schools on 1 September 2001. On or around 1 April 2014 Mr Mannix's employment was transferred to the Trust and he took the title of Chief Executive Officer ("CEO"). Mr Mannix was dismissed with effect from 11 March 2017. Mr Mannix's service appears to have been without disciplinary or similar incident until the events the Tribunal will come to.
9. Bishop Mark heads the Roman Catholic Diocese of Plymouth (the Tribunal will use the shorthand term "Catholic"). The Diocese embraces Cornwall, Devon and Dorset. This includes responsibility for 63 parishes and 40 schools (the Tribunal will use both the terms "school" and academy) of which 36 schools are within the Trust. Those schools are spread across the three Counties. As Bishop Mark puts it (WS2):

*"A major part of that role as the Catholic Bishop in this part of the country is to have oversight of, and give support to, high quality Catholic Education in the Diocese provided through Catholic Schools."*

10. The Trust is a multi-academy trust ("MAT"). Its legal status is that of a private company limited by guarantee. MATs provide the infrastructure that supports a number of academy schools. On 1 April 2014, 34 of the 36 schools now within the Trust converted from voluntary aided maintained schools to academies under the Trust. That process had followed consultation with the Diocesan Trust, the Regional Schools Commissioner for the South West and the Office for Standards in Education, Children's Services and Skills ("Ofsted").
11. Mr Mannix had been a driving force behind the formation of the Trust. The Trust reported that it employed some 2,000 people at the time of its response in these proceedings. During Mr Mannix's time in post, there were only around 20 people engaged in providing the infrastructure support. The rest were employed in the academies themselves.
12. Central to the events the Tribunal is concerned with is a difference of view as to how MATs should be run. Very broadly speaking, there is a view that MAT's should follow the "Significant Autonomy" model. This involves maximum delegation to individual schools, commensurate with proper supervision. This was the model favoured by and adopted by Mr Mannix. Another view is that MATs should be run using a much more centralised

supervisory structure. The Tribunal will refer to this as the “Top Down” model.

13. Bishop Mark is a member of the Trust and has a right to appoint and remove a majority of its directors. (Apparently the other members of the Trust are the Vicar General and the Episcopal Vicar for Evangelisation, Catechesis and Schools – see 222). The Bishop, however, does not sit on the Board of the Trust, although he has the right to advise it. The Bishop also has the right to appoint a majority of the committee of governors for each individual academy within the Trust.
14. The Plymouth Roman Catholic Diocese Trustees Registered (“Diocesan Trust”) is a charity that supports the Diocese and its work. Bishop Mark is the Chairman of the Diocesan Trust. The Diocesan Trust is the trustee of all, or nearly all, of the individual academies within the Respondent Trust and the academies occupy Diocesan property.
15. The Regional Schools Commissioner for the South West (“RSC”) is the Bristol based representative of the Department for Education in the South West Region.
16. A further body that played a part in the events with which the Tribunal is concerned is the Catholic Education Service (“CES”). This is a national body, being the education agency of the Bishops’ Conference of England and Wales (the permanent assembly of all the Catholic Bishops in that territory). The CES provides support and advice to Diocesan Bishops and their education teams. The CES has agreed with the Department for Education the proper relationship between the RSC and the local Catholic Diocese whenever a Catholic academy is concerned. The first point of contact is the Diocesan Commissioner. That post was not filled during the period the Tribunal is concerned with and the relationship was part of Father O’Keefe’s remit as Episcopal Delegate for Schools.
17. Bishop Mark’s evidence is that, after his appointment to the Diocese in January 2014, he had a good relationship with Mr Mannix and believed he was doing his job well. Mr Mannix seemed to know the MAT system and was well liked within the Trust (WS9 & 11).
18. Bishop Mark, however, says that there were some concerns. These appear to have centred around the Church’s role in the delivery of education (WS10). One of the actions Bishop Mark

took to address these concerns was to appoint Father O'Keefe as Episcopal Delegate for Schools in the Diocese in 2015.

19. As might be expected given the wide-ranging nature of his responsibilities, on his own account Bishop Mark did not fully understand the MAT system and relied on Mr Mannix to do his job competently. Sir Brian Pearse, Chair of the Trust's Board, told the Bishop that Mr Mannix was highly thought of by the RSC and there was a risk that Mr Mannix might be head hunted by other MATs (WS12).
20. Mr Anderson knew Mr Mannix well and described him thus (WS10 & 11): *"He appeared to be a focused employee who was passionate about his work with the Trust and he got along well with everyone."* Mr Anderson thought the Trust very understaffed for the first couple of years and that Mr Mannix was working *"completely unreasonable hours"*. Mr Anderson had suggested that Mr Mannix needed the support of a Chief Operating Officer. Mr Mannix had resisted this, but the recruiting process had started by the time that the Ofsted review, which the Tribunal will come to, had started in October 2016. In his statement Mr Anderson expressed some concerns that he had leading up to the Ofsted inspection but, apart from insisting on the appointment of a Board member with responsibility for safeguarding, he does not appear to have taken any particular action on them (WS13).
21. From the outset it appears that Mr Mannix was fully aware of the Trust's vulnerability to Ofsted inspection of its schools. In his report to the Trust Board on 2 March 2015 Mr Mannix included this prophetic passage (295):  
  
*"During this early phase of CAST's operations, our biggest vulnerability is to public failure of schools; most notably through poor Ofsted inspections. Multi-academy trusts have been subjected to great public criticism if their schools do not improve – and there is little sympathy for the context."*
22. The then RSC, Sir David Carter, wrote two letters to Mr Mannix dated 9 September 2015 and 11 February 2016 respectively (1-4). They were mixed in their message but included concerns. First was that local governing boards, rather than named educational professionals, were managing principals (head teachers) within the Trust. Second was the degree of autonomy allowed to local governing boards, especially where schools had performance issues. Third were drops in attainment by a number of named schools. Sir David requested a strategic summary of how these drops in attainment were to be addressed. As Had Mr

Mannix, Sir David expressed a concern that Ofsted visits posed a risk for the Trust. Towards the end of Sir David's second letter he wrote this:

*"We discussed Plymouth CAST's leadership and governance structure as well as its lines of accountability. There appeared still to be some uncertainty about who is accountable to who within the MAT, with differing models at different schools. As you know, I am keen that clear lines of accountability from the headteacher up to you as Chief Executive and the Board are in place."*

23. Sir David evidently favoured the Top Down model for MATs and the tension in these letters between that and the Significant Autonomy model favoured by Mr Mannix is clear. The fuller report Sir David procured in January 2016 together with the Trust's responses provides some detail and perspective (287-294).

24. Sir David Carter's successor, Ms Rebecca Clark, wrote to Mr Mannix on 9 June 2016 (5-6). Whilst this letter was largely a record of an agreed action list, Ms Clark commented:

*"...I do have some concerns about Plymouth CAST's accountability structure. I recognise the reasons behind the design of your current arrangements but I would like to continue to evaluate its efficacy with you over the coming months."*

25. Mr Anderson criticises Mr Mannix for not reporting the issues raised by Sir David Carter and Ms Clark to the Trust's Board and not implementing the agreed action plan (WS27-30). Mr Mannix's response is that the letters were available to the Board on the "Dropbox" information system and the action plan was implemented.

26. Ofsted commenced a two week "Focussed Review" of the Trust on 10 October 2016. As the Tribunal understands it, Ofsted had no formal mandate to inspect MATs but could inspect the individual schools within a MAT. This, of course, gave Ofsted a means of comment, implicit or otherwise, on the MAT itself. It appears that the 10 schools inspected were visited between 11 and 13 October 2016 (122).

27. It was to the Bishop's surprise that early indications of the review from Mr Mannix were that it was going badly. As the Bishop says (WS13): *"This was the first time I was aware that our external regulators had concerns about the Trust."*

28. There must have been some very early feedback from Ofsted to the RSC (the Tribunal notes that they share the same office premises in Bristol). On 13 October 2016, only two or three days into the Ofsted visits to schools, Father O’Keefe (in his role as Episcopal Delegate) had a meeting with Ms Rebecca Clark. Ms Clark expressed serious concerns about the Trust and Mr Mannix’s strategic leadership. Ms Clark asked to meet Bishop Mark. Father O’Keefe explained this to Bishop Mark that evening.
29. Bishop Mark met Ms Clark on 17 October 2016. Bishop Mark says that Ms Clark was *“scathing in her criticism of Trust and that she had serious questions about Mr Mannix’s ability to see what was wrong with the model and his ability to turn things around. She talked about “giving support” and looking at a Deputy for him.”...“She said that if we were not a Catholic MAT, she would be seeking to re-broker some of our schools with other, more successful MATs.”* (WS14).
30. Ms Clark showed Bishop Mark the two letters which had been sent by her predecessor, Sir David Carter, to Mr Mannix (see paragraph 22 above). Ms Clark said they had never been responded to. Bishop Mark refers to them as *“indicating serious concerns.”* (WS14). Bishop Mark says that he found them *“deeply troubling”* and that both the meeting with Ms Clark and the letters *“gave me cause for concern that Mr Mannix would be unable to deliver the change required.”* (WS15).
31. When evidence of later events is taken into account, it is clear that this meeting between Ms Clark and Bishop Mark was pivotal in Mr Mannix’s subsequent dismissal. The Tribunal cannot say that either Ms Clark or Bishop Mark suggested dismissing Mr Mannix at this meeting but it was surely in their minds. It is clear that thereafter Bishop Mark worked to achieve that objective and was aided in doing so by Ms Clark.
32. That same day, 17 October 2016, the Trust’s Board met. The minutes are at 7-9. Assuming there were no apologies, at this stage the Board consisted of Sir Brian Pearse (in the Chair), Mr Anderson, Mr Mannix, Mr Paul Cotter, Ms Helen Brown, Mr Johnson, Father Francis Straw, The Right Honourable Dan Rogerson, MP, Mr Appleby and Ms Frances Guppy. Father O’Keefe was in attendance as was Ms Helen Moram (Office Manager) who took the minutes. Mr Anderson was confirmed as the Vice Chair. Mr Mannix spoke about some of the inconsistencies in the Ofsted inspections then underway. He did not feel that the inspections had been entirely free from RSC influence. The Tribunal assumes that Mr Mannix did not, at this

stage, know of the meetings between Bishop Mark, Father O’Keefe and Ms Clark or, if he did, he did not know of their content.

