CG

EMPLOYMENT TRIBUNALS

Claimant: **Mr Taj Uddin Ahmed**

Respondent: **London Borough of Tower Hamlets**

Heard at: **East London Hearing Centre**

On: **30 April 2019, 1 May 2019, and 2 May 2019**

Before: **Employment Judge Ross**

Representation

Claimant: Mr Johnston (Counsel)

Respondent: Ms Winstone (Counsel)

RESERVED JUDGMENT

1. **The complaint of unfair dismissal is well-founded.**

2. **The Basic and Compensatory awards shall be reduced by 100% pursuant to sections 122, 123(1) and 123(6) Employment Rights Act 1996.**

3. **The complaint of breach of contract is dismissed.**

REASONS

Introduction

1. The Claimant was continuously employed by the Respondent from September 2002 until his summary dismissal on 21 December 2017. Having complied with the early conciliation provisions the Claimant's claim was presented on 14 May 2018. The Claimant complained of unfair dismissal and breach of contract by failing to pay notice pay.

The Evidence

2. There was an agreed bundle of documents from pages 1 to 901. In addition, I marked as R1 Appendix 7.1 and 7.2 of the Disciplinary Investigation Report (containing notes of the Claimant's interview and the version of those notes with his revisions added).

3. I read witness statements for and heard oral evidence from the following witnesses:

3.1. Sharifa Chowdhury, Team Manager within the Attendance and Welfare Service and the investigating manager in this case;

3.2. Ronke Martins-Taylor, Divisional Director for Youth and Commissioning;

3.3. The Claimant.

4. In general, and on all the key issues, I found that the Respondent's witnesses were broadly reliable.

5. In respect of Ms Chowdhury, I found her to be an inexperienced Investigating Officer. This was the first investigation that she had conducted. I found that this was likely to account for any alleged failings within in. This is demonstrated by the fact that she allowed Allegation 1 (an alleged assault on the Claimant's wife) to proceed to a disciplinary hearing, even though the police had decided to take no further action and even though there was only one admission of assault by the Claimant from years before he was employed by the Respondent, when he was a young man. This was also shown by a failure to understand that the Claimant would be keen to influence the disciplinary investigation report by producing whatever evidence he could, given the career-threatening nature of the allegations.

6. Ms Martins-Taylor was generally a reliable witness. Although I found that her evidence demonstrated a degree of contempt for the Claimant, her oral evidence convinced me that she was so imbued with a culture of Child Protection and of keeping families together, that she had taken a dim view of the Claimant given her findings at the disciplinary hearing. This caused her to be reluctant to concede anything in evidence which could assist him. But on any key factual dispute, I preferred her evidence to that of the Claimant.

7. In respect of the Claimant, I noted that he was perhaps the best of the witnesses in terms of fluency. Moreover, I witnessed that he had excellent writing ability and constructed able arguments in a fluent way. However, in general terms, on issues of disputed fact, I did not accept his evidence for reasons I set out below. When his evidence was studied and cross-referred to documents, and seen in the context of his experience, I found his explanations for certain events to be implausible for reasons that I shall come to.

8. Moreover, the Claimant was prone to exaggerate in his evidence of fact. For example, he alleged in cross-examination that his wife had abducted his children already, prior to September 2016. In fact, after I queried this (because it was not part of his evidence in his witness statement nor before the disciplinary hearing), it

transpired that this was a reference to his wife taking their children to Egypt for three weeks without telling him and the Claimant conceded that this trip had taken place in August 2016, and had been a holiday with his wife's sister, possibly to a resort. I found that the Claimant was shocked by this incident because his permission was not sought. When I came to make findings of fact on the issue of breach of contract and contributory fault, I found that this incident had probably led to the gross misconduct which I have found that he was guilty of.

Findings of Fact in respect of Unfair Dismissal

9. It is important that I emphasise that I took all the evidence and all the facts into account. The parties must understand, however, that I am not required to repeat all of the evidence or the facts in this set of Reasons. Secondly, in analysing the evidence and reaching findings and conclusions fairly, I was well aware that each of the three allegations faced by the Claimant were potentially career-ending allegations. I have taken that into account in my assessment of the evidence and in reaching my conclusions.

Disciplinary Procedure

10. The Respondent's disciplinary procedure is at page 844 and following pages. This emphasises that disciplinary issues must be investigated without delay – see paragraphs 2.2 and 2.3 of the procedure. The procedure states that suspension should be reviewed by an authorised manager and business partner – see paragraph 5.1.

The Claimant's Role

11. In May 2015 the Claimant became an Attendance and Welfare Adviser ("AWA"). His role changed about September 2016 to become that of a Specialist AWA for missing children, where his duties were directed to investigate children that were missing or missing education and report the findings to the appropriate Agency. I found that this was a more specialist role but not fundamentally different in its purpose. The key purpose of the Claimant's role was to ensure the welfare of children; Ms Martins-Taylor explained that Children Services were responsible for keeping children safe.

12. In the Claimant's role, it was very important (if not essential) for schools to be able to trust the Claimant. This is because he would receive referrals from schools and, although not prepared to accept this in cross-examination, I found that he worked closely with schools as well as health professionals and local authorities. The Claimant explained the following in his witness statement at paragraph 2:

"*This role involves working closely and in partnership with schools to seek to address issues affecting attendance and to improve attendance levels. The role involves working with vulnerable children and their families who may be affected by a number of issues including inter alia poverty domestic abuse and other social welfare concerns. The role requires a high degree of professional trust, integrity and confidence. Schools often seek advice from AWA's in cases involving domestic violence, child safeguarding and welfare concerns and other related issues. The role also requires AWA's to amend Child Protection case conferences, multi-agency meetings and the like*".

The Claimant also accepted that his role did involve situations of family break-up. I found that all this evidence to be true and at the heart of both complaints in this case, because, as the Claimant accept in cross-examination, any breach of trust by him would breach the trust between the relevant agency and his employer.

13. The Claimant accepted that any breach of trust by him would be so serious as to go to the heart of his contract of employment, although he stopped short of admitting that it would justify dismissal in all circumstances.

The Family Proceedings

14. The Claimant has three children with his wife. Their marriage broke down. He moved out of the matrimonial home in February 2016.

15. At the time of the incidents, the younger boy CD was almost 4 years old and the elder boy AB was 12 years old. At all relevant times, AB attended St Paul's Way Trust School ("SPW") and CD attended Bonner Mile End Primary School ("Bonner"). The Claimant also had a daughter who was aged about 17 in September 2016.

16. In September 2016, after his wife had taken the children to Egypt, the Claimant visited the former matrimonial home. An incident occurred. Afterwards, the Claimant instructed TV Edwards, solicitors with a Family Law department. He applied for a Prohibited Steps Order and a Non-Molestation Order on an urgent, without notice, basis.

17. On 8 September 2016, a Non-Molestation Order (page 717 – 718) and a Prohibited Steps Order (page 719 – 720) were granted.

18. Given that those Orders were made in Family Proceedings, and given that this set of Judgement and Reasons will be publicly accessible, I do not repeat their terms, but I stress that I have taken all their terms into account.

19. Paragraph 6 of the Non-Molestation Order anticipates that direct contact with the mother of the children will be either agreed or ordered by the Court, which from my experience in practice would usually be considered to be in the best interest of children, including the two younger children AB and CD, given their ages and the importance of the relationship with their mother.

Background Facts

20. On 2 November 2016 the designated Safeguarding lead at SPW informed Mr Hough, the Claimant's manager that the Claimant had provided information to SPW that had been misleading, that he had manipulated staff members to accept his wishes in respect of his son's contact with his mother and the information that would be received by his mother, and that he had crossed professional boundaries. In addition, Mr Hough was informed that the Claimant faced allegations of assault made by his wife which the police were investigating. Mr Hough took the call seriously and immediately transferred it to the local authority designated officer because the allegations were of a member of staff who was using his professional role in relation to his own interests.

21. On 16 November 2016, the Claimant was suspended pending a full investigation. The allegations of gross misconduct in which he was suspended were as follows:

> "*1. The Metropolitan Police were investigating allegations that you assaulted your wife and daughter and are considering whether to prosecute you. A criminal offence of this kind if proven could:*
>
> *(i) Legitimately cause particular concerns for the schools you support,*
>
> *and*
>
> *(ii) Cause concerns for the Council about the appropriateness of continuing to employ you in a responsible job involving vulnerable service users*
>
> *2. You had not been totally accurate with the information you had given to your eldest son's school in relation to what rights your wife had. The school also felt that you had used your professional position to support these inaccuracies and educational professionals have expressed the view that they felt they had been manipulated to support your stance against Mrs …. This conduct if proven could:*
>
> *(i) Legitimately cause particular concerns for the schools you support,*
>
> *and*
>
> *(ii) Cause concerns for the Council about the appropriateness of continuing to employ you in a responsible job involving vulnerable service users particularly because of the damaged caused to the relationship of trust and confidence.*"

22. I have no doubt that those allegations contain sufficient detail for the Claimant to know and understand the charges that he was facing.

The Investigation

23. On 1 December 2016, Sharifa Chowdhury was appointed as the Investigating Officer. Ms Chowdhury was a Team Manager in the AWA Service in the Children Services Directorate. The Claimant did not object to her appointment as Investigating Officer.