33. The next day, 18 October 2016, Mr Mannix sent a note to head teachers and governors (11-12). It was copied to, amongst others, Bishop Mark, Father O’Keefe and the Trust Board. It included this:

*“...from the oral feedback we have received from each of the inspection teams, the inspections themselves have, on average at least, not gone well. Of course we are yet to receive the draft reports but they rarely differ from the oral feedback given at the time. Together with the Heads and the governors of the inspected schools, we have reflected on the outcomes and I think it fair to say that we, collectively, have been concerned by some elements of the conduct of the inspections and the harshness of the judgements.”....“....in 5 out of the 10 inspections the outcomes are at least one grade lower than our own judgements.*

*I think many of those who were inspected were a little frustrated by the expectation from inspectors that somehow “CAST” should be operationally “running” the schools, as though “CAST” is a large team of multi-disciplinary experts which descends on schools to direct the activities of the Heads and classroom practitioners.*

*However, there is little use in crying “foul” or simply moaning about the outcome. We all already know that we are in a process of development and that there are lots of improvements required at school level and in terms of network processes. So the Heads and Area Advisers are working already on looking at the lessons to be learnt and sharing that across the network.*

*Fundamentally, though, if schools are not improving, or not improving sufficiently quickly, then we can expect that the Trust/network/“Plymouth CAST”/“We” - will receive a critical report at the end of this review. The form of report that MAT’s receive is not an Ofsted Report as you would recognise from a single school but what is called an “Outcomes Letter”. Most of the big MATs have received these and they are published on the gov.uk website. As you know, performance of MATs is a very contentious issue and particularly those who oppose the academisation*



*programme tend to seize upon any negative news. So I'm afraid that is something for which we will need to prepare."*

34. On 20 October 2016 members of the Ofsted team delivered their formal feedback at a meeting. The notes are at 20-22 and should be referred to for their full content. Both the Trust and Mr Mannix accept that the notes are accurate. The meeting was attended by 4 members of the Ofsted inspection team and the Senior Inspector for the South West, Mr Bradley Simmons. Around 12 people from the Trust were there, including Mr Mannix, Father O'Keefe, Sir Brian Pearse and Mr Johnson.
35. The review had been undertaken because the Trust had been in operation for 2 years and 7 months and Ofsted wanted to find out how well the Trust had been performing. As noted above, in the first week of the review, there had been 10 inspections of schools. 3 schools had been judged to be good, 3 required improvement and 3 had been placed in special measures. The tenth school had met its requirements for safeguarding. 17 head teachers from other schools had been spoken to about the challenge of and support received from the Trust. In the second week there had been a meeting with Mr Mannix, area advisers, some head teachers, some chairs of governors, some others and also significant partners. Strategic plans, case studies, outcomes data, evidence of partnership working and financial management had also been reviewed.
36. Headline findings were these:
- *"The Trust suffered from a lack of strategic leadership. Staff were unclear about lines of responsibility and accountability. It is unclear who takes action if an academy is failing."*
  - *"Strategic plans for improvement and overarching actions do not have enough impact on the outcomes for the most able or disadvantaged."*
  - *"The presentation by the CEO was an honest representation of the journey so far and of next steps needed."...."The board has insufficient understanding of the state of its schools."*
  - *"The board cannot explain how the £2M funding for pupil premium is spent."...."This is the largest Trust in the South West, with 8000 children. Nobody knows how the £2m is being spend on the disadvantaged. There is*

*no evaluation of this spending. There is no strategy on how the money should be spent. That is not good enough.*

- *“The pace of improvement is too slow.”*
- *“There is a significant issue around capacity in the Trust. It has taken the Trust too long to build the necessary capacity to work effectively.”*
- *3 schools had not responded to a request in June 2016 for information meaning that “the board cannot say that children are safe in those schools.”*
- *“We want to give you a scenario. Imagine that poor boy in Plymouth. His outcomes are the worst that exist that we have seen. The Trust needs to think about this.”*
- *“This is a failing Trust. It is the worst case I have seen nationwide. The Trust needs to place the child at the heart of what it does. The Trust is too cosy. It is likely that Sir Michael Wilshaw will comment nationally on this outcome, so it is imperative that the Trust has ready a list of actions that we have already done from today.”*

37. It is unsurprising that Bishop Mark was *“deeply shocked by the feedback and how bad things were.”* (WS16). Mr Anderson described his reaction thus (WS18-19): *“The outcome of the review was shocking and to a large extent unexpected.”...“I commented at the time that this Ofsted report should be the shot in the arm that we needed to bring about the major change which was absolutely required for the Trust’s survival.”...“The Ofsted report is a very important document. A letter summarising the review is written to the Secretary of State and becomes public record. The reputation of the Trust, and indeed the Catholic Church, would be inevitably and very publically damaged.”*

38. Nor is it surprising that Bishop Mark considered Mr Mannix’s responsibility for the criticisms. Bishop Mark saw Mr Mannix’s note of 18 October 2016 (see paragraph 33 above) as making it *“clear to me that Mr Mannix did not see that he was accountable in any way for the failings identified by Ofsted and that he thought he was the solution to the problems.”* (WS17). The Bishop continues: *“He critiqued the methods and Ofsted’s approach and failed to own the difficult things which were being pointed out. I felt there was a real difference between the reality of the picture*

*that emerged from Ofsted and Mr Mannix's perception of what was going on."*

39. Bishop Mark owns that he had "*strong views*" on the best way forward (WS18). From his oral evidence at the Hearing it appears that, at this point, Bishop Mark expected Mr Mannix to resign.
40. If it had been in any doubt before, the way Bishop Mark was going to play the Ofsted feedback was clear in an e-mail from Father O'Keefe to Ms Clark on 20 October 2016. The findings of the report were not going to be questioned and the Trust was to fall in behind Ms Clark's direction of travel. The e-mail included this:

*"I have been to the meeting, as you suggested, which gave the oral findings after the concerted inspections of 10 of our schools, the outcome was as expected.*

*The meeting was less than an hour but as predicted, both damning and the conclusion is simply that we will be regarded as a failing Trust.*

*Needless to say after our conversation in Bristol, this is now a time for us to act.*

*We will need your help and guidance in this and would appreciate your thoughts and input as we strive to make the changes necessary.*

*I will keep you briefed up on the matters as they begin to unfold.*

*You mentioned a person who might be able to assist us in the task. I would be grateful if in confidence you could give us the details of that person so that we have options before us."*

41. On the same day Mr Mannix sent a further communication to head teachers (18-19). In it, Mr Mannix acknowledged that the Ofsted feedback "*clearly calls into question my own effectiveness*" and that "*I do agree with these findings*". Later in the e-mail Mr Mannix added this:

*"I should also say, in the light of my previous CEO's letter, that we have had an opportunity to re-examine the individual school inspections - of which I had raised concerns about their harshness. I will not go into detail here but it is fair to say that those concerns were allayed as HMI helped us to*

*understand the way the Ofsted framework needs to be interpreted and applied.”....*

*“We cannot take too much time to consider the next steps and have to act quickly. We have a meeting scheduled with the Regional Schools Commissioner on the 4<sup>th</sup> November, which is the first I will know of her response to the review. We then have a rescheduled meeting with the Board of Directors on 9<sup>th</sup> October.” [Presumably Mr Mannix meant to refer to “November”] “In the meeting we held this evening immediately after the feedback it was agreed that we have to meet as a whole network as soon as possible. As such, we are arranging a venue (probably Exeter Racecourse) for a meeting all day on 11<sup>th</sup> November.”....*

*“I am saddened and ashamed to be reporting this situation”*

42. Mr Mannix, in ignorance of what was going on between Bishop Mark, Ms Clark and Father O’Keefe, seemed to be accepting responsibility for the position and was planning what to do about it. This included the planned meeting with the RSC, the Board meeting and a meeting for head teachers and some governors. In the event, Mr Mannix was to be removed from any part in that process.
43. Bishop Mark took immediate action following the Ofsted feedback. In particular, Bishop Mark used his connections. On 21 October 2016, the day after the Ofsted feedback had been received, there was an exchange of e-mails between Father O’Keefe and Bishop Mark (23). It seems that Ms Christine Fischer of CES had been approached and provided an action plan. The Bishop was considering speaking to Ms Kate Griffin (a member of the Management Committee of CES who Bishop Mark subsequently appointed to advise the Board in the circumstances and who eventually became one of two Interim CEOs) who had offered to help. The Bishop continued:

*“Immediately, we need an interim/acting CEO once we let John down gently....whose going to step into those shoes immediately?”*

*How much has been shared with Sir Brian.....does he know anything of what’s being proposed?”*

44. On 23 October 2016 Ms Griffin e-mailed Bishop Mark to say that she was going to see Sir David Carter (23).

45. Earlier that day, 23 October 2016, there had been an exchange of e-mails between Sir Brian Pearse and Father O'Keefe (24). They included this from Sir Brian:

*"I spoke to Sandy in Brussels yesterday. He was as shocked as I was but feels that the HMIs have overstated our situation problems."...."We may need legal advice after Friday, if we decide to take certain actions but we can find someone locally to advise on the HR situation.*

*I am certainly not sanguine about our situation and I await the final report with considerable concern."...."I do accept that there may have to be a top management change."*

46. Bishop Mark's thinking is reflected in an e-mail on 24 October to Father O'Keefe (25):

*"I'm happy for you to speak with Rebecca" [Clark] "about how I feel about JM.....though I sense Brian is not so convinced. It will be interesting to see how it goes with other members of the Board; I hope John will see sense, and if not, I hope the Board will be willing to act!"....*

*"So you know, I'm going to give the Trustees the "heads up" at our meeting on Thursday...."*

47. From this it is clear that Bishop Mark was hoping Mr Mannix would resign. Otherwise the Bishop hoped the Trust Board would act to dismiss Mr Mannix. The "heads-up" was to be given to the Diocesan Trust.

48. At this stage Sir Brian Pearse was either not fully conversant with Bishop Mark's thinking or, if conversant, not entirely on side. On 25 October 2016 Sir Brian questioned the need for legal advice, which Father O'Keefe had suggested to him. In an e-mail to Bishop Mark that day Father O'Keefe commented (27):

*"I am thinking he is not getting the message that the solicitors are in relation primarily to JM?"*

49. As mentioned above, the "meeting on Thursday" referred to in Bishop Mark's e-mail of 24 October was a meeting of the Diocesan Trustees, not to be confused with the Trust Board. Father O'Keefe was on standby to brief the meeting on the Ofsted feedback. Commenting on this in an e-mail to Bishop Mark on 25 October 2016 Father O'Keefe wrote (28):

*"Do you want me to keep the JM issue quiet at the meeting?"*

*IF NOT - I am happy to say that as delegate I have been tasked with finding out locally and nationally what the issues are and I have reported back to you that systemically there were concerns which have been justified by the HMI Inspectors. In light of that I have pinpointed the area of leadership to be flawed and therefore the Bishop has to act (or words to that effect?) Might save you looking like the "bad cop"!"*

Bishop Mark replied: *"Thanks.....that would be helpful!"*

50. Overnight on the 26-27 October 2016 the Diocesan Trust held its meeting. The redacted minutes are at 309-317. Ms Edwards attended as a Trustee. On 27 October Father O'Keefe gave a full presentation to the Trustees on the Ofsted feedback. As suggested in Father O'Keefe's e-mail exchange with Bishop Mark on 25 October, Father O'Keefe's presentation included this:

*"Therefore as the Episcopal Delegate for the Schools, he would recommend to the Bishop and the trustees that in order to secure the necessary changes for CAST, the management of the MAT at the highest level should be terminated and a new team leader should be appointed with immediate effect."....*

*"Accordingly, a meeting will take place on Friday 28 October at St Boniface House to discuss how to facilitate the changes necessary, and to prepare for a new leadership of Plymouth CAST."*

*Shortly afterwards: "Ms Edwards"...."urged that steps should be put in place immediately along the lines recommended by the CES and the Regional Schools Commissioner."*

51. On 27 October 2016 Sir Brian Pearse sent Mr Anderson two e-mails (29). As the Tribunal reads the extract below, Sir Brian was referring to Bishop Mark and Ms Clark having "taken over":

*"I am meeting Rebecca Clark (the Regional Schools Commissioner) on 4<sup>th</sup> November and I understand she will head us in the direction of finding a new CEO. Sorry!!!"*

*"I do not know if I will be going!!! Until after I see Bishop M tomorrow. They seem to have taken over."*

52. Whilst the Tribunal is not privy to exactly what happened (it appears to be privileged) there was obviously some sort of conference call/meeting on Friday 28 October 2016. In

preparation for this Bishop Mark sent an e-mail to Father O'Keefe on 25 October 2016 including (26):

*"Regarding moving forward, we do need legal advice – is Brian onboard with that? If not, we have to get him onboard, and then it makes sense to have the lawyers ready to be online on Friday...."*

53. It seems that Mr Anderson was not yet fully up to speed on developments. He was certainly telling Father O'Keefe things Father O'Keefe already knew. On 28 October 2016, presumably after the conference call/meeting, Mr Anderson received a telephone call from Sir Brian Pearse. After that call Mr Anderson sent an e-mail to Father O'Keefe which included (30):

*"I have just had a call from Brian - the gist of which was that he has the task of bidding John farewell and then he too will be retiring!"*

54. On 29 October 2016 in an e-mail to Bishop Mark on a variety of subjects Father O'Keefe commented (31): *"I shall do a little home work on Nick Appleby and find out his story ere long."*

55. Developments are further reflected in redacted e-mails from Sir Brian Pearse to Mr Anderson and from Father O'Keefe to Bishop Mark on 31 October 2016 (33-34):

*Sir Brian: "I am not sure if the November 4<sup>th</sup> meeting is still happening but I will not be going. Still a couple of things to tidy up but I think my CAST days will be at an end on Wednesday. I cannot say any more at this stage but I think JM will not be around much longer."*

*Father O'Keefe: "Just had a frank and good discussion with Sandy.*

*He was not in tune with "all the facts" shall we say, but soon came on board. He had an email from Sir Brian saying that he would not be at the meeting on the 4<sup>th</sup> with the RSC. He is under the impression that Sir Brian thinks he will be seeing JM on Wednesday or Thursday. He will then step down with immediate effect.*

*So I have invited Sandy to come to that meeting"...."and he can and will act as the Chair (he is currently vice chair) in place of Sir Brian which will be useful"....*

*“Needless to say Sandy has shared the “frustration” of many in regards JM, and he understands the need. He was complimentary about the hours and effort but results had not been good, so quite gets the scenario and shared immediately without prompting the issue concerning Safeguarding and the welfare of the children which makes me think he is of value and will work well.”*

56. Sir Brian Pearse and Mr Anderson met Mr Mannix on 2 November 2016 (from 218 it seems that Father O’Keefe may also have been present). An e-mail to them both of that date from Mr Mannix, presumably following that meeting, accepts their offer of special leave (36). The plan was for it to last until 11 November at the latest. In fact, Mr Mannix never returned to work nor did he attend another Trust Board meeting or perform any further function on behalf of the Trust.
57. The Tribunal is aware that, around this time, some privileged communications and or meetings may have been taking place. These may have been confined to, but certainly included, the conference call/meeting on 28 October and the meeting on 2 November. It is, however, clear that Sir Brian Pearse and Mr Anderson had suggested to Mr Mannix that he should resign at the meeting on 2 November 2016 (see 234 and 218). The basis of that invitation is also clear from numbered paragraph 3 at 156 and from 218. It may be that these unredacted documents are inadvertently in the agreed bundle. If that is the case the parties should be assured that they play no part in the conclusions reached in this Judgment.
58. The e-mail at 37 shows that Mr Mannix helped to put transitional arrangements in place. Mr Anderson briefed senior Trust employees in an e-mail on the same day (38). Bishop Mark sent out a personal message to Trust staff, head teachers and governors (39).
59. On 3 November 2016 Mr Mannix sent a further e-mail to Mr Anderson (40). Mr Mannix asked to speak to Mr Anderson and continued:

*“I remain of the view that I am of course at one level culpable for the concerns about CAST – simply because I’m CEO and that’s what goes with the role.”....“However, I genuinely don’t believe that these things amount to a personal failure that should lead to my dismissal nor do they persuade me that I’m not the right person to take things forward.”....“As a result, I still don’t feel in the least inclined to walk away. I’m*



*not concerned about the additional scrutiny I would be under through disciplinary/capability (in fact it would be welcome – we'll all be under that scrutiny anyway) nor am I concerned to avoid any personal humiliation if I am dismissed. While I don't exactly look forward to it, a little bit of humiliation is good for our humility."*

60. There was an e-mail exchange between Father O'Keefe and Bishop Mark on 3 November which included (42):

Father O'Keefe: *"I am getting a call with Nick" [presumably, Appleby] "as he isn't able to make it today which is a little bit disappointing, but instead I shall be speaking with Veronica Towey" [presumably, Towers] "hopefully."....*

*"Interesting remark from one of the clergy who quietly said – does your letter (ie mine) mean it's the end of JM? I asked why he said because the whole thing has been shrouded in mist and nonsense for far too long and he needs to go! The brethren have feelings about the situation for sure.*

*I must get on and do a little more about the situation."*

Bishop Mark: *"I did think about being there tomorrow with RSC, and asked Kate's advice. She said it was important not to be there so Rebecca could put the wind up Sandy and if I was there she'd talk to me....and its more important he gets the message!"*

61. Later the same day Father O'Keefe and Bishop Mark had a further e-mail exchange which included this (44):

Father O'Keefe: *"Just been on the phone to Veronica Towers, very impressive lady. Gave her a full update, - quick question – are you happy for me to forward some of the e-mails surrounding the history so that she can get a good read of the situation, I said I would want your OK, please."*

Bishop Mark: *"Yes, send Veronica whatever....she's very confidential."*

Father O'Keefe: *"Am still not overly confident in trusting Sandy at the moment, but spoke to Becks about making sure he will be well in the picture by the end of the meeting tomorrow. I want to get a feel for how onside Nick Appleby is too."*

Bishop Mark: *"Yes, I'm a bit worried about Sandy too,...."*

62. Pausing at this point, these e-mail exchanges demonstrate two points in particular. First, between them, Bishop Mark and Father O’Keefe were making it their business to bring Mr Anderson onside in the matter of dismissing Mr Mannix. Father O’Keefe, with Bishop Mark’s knowledge, was talking directly to Ms Clark about achieving this aim. (Father O’Keefe appears to have considered himself on familiar terms with Ms Clark, referring to her as “Becks”). Ms Griffin was also somewhere in the mix. Second, Mr Appleby and Ms Towers were being sounded out as Trust Board Directors. Given all that was happening it is very likely that this included ensuring they were onside in the matter of dismissing Mr Mannix.
63. On 4 November Mr Anderson and Father O’Keefe met Ms Clark. Two other people attended that meeting and Ms Griffin attended by telephone. Ms Griffin’s full note of the meeting is at 50-57. The note included these extracts:

*Ms Clark commenting on matters since she had come into post: “It became clear that the structure of the CAST Board was over complicated and the education advisers were having a very limited effect as local Governing Bodies could choose whether or not they took the advice they gave therefore the advice was not always followed – the final decision making was too close to the point where action was required.”....*

*“She emphasised that she and her team were committed to a series of actions where they could work along side the Trust to help them to improve however she added that had this not been a Catholic Trust the conversation would have been about re-brokering schools within CAST but given the Memorandum of Understanding agreed between the Catholic Church and the Department for Education they do not have that power.”*

Having run through the Ofsted feedback (see paragraph 36 above) the note continues: *“RC asked SA if the description as reported described the Trust. SA there are a number of things that I’m not too happy with but I have to take that this was the experience of the inspectors. It is expressed in a sharp and emotive way but a good thing as it focuses the mind. CAST must address the issues raised.”....*