24. A decision was taken by an unidentified officer within the local authority that the investigation would not proceed until the police investigation into the assault matter was completed. I heard no evidence of any mechanism or process that the local authority had in place to find out when this point in time was reached. The Respondent did not explain why it had not followed its own procedure and investigated allegation 2 promptly, given that this had nothing to do with allegation 1. Ms Martins-Taylor's explanation that the Respondent could be criticised if it did not deal with both complaints together at a hearing was not relevant; the point was whether one matter, which depended on other evidence, should be postponed to an unspecified and incalculable date due to the police investigation of the other matter.

25. Moreover, there was no evidence that the Respondent reviewed the Claimant's suspension as required by the disciplinary policy. Had it done so it may have learned from the Claimant whether the police had decided not to proceed in respect of allegation 1, or simply reviewed the decision not to proceed with the investigation into allegation 2 at that point. The first Ms Chowdhury knew that the police had decided not to proceed in respect of the assault matter was when the Claimant gave her an email from the police during her investigatory interview with the Claimant on 12 April 2017.

26. In this case, during this period of delay, the Respondent's three main witnesses (Mottley, Illey and Lynch) were involved in Child Protection Conferences relating to AB and CD at which the Claimant and their mother were present. It is fair to say that the Social Worker at that time (Ms. Ferreira) had a very dim professional view of the Claimant and his conduct in respect of allegation 3, which affected her view of him in total, and the issue of contact. The Respondent's three witnesses were likely to have known her professional views. Apart from the evidence that I saw and heard, her views in those Child Protection proceedings did not affect the substance of the evidence given in respect of allegation 2 by Ms Mottley, Ms Illey and Ms Lynch.

27. On 9 March 2017, Ms Chowdhury was instructed to commence the disciplinary investigation into the allegations against the Claimant. The investigation included a third allegation which was notified to the Claimant on 9 March 2017, arising from the claim made through the Social Worker carrying out a Child Protection investigation, Ms Ferreira. Allegation 3 was in the following terms:

> *"You have been having inappropriate contact with minors/children. This conduct if proven could*
>
> *(i) Legitimately cause particular concerns for the schools you support,*
>
> *and*
>
> *(ii) Cause concerns for the council about the appropriateness of continuing to employ you in a responsible job involving vulnerable service users."*

28. This third allegation lacked particulars. It was not possible for the Claimant to know from this when or what the inappropriate behaviour was.

29. In the course of her investigation, Ms Chowdhury interviewed several witnesses. Given that so much attention has been paid by Counsel before me to examining the question of who was interviewed and whether their evidence was relevant, I consider it important to set out a list of witnesses with a summary of their evidence where necessary.

30. *Martin Tune, Head Teacher of Bonner School*. Mr Tune was interviewed on 20 March 2017. His evidence included:

30.1. "*Taj explained that an incident took place in early September 2016 with his wife where he was physically abused. He had the video recording and*

wanted to show me the video. I said to Taj I did not want to see the video as it was not appropriate".

30.2. "*Taj had given me the impression that the mother was to have absolutely no contact with the children. Taj gave copies of the order voluntarily – I did not ask him for the copies of the order. Taj told me school should not have any contact with the mother. He said all communication should be with him. The impression created by Taj was that contact should not be with anyone other than him.*"

30.3. "*Taj explained that he had a very long, difficult and abusive relationship. He had tried very hard to stay together for his children but felt it was not safe for his children to remain in the care of their mother*."

30.4. "*On the date ……. Started school, Taj gave printed photos of his wife and daughter and said they were not to take from school".*

30.5. *"I told Taj I respected the orders. Subsequently I made staff aware of what Taj had told me and made arrangements for collection of …… from school in accordance with the instructions given by Taj*."

30.6. "*When Taj gave copies of the orders, did he explain to you what were the orders about and what were the restrictions in the order?*

No, Taj just gave the copies of the orders and said the mother was not to be given any information and not to be allowed to have any contact with …….."

30.7. "*Mother contacted the school 2/3 days after …… had started attending to find out how …… was doing. I had very basic conversation with the mother updating her on how …….. was doing. I felt the mother still had the right to know about her child*."

30.8. "*An incident took place on …… birthday. …….. sister …….. came to the school at the end of the school day. She asked if anyone had collected …… had come with a birthday card for …… was taken away by his class teacher and so …… did not see …….. She was upset. ……left the card with the school.*"

30.9. "*When Taj was told about this he interpreted this as ……. had come to take …….. The school feel that there was no attempt by …….. to take …….. but to share a card on his birthday*."

30.10. "*When I read the content of the orders there was nothing mentioned about the children in the orders. Therefore, I decided that the mother could have information about …… as she still had parental responsibility. I think the secondary school where …….. brother attends may have acted differently*."

30.11. "*I am concerned about the level of conflict between the parents, the allegations against each other and the impact this is having on the children*."

31. Mr Tune advised that the Claimant did not explain that the mother had retained parental responsibility when providing copies of the orders, nor did he explain why the sister of the boy attending his school was not able to have contact given that she was not included in any orders. Mr Tune added that the Claimant had said that his wife had mental health difficulties which created an impression this had an effect on her parental responsibility causing the school to assume there could be no contact with the mother by the school. Mr Tune expressed repeatedly his concern that the Claimant had created the impression that the mother and sister must not have any contact from the school nor must they have any contact with CD. Mr Tune referred to the Claimant as a "*knowledgeable and intelligent person*" who had manipulated how he had provided information.

32. *Carlyn Ferreira, Social Worker with conduct of the Section 47 Child Protection Investigation (appointed 10 October 2016).* Ms Ferreira's evidence included that the Claimant had told the local authority that he had full parental responsibility and interim Care Order which the Social Work Manager corrected him on pointing out that this was only granted to a local authority. Her interview largely contained hearsay evidence, the view she formed was that the Claimant tried to manipulate every situation and that his behaviour was "dangerous given his role working with vulnerable children and families".

33. *Jane Illey, Safeguarding Lead at SBW, 28 March 2017*. Ms Illey's evidence was that the Claimant had told the school on 8 September 2016 that it should not have any contact or give any information to the child's mother. She stated that Ms Mottley (Student Achievement Coordinator) had told her that the Claimant had said he had a court order which said the mother could not have any contact with her children and only the Claimant had parental responsibility and that all communications must be with him. Ms Illey stated that this was not true and was misleading, and that the Claimant was building up a case against his wife and professionals involved. Ms Illey's evidence included the following:

> "*The conversations Taj had with Dionne Mottley been extensive and the feedback from Dionne was that they were directive, plausible and convincing, telling about court orders and what the school could do and could not do in relation to his son. Initially he did not present any paperwork to support his stance. Dionne had not had any previous professional dealing with Tax and had no experience of working with him in any capacity; she dealt with him as a parent. He came across as being trying to use his position to blind her, muddled his role as a professional with being a parent. He tried to manipulate Dionne Mottley and Bodrul Hoque (Year Team Leader), pull wool over their eyes and blind them. I began to be concerned based on the feedback that Dionne Mottley gave me that she was being manipulated and was confused regarding a way forward. At the point when she said he must know what he is talking about, he is an Attendance and Welfare Advisor, I intervened.*
>
> *Initially the school found it difficult to understand the orders. Taj did not explain to the school what the orders contained and what they meant. Dionne Mottley and other staff members took everything he said on face value. It took a long time to unpick the situation and get clarity from Taj.*
>
> *On 8 September 2016 Taj had told Vanessa Mansfield-Taylor (Deputy Safeguarding Lead) that he had been attacked by his wife on 6 September 2016 and that he was a victim of domestic violence. By telling this it was felt that he*

was attempting to manipulate the staff, pull wool over their eyes and gave a version of events that was only his.

Initially his communication with Dionne Mottley (Student Achievement Coordinator) and Bodrul Hoque (Year Team Leader) were very much about his side of the story, telling them he was a victim and that he had the sole care of the children and all communication must be with him.

Taj tried to make out that his wife was mentally unstable and was not fit to be with the children for their safety. Staff members found this disclosure very unpleasant and were concerned about the confidentiality. Taj's approach in using his work email and phone and being very pleasant and smooth talking was difficult for staff members. It was felt he was using his professional status to influence them.

He told the school that the mother was prevented by court orders from having any direct or indirect contact with which was not true. School was led to believe that mother's parental responsibility was withdrawn and that she could not have any contact with the children. He had the sole parental responsibility for the children. He was very plausible with everything he communicated with the school.

Taj had used his knowledge of how the systems/services work to his advantage rather than being concerned about his children's wellbeing and acting in the best interest of the children. He also used his knowledge to "fool" the staff in the school and misled them into believing that the other had been prevented by court orders from having any contact with the children and that she no longer had parental responsibility.

A lot of time was being taken to deal with his behaviour rather than concentrating on the children's wellbeing.

His manipulative behaviour, misleading the school, using his professional position has given us cause for concern."

34. Ms Illey concluded at page 214:

"*Since September 2016, my view of him as a professional has changed. His behaviour and conduct have raised questions about his suitability to be working with children and families. I feel his behaviour demonstrates that he is currently not suitable to be working with children and families. Taj has lost complete sight of his role and responsibilities and stepped out of his boundaries as professional*".