*“RC 2 things to emphasize:*

1) *Nationally Catholic Education has a good reputation but CAST has not possibly causing huge reputational damage.*

2) *The failings of this Trust have the potential to undermine the whole academy movement in the South West.*

*She will have to say that both she and her predecessor had advised action that was not taken adding to the reputational damage to the church.”....*

*“SA”....“CEO’s position is under review”....*

*“RC What’s your view?*

*SA I’m reluctant to throw baby out with bathwater, he brings a lot but doesn’t fill role of CEO so things have to change. Don’t think JM should go, I disagree with working through that process in my view he is good at working at school improvement and public relations.*

*RC JM being used to making macro decisions I believe is not tenable for him to continue. Has anyone spoken to him – how is he?*

*SA He is ashamed and he believes that his being away leaves a void that will be damaging for the Trust. If his position is not tenable how do we work it through? Do we need to bring the Board meeting forward? Bishop Mark wanted Sir Brian to see us through the next few weeks but as he is not able to do so I’ll continue. I talked with Bishop Mark this morning and will talk again tonight I feel comfortable that I can work with the Bishop.”....*

*“RC has identified someone with excellent experience who could help particularly in Early Years. She is a Catholic which will help when providing interim support to Catholic schools. Her name is Lisa Mannall (LM) and RC gave KG her contact details so they could discuss the programme.”*

64. In this meeting Ms Clark secured two things. First, when faced with Mr Anderson’s inclination to keep Mr Mannix in some form of role, Ms Clark made clear her belief that Mr Mannix’s position was “*untenable*”. This, together with the other uncompromising comments Ms Clark made, delivered Bishop Mark’s and Ms Griffin’s plan to “*put the wind up Sandy*”. In describing Mr Mannix’s position as “*untenable*”, Ms Clark demonstrated her own complicity in the push to have Mr Mannix dismissed. Second, Ms Clark put forward a trusted substitute to address what needed to

be done. That was Ms Mannall (later to become the other Interim CEO, alongside Ms Griffin).

65. On 6 November Bishop Mark saw the note of the meeting on 4 November and, in an e-mail to Father O'Keefe, commented (49):

*"I've just had a thorough read of Kate's note, and I was surprised to read of Sandy's comments especially in regard to JM, ie believing he can be part of the solution, given what's happened. I note the RSC said his position was untenable. Are we sure Sandy's on board? I'd hate for Wednesday's meeting to waste a lot of time talking about JM.....we need to move on to how we are going to help the schools!"*

66. Later on 6 November, Bishop Mark received, via Father O'Keefe, Mr Anderson's draft agenda for the Trust Board meeting planned for 9 November. Bishop Mark commented (58):

*"I plan to be present. The agenda is a little troubling as it doesn't raise the matter of Ofsted, or the Report from RSC, etc I would have thought we need to cover:*

*The Board needs to be brought up to date with where we are, and what steps have been taken.*

*Secondly, we have to deal with decision about JM, which Sandy doesn't mention at all," [redaction] "are the Board in agreement that he should be dismissed? I imagine we need a vote on this and record it...."*

67. It seems that the agenda prepared by Mr Anderson included an item numbered 10.2 "Ofsted report" and an item numbered 11.1. entitled "decision regarding John" (48). Presumably Bishop Mark had missed these when he made the above comments.

68. In an earlier e-mail on 6 November 2016 Bishop Mark commented on a conversation he had with Ms Edwards (47):  
*"She was very interesting on JM, and of course was on the Trustees when these things were talked about in 2012, so has good Institutional memory. She is not surprised things have gone wrong!"*

69. Ms Edwards was asked about this reported conversation. Ms Edwards maintained that her remark was not critical of Mr Mannix as such. It was a reference to her view that Mr Mannix had needed more support in his role to free him to concentrate on more important matters.

70. On 7 October 2016 Father O’Keefe sent an e-mail to Ms Griffin, which leaves little doubt about Ms Edwards’ position as Father O’Keefe saw it. It included this (65):

*“Had a good chat with Maria.”...“She is fully on board with everything and will be at het meeting on Wednesday and also Friday.”*

71. Bishop Mark now moved to make changes to the Trust’s Board of Directors. Bishop Mark says this was because good practice favoured MAT boards not including employees and that this was supported by Ofsted (the “*too cosy*” comment – see paragraph 36 above), the CES and Lord Nash (Parliamentary Under Secretary of State for the School System - Department for Education - see 70 “*Does your board of trustees have sufficient independence and diversity of perspectives?*”). Mr Mannix, however, says it was a move by Bishop Mark to increase the likelihood of the Board following his direction. It may have been prompted by the former but the timing and putting into effect of the changes certainly facilitated the latter.

72. The three appointments that were made replaced three head teachers. The appointments were Father O’Keefe, Ms Edwards and Ms Towers. That the replacement of the head teachers suited the Bishop’s purposes is clear from the following two e-mails on 8 and 9 November from Father O’Keefe and Ms Griffin respectively (65 and 76):

*Father O’Keefe: “Just to report that all the Heads are very grateful for having worked on the Board and see totally what is asked of them in terms of stepping down, and no issues. None will be attending the Board meeting tomorrow. Hurrah!”*

*Ms Griffin: “It’s very good that the Heads will not be attending tomorrow’s meeting.”*

73. In short, it was almost certainly part of Bishop Mark’s purpose to strengthen the Board and follow the steer given by Ofsted, the CES and Lord Nash. The timing, however, was opportune. In making the Board changes, Bishop Mark would have known that three head teachers, likely to be supporters of Mr Mannix, were being replaced by Father O’Keefe, Ms Edwards and Ms Towers. Father O’Keefe shared the Bishop’s view that Mr Mannix had no future with the Trust. The evidence points to this also being Ms Edwards’ view (see paragraphs 50, 68 and 69 above) and Ms Towers had been sounded out (see paragraphs 60 and 61 above and 74 below.)

74. On 7 November 2016 Father O’Keefe and Bishop Mark had an e-mail exchange (59). It included:

*Father O’Keefe: “Had useful conversation with Nick this morning.*

*He is in the picture and onside in regards to Wednesday’s meeting.*

*He is knows Lisa Mannell well and speaks highly of her. He said she is everything John is not, which at this stage may be the solution.”*

*Bishop Mark: “Many of thanks....that all sounds good. Keith mentioned to me that Graham Johnson is a great JM devotee....Don’t know what spin that puts on things!”....*

*“Will you keep Veronica in picture – don’t know if she can come on Wednesday or not, but her vote could be important....”*

75. On 8 November 2016 Father O’Keefe wrote to update the Board following the meeting Mr Anderson, Father O’Keefe and others had had with Ms Clark on 4 November (66-68). It included this:

*“Specialist legal advice has also been secured to advise the Diocese and CAST in relation to the review of the strategic leadership of the Trust and to undertake a comprehensive governance review.”....*

*“There has been a dialogue with John Mannix to discuss the inspectors’ findings and the view of the RSC that the outcome of the inspections demonstrates a failure of strategic leadership. As you may be aware John is taking some personal leave and either I or Sandy will keep you informed of the outcome of those discussions.”*

The Tribunal believes Father O’Keefe was referring to Ms Mannall when he wrote: *“Following from the above and whilst John has been out of action, contact has been made with a senior leader of another multi academy who has been recommended to us by the RSC to provide some guidance and strategic leadership support focussing in particular on school improvement. She will work with Kate and the Area Advisers to develop detailed action plans and to assist with the implementation of the immediate and longer term changes that need to be made.*

*Finally, having discussed the matter first with Sir Brian prior to his resignation and with Sandy as Acting Chair, Bishop Mark has indicated his wish to make some changes to the Board to strengthen it in response to advice being received from the Department and to help those with leadership responsibilities to focus on the work that now needs to be done in the Schools. I attach a copy of an open letter sent by Lord Nash, the permanent Under Secretary for Education, to all Chairs of academy trusts which recommends that school leaders and executive officers do not serve on the Board. This would seem to be an opportune moment for the Trust to take this advice and Bishop Mark is inviting each of the three serving head teachers currently appointed as Directors to step down. Three new appointments will be made with effect from Wednesday; Maria Edwards, Veronica Towers, both Diocesan Trustees with relevant experience, and myself. It is likely a further sub-group will be identified, with Kate providing advice and guidance to that group, to support Sandy in the review of leadership and more details of that will follow in due course.”*

76. Had it been contemplated that Mr Mannix might return from his special leave to his post as CEO, the job Ms Mannall was given to do would surely have been part of Mr Mannix's remit.
77. On Wednesday 9 November 2016 the Trust Board met. The minute is at 74-75i. Apparently, this was the first time the Bishop had ever attended such a meeting (Mr Mannix WS35). The Board now comprised Father O'Keefe, Mr Anderson, Mr Jackson, Mr Appleby, Mr Rogerson, Father Shaw, Ms Edwards and Ms Towers (who sent her apologies). Mr Mannix had not been invited and did not attend. 5 members of the CAST staff were in attendance as was representation from the Trust's PR advisers, Lexington Communications.
78. Sir Brian Pearse's resignation was noted as was the appointment of Father O'Keefe, Ms Edwards and Ms Towers and the stepping down of the three head teachers. Mr Anderson was appointed as Chair. The meeting dealt with a considerable amount of routine business. It also spent time on the results of the Ofsted review in respect of the individual schools affected. The minutes contain no mention of any debate surrounding Mr Mannix's absence nor of what, if any, action was to be taken in respect of him. If item 11.1 ("*decision about John*" – see paragraph 67 above) was debated, the debate was not recorded, nor was any decision.

79. The next day, 10 November 2016, Bishop Mark wrote to Mr Anderson (92-93). It is not in dispute that this letter was seen by both the Directors' Panel and the Appeal Panel that later considered Mr Mannix's capability. In it, Bishop Mark recognised that the RSC could not take schools away from the Trust but:

*"The very model of diocesan wide Catholic academy trusts is under threat if CAST cannot now prove itself to be able to drive up standards. There is a risk that not only will the Trust have to be broken up into smaller trusts but that the DfE may never again approve a diocesan wide academy trust for any other Catholic diocese. These outcomes would be devastating to the Catholic mission, not only in our diocese, but across the country.*

*It is in that context that I have considered whether the current CEO has my trust and confidence to lead CAST in the urgent task of leading school improvement and avoiding the dismantling of CAST. I am aware that John Mannix was the driving force behind creating CAST and its structures. Undoubtedly, there have been some successes with some schools making some improvements. However, the feedback from Ofsted demonstrates that improvement is not sufficiently fast; that the structures John created have brought confusion on who is accountable for what and that the Board have not been getting the right information they need. I note that John was warned by Sir David Carter earlier this year, in February 2016, that there was a risk of Ofsted inspections where Schools would fall back.*

*I have concluded I do not have trust and confidence in John to lead the Trust to recovery from the Ofsted findings and that if he were to remain there would be a risk not only of CAST being split up, but also of other whole-diocese Catholic academy trusts being prohibited.*

*I ask the Board to reflect prayerfully on the contents of this letter in your future deliberations."*

80. So far as The Tribunal can see, no Board approval was obtained for any particular course of action in respect of Mr Mannix. Mr Anderson says in his statement (and confirmed in oral evidence) that the next step was his (WS39):

*"A decision had to be made about how to move matters forward with Mr Mannix. As Chair of the Board, I needed to be the one to make the decision about next steps. By this*



*time, I had some serious concerns about Mr Mannix's capabilities and ability to lead the Trust. By this time, it was clear to me that Mr Mannix did not have the trust of the Bishop, Ofsted or the Regional Schools Commissioner. I could not see how Mr Mannix would be able to lead the Trust through the necessary changes which were desperately needed. I therefore did consider that formal capability proceedings were required. Instigating this procedure was my decision."*

81. The Tribunal's understanding of Mr Anderson's oral evidence nuanced this. Mr Anderson was pragmatic about the position the Trust found itself in. At the time it is almost certain that Mr Anderson would not have appreciated the extent to which he had been manipulated in the meeting on 4 November by the complicit actions of the Diocese and the RSC. There is also no evidence that he knew of the extent of the efforts made by Bishop Mark and Father O'Keefe to ensure that others on the Trust Board were onside. The upshot was, whatever Mr Anderson's personal view of Mr Mannix's abilities and potential for the Trust, Mr Anderson had come on board with the idea that Mr Mannix had to go because the pressure for that outcome had become too great to withstand. Somewhat as an afterthought and probably on the basis of advice, Mr Anderson allowed that this had to be subjected to a capability process. In his oral evidence and in response to a question from the Tribunal Mr Anderson volunteered that, if the process had not resulted in Mr Mannix's dismissal, the Trust would have had to find a way of accommodating that outcome. However, on the evidence, it was already too late for any such outcome to be a realistic possibility.
82. Mr Anderson requested a meeting with Mr Mannix in an e-mail on 10 November 2016 "to move to stage 4" (77).
83. On 15 November 2016 Mr Anderson met Mr Mannix and handed him a letter (80-81). The letter can be referred to for its full content. It included:

*"I am inviting you to attend a meeting under the Capability Rules in the attached process at Stage 4. I will be presenting the case against you to a panel of three Directors.*

*The case against you is that following the feedback from the Ofsted inspection on 20<sup>th</sup> October.*

*a) There has been a loss of trust and confidence in your ability to respond to the Ofsted findings.*

*b) You are not capable of leading the Trust in response to the Ofsted findings.*

*c) As the person who established the Trust and its structures and oversaw its operation as CEO you are primarily responsible for:*

*1. The failure of strategic leadership identified by Ofsted.*

*11. The failure to give the Board appropriate data on school performance and pupil premium.*

*111. The failure to ensure that all staff were clear about the lines of accountability.*

*1V. Failure of CAST schools to close the gap between disadvantaged children and All National.”....*

*“I will be sharing with the Director’s Panel my own view that it is not tenable for you to remain as CEO given the findings of the Ofsted report, the letter from the Bishop and the concerns of the RSC. I do not believe it is possible for you to successfully lead the trust forward and regain the trust of all those bodies in the time scale required.”....*

*“The meeting is at Stage 4 of the process as it may result in dismissal on notice or with a payment in lieu of notice. If a sanction is imposed by the Directors’ Panel there will be an appeal to a panel of three different Directors.”....*

*“As dismissal is a potential outcome of this process I am suspending you from work on full pay until the conclusion of the process.”*

84. Notwithstanding the commencement of the capability process, the evidence is clear that, long before this stage, it had been decided that Mr Mannix should be dismissed. Further, the Tribunal is not persuaded by any argument that, in the face of the express wishes of the authority figure that was Bishop Mark, the RSC and Mr Anderson, there was any realistic possibility that a panel of three Trust Directors could act without bias and find that Mr Mannix should remain in post. This primary finding is reinforced when the make-up of the Directors’ Panel and the subsequent Appeal Panel is taken into account.

85. In essence, the Tribunal’s finding on the evidence is that a majority of the Directors’ Panel and one member of the Appeal Panel were demonstrably biased.

86. Mr Anderson says that he selected the Directors' Panel based on co-ordinating availability dates without undue delay. Those selected were Father O'Keefe, Mr Appleby and Mr Rogerson. Mr Anderson probably acted in good faith when appointing the Panels. As noted above, there is no evidence that Mr Anderson knew of Bishop Mark's and Father O'Keefe's efforts to sound out Trust Board Directors.
87. It is quite clear now, however, that Father O'Keefe's part in all that had happened meant that when he came to consider whether or not Mr Mannix should be dismissed, he would be biased against Mr Mannix. During the Appeal, Ms Edwards managed to get as far as describing Father O'Keefe's involvement as "*questionable*" (224).
88. Mr Appleby had been thoroughly sounded out (see paragraphs 54, 60, 61 and 74 above). Father O'Keefe's comment that Mr Appleby was "*onside*" is enough to find bias on Mr Appleby's part.
89. Thus, even if the Bishop's letter of 10 November and Mr Anderson's of 15 November are disregarded, two members of the Directors' Panel were compromised. They could have played no part in a fair process. The Tribunal knows nothing of Mr Rogerson's views of Mr Mannix leading up to the capability process.
90. Mr Anderson later appointed an Appeal Panel to hear Mr Mannix's appeal. It consisted of Ms Edwards, Father Straw and Mr Johnson. Nothing is known of Father Straw's predispositions, if any. Mr Johnson was billed by Bishop Mark as a "*devotee*" of Mr Mannix's (see paragraph 74 above).
91. Turning to Ms Edwards, the Tribunal is not persuaded that Ms Cummings's evidence on Ms Edwards's views on Mr Mannix (see below) establish bias on Ms Edwards's part when it came to doing her job on the Appeal Panel. The telling evidence is of Ms Edwards' views at the meeting of Diocesan Trustees and her being pronounced "*fully on board*" by Father O'Keefe (see paragraphs 50, 68-70 and 94 below). That is enough to establish bias on Ms Edwards' part. Whilst this only establishes individual bias in one of three of the members of the Appeal Panel, the Tribunal points again to its primary finding that bias resulted from the pressure exerted by the Bishop, the RSC and Mr Anderson.
92. The Formal Ofsted Review (in fact, an "Outcomes Letter") was dated 25 November 2016 (105-116). It was signed by Mr Simmons. Although addressed to Mr Mannix, he only obtained a

copy by asking Mr Anderson for it. The Review itself was an expanded version of the feedback already received by the Trust. It was a damning indictment liberally sprinkled with criticisms of leadership.

93. Having received the Ofsted Review, Mr Mannix sent his comments to Mr Simmons (117-134). There is a dispute over whether or not Mr Anderson authorised Mr Mannix to make these comments but nothing turns on it. It appears that Mr Anderson, in conjunction with Ms Mannall had made a “factual accuracy response”. Mr Mannix’s comments on the Review at 119-134 are interesting in that they express Mr Mannix’s views, later put to the Directors’ and Appeal Panels. The flavour is at 119 and they can be referred to for their full content. They are a mixture of arguments about the right model for a MAT and factual challenge. From the Trust’s perspective, Mr Mannix’s views on the Ofsted report were never, themselves, relevant. The Trust had decided the best thing to do was to accept the Review and move forward from there. (See, for example, Mr Declan McHugh’s (Associate Director at the PR adviser used by the Trust – Lexington Communications) comment on 23 November 2016 at 95 – “*As agreed there is no intention to argue about the findings.*”). When Mr Anderson realised that Mr Mannix had contacted Mr Simmons direct on the subject of the Review, Mr Anderson warned Mr Mannix that he was not to contact anyone in relation to the activities of the Trust on pain of dismissal (135).
94. On 25 November 2016 Mr Mannix sent an e-mail to various people asking if they could obtain any letters of support for him (102-103). It seems clear from e-mail exchanges between Bishop Mark and Father O’Keefe at 37 that they became aware of this and tried to stop it. It also seems clear that Ms Edwards was in the loop and used a pretext to prevent one individual from going into schools for that purpose.
95. An e-mail Mr Mannix sent Sir Brian Pearse on 26 November (137-138) reflects that Mr Mannix knew he would not be allowed to return to work with the Trust.
96. On 28 November 2016 Ms Clark sent a “Warning Notice” to the Trust (141-142). The warning was to the effect that, unless the matters in the Ofsted Review were remedied, the Secretary of State may use powers of intervention. An action plan setting out the steps the Trust was planning to take was to be sent to Ms Clark by 16 December 2016.