35. Ms Illey also complained that the school had been "totally blinded and mislead" by the Claimant.

36. *Dionne Mottley, interview 28 March 2017.* Ms Mottley explained in the interview that the Claimant dropped in a copy of the Prohibited Steps Order on 8 September 2016. Her evidence to the investigating officer was that he had stated to her that the Claimant's wife was not allowed any contact with AB nor calls or text from the school

and that he had sole parental responsibility and that AB's mother had no parental responsibility. Ms Mottley explained further:

> "*The school adhered to what Mr Uddin Ahmed had told us about not contacting the mother and not to give her any information.*
>
> *Mr Uddin Ahmed did not explain what the orders were and what they meant. Initially the school did not understand the contents of the orders provided by Mr Uddin Ahmed and so took everything he had said to be true. A few weeks into this the school asked Mr Uddin Ahmed to provide the school with copies of the orders which clearly states that the mother had lost her Parental Responsibility and could not have any contact with the school or receive any information. After this the school received letters from Mr Uddin Ahmed's Solicitor saying they were waiting on the court for the paperwork.*
>
> *By not telling the truth Mr Uddin Ahmed made it much bigger than what the issues were. He was probably trying to get me on his side.*
>
> *Mr Uddin Ahmed totally manipulated the situation because of the job he does. He kept telling us that the mother was mentally ill, she needed to get better and the children needed both their mother and father.*
>
> *Mr Uddin Ahmed used his work email and telephone. This gave the impression that he knew what he was talking about and we believed him. At the time we did not think anything about him using his work email or job title.*
>
> *From her evidence the school queried whether the mother could have no contact with the school nor have information to which the Claimant said the mother had no parental responsibility. The school asked him for documents showing that the mother had no parental responsibility. Ms Mottley's evidence to the investigation was also that the school set out details of the mother and AB's sister with photos saying that only the father was to have contact and that the Safeguarding Team were to be informed. Ms Mottley explained to Ms Chowdhury that the Claimant had attended school in late September or early October to update on the court outcome. At that time, he had asked her to sign something about the mother passing a note and making contact with the school; she believed that he was talking and distracting her and that she would have signed the noted had another member of Safeguarding Team had been there, namely Ms Lynch. Ms Mottley recorded that not having contact with his mother and sister had an adverse emotional impact on AB. Ms Mottley described the Claimant as a very manipulative man who was intelligent and smooth talking who presented with professional knowledge."*

37. After this interview, Ms Mottley provided an email dated 13 September 2016 from the Claimant to her which stated that:

> "*I am emailing further to our discussion in the telephone earlier today. As you know I was in court yesterday and they are upholding the current court orders emailed to you by my solicitors, TV Edwards. No-one including my wife and daughter is allowed to contact …. I know my daughter telephoned today to speak to …. and you did not allow it. Only my sister is allowed to collect … after school. She will be coming at 3:30pm. I have already emailed you regarding this which*

you acknowledged receiving, her driver's licence photo was attached FYI. PLEASE DO NOT ALLOW MOTHER OR SISTER OR ANYONE OTHER THAN WHO I APPROVE to have contact with... This is to protect emotional wellbeing and to ensure he doesn't become confused and distressed."

38. On 12 April 2017, Ms Chowdhury interviewed the Claimant. The notes of this interview is at page 236 – 245 (and as amended by the Claimant in R1). I viewed the accuracy of the amendments made by the Claimant with some caution because some of his notes were arguments or comments rather than revision of the notes.

39. In summary, the evidence provided by the Claimant was as follows:

39.1. In response to question 1: "*all email correspondence prior to my suspension did not mention anything about parental responsibility of my estranged wife*"

The Claimant did admit he told SPW that his wife should not be allowed contact with AB.

39.2. In the investigation interview, the Claimant was asked whether the mother was prevented by the order from having any contact with the school or getting information about her children. The Claimant did not answer the question but responded: "*I was concerned about the safety of the children and that she might try to take them*".

39.3. The Claimant was asked whether SPW were given an explanation about the contents of the orders, and again the Claimant did not give a direct answer to that question.

39.4. The Claimant was asked whether the mother was prevented by the orders from having any information from the school about AB. The Claimant responded: "*On 6 October I emailed the school – Dionne Mottley and Mr Hoque. The school was told not to give any information about my son to the mother*".

39.5. The Claimant was asked whether the mother had any right to seek information about how the children were doing in school between 8 September 2016 and 6 October 2016. In interview, the Claimant stated Ms Illey had sought clarification on 6 October 2016. He complained that he told Ms Illey and stated that prior to 6 October 2016 there had been no confusion, and the school had not asked for clarification. The Claimant went on to state in interview that he had taken legal advice and an email to the school again on 7 October 2016 clarified there was nothing in the order to stop the mother being given achievement and academic information.

39.6. The Claimant fervently denied manipulating SPW to support his case against his wife and denied that he used his professional position to influence them to believe inaccuracies. He denied knowing what the allegation meant and he claimed that he was acting as a concerned parent (see appendix 7.2 within R1). The Claimant commented in his additional note at R1 "*my estranged wife and my relation should now be clear in evidence; it was a tragic one where I have been the victim of both physical*

and mental abuse. I was reluctant to show explicit details of DV incident or the ins and outs with St Paul's Way Trust School. I only gave them information I need to know basis such as the court orders NMO and PSA. I did not feel the need to go into any more detail than "there was an incident of DV, children witnessed it, it was traumatic and my concerns about estranged wife's mental health""

39.7. The Claimant's case in the interview was that he was acting to safeguard the children from the mother's behaviour.

39.8. When asked what would the impact have been on the mother and her children if the schools had not shared information with the mother, the Claimant responded that there was no legal order preventing her having contact with her children nor of the school sharing information with her.

39.9. In the "any further information" section of the interview, the Claimant stated that copies of the orders were given to the school and the majority of SPW exchanges were by email. He criticised Children Services, alleging they had stereotyped by considering the wife to be the victim. The Claimant made the allegation that the mother had coerced his daughter to make allegations against him.

39.10. The Claimant stated that on the morning of 8 September 2016 he had informed Ms Mottley that he was going to obtain the orders. (I find that this answer indicates that he spoke to Ms Mottley first, but that he subsequently spoke to Mr Hoque at that visit).

39.11. In appendix 2 to the investigation report, the Claimant stated in his notes that "*he was very unwell during the interview*" and had just had a fact-finding hearing in the Court on 23 and 24 March 2017 so was not in the best frame of mind and should have asked to postpone the investigatory interview. Also the Claimant stated he found it very difficult to discuss private family matters.

40. The above is necessarily a summary of the points made by the Claimant in interview (which are contained more fully in appendix 7.1 and 7.2 of the investigation report); but I took all the evidence given in the investigation into account. The Claimant's evidence in the interview and his subsequent additions was not one of apology nor did it show any sign of remorse for what had happened. There was no acceptance that he had made oral statements or sent emails which were incorrect in terms of what rights or responsibilities his wife retained under the terms of the court orders.

41. It is also worth noting that the Claimant denied having any contact with young girls and that this allegation was his wife's doing. He gave a direct straight denial in respect of that allegation.

42. Further, at this meeting, the Claimant produced the documents listed at page 245, including from DC Bridges, an email showing the police were not proceeding with the allegation of assault on his wife. The Claimant stated that this was because there was "*no evidence to support the allegations*". This is an example of the Claimant making statements which are simply not true. The email dated 14 January 2017 from

DC Bridges states that the decision has been taken to take no further action. DC Bridges does not explain why and does not refer to the evidence at all.

43. *Gloria Lynch, interview 13 April 2017*. In her interview, Ms Lynch stated that she had spoken to the Claimant at the end of September 2016 about what information the mother of the child could have and the Claimant had told her that the mother did not have parental responsibility. Ms Lynch attended a meeting with the Claimant because Ms Mottley felt the Claimant was trying to use his position to manipulate her, such as by trying to get Ms Mottley to state the mother had contacted the school more than she had.

44. According to Ms Lynch's evidence it was only after this meeting that the school became aware that the mother had not been prohibited by the orders from contacting her children or from receiving information from the school. She explained that AB had suffered detriment by having no contact with his mother.

45. Ms Lynch explained the Claimant had put in a complaint about her after she challenged him as to the status of the mother. Ms Lynch concluded by stating that his behaviour had impacted on the school and its ability to trust and have confidence in him as a professional.

46. On 18 April 2017, the Claimant provided more information in an email with supporting documents. The Claimant stated in this document that he was being prejudged and he made further allegations about his wife's behaviour. Again, he described himself as a victim of domestic violence.

47. Ms Chowdhury explained in oral evidence before me that this email and the contents of it were not referred to in the report because they were not considered to contain relevant evidence but merely allegation. I cannot agree. Compared to the Claimant's total denial of any wrongdoing in his interview, this further statement, although it does contain repeated denial and allegations about his wife, also marks a shift in the Claimant's position. He admitted as follows: page 254:

> "*There may have been a misunderstanding on how much information the school could share with my estranged wife, which SPWTS only started to question in the beginning of October 2016 after CSC became involved. Prior to that there were no questions or confusion to my knowledge from SPWTS.*
> *… I have never intentionally or otherwise tried to mislead my children's schools and I am truly sorry if there is any misunderstanding as this was never my intention*".

48. In respect of allegation 3, the Claimant stated in the further submissions that his wife had created false social media accounts and had made "*countless false and malicious allegations*" against him.