97. Whilst in the Tribunal's view the capability process was a sham with a predetermined outcome, it is necessary to examine aspects of it as it informs other issues the Tribunal must consider in its conclusions. The process involved a "papering up" exercise directed, it appears, by legal advice. It went off in many different directions.
98. The "*Capability Meeting*" took place on 30 November 2016. The minutes are at 144-158 including detailed papers tabled by Mr Mannix. There are extracts from a recording at 305-308. Present were Mr Appleby, Mr Rogerson and Father O'Keefe. Mr Mannix was accompanied by Ms Sue Pitcher and Ms Karen Laidler took the minute.
99. To Mr Mannix's surprise, Mr Anderson did not attend, despite Mr Anderson's clear indication that he would (83). Mr Mannix had expected Mr Anderson to come to the meeting to put flesh on the bones of the charges against him. The upshot was that Mr Mannix felt he was unable to have an informed debate with someone who had in depth experience of the Trust. Mr Mannix points out that the Directors' Panel had less than four months' experience of the Trust Board between them (WS49).
100. Apparently, Mr Anderson was absent from the meeting because he mistook legal advice. However, there is some evidence that Mr Anderson's absence had been manipulated.
101. On 28 November 2016 there was an exchange of e-mails between Ms Griffin and Bishop Mark. Whilst Ms Griffin's reference appears to be to Mr Anderson being a member of the Director's Panel rather than simply attending the meeting, it adds to the picture. The exchange also shows Bishop Mark's continued involvement and his desired outcome. The e-mails included this (143):

Ms Griffin: "*The good news is that Sandy is not on the panel,*"...

*"Less good is the financial position of some of the schools and in particular St Boniface, we'll need to justify ourselves to the EFA."*

Bishop Mark: "*....that's good about the panel. Oh dear about St B....I wondered if it was beyond the Head*"

Ms Griffin: "*Although it would not be just the head involved in going from a deficit of £359,777 to £613,156 it is ultimately*

*the head's responsibility which is supposed to be monitored by the accounting officer – in CAST's case JM.*

*The lack of financial control just adds to the incompetence of the CEO."*

Bishop Mark: *"Thanks....Another nail!"*

102. Returning to the capability meeting, Mr Mannix took the Panel through his detailed papers responding to the charges set out in Mr Anderson's letter. Mr Mannix's first paper was entitled "General Response". In it Mr Mannix set out what was then and, at the Tribunal Hearing remained, his overall view:

*"I believe that what is happening here is that the Board, pushed by Bishop Mark and the company members, has made a knee-jerk reaction to false premises.*

*The false premises are:*

- *that Plymouth CAST is clearly failing and is not delivering what could reasonably be expected from a Trust of its age;*
- *that its failure is extreme in comparison with the overall range of educational performance across the country;*
- *that the key to this failure is the capability of the CEO.*

*The knee-jerk reaction has been to seek a scapegoat and dismiss the CEO.*

*It is "knee-jerk" in so far as the Trust has taken action to bring about the CEO's departure before any reasonable or informed scrutiny of the key premises above, and certainly without at any point offering the CEO a chance to respond. Further, the CEO's request to meet Bishop Mark to discuss the matter was denied.*

*By preventing the CEO from continuing to lead the network at such a crucial time and by (implicitly) accepting the Ofsted feedback without evaluation or challenge, the Trust has made the CEO's position untenable before he has even had a chance to make a defence."*

103. Mr Mannix refers to the "premises". In essence the issue was whether or not the Ofsted Review actually demonstrated that the Trust and/or Mr Mannix was/were failing. This subject

occupied much of Mr Mannix's evidence to the Directors' Panel and the subsequent Appeal Panel. It was wasted because the Panels started from a different point of view. That was the Trust's decision not to question the Ofsted Review but to accept it and go forward from there. In that respect there was a disconnect in the capability process. Mr Mannix was endeavouring to show that the Ofsted Review did not establish a lack of capability on his part to do his job. The Panels were occupied in deciding whether or not Mr Mannix was capable of moving matters forward. The problem that faced the Directors' Panel, whether appreciated or not, is that it was trying to shoe-horn a strategic decision, that Mr Mannix should not play any part in the Trust's response to the Ofsted Review and, indeed, in the Trust going forward, into a process ostensibly directed at assessing Mr Mannix's capability to do his job. This was an illogical and probably impossible task.

104. Mr Mannix's paper at 156-157 is a further well-argued summary of his position.
105. On 2 December 2016 the Ofsted Review featured on the BBC News (163-164). It included a headline of "Missing £2m". The local press also carried similar articles (165-168 and 172). Mr Mannix rightly resents any implication that he had pocketed £2M. Mr Anderson described it as "*a disgusting bit of Journalism*" (169). However, a proper reading of the Press coverage belies the headline on the subject. The Trust put the correct position in its PR draft (99): "*There is no suggestion that there has been any improper use of pupil premium spending. Individual schools have fully accounted for those funds. However, Ofsted found inadequate monitoring of the impact secured through that funding by the Trust and we are now working urgently to put in place measures that will address that problem going forward.*"
106. The Directors' Panel met again on 6 December 2016. There is a note at 170. Some legal advice, apparently about the joint culpability of the Board with Mr Mannix for any failings, was considered. The allegations against Mr Mannix were upheld save for c)1V. – "*Failure of CAST schools to close the gap between disadvantaged children and All National*".
107. On 12 December 2016 Mr Appleby wrote to Mr Mannix with the Directors' Panel's decision (173-195.) Mr Mannix was dismissed with three month's paid notice to be served on "garden leave".

108. Much of Mr Appleby's long letter was a recitation of events and papers. It seems to the Tribunal that the crux of the letter is to be found in these extracts:

***“Challenging Ofsted’s views of CAST***

*26. On the day that you heard the oral feedback from Ofsted (20<sup>th</sup> October 2016) you e-mailed all headteachers and governors indicating that you accepted the findings. Those findings included an explicit statement that the Trust was failing and statements that the Trust was suffering from a lack of strategic leadership and the pace of improvement was too slow and that outcomes were not good enough. Your e-mail made it clear to those recipients who had attended the feedback and those who had been briefed on it, that you accepted that the Trust was failing, lacked strategic leadership and was too slow in making improvements. Those recipients included the Chair of the Board of Directors and the Bishop.*

*27. You are now saying that the Directors should have undertaken a deep analysis of whether Ofsted’s findings were fair or correct despite having publicly agreed to those findings yourself.*

*28. Whilst you were on special leave and then on suspension the Directors came to the view that the best strategy for the Trust was to accept Ofsted’s findings and move on to working to address them – in effect adopting the approach you set out in your e-mail of 20<sup>th</sup> October.”....*

*“32. We do not accept your subsequent criticisms of Ofsted’s findings – we believe you were correct in your original assessment that the findings should be accepted. This is a key strategic issue and you have demonstrated poor judgement in not only changing your strategic position from the sensible one of accepting the findings to challenging them, but also exacerbating Ofsted’s lack of confidence in your judgement and so undermining your capacity to lead improvement.*

*33. In your submissions to us you describe the Ofsted report as “poorly evidenced and misleading”, as “negative and “poorly evidenced”. We take the view that we are entitled to rely on the Ofsted Report as an official indicator of the performance of our Schools and the Trust.*



*34. Nevertheless we have tested your proposition that the report was poorly evidenced and misleading by reviewing your comments of the summary of the main findings.”*

109. It will readily be seen that, at the core of Mr Appleby's letter, was Mr Mannix's willingness or otherwise to go along with the Trust's strategy to accept the Ofsted Review without criticism and move on from there. The problem with this is that no-one on the Trust's side had ever approached Mr Mannix to ask him that question. If what the Director's Panel was now purporting to do was to put that question, it was far too late and in the inappropriate context of a capability procedure. The reason no such approach had been made in the first place, whilst Mr Mannix was in post, was that it had long ago been decided that Mr Mannix was to play no further part in the Trust.

110. Mr Appleby had written *“Nevertheless we have tested your proposition that the report was poorly evidenced and misleading by reviewing your comments of the summary of the main findings.”* In the Tribunal's view this is window dressing. Whilst there were a couple of gestures in that direction on the subjects of pupil premium, data and accountability, reference to that part of Mr Appleby's letter that sets out the decision further demonstrates the point that the content of the Ofsted Review was not to be in issue. Further, it shows the real reasons for dismissing Mr Mannix and where they had come from. The Directors' Panel was doing no more than delivering the Bishop's wish:

*“67. The public comments from Ofsted demonstrate a clear lack of confidence in both you and the Board in relation to the way you and the Board have lead the Trust in since 1 April 2014.*

*68. As the creator and leader of the Trust your credibility to lead the organisation is inevitably damaged by such a damning report from Ofsted.*

*69. Your credibility with stakeholders to lead on the task of urgent improvement when such urgency has been identified as lacking to date is reduced even further.*

*70. You have further damaged your credibility with Ofsted by seeking to challenge their findings after the Chair of Directors had made submissions on the Trust's behalf.*

*71. The Directors' strategy to deal with this issue is to accept the findings and move on. You are clearly not prepared to*

*accept the findings. This makes you even less credible or suitable to provide leadership to the urgent transformation process which must now take place to placate Ofsted.*

*72. We are satisfied that not only do key stakeholders such as the Bishop and Ofsted lack confidence but we ourselves do not have confidence in your ability to effectively lead the Trust's response to Ofsted's findings. And we do not believe you are capable of doing so.*

*73. We believe there would be severe concern amongst Ofsted and the Regional and National Schools Commissioners, if the Trust proceeded without a change in the leadership at both executive and board level. To take no action at all would risk the Trust being dismantled into three or more smaller trusts and damage the reputation of Catholic education nationally. Changes have been made at Board level to placate stakeholders but in reality there will be no confidence in the Trust to proceed to deal with this effectively if you remain in employment. To leave you as CEO would in our view risk the continued existence given your lack of credibility with key stakeholders.*

*74. In our view this lack of confidence and credibility alone warrants your termination on the basis of the first and second allegations so it is not formally necessary to consider the third allegation and its four sub-clauses. We do so for completeness.*

*75. As the person who established the Trust and its structures and oversaw its operation as CEO we accept that you are primarily responsible for:*

*1. The failure of strategic leadership identified by Ofsted.*

*11. The failure to give the Board appropriate data on school performance and pupil premium.*

*111. The failure to ensure that all members of staff were clear about the lines of accountability."*

111. On 16 December 2016 the Trust provided the action plan required by Ms Clark (197-198). By that time Ms Mannall and Ms Griffin had been appointed Interim Joint Chief Executive Officers and an appointment had been made to the post of Chief Operations Officer. On 10 January 2017 Ms Clark replied to the effect that the Trust had not complied with the warning notice and more was required (214-215). This appears to have involved

even closer involvement of the RSC's representatives at Trust Board and other levels.

112. On 21 December 2016 Mr Mannix sent Mr Anderson an appeal against the decision to dismiss him (200-202). First, there were challenges to "*the premises*" of the Ofsted Review. Second, Mr Mannix pointed out that he had not been allowed any opportunity to engage with the Trust about the appropriate response to the Ofsted Review.
113. The Appeal Panel had a pre-meeting on 4 January 2017. Following this Ms Edwards produced a list of actions and some supporting paperwork to structure the process (208-213).
114. The appeal hearing took place on 11 January 2017. It was to be a full re-hearing. The minutes are at 229-234. Present were Mr Johnson, Father Francis Straw and Ms Edwards. Mr Mannix was accompanied by Ms Pitcher and Ms Laidler took the note. Mr Appleby attended to support the Directors' Panel's original decision and tabled his response to Mr Mannix's appeal (243-262). This lengthy document was not seen by Mr Mannix before the hearing. This document introduced a new angle. It rejected the relevance of the performance of the Trust's schools in favour of emphasising the personal criticism Mr Appleby saw in the Ofsted Review of Mr Mannix. The change of approach may be because Mr Mannix was right that the performance of the Trust's schools was in line with the national average (see, for example, 303).
115. Mr Mannix tabled papers arguing his case (263-275). Mr Mannix raised his concern that Father O'Keefe had been part of the Directors' Panel and was now concerned about Ms Edwards's presence on the Appeal Panel. These concerns were noted. Mr Mannix did not, of course, know all the circumstances pertaining to Father O'Keefe and Ms Edwards at the time, nor that Mr Appleby was also compromised.
116. It is clear from Ms Edwards's oral evidence and the notes of the meeting that the Appeal Panel's starting point was also that the Ofsted Review should be taken as read. (See also Ms Edwards's e-mail at 235 and the facts taken as agreed at 225.)
117. Ms Edwards prepared a paper for her fellow Appeals Panel members (216-227).

118. On 13 January the Appeals Panel met, worked through Ms Edwards's paper and decided to uphold the decision of the Directors' Panel to dismiss Mr Mannix.
119. On 18 January 2017 Mr Johnson wrote to Mr Mannix confirming the decision (237-242). The letter included this, which gets to the heart of the matter:

***“18 Was there a loss of trust and confidence in your ability to respond to the Ofsted findings?”***

*19 In his letter of 10 November the Bishop specifically expressed his view that he “did not have trust or confidence” in your ability to lead the Trust to recovery from the Ofsted findings. In his letter of 15 November the Chair of the CAST Board stated that “in my own view it is not tenable for you to remain as CEO given the findings of the Ofsted report, the letter from the Bishop and the concerns of the RSC.” Ofsted is an independent regulator of school standards. The Ofsted Published Report of 25 November stated that “Trust leaders do not have the capacity to bring about improvement with the required urgency.” The Directors’ Panel comprising three members of the CAST Board stated “we ourselves do not have confidence in your ability to effectively lead the Trust’s response to Ofsted’s findings.” These remarks and the content of the Warning Notice to the Governors of Plymouth CAST issued by the Regional Schools Commissioner on 28 November 2016 led the Appeal Committee itself to decide that it had lost trust and confidence in your ability to respond to the Ofsted findings given your failings identified by the Ofsted report.”*

120. The Appeals Panel was saying no more than this. Because the Bishop, Mr Anderson, Ofsted and the Directors' Panel had said they had lost trust and confidence in Mr Mannix, it must be so.
121. On 11 February 2017 Father O’Keefe was sent a draft communication concerning Mr Mannix leaving the Trust. Father O’Keefe’s comments included these:

*“As far as the wordsmith who crafted together such a glowing account of the glittering career of such a dear and valued member of the work force within the Diocese, what can I say. What can I say that won’t be incriminating if/when he goes to Industrial Tribunal??!! So will agree to the words and tell you the unadulterated text I would have put in the*

*announcement during the rather crowded Valentines luncheon!!!!”*

122. Although chronologically out of order, there are two further pieces of evidence the Tribunal should deal with.
123. The first is Doctor Merrin’s evidence that Father O’Keefe had a pre-existing bias against Mr Mannix. Doctor Merrin was at school with Mr Mannix in the 1970s and they have met as friends on and off over the years.
124. Doctor Merrin was an active parishioner at Holy Trinity Parish Church in Newquay, Cornwall from 2004. Father O’Keefe became the parish priest at the end of June 2007. Doctor Merrin says that Father O’Keefe made some derogatory remarks to him about a department of the Diocese that, at the time, included Mr Mannix and mentioned Mr Mannix by name. In evidence Father O’Keefe provided an explanation for what he believed had been a misunderstanding between Doctor Merrin and him, although the Tribunal is sure Doctor Merrin remains unconvinced. For the purposes of this case, the Tribunal does not rely on unspecified remarks made by Father O’Keefe some nine years before the more immediate events with which it is concerned as evidence of bias.
125. The second concerns evidence that Ms Cummings gave that, in her view, showed that Ms Edwards had a pre-existing bias against Mr Mannix. The principal reason for this relates to an event on 17 June 2013. Ms Cummings, who is an HR professional and at the time an HR consultant to the Diocese, was asked to present a report to the Diocesan Trustees on the implications of the transfer of undertakings regulations for the proposed creation of the MAT. As part of that report Ms Cummings explained that Mr Mannix’s contract of employment, together with that of other employees, would transfer to the MAT. Ms Cummings says she was interrupted and continues (WS8):

*“The interruption came from Maria Edwards and two of her diocesan trustee colleagues it was an angry interruption objecting strongly to John Mannix, Director of Schools, being transferred into CEO position within Plymouth CAST. I was shouted down and Maria and her colleagues seemed unable to except the legal findings under the TUPE regulations.”*

126. Ms Edwards accepts that something of the sort occurred but that it was prompted by her view that the post of CEO should be opened to the market, rather than filled automatically by Mr

Mannix. The Tribunal's observations on this are these. First, this would not be the first occasion on which people unfamiliar with the effects of the transfer of undertakings regulations were surprised by them. Second, this event took place in 2013, at least three years before the events surrounding Mr Mannix's dismissal. It would be unsafe for the Tribunal to rely on this event as evidence that Ms Edwards was biased against Mr Mannix when she sat on the Appeal Panel in 2016/17 and it does not do so.

### **APPLICABLE LAW**

127. Section 94 of the Employment Rights Act 1996 (the "ERA") provides an employee with a right not to be unfairly dismissed by his employer. Section 98 of the ERA sets out provisions for determining the fairness or otherwise of a dismissal. So far as it is relevant it provides:

*"98 General*

*(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-*

*(a) the reason (or, if more than one, the principal reason) for the dismissal, and*

*(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

*(2) A reason falls within this subsection if it-*

*(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*

*(b) relates to the conduct of the employee,"....*

*"(3) In subsection (2)(a)-*

*(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality,"....*

*"(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the*

*dismissal is fair or unfair (having regard to the reason shown by the employer)-*

*(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*

*(b) shall be determined in accordance with equity and the substantial merits of the case."*

128. In a case where an employer relies on "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held", once the employer has shown such a reason as being potentially fair, it is up to the Tribunal to decide whether or not the employer acted reasonably, under section 98(4) of the ERA, in dismissing for that reason. As in all unfair dismissal claims a Tribunal must decide the fairness of the decision by asking whether or not the decision to dismiss fell within the range of reasonable responses that a reasonable employer might adopt. A Tribunal must not substitute its own view in this respect.

129. The established test for a fair dismissal on the ground of capability has two elements. First, does the employer honestly believe that the employee is incompetent or unsuitable for the job? Second, are the grounds for that belief reasonable? Procedural issues include a proper appraisal of the employee's performance, an identification of the problem, a suitable warning and a reasonable chance to improve. There may also be some onus on the employer to consider alternative employment although it is well established that this is a low threshold to cross in the context of capability dismissals and an employer certainly does not have to create a job for the affected employee.

130. Whilst the Trust has not pleaded that the reason for dismissal related to conduct, the test is of some assistance in this case. The test for a fair conduct dismissal is well established. In a case where an employee is dismissed because the employer suspects or believes that he or she has committed an act of misconduct, in determining whether that dismissal is unfair an employment tribunal has to decide whether the employer who dismissed the employee on the ground of the misconduct in question entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. This involves three elements. First, the fact of that belief must be

established, that is that the employer did believe it. Second, the employer must have had in his mind reasonable grounds upon which to sustain that belief. Third, the employer at the stage at which he formed that belief on those grounds, must have carried out as much investigation as was reasonable in all the circumstances. The first of these elements goes to the reason for dismissal, which it is for the employer to show. Otherwise, the burden of proof is neutral.

131. Added to these tests is the requirement that the sanction imposed by the employer is within the band of reasonable responses.

132. Whilst it has been explained above, it is worth reemphasising that implicit in all this is that it is not for the tribunal to substitute its view for that of an employer provided that the employer's view falls within the band of responses which a reasonable employer might adopt.

133. Sections 122(2) and 123(6) of the ERA respectively provide:

*“122”....“(2) Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.”*

*“123”....“(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.”*

134. The Tribunal was not referred to any specific case law.

## **CONCLUSIONS**

135. The Tribunal's task is to decide whether or not Mr Mannix was unfairly dismissed by the Trust and, if so, what the consequences are. In doing so the Tribunal must apply the law to the facts it has found. It is not the Tribunal's task to decide whether the parties involved in the dismissal of Mr Mannix acted in the best interests of the Trust or otherwise, far less to comment on the ethical rights or wrongs of actions taken. That is for others to decide.



136. It is for the Trust to show a permissible reason for the dismissal and it puts forward “capability” under subsection 98(2)(a) or “some other substantial reason” under subsection 98(1)(b) of the ERA. By “capability” the Trust refers to “skill” and/or “aptitude” under subsection 98(3)(a) ERA.