49. I found the reason why this further email from the Claimant was not referred to in the investigation report was that Ms Chowdhury was an inexperienced investigating officer, who was conducting her first investigation and who probably lacked sufficient training to understand that, whenever evidence was furnished during an investigation process, it should be taken into account. This evidence from the Claimant was typed and ordered and there was no reason for it not to be considered.

50. Ms Chowdhury at paragraphs 23 – 25 of the witness statement explains that she requested an extension of time to complete her investigation report. I accepted her evidence on this and the Claimant made no complaint about any delay caused by these extensions of time. I inferred that as a result of HR advice the Respondent decided to interview Mr Hough, the Claimant's manager. This interview took place on 11 May 2017, and the notes are at page 270 – 273. This interview included the following:

> "*Mr Uddin Ahmed failed in his role as an Attendance and Welfare Advisor by deliberately using his professional status to influence others in relation to his children and personal affairs and this is unacceptable. I would have expected him with his experience as a professional as an Attendance and Welfare Advisor to maintain boundaries between professional and personal issues. In his role as an Attendance and Welfare Advisor in relation to schools and children and families he would be expected to be impartial and objective. This he failed to be in relation to his own situation – his behaviour was in breach of his professional integrity and trustworthiness. The further consequences are that the schools would not be able to see him as impartial, honest and trustworthy and would be unlikely to want to work with him in future*".

51. On 19 April 2017, Ms Chowdhury emailed the HR business partner, Mr Bloch, to complain that the Claimant was attempting to influence her investigation because the Claimant had emailed her further information on 18 April 2017 (page 253 – 255). This demonstrated her naivety as an investigating officer. The business partner made a sensible, robust, response that the Claimant was trying to influence the investigation and that any person accused of an offence has a right to defend themselves by giving their side of the story.

52. Ms Chowdhury completed her investigation report on 19 May 2017. The report is at page 276 – 299. Ms Chowdhury concluded that there was a case to answer on all three allegations.

53. The summary of evidence in respect of allegation 1 included evidence from the fact-finding hearing in the Family Court on 23 and 24 March 2017, which stated that the Claimant's five allegations against the mother were found to be proved and that four allegations by the mother against the father were found not to be proved (save that he had admitted slapping his wife in 1997).

54. In respect of allegation 2, Ms Chowdhury's analysis explained that all the witnesses interviewed felt that the Claimant had used his professional position and tried to influence them and had helped mislead them into believing him: see paragraph 6.84 of the report. Her conclusions (6.85 – 6.87 of the report) were as follows:

> "*6.85 – By using his professional role and status in communicating with the schools and using his work email and professional status to convey a role in misleading information, Mr Uddin Ahmed appears to have breached the professional conduct that is expected of an Attendance and Welfare Advisor and an employer of the local authority.*
>
> *6.86 – Mr Uddin Ahmed has been employed in the position of an Attendance and Welfare Advisor for nearly 15 years. During these 15 years he has acquired a significant level of knowledge and experience in working with the schools and*

vulnerable children and families. With this level of experience and knowledge one would expect an employee to be fully aware of the professional behaviour expected of him and also to be fully aware of the professional boundaries required in such a position.

6.87 – Mr Uddin Ahmed's alleged behaviour raised concerns about his professional integrity, honesty and trustworthiness."

55. Evidence in respect of allegation 3 was analysed at paragraph 6.88 – 6.96 of the report. A conclusion was at 6.97 of the report.

56. The above shows that at that point Ms Chowdhury recognised that the misconduct in allegation 1 was not likely to amount to gross misconduct or affect the Claimant's suitability to continue in his work with schools and vulnerable families.

57. The Claimant was not employed by the Respondent in 1997. I find that Ms Chowdhury's inexperience as Investigating Officer and her lack of training allowed allegation 1 to proceed.

58. The Divisional Manager at the time, Ms Patel, decided that all three allegations would be heard at a disciplinary hearing. They were set out in a letter dated 1 June 2017. The disciplinary hearing was listed for 9 June 2017. Due to various factors explained in the evidence of Ms Chowdhury's witness statement, which I found to be accurate, the disciplinary hearing could not begin until 29 September 2017. In evidence the Claimant made no complaint about this further delay nor did he suggest there was no good reason for that period of delay (that is, from 1 June to 29 September).

The Disciplinary Hearing

59. The panel for the disciplinary hearing was Ms Martins-Taylor and Lisa Matthews. Ms Martins-Taylor was Divisional Director at Youth and Commissioning. Lisa Matthews was head of Adult Social Care. I accepted Ms Martins-Taylor's evidence that this panel had experience of Social Care for children, and how this related to adults. The hearing was adjourned to 12 October 2017 and then further adjourned to 10 November 2017 due to non-availability of a participant. Minutes of the disciplinary hearing are at pages 584 – 604 and 658 – 677. I find these notes to be accurate, although not verbatim.

60. The Claimant made no complaint about the further delay in completing the hearing from 12 October to 10 November 2017.

61. On 26 June 2017, the Claimant provided a 22-page statement for the hearing (page 361 – 382). The Claimant provided an updated statement for the disciplinary hearing on 10 November 2017 (see page 628 – 655), which included at paragraph 2 (at page 630):

"*I completely appreciate and understand the seriousness of these allegations and if they were true about anyone it should result in them being formerly dismissed by LBTH. However, I fervently deny all three allegations against me as they are false and malicious and at best misunderstanding fuelled by my estranged wife, Carlyn Ferreira LBTH Children's Social Worker/CSC along with*

> *Gloria Lynch from St Paul's Way Trust School. My estranged wife also cohersed my own daughter to support her as well as fabricate malicious and false allegations to the police which triggered the Section 47 investigation*".

62. This demonstrates both that the Claimant realised that each allegation was sufficient for his dismissal and that he made serious allegations about the veracity of certain of the Respondent's witnesses.

63. The Claimant's case was that any issue over how much information the school could give his wife was the result of "*misunderstanding*" and that the school had the orders of the court from 8 September 2016, which do not mention the mother losing parental responsibility and he had not informed either school about the issue of parental responsibility.

64. The Claimant admitted sending the email of 6 October 2017 from his work account, but stated that this was done by mistake and that he meant to send it from his personal email account; he had intended merely to draft it on his work email account. The Claimant explained that this all took place when:

64.1. He was in the middle or work in a new role and under pressure in a new job.

64.2. He was very distressed and concerned about the safety and wellbeing of his children.

64.3. The mother had taken the children away for three weeks to Egypt and he was fearful that she was planning to move abroad with them due to previous threats from her.

65. The Claimant's case was that as soon as he had received advice from his solicitors on 7 October 2016, he emailed SPW on the same day. His case was that, like Ms Chowdhury, he had not understood the orders made by the Family Court.

66. From the Claimant's amended statement, it is notable that in respect of the two main witnesses for allegation 2, Ms Mottley and Ms Illey, he makes relatively little criticism of their evidence and does not attack their credibility, but that Ms Mottley was influenced by Ms Ferreira and Ms Lynch in alleging that he was manipulative.

67. In terms of the evidence at the hearing, this is set out in the minutes of the disciplinary hearing. I do not intend to rehearse it. The reference to Diane Brockley at page 659 is a typing error; I infer that it should refer to Dionne Mottley (because no witness or document has referred to a Ms. Brockley).

68. Mr. Hoque was called to give evidence on 10 November 2017. Notes of his evidence are at page 664. He denied that the Claimant had misled him in respect of the court orders, but it appeared that he had only had a brief conversation with the Claimant on the school steps on 8 September 2016. Moreover, he stated that he wrote on the school record for AB "*no information to be sent to the mother*" and that he wrote this based on a conversation with Ms Mottley.

69. By a decision letter dated 21 December 2017, the Respondent notified the Claimant that allegation 2 had been found proved and that the Claimant was dismissed for gross misconduct. The letter informed the Claimant that allegation 3 was not upheld on the balance of probabilities and that allegation 1 had been discontinued at the outset of the disciplinary hearing because no further action was being taken by the police.

70. The outcome letter set out the panel's detailed reasons for finding that allegation 2 was upheld. In summary, the panel rejected the Claimant's evidence and arguments on the key points, specifically finding that the Claimant was not mistaken in using his account and email address, and explaining why. The panel found his use of his council email address on more than one occasion (on 20 September 2006 and 6 and 7 October 2016) was a deliberate attempt to use his professional position to support inaccuracies in information that he had already provided. The inaccurate information were the instructions in his email dated 8 September 2016 and 6 October 2016, which went beyond the terms of the Prohibited Steps Order. The panel explained the consequences of the instructions given by the Claimant which were that the school did not share information with his wife and in fact, extended the Prohibited Steps Order to include the sister of his son, who therefore was denied access to CD including when trying to deliver a birthday card to him.

71. In evidence, Ms Martins-Taylor accepted that allegation 2 referred to the period from 8 September 2016 to 6 October 2016, but went on to show that the response of the Claimant on 7 October 2016 was taken into account.

72. As a matter of fact, I found that Ms Martins-Taylor and the disciplinary panel as a whole were not influenced when deciding allegation 2 by the content of allegation 3, or for that matter, allegation 1. I found that the panel gave weight to the Claimant's evidence and the criticisms of Ms Ferriera's evidence and decided not to uphold allegation 3.

73. Indeed, I found as a fact that the unjustified delay in the investigation of allegation 2 did not prejudice the Claimant at all. I accepted Ms Martins-Taylor's evidence that the witnesses in this case were professional witnesses, used to dealing with issues involving safeguarding of children, and that they were able to recall events such as arose in this case, particularly given the documentary evidence such as the emails sent by the Claimant. There was no evidence from the investigatory interviews nor the hearing notes that the management witnesses could not recall events with sufficient clarity for allegation 2 to be proved.

74. Ms Martins-Taylor admitted the decision not to continue with allegation 1 was made at the outset of the hearing on 29 September 2017. I did not accept Ms Martins-Taylor had used the words alleged by the Claimant. I find it likely that she responded to the Trade Union Representative by stating that removing allegation 1 was a subtraction not an addition to the case, which are the words indicated by the minutes at page 585. I preferred Ms Martins-Taylor's evidence, finding that the Claimant demonstrated that he was unable to control his emotions at the time by making a large number of allegations against several persons who did not agree with him at that hearing.

75. I found that this decision to withdraw allegation 1 was made at a late stage because of the inexperience of the investigating officer. I found that Ms Martins-Taylor

and the panel, who were more experienced, saw the police investigation had ended; and they realised that this allegation could not be proceeded with, because the only evidence was that the Claimant had assaulted the Claimant in about 1997 before he was an employee.

76. There was no evidence that the late withdrawal of allegation 1 had any effect on the outcome of the disciplinary process. I accept that having three allegations rather than two may have added something to the Claimant's anxiety about the hearing, but I infer that this was extremely limited because he knew from March 2017 that the police had decided to take no further action, so it is difficult to see why he would have thought that allegation 1 could have succeeded.

77. I accepted Ms Martins-Taylor's evidence that the disciplinary panel took into account that the schools received the Non-Molestation Order and Prohibited Steps Order in September 2016. I find it is likely that she was aware at the time of the disciplinary hearing that the schools had received the orders on 8 September 2017, because this was the evidence before the panel (see page 58 and the evidence of the Claimant).

78. Ms Martins-Taylor was cross-examined about the update provided by the new Social Worker in the Child Protection case (see page 386 – 387) but I do not accept that this was relevant to the issues in this case. I agree with Ms Martins-Taylor that this evidence reflects the assessment of a new Social Work Team, after a Court fact-finding hearing, and as at 20 June 2017, some nine months after the incidents leading to allegation 2.

79. It was alleged in cross-examination that the panel had not given the Claimant's case any weight at the disciplinary hearing because none of his witness evidence was referred to. I accepted the evidence from Ms Martins-Taylor that, in the view of the panel, his witnesses did not clarify any issue the panel had to address. As I have indicated, the decision letter was well-reasoned. From Mr Hoque's evidence to the hearing, I could not see what it added other than a tendency to support the Respondent's case, because he had removed the mother's contact details, probably as a result of Ms Mottley telling him to do so.

80. Counsel for the Claimant was critical that the Respondent had considered the evidence of Mr Tune at all because he was head of Bonner School, and therefore his evidence was not relevant to allegation 2. I accepted Ms Martins-Taylor's evidence as to why this evidence was relevant. I found there was no unfairness in the consideration of his evidence: his evidence corroborated the staff members Ms Mottley and Ms Illey at SPW because he felt the Claimant took inappropriate steps and tried to manipulate his school. I found the disciplinary panel placed reliance on the witnesses from SPW as well as the evidence of Mr Tune, which contributed to its conclusion in respect of allegation 2.

81. I found much of the cross-examination of Ms Martins-Taylor about what the school should have seen on the orders given to them on 8 September 2016, and whether they could have taken their own legal advice, all very well, but none of this carried weight in the question of whether the Claimant was guilty of allegation 2.

82. The panel believed that the Claimant had tried in his communication with SPW to extend the effect of the PSO to create the situation that he wanted.

83. The panel found that the Claimant had said to the school that there was a blanket ban on sharing information with the children's mother, and that his email on 7 October 2016 was not a "correction" because, on his evidence, there never had been any ban, so there was nothing for him to concede.

84. The panel found that the email of 6 October 2017 was so serious in itself (a blanket ban on sharing information with the mother of AB) that it warranted a finding of gross misconduct in itself. They found that this was so serious because it attempted to extend the scope of the Prohibited Steps Order in two ways:

84.1. It attempted to mislead the school about the effect of the Court Order which did not mention sharing of information with the mother at all; and

84.2. The panel saw the email in a dim light because the Claimant brought his daughter within the scope of the Prohibited Steps Order. The panel found that she was not within the original order and this could not be a mistake.

85. Moreover, on the issue of legal advice, the Panel found that the Claimant had had legal advice at the Family Court hearing where the Orders were made. It found that the Claimant knew what the Prohibited Steps Order meant and that the addition of the daughter could not be any mistake.

86. Ms Ferreira was interviewed. Subsequently, there was a change in the Social Work Team. Despite this, Ms Chowdhury did not interview the new Social Work Team even though she was told of them and sent details (see page 386). Their evidence in the email of 20 June 2017 included that the father was primary carer and there were no welfare concerns and that he was supporting direct and indirect contact.

87. None of this evidence was referred to in the investigation report. There was no evidence whether or not it was in the bundle at the disciplinary hearing, nor whether the disciplinary panel saw it. In any event, I found as a fact that it would not have made any difference to a disciplinary panel in respect of allegation 2, which related to matters of fact (not opinions) in respect of what happened between 6 September 2016 and 7 October 2017 in particular.

88. Moreover, I could not see how or why this was relevant to allegation 3, because the new Social Worker was not expressing opinions relevant to whether the facts in allegation 3 were made out. I accepted Ms Martins-Taylor's evidence that the different Social Workers were giving different opinions at different points in time for different purposes based on different evidence.

89. Part of the Claimant's case related to the evidence of Mr Hoque and the fact that this had not been adduced as part of the management case. I found as a fact that, when interviewed by Ms Chowdhury, the Claimant did not mention speaking to Mr Hoque first on 8 September 2016. There was nothing in the other witness evidence collected by the Investigating Officer to think that he was a relevant witness. True, he sent emails to the Claimant, to which the Claimant replied on 20 September and 6 October, but those emails spoke for themselves.

90. The Claimant stated that the note at page 237 was inaccurate, but I do not accept that. There is no reason why that particular note would be inaccurate from the evidence that I heard. Moreover, the Claimant revised the version of that interview note, and this version does not state that he spoke to Mr Hoque first.

91. I noted that Mr Hoque gave evidence at both the disciplinary hearing and at the appeal hearing. I agreed with Ms. Martins-Taylor: his witness evidence did not clarify anything in respect of allegation 2 and even if Ms Illey was mistaken in saying that Mr Hoque was manipulated by the Claimant, I consider that it is not for the Employment Tribunal to re-hear the disciplinary hearing when deciding an unfair dismissal complaint. But, in any event, experience shows that it happens from time to time that a witness or a party in a case does not recognise nor realise that they had been manipulated. Whether or not Mr. Hoque felt manipulated was beside the point.

92. In any event, the panel did take into account Mr Hoque's evidence and gave it only little weight, because it did not refer to or explain the other evidence collated in respect of allegation 2. Mr Hoque's evidence was viewed by the panel in the context of all the other evidence that the panel had before it, including the evidence from Ms Mottley and Ms Illey, the Safeguarding leads, whose evidence it accepted.

93. I found that the disciplinary panel reached its decision on allegation 2 on the basis of all the evidence relevant to that allegation, including the evidence of SPW's staff, the evidence of Mr Tune, and the documentary evidence and emails from the Claimant, particularly that of 6 October 2016. The panel found the Claimant used his professional life to influence actions in his personal life as a parent, such as by using his Council email address. There was sufficient evidence for it to reach this conclusion.

94. The panel was extremely concerned by the Claimant's treatment of his daughter, because he had, in effect, informed the schools that the Prohibited Steps Order included her, and stopped any contact between her and her younger brother.

95. I concluded that this was treated as an offence of misconduct in itself, but one which was not put to the Claimant in a formal charge. I accept that it was, to some degree, the outcome of the facts found true in relation to allegation 2, but this act was in the panel's mind when punishing the Claimant, despite the fact that it occurred at the Bonner School not the SPW School.

96. However, I have concluded that the panel would have dismissed the Claimant in any event, because it was obvious from Ms Martins-Taylor's evidence, that the panel viewed allegation 2 as a grave matter and rejected the Claimant's case. On its own, the panel found the email of 6 October 2016 was deliberately sent by the Claimant from his Council email address and that this amounted to gross misconduct given the intention behind it. The panel found that this email did amount to an attempt to manipulate the school and that it had taken a long time and careful preparation to draft, so it could not have been sent by mistake from the Council email address.

97. In deciding sanction, in respect of mitigation, the panel took into account the length of service, and included in that the clean disciplinary record of the Claimant over that service.

98. I found that the panel did not take into account all the mitigating factors, such as personal circumstances, including family breakdown and the Claimant's evidence of

the stress caused to him by that. The Claimant had specifically raised this background in correspondence prior to the disciplinary hearing.

99. For the avoidance of doubt, I found that the panel's decision was not influenced by allegation 3 which was not upheld. I did not find the Claimant was punished for this even if it was not found proved. The panel reached its decision because allegation 2 was found proved and the facts found proved - especially the belief that the emails were vehicles for the Claimant to manipulate the schools to accept what he wanted to happen with his children and in respect of information and contact with their mother.