137. The reason for the dismissal

138. The Trust’s argument is that, whilst the Bishop may have formed the view that the best way forward for the Trust was for Mr Mannix to leave it, the Bishop could not achieve that result because it was in the hands of the Trust Board. Once in the Trust’s hands, the dismissal was for reason of capability as judged by a capability process controlled by the Trust Board acting independently. The facts do not support this. The reason for the dismissal is clear. Mr Mannix was dismissed because Bishop Mark thought that was the right way of dealing with Mr Mannix following the Bishop’s meeting with Ms Clark on 17 October 2016. This was not about a loss of trust and confidence in Mr Mannix’s ability to respond to the Ofsted Review. That was never tested. It was an act to appease the RSC who was complicit in it. In structural terms Bishop Mark may not have had the theoretical power to procure that result, but he deployed a number of means at his disposal to secure that outcome through instruction and influence. On the evidence the suggestion that the Trust Board acted independently is unsupported. It is instructive in this context to note that Mr Mannix was effectively suspended (it was referred to as special leave, but it had the same effect) on 2 November 2016 (just over two weeks after the Bishop’s meeting with Ms Clark) and given notice of dismissal on 12 December 2016 (eight weeks after the Bishop’s meeting with Ms Clark).

139. It is easier to identify the reason why Mr Mannix was dismissed than it is to fit it into the scheme of permissible reasons in section 98 ERA. The reason for dismissal is not about capability. The evidence is not that the Bishop thought Mr Mannix could not do his job for want of skill or aptitude. The evidence is that the Bishop thought the best way of preserving the reputation of the Trust and Trusts in general as a means to deliver Catholic Education was to placate the RSC by doing what she wanted and dismissing Mr Mannix. Arguably there may be collateral elements of capability and even conduct in this. However, in the Tribunal’s view, the Trust is right to put this forward as some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. That reason may be a permissible reason. The Tribunal will return to this below.

140. The enquiry then turns to the subsection (4) tests. Before doing so in the context of “some other substantial reason”, it is instructive to consider two other possibilities. They are that the reason for the dismissal was either capability or conduct.

141. A “capability” dismissal?

142. If the Tribunal is wrong and the reason for dismissal was capability, the Tribunal would first have to consider whether or not the Trust honestly believed that Mr Mannix was incompetent or unsuitable for the job because of a lack of skill or aptitude. The first point is that the Panels assembled to judge this on behalf of the Trust were not competent to do so given the pressure they were subjected to and the individual bias of some of the Panels’ members.

143. If the Tribunal is wrong about that, the second point is that the Panels clearly did not proceed on the basis of assessing Mr Mannix’s skill and aptitude to do the job. What they assessed was whether or not Mr Mannix was prepared to take the Ofsted Review as read and move forward from there. They did so in circumstances in which the Trust had never sat down with Mr Mannix and asked him that question. Further, even if Mr Mannix was prepared to accept the findings of the Ofsted Review without question, the Panels would each have dismissed him because of the unchallenged content of the Review. As Mr Mannix put it in his pleadings (12):

*“If I accepted the findings, I should be dismissed; if I challenged the findings, it proved my lack of professionalism.”*

144. Again, if the Tribunal is wrong about that there are procedural issues. There was no proper appraisal of Mr Mannix’s performance, no proper identification of the problem, no consideration of any warning and no offer of a reasonable chance to improve or to consider alternative employment.

145. A “conduct” dismissal?

146. As noted, the Trust has not pleaded conduct as a reason for dismissal. The Tribunal agrees with the Trust that it was not. If the Trust and the Tribunal are wrong, the fairness or otherwise of the dismissal would be judged by applying the tests applicable in conduct cases and explained above. It can readily be seen that the tests do not fit. The argument falls at the first hurdle. The

Trust has never said that it entertained a reasonable suspicion amounting to a belief in misconduct on Mr Mannix's part.

147. Dismissal for "some other substantial reason" and the subsection 98(4) ERA tests.
148. To recap, the Tribunal's findings on the reason why Mr Mannix was dismissed are set out in paragraphs 138-139 above. Before the tests in subsection 98(4) are engaged the reason has to amount to "some other substantial reason" within the meaning of section 98(1)(b). This is not a high threshold for the Trust to cross. Nevertheless, there must be a "substantial" reason and not a whim. It does seem to the Tribunal that, focussing on the identified reason for the dismissal, it might fall the side of a "whim" rather than a substantial reason. If that is right, the dismissal is unfair because the Trust has not shown a permissible reason for the dismissal. However, the Tribunal acknowledges that this alone is liable to attack and it is in the parties' interests to go further.
149. Assuming that the reason for the dismissal set out above is a permissible reason for the dismissal, being some other substantial reason, the tests in section 98(4) are engaged. The question the Tribunal must ask is whether or not the decision to dismiss fell within the range of reasonable responses that a reasonable employer might adopt. The Tribunal must not substitute its own view in this respect.
150. It should be noted that the Trust did not plead pressure from a third party or parties as the "some other substantial reason" for the dismissal, although, when prompted by the Tribunal, Mr Ahmed did leave that possibility open. On the face of it, the pressure from the RSC might appear to be the most likely "some other substantial reason". However, in the Tribunal's view this is not a case where this argument can succeed. First, it is not clear that the RSC demanded or even suggested that Mr Mannix be dismissed before Bishop Mark had made that decision himself. Second, even if did, it is clear that Mr Mannix's dismissal served Bishop Mark's purposes as well as those of the RSC. They were complicit in it. Third, there were other options available to the Trust. An obvious one is that the Trust could have argued the case for keeping Mr Mannix as part of an action plan to address the Ofsted Review.
151. Returning to the more obvious "some other substantial reason" identified in paragraphs 138-139, a reasonable employer would regard the decision to dismiss, taken, in effect, by Bishop

Mark, as arbitrary both in the way that it was made and executed. It may or may not have been in the best interests of the Trust. As explained, that is not what is in issue here. A reasonable employer in the situation that Bishop Mark (the Trust) found himself (itself) in would have started by asking Mr Mannix for his reaction to the Ofsted Review and the RSC's views. This would have amounted to an investigation. Given that the Bishop accepts that he has little expertise on the subject, this could reasonably have been done by having someone like Mr Anderson, perhaps aided by one of the experts, discuss the Ofsted Review and the RSC's views with Mr Mannix. That might have led in a number of directions. Two that spring to mind are these. It might have resulted in a reasoned negotiation with the RSC about the way forward with Mr Mannix. On the other hand, it might have produced properly reasoned grounds for a capability or conduct process. Instead, Bishop Mark acted as he did. The evidence reveals a process which was, in all material respects, grossly unfair to Mr Mannix. There was a predetermined decision to dismiss in which a third party was complicit. Mr Mannix was almost immediately removed from the workplace and the Trust, never to return. There was a complete absence of any meaningful debate with Mr Mannix about the Ofsted Review and the RSC's views. There was a sustained campaign of undue influence and pressure. There was an attempt to take refuge in a fundamentally flawed and sham "capability" process. All this was designed to and did lead to only one outcome - Mr Mannix's dismissal. Perhaps the Bishop (Trust) decided that in all this he (it) was acting in the best and greater interests of the Trust and Catholic education. In doing so, however, he (and the Trust) must accept that the arbitrary nature of his (its) decision about Mr Mannix's future and its execution amounted to an unfair dismissal for which the Trust must bear the consequences.

152. The Tribunal is required to consider whether or not the unfairly dismissed Mr Mannix could have been fairly dismissed if a proper procedure had been followed. This is the "Polkey" issue named after the case that established it. It might seem strange in a case which has almost nothing "fair" about it. Nevertheless, it is a proper test going to the consequences of an unfair dismissal even in a case where the dismissal is substantively as well as procedurally unfair.

153. The task is to construct, from evidence not from speculation, a framework which is a working hypothesis about what would have occurred had the employer behaved differently and fairly.

154. The Tribunal has started down this road in paragraph 151 above. If a proper discussion or investigation had taken place the Tribunal has suggested that it might have resulted in a reasoned negotiation with the RSC about the way forward with Mr Mannix or it might have produced properly reasoned grounds for a capability or conduct process. The difficulty in going any further down either of those roads is that the Tribunal does not have the evidence to evaluate the chance of either of these outcomes occurring because it cannot assess the competing positions of the Ofsted Review and the RSC and Mr Mannix. This is an evidential problem that could probably only be resolved with fresh evidence and an expert's report.
155. There is also a more fundamental problem with that approach. In the Tribunal's view it is an unrealistic speculation on possible outcomes. If, as seems to be the case, Bishop Mark (the Trust) believed Mr Mannix's dismissal was in the Trust's best interests, whatever the rights and wrongs of the Ofsted Review, it is unrealistic to speculate on any other outcome. That being the case, the only alternative to what happened is what appears to have nearly happened. Ms McColgan suggested this as a possible finding. The Bishop (Trust) would have explained to Mr Mannix that he had to go, accepted that the dismissal would be unfair and negotiated a settlement. This, of course, is a common scenario. It happens that a high-profile executive in a commercial or non-commercial organisation has to fall on his or her sword in the face of some exceptional event. This placates the opinion of stakeholders and/or the public. Sometimes the dismissal is fair and that is the end of it. Where the dismissal is unfair it is often accompanied by a financial settlement. Inevitably, the settlement is criticised by the same stakeholders and/or the public as rewarding the object of their ire. Nevertheless, it is the price of an unfair dismissal. It seems to the Tribunal that this would have been the likely outcome if the Bishop (Trust) had acted differently and fairly. It would not, of course, have led to a fair dismissal and this "Polkey" finding simply brings the parties back to where they were and are - with an unfair dismissal. In the circumstances the Tribunal sees no scope for a "Polkey" reduction to any compensatory award.
156. Although Mr Ahmed did not pursue it, the Tribunal is also required to consider the issues of contribution as set out in sections 122(2) and 123(6) of the ERA. No act of Mr Mannix's has been put forward as culpable or blameworthy in this context, nor can the Tribunal see any. The Tribunal sees no basis for finding that any action by or conduct of Mr Mannix should reduce any basic or compensatory award made in favour of Mr Mannix.

157. The parties have indicated that a Judgment on liability, “Polkey” and contribution may avoid the need for any further hearing on remedy. Nevertheless, dates will be offered for a one day’s hearing on remedy. If, following consultation between the parties, case management orders are required in that regard, the parties are to notify the Tribunals promptly.

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Employment Judge Matthews

Date: 3 January 2019