100. I note that the dismissal letter (at page 683) states (with my emphasis):

> "*These allegations are so serious and constitute gross misconduct*".
>
> In fact, only allegation 2 was proved. I found that the plural was used because the letter was likely to have originated from a template, not correctly completed; the use of the plural was not an indication of Ms Martin-Taylor's unconscious state of mind.

The Appeal

101. The Claimant lodged an appeal on 13 January 2018 (page 697 – 713). The appeal was heard by an Appeal Sub-Committee consisting of three Councillors. Mr Hoque was called by the Claimant to give evidence before the appeal.

102. By a decision letter, dated 9 April 2018, the decision to dismiss was upheld (see pages 828 – 831). The panel found the Claimant's continued employment was untenable because the breach of trust was so great.

103. Before me, the Claimant made no criticism at the appeal hearing nor the timing of the appeal.

Findings of Fact in respect of Breach of Contract and Contributory Fault

104. I repeat the findings of fact in respect of unfair dismissal set out at paragraphs 10-103 above.

105. The Claimant moved out of the family home in February 2016. His wife remained living with the children at that home.

106. In August 2016, his wife went with their children and her sister on a holiday to Egypt, probably to a Resort, for three weeks. I found that the Claimant was shocked by this, as explained above.

107. On 6 September 2016, there was an incident at the former matrimonial home, which took place in front of the children.

108. On 8 September 2016, the Claimant attended SBW, dropping off his eldest child, and then meeting Ms Mottley, who was the first person he spoke to, evidenced by his own interview notes at page 237. In addition, I note that Mr Hoque was Head of Year and I find it was less likely that he would have been available in the minutes before school to be told first, and also that it is unlikely that he would have been told ahead of the part of the Safeguarding Team.

109. Later on, 8 September 2016, the Claimant attended the Family Court at East London and obtained Non-Molestation and Prohibited Step Orders without notice. The Claimant was represented by Counsel, Ms Roberts. I find that the Claimant well-knew what the Orders said when they were made and what they meant. I found that his evidence in answer to my questions on this point demonstrated his tendency to divert attention away from unhelpful evidence; in this instance, he stated that he was not given copies of the Orders at Court but I find that he knew what the application stated and what the Orders meant, partly because his Counsel would have explained them, and partly because his solicitors or Counsel would have answered any questions if he had any doubts on or after that date.

110. When the Orders of 8 September 2016 were received from the Court, the Claimant's solicitor sent copies to the schools. After the hearing on 8 September 2016, the Claimant gave the schools photos of his wife. The correspondence sent to Bonner School (page 60) states that the mother of CD was not to come to the school or have any contact with him and that this was in accordance with the Court Orders of 8 September 2016. The Claimant gave the same information to SPW (see page 64). It is notable that this is sent to Miss Mottley, not Mr Hoque, further confirming that it is unlikely that he had much dealing with Mr Hoque on 8 September 2016. When he sent the email at page 64, the Claimant well-knew that the email did not represent what the Orders said in respect of contact between the mother and the school, because his legal advisers would have explained the Orders to him, and because of his experience in his role as AWA, and because of his ability to understand formal documents.

111. I found that the Claimant did tell Ms Mottley, on or about 8 September 2016, that the mother of AB was not to have any contact with her son and that she had lost parental responsibility. This is not inconsistent with the email at page 64. Moreover, I decided that Ms Illey would not have demanded clarity about what the Orders meant, and whether parental responsibility had been lost by the mother, unless Ms Mottley stated that this had been said at the time. I appreciate that I have not heard oral evidence from Ms Mottley or Ms Illey. Usually, the oral evidence of a witness who attended for cross-examination, like the Claimant in this case, would carry more weight. However, I found that a combination of the oral evidence that I heard and the documentary evidence I read, satisfied me that the Claimant's account of events between 8 September 2016 and 7 October 2016 was implausible, particularly his explanation for the misleading email of 6 October 2016.

112. It is important to recognise that the Claimant did not deny misleading in the email of 6 October 2016, but that this was a mistake and was not intentional. Having found his evidence about whether sending email of 6 October 2016 from his work address was intentional, and thus his evidence was inaccurate, I had little difficulty in rejecting his denials of the fact that he told Ms Mottley that his wife had lost parental responsibility and the fact that he had communicated to her that he was an Education Social Worker so that she accepted what she was told, believing that it must be true, because of the trust placed by her and other staff in persons holding that role.

113. From Ms. Mottley's interview with Ms Chowdhury (albeit on 28 March 2017), I find that she knew what his job role was at the time of the discussions with her. I found Dionne Mottley, with the support of Gloria Lynch and Ms Illey, did query with the Claimant why the mother could have no contact with her children or information from the school about her child. At the meeting referred to by Gloria Lynch in her interview (page 247), she recalled being categorically informed by the Claimant that the mother

did not have parental responsibility and being given an example by the Claimant to demonstrate this. I find it unlikely that this example was made up or that she was mistaken, not least because her evidence is corroborated by Ms. Mottley's account of what he told her at the time. Ms Lynch knew from working with him what the Claimant's role was; Ms Mottley must also have known.

114. The Claimant's explanation as to why Ms Mottley and Ms Lynch were saying that he had misled them, by stating that the mother had no parental responsibility, was to attack Ms Lynch by saying that she did not like him because his work visits to the school generated work for her. I found it inherently unlikely that such a serious allegation would be made up by Ms. Lynch for that reason.

115. In respect of Ms Mottley and Ms Illey, it was alleged by the Claimant that their views of him were clouded by the view of Ms Ferreira and Child Protection Conferences. I found this to be unlikely. Ms Mottley was already feeling uncomfortable by what the Claimant had attempted to do in September, evidenced by Ms Lynch's interview notes. I found it unlikely that Ms Lynch would have invented the meeting referred to at the bottom of page 247, where the Claimant was trying to get Ms Mottley involved in his Family Proceedings case, by getting her to say that the mother of AB had contacted the school more than she had.

116. The Claimant did not dispute in cross-examination that it was against the Respondent's policy, and viewed as a serious matter, to use a work email address for personal rather than professional matters. I found that the Claimant used his work email address to email Mr Hoque on 20 September 2016. This is a long email, not sent in any situation of urgency. I heard no explanation for this email being sent from the Claimant's work email address. The use of his London Borough of Tower Hamlets email account and his professional title in signing off the email does point to a pattern of behaviour where the Claimant was using his professional position to promote his wishes in respect of his personal family matters and his stance against his wife.

117. In the Claimant's cross-examination, he stated that after he was challenged by Ms Lynch and Ms Illey about whether the mother of the child had parental responsibility and whether his statements that she could have no information from the school were true, he felt "*cornered*".

118. I rejected that his actions were because he was under pressure. His demeanour as a witness, when cross-examined by Counsel, demonstrated to me that he was cool under pressure and he had an ability to seek legal advice from the Family Law Department of T.V. Edwards. If he felt cornered, it was because of his inventions about the effect of the Court Orders and that he was at risk of being exposed.

119. For this reason, the Claimant sent the email of 6 October 2016 to SBW. I found that this email in and of itself was sufficient to amount to an act of gross misconduct. The Claimant accepted that it could be an act of gross misconduct if it was sent intentionally from his London Borough of Tower Hamlets work email account. I found that it was sent from that email address intentionally and with the intention to further manipulate staff at SPW to accept his desire to exclude his wife having contact with her son.

120. By virtue of sending this email, whether taken alone or with other findings of facts, the Claimant committed gross misconduct, specifically the substance of

allegation 2. I rejected the Claimant's version of events, and his claim that the sending of it from his work email account was an accident. This was for the following reasons:

120.1. The Claimant's initial reaction during the investigatory interview was to deny that this email had misled at all. He changed his case on this over time, so that his evidence before the disciplinary hearing is that he apologised if anyone had been misled. I found those two positions to be so inconsistent as to point to a witness who is not reliable.

120.2. In response to question 1 of his interview with Ms. Chowdhury, the Claimant stated:

"*all email correspondence prior to my suspension did not mention anything about parental responsibility of my estranged wife*"

I found this to be a selective response, because the evidence collected from Ms Mottley did not refer only to email communication but included oral statements to her. The Claimant did admit that he told SPW that his wife should not be allowed contact with AB. I find, on balance, that it was likely that he orally stated that the school should not give any information about AB to his mother and stated that his wife was not allowed to come to the school.

120.3. There is force in the criticism, made during cross-examination, that the Claimant did not answer question 2 in a substantive way during his investigatory interview. In that interview, there was no acceptance that any mistake had been made.

120.4. I rejected the Claimant's case that he did not know what the Orders meant from 8 September 2016, given that he was legally represented throughout the period from or about 8 September 2016 to 7 October 2016. I rejected his rationale that it was only at the end of September that "*confusion*" over the Orders arose. I found that he had up to then successfully misled the school as to whether the mother had parental responsibility and the question of whether information should be shared with the mother of his children.

120.5. I rejected the Claimant's diversionary tactic of blaming the teachers at SPW for not reading the Court Orders as an explanation for his misleading statement about the meaning of the Orders. In a matter of such importance as this was to the Claimant, involving questions of residence and contact of his boys, I considered it very unlikely that the Claimant did not know the meaning of the Orders, given his experience as an educational Social Worker. Moreover, if he genuinely did not know the meaning of the Orders, I find it inexplicable that he would not have asked his legal advisers before sending the email of 6 October 2016.

120.6. The email of 6 October 2016 contains a number of inaccurate statements. In particular, the PSO does not prevent the schools sharing any information with his wife and the mother of the boy in question. The reference to the child being under his "*sole care*" is also misleading; the mother retained parental responsibility at all times.

The alleged extension of the PSO on sharing information to include his daughter, the sister of this boy, who is not named in the Order at all, is another inaccuracy.

120.7. The email of 6 October 2016 seeks to manipulate SPW by asserting that Bonner had complied with the Court Order and his wishes by not disclosing any information to her.

120.8. The Claimant claimed in cross-examination that he had made a mistake by using his professional address and that he was merely replying to Mr Hoque who had emailed his work address. I rejected the Claimant's evidence that this was a mistake caused by "*so much pressure*" and being bombarded by emails from his solicitors and the police at the time. These are exaggerations: the Claimant received an email to his personal and his professional email addresses from Mr Hoque; he chose to reply from his work email address to try to stop the Safeguarding leads at SPW questioning his statements and thereby his ability to control the flow of information, and thereby his ability to prevent indirect contact with the mother of his child. I infer, given the issues that the Court was to consider relating to contact and residence, that this was probably done to support his case in Family Proceedings and, probably, to get back at his wife for what he perceived to be tantamount to abducting the children in taking them on holiday to Egypt in August without his consent.

120.9. The Claimant admitted he could have removed the sign-off at the bottom of his Council email.

120.10. The email of 6 October 2016 was a fairly long email. Even if mistaken at first, the Claimant could have copied what he had written and added it to an email from his private account.

120.11. The Claimant sent a further email to the school on 7 October 2016 after Ms Lynch and Ms Illey challenged his account in the email of 6 October 2016. The Claimant stated before me that he had taken legal advice and sent this further email in order to correct any accidental misunderstanding. This email does not refer to any conversation with his solicitors, and I did not believe that any had taken place. In fact, for someone who has, on his case, found out about a "*mistake*" in his 6 October 2016 email, it is strange that the email of 7 October 2016 contains no apology; as I have explained, the Claimant is an articulate man, used to dealing with other professionals. Moreover, the Claimant stated in that email of 7 October 2016 that there was "*no harm*" in sharing information about the children with their mother, even though his preference would be otherwise, but he still tried to use an emotional appeal to influence the school against his wife, by alleging that the mother could use such information against him (see page 89).

120.12. Ms Ferreira, about who the Claimant complained in detail, was not involved in the family proceedings at all until 10 October 2016, so she

could not have produced any pressure for him at the time that he sent the email of 6 October 2016.

121. In addition to the above, I found much of the cross-examination of Ms Martins-Taylor about what the school should have seen on the orders given to them on 8 September 2016, and whether they could have taken their own legal advice, all very well, but none of this carried weight in the question of whether the Claimant was guilty of allegation 2. This appeared to be a diversionary tactic by the Claimant to blame others, rather than to address what he had done and why.

The Law

Gross misconduct

122. Gross misconduct is conduct which is so serious that it goes to the root of the contract. It must be conduct so serious as to amount to repudiatory breach. By its very nature, it is conduct which would justify dismissal, even for a first offence.

Unfair Dismissal

123. In determining whether a dismissal was unfair, it is for the employer to show that the reason for the dismissal is a potentially fair reason within s.98 ERA.

124. A potentially fair reason is one which relates to conduct: s.98(2)(b) ERA.

Reasonableness: s.98(4) ERA 1996

125. I directed myself to section 98(4) ERA which provides:

> "*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 reasons shown by the employer)*
>
> *(a) depends on whether in the circumstances including the size and administrative resources of the employers 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."*

126. The burden of proof on the issue of fairness is neutral.

127. In conduct cases, in considering the fairness of a dismissal, the classic questions for a Tribunal to consider are:

127.1. Did the employer have an honest belief that the employee was guilty of misconduct?

127.2. Was that belief based on reasonable grounds?

127.3. Was that belief formed on those grounds after such investigation as was reasonable in the circumstances?

(See *BHS v Burchell* [1980] ICR 303)

128. The principles which the Tribunal must apply when considering section 98(4) are as follows:

128.1. The Employment Tribunal must not substitute its own view for that of the employer as to what was the right course to adopt for that employer.

128.2. On the issue of liability of the unfair dismissal the Tribunal must confine itself to the facts found by the employer at the time of the dismissal.

128.3. The employer should ask: did the employer's action fall within the band of reasonable responses open to an employer in those circumstances?

(See *Foley v Post Office and HSBC Bank plc v Madden* [2000] IRLR 3.)

129. The range of reasonable responses test applies not only to the decision to dismiss but also to the procedure by which that decision is reached including the investigation: see *Sainsbury plc v Hitt* [2003] ICR 111. I directed myself to the following passage in *Hitt*, with emphasis added by me, which I found to be relevant to this case:

> "The investigation carried out by Sainsburys was not for the purposes of determining, as one would in a court of law, whether Mr Hitt was guilty or not guilty of the theft of the razor blades. **The purpose of the investigation was to establish whether there were reasonable grounds for the belief that they had formed, from the circumstances in which the razor blades were found in his locker, that there had been misconduct on his part, to which a reasonable response was a decision to dismiss him.** The uncontested facts were that the missing razor blades were found in Mr Hitt's locker and that he had had the opportunity to steal them in the periods of his absence from the bakery during the time they went missing. Investigations were then made, both prior to and during the period of an adjournment of the disciplinary proceedings, into the question whether, as Mr Hitt alleged, someone else had planted the missing razor blades in his locker. In my judgment, Sainsburys were reasonably entitled to conclude, on the basis of such an investigation, that Mr Hitt's explanation was improbable. The objective standard of the reasonable employer did not require them to carry out yet further investigations of the kind which the majority in the employment tribunal in their view considered ought to have been carried out."

130. Reading *Hitt* and *Foley* together, it is clear that the Tribunal must not substitute its own standards of what was an adequate investigation for the standard that could be objectively expected of a reasonable employer, in this case, a school.

131. I directed myself that whether a procedural defect is sufficient to undermine the fairness of the dismissal as a whole is a question for the Tribunal. Not every procedural error will do so; the fairness of the whole process should be looked at. In *South Maudsley NHS Foundation Trust v Balogan* UKEAT 0212/14, the EAT held at paragraph 9:

> *"As this Tribunal has said countless times, the crucial thing is the statutory test in section 98(4) namely whether in all the circumstances the employer acted reasonably in treating its reasons for dismissing the employer sufficient. A procedural defect is a factor to be taken into account but the weight to be given to it depends on the circumstances and the mere fact that there has been a procedural defect should not lead to a decision that the dismissal was unfair. The fairness of the whole process needs to be looked at and any procedural issues considered together with the reason for the dismissal, as the two will impact on each other".*

132. In cases were allegations are based on circumstantial evidence (i.e. on inferences), greater investigation will be required: *ILEA v Gravett* [1988] IRLR 947.

133. I accepted the submission that it is particularly important that employers take seriously their responsibility to conduct a fair investigation where the employee's reputation or ability to work in his chosen field is likely to be affected by a finding of misconduct: see *Salford Royal NHS Foundation Trust v Roldan* [2010] ICR 1457. In my judgment, this case highlights that, where the purpose of the investigation is to establish whether there are reasonable grounds for the suspicion of gross misconduct in the form of a charge grave enough to affect a career or reputation in a chosen field, a more careful investigation is required which produces more cogent or weighty evidence.

Section 122(2) and 123(1) ERA 1996: Polkey

134. Applying section 123(1) ERA 1996, if a Tribunal finds a dismissal unfair on procedural grounds, but the employer can show that it might have dismissed an employee if a fair procedure had been followed, the Tribunal may make a percentage reduction in the compensatory award which reflects the likelihood that the Claimant would have been dismissed: see *Polkey v AE Dayton Services* [1988] ICR 142.

Contributory fault

135. If a finding of unfair dismissal is made, where a Tribunal finds that the dismissal was caused or contributed to by any action of the complainant, it must reduce the compensatory award by such proportion as it considers just and equitable: see s.123(6) ERA 1996.

136. The proper approach to deductions in respect of contributory fault is set out in *Optikinetics v Whooley* [1999] ICR 984, 989. Before making any finding of contribution the employee must be found guilty of culpable or blameworthy conduct. The inquiry is directed solely to his conduct and not that of the employer or others.

137. The Basic award may also be reduced for contributory fault: see the wide discretion conferred by s.122(2) ERA 1996.

Appeals

138. In *Taylor v OCS Group Ltd [2006] IRLR 613*, it was stated that ultimately a tribunal must look at the overall fairness of the procedure, and not just consider whether the appeal had taken the form of a rehearing rather than a review.

Submissions

139. Both Counsel prepared detailed written submissions which they expanded upon orally before me. The fact that I do not address each and every submission here is not evidence that each was not taken into account. I took all the submissions into account in reaching my conclusions but I have tried to be both fair and proportionate in explaining my decision.

Conclusions

140. Applying the findings of fact and the law set out above to the issues identified at the outset of the hearing, I reached the following conclusions:

Issue 1: Genuine belief that the Claimant had committed Gross Misconduct?

141. I have explained in the findings of fact that the disciplinary panel did have an honest belief in the guilt of the Claimant, and I have explained why. The existence of this belief was accepted by the Claimant in submissions.

Issue 2: Reasonable grounds for this belief?

142. I concluded that the disciplinary panel had reasonable grounds for its belief that the Claimant had committed gross misconduct. The Claimant accepted in evidence that there was evidence from which the Respondent could decide that he had acted intentionally in sending the email of 6 October 2016 and he accepted that if allegation 2 was proved, and that his actions were deliberate, it would amount to very serious misconduct.

Issue 3: Had the Respondent carried out as much investigation as was reasonable in the circumstances of the case?

143. I have paid close attention to the guidance in *Roldan*, because I found that this was a disciplinary case which could have a long-lasting or permanent effect on the Claimant's career or his ability to work in his chosen field.

144. The Claimant admitted in submissions (see paragraph 56 of the Claimant's submissions) that the Respondent had reasonable grounds for finding that the Claimant had provided information to the school that was inaccurate at least insofar as it purported to state the effect of the Prohibited Steps Order.

145. For reasons that I have set out above, including at paragraphs 30-45, 54, 82-84, and 93, I found that the Respondent had reasonable grounds for finding that the Claimant had deliberately sought to use his position to manipulate the staff at the SPW School. There was a wealth of cogent and credible evidence from professionals, including Mr. Tune, that the Claimant had misled SPW (as well as Bonner) about the effect of the orders obtained on 8 September 2016. Every necessary witness was interviewed.

146. I concluded that the scope of the investigation was sufficient to be fair in all the circumstances of this case, taking into account the nature of allegation 2, subject to the issue of delay, which I deal with below. I accepted that a more experienced

investigator may have produced a fuller report, but this investigation fell within the band of reasonable responses at least in respect of allegation 2 (subject to the delay issue). In particular:

146.1. The investigation did identify (by its appendices at least) that the school was provided with a copy of the Prohibited Steps Order on the day that it was made. Ms Martins-Taylor understood this, so there was sufficient reference to it to enable her to come to that understanding.

146.2. It was quite proper for the Investigator to speak to Mr Tune. In the light of the Claimant's subsequent case that the Social Worker had influenced the evidence of Ms Mottley, it can be shown to be sensible to have obtained corroboration from Mr Tune about what statements were being made to his school by the Claimant at the time. It is notable that when speaking to Mr Tune, the Claimant referred to knowing him in his professional capacity and that the Claimant had created the impression that neither his wife nor the sister of his son should have contact with Bonner. The Claimant had created the impression on Mr. Tune that the mother of his children had no parental responsibility and that he had sole care of the children. I find that it was reasonable to take this evidence from Mr. Tune into account so as to create a full picture of what steps the Claimant was taking in relation to his sons. I am afraid Mr Johnston's valiant submissions rested on an approach to evidence more familiar in criminal cases than the Employment Tribunal.

146.3. I have explained above, including at paragraphs 89-91, why Mr Hoque was not a necessary witness to interview, and what Ms Chowdhury knew prior to completing her report. I agree it may have been prudent to interview him after his name was raised as a witness, but there was no unfairness caused by this omission, because the Claimant was able to call him to give evidence, which he did.

146.4. I agree with the Claimant's submissions that Ms Chowdhury could have contacted the new Social Work Team before the disciplinary hearing. But, I do not consider this was necessary because that Team could give no evidence about the matters of fact which arose prior to their appointment and, in any event, there was no unfairness to the Claimant because allegation 3 (which Ms Ferreira dealt with in her evidence) was not found proved at the disciplinary hearing.

146.5. Despite the fact that the investigation was not as forensic as a police investigation may have been, I found that it was conducted fairly and even-handedly. I found it unlikely that Ms Chowdhury had much rapport with the Claimant; he was not very helpful as a witness and spent some time making allegations against his estranged wife.

146.6. A very serious allegation was made that Ms Chowdhury sought to construct a case for the Claimant's dismissal, leaving out exculpatory evidence. There was no cogent evidence to support such a serious allegation because:

146.6.1. the decision to proceed with allegation 1 was done out of inexperience and lack of adequate training;

146.6.2. Ms Chowdhury's response to the further submissions from the Claimant following her interview with him showed her inexperience, but it was not deliberate;

146.6.3. The failure to interview Mr Hoque was the product of inexperience but it did not affect the fairness of the investigation overall (and, given that he gave evidence at the disciplinary hearing and the appeal hearing, this produced no unfairness).

Issue 4: Procedural failings

146. This is a case where it is helpful to remember that there are not two separate questions – whether there was procedural fairness and whether there was substantive fairness. There is only one statutory question, which is that posed by section 98(4) ERA 1996.

147. Whereas I have rejected many of the Claimant's criticisms of the procedure used by the Respondent, I have concluded that there were significant failings which took the procedure overall outside the band of reasonableness open to this employer, given that this was a situation where allegations had been made which were likely to affect the Claimant's career, including allegation 2, and given that this was a London local authority, with sufficient resources and experience to avoid the failings that I refer to. In particular:

147.1. There was an unacceptable delay prior to the investigation of allegation 2. The length of the delay is a factor; but what is more significant is what happens during this period. In this case, this allegation relied in part on oral evidence. By the time the Respondent's witnesses attended investigatory interviews, the witnesses had attended Child Protection Conferences where the Social Worker had formed a very negative view of the Claimant's actions. There was a real risk that that view would affect the quality of their evidence (even if it did not in fact do so in this case).

147.2. This did have at least some knock-on effect in delaying the disciplinary hearing because it could have been held sooner if all the evidence on allegation 2 and 3 was collected when the Respondent found out that the police were taking no further action in respect of allegation 1.

147.3. In reaching the decision to dismiss because of allegation 2, the disciplinary panel should not have taken into account that the Claimant's daughter had been prevented from seeing her younger brother on his birthday at Bonner School. This was irrelevant to allegation 2 or 3; it was in reality a separate allegation, never put to the Claimant.

147.4. The disciplinary panel did not take into account all the mitigating factors, as explained at paragraph 98 above. It was outside the band of reasonableness open to this employer, in view of the wording of section 98(4) ERA, not to take into account evidence relevant to the question of sanction, particularly where the sanction considered is dismissal.

148. I have considered the effect of the appeal in this case. However, I heard limited evidence about the appeal – such as whether it was a review or rehearing. The evidence I received was limited (mainly to paragraph 30 of the statement of Ms. Martins-Taylor), although the Claimant had no complaint about the appeal.

149. I concluded that the appeal did not cure the failings identified. For example, the appeal panel did not hear from the witnesses to the investigation; it could not assess what if any effect the delay, and events during the delay, had had on them.

Issue 5: Was the sanction of dismissal outside the band of reasonable responses open to this employer in the circumstances?

150. Although I have found the dismissal to be unfair for reasons set out above, it may be helpful to the parties for me to consider, in the alternative, whether the dismissal fell within the band of reasonable responses, absent those flaws which I have described as procedural.

151. I concluded that, absent those flaws, the decision to dismiss fell within the band of reasonable responses open to this employer. I repeat the relevant findings of fact above including those set out at paragraphs 70, 84, 93 and 96.

152. The Claimant admitted that if the Respondent had an honest belief based on reasonable grounds after reasonable investigation that he had done the acts contained within allegation 2 deliberately, that this amounted to gross misconduct.

Issue 6: Section 123(1) - Polkey

153. I found that it was inevitable that the Claimant would have been dismissed in any event, having heard the evidence of Ms Martins-Taylor. On the basis of the 6 October 2016 email from the Claimant to SPW, which the panel found was deliberately misleading and had been deliberately sent from the Claimant's work email account, to try to influence the school, the panel would have concluded in any event that the Claimant was guilty of gross misconduct justifying summary dismissal, which the mitigation of his personal circumstances including family breakdown would not have altered.

154. I concluded that it would be just and equitable to reduce any Compensatory award by 100%.

Issues 8 and 9: Contributory Fault

155. As shown in the findings of fact at paragraphs 105-121 above, I found that the Claimant was guilty of gross misconduct. I have borne in mind the seriousness of the allegation, and I have taken into account all the evidence in reaching my findings and my conclusions on this issue.

156. I find that the Claimant was the author of his own misfortune. I do not accept that there was much by way of mitigation. The Claimant knew what he wished, and he set out to get it, putting this into effect by sending emails designed to mislead the schools; and my use of the plural "schools" is not an error. The person I saw give evidence was a cool, articulate and intelligent man, and I did not believe that even in the midst of family proceedings he was so different that he did not appreciate the seriousness of what he was doing.

157. I concluded that the Claimant was guilty of culpable behaviour, which was the sole cause of his dismissal. I find that a 100% reduction to the Basic and Compensatory awards would be just in the circumstances.

158. I considered whether the deduction should be to both Basic and Compensatory awards, given the Claimant's length of service. I concluded that the deduction should apply to both. I realised the Claimant's length of service, and that it was without blemish to this point, but such is the degree of blameworthiness in damaging irreparably the trust of the schools in this case, and potentially the reputation of the role that he held, it would be neither just nor equitable for him to receive any compensation.

Wrongful Dismissal

159. I repeat the findings of facts set out above at paragraphs 105-121. The Respondent was entitled to dismiss the Claimant summarily without notice pay.

Summary

160. The complaint of unfair dismissal is upheld and a declaration to this effect shall be made. There shall be no Basic or Compensatory award.

161. The complaint of breach of contract is dismissed.

Employment Judge Ross

13 June 2019