Appeal No. UKEAT/0320/19/AT (V)

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON, EC4A 1NL

At the Tribunal
On 23 July 2020
Judgment handed down on 31 July 2020

Before

THE HONOURABLE MR JUSTICE CAVANAGH

(SITTING ALONE)

MS LINDA FRAME — APPELLANT

(1) THE GOVERNING BODY OF THE LLANGIWG PRIMARY SCHOOL
(2) NEATH PORT TALBOT COUNTY BOROUGH COUNCIL — RESPONDENTS

JUDGMENT

APPEARANCES

For the Appellant	MR JOHN SMALL (of Counsel) Instructed by: NASUWT Hillscourt Education Centre Rose Hill Rednal Birmingham B45 8RS
For the Respondents	MR JONATHAN WALTERS (of Counsel) Instructed by: Neath Port Talbot CBC Legal Services Civic Centre Heilbronn Way Port Talbot SA13 1PS

SUMMARY

PRACTICE AND PROCEDURE

UNFAIR DISMISSAL

The Appellant complained that the Employment Tribunal had failed to give adequate reasons for its judgment, and had failed to take into account material evidence.

Appeal dismissed.

A **THE HONOURABLE MR JUSTICE CAVANAGH**

Introduction

1. This is an appeal against the judgment of the Employment Tribunal, sitting at Cardiff (Employment Judge Cadney, sitting alone), in which the Tribunal dismissed the Appellant's claims of unfair dismissal and wrongful dismissal. The judgment was entered in the Register and sent to the parties on 26 April 2019, after a hearing lasting 15 days in September and October 2018. It follows that the Employment Tribunal's judgment was handed down six months after the hearing had ended.

2. In this judgment, I will refer to the Appellant as "the Claimant".

3. The Claimant relies on a number of grounds of appeal. In essence, however, her complaint is that the Employment Judge failed to take into account material evidence, and failed to give adequate reasons for his findings. She also contends that the Employment Judge erred in his analysis of procedural defects in the disciplinary process conducted by the Respondents, and applied the wrong legal test to his consideration whether the length of the Claimant's suspension rendered her dismissal unfair. She submits that the Employment Appeal Tribunal should scrutinise the Employment Tribunal judgment with particular care because there was a long delay between hearing and the hand-down of the judgment. The Claimant does not submit that I should substitute my own conclusions in relation to the issues of unfair and wrongful dismissal. Rather, she submits that, if I allow the appeal, the case should be remitted for rehearing before a different Employment Tribunal.

4. The Claimant is a teacher with over 39 years' experience, who became Head Teacher of Llangiwg Primary School in 2007. The Claimant was suspended in June 2015, and did not return to the School before she was summarily dismissed on 20 April 2017. Her dismissal followed an

unsuccessful appeal against the decision of a disciplinary panel, following a hearing in November 2016, that she should be dismissed.

5. In accordance with The Staffing of Maintained Schools (Wales) Regulations 2006, the Claimant was appointed by the School's Governing Body and the decision to recommend her dismissal was that of the Governing Body. However, the Claimant's employer was the Second Respondent, the County Borough Council, which dismissed her. The effect of The Education (Modification of Enactments Relating to Employment) (Wales) Order 2006 is that the Governing Body is the proper Respondent to the unfair dismissal claim, and the County Borough Council is the proper Respondent to the wrongful dismissal claim.

6. This appeal hearing took place remotely, via Skype for Business. The Claimant has been represented before me by Mr John Small of counsel, and the Respondents by Mr Jonathan Walters of counsel. I am grateful to them both for their very clear and helpful submissions.

The disciplinary allegations, and the Employment Judge's findings

7. There are three strands to the disciplinary allegations that were made against the Claimant in the run-up to her dismissal. In order to address the grounds of appeal, and to explain my conclusions in relation to them, it is necessary to describe these, and the Employment Judge's findings in relation to them, in some detail.

The medication issue

8. The first strand concerned an allegation that the Claimant had been partially responsible for an incident in which prescription medication for one pupil had been improperly passed on to the family of another pupil. This was the original reason for the Claimant's suspension in June 2015. She denied that she had any involvement in the matter, and, indeed, alleged that the

allegation had been deliberately fabricated in order to further the Respondents' agenda against her. An investigation was conducted by Mr Alan Tudor Jones, who produced a report in July 2015. Over a year later, on 4 August 2016, it was determined that the matter should be referred to a disciplinary committee. (In the meantime, the other two sets of allegations were investigated.) At a disciplinary hearing in November 2016, the disciplinary panel decided to impose a final written warning for this allegation. However, the Claimant's appeal was upheld. In an appeal decision dated 24 July 2017, the appeal panel found that on the basis of the information available, the allegation was not substantiated. This allegation was not, therefore, the reason for the Claimant's dismissal.

Wraparound

9. The second strand concerned allegations relating to a type of child-care provision called Red Dragon Wraparound ("Wraparound"). Wraparound is a child-care provision that is made available to allow nursery age children (three and four years' old) to stay in school in excess of the 2.5 hours' free daily nursery provision that is provided to parents. A fee may be charged to parents for using this facility. There is a statutory requirement, under the National Minimum Standards for Regulated Childcare, that any childcare facility which provides care in excess of 2 hours per day should be registered with the Care and Social Services Inspectorate Wales ("CSSIW"). If the Wraparound provision lasts 2 hours or less per day, it does not need to be, and cannot be, registered.

10. Registration is important, because it means that there are certain rules and requirements that the Wraparound provision must comply with, and it means that the provision is subject to review by the CSSIW.

11. Llangiwg Primary School first offered Wraparound provision in 2010. This was cancelled at the end of the Summer Term 2010, because insufficient numbers were using the facility. Wraparound started up again in early 2011 and continued until after the Claimant's suspension. The Wraparound was not registered. The core hours of the Wraparound provision were from 1 to 3pm in the afternoon. Most, if not all, of the three- and four-year olds who attended Wraparound would have attended the morning nursery session at the School, which finished at 11.45. The School was aware that many working mothers would be placed in difficulties if they had to collect their nursery-age children at 11.45 am and look after them for an hour and a quarter before returning them to the School for Wraparound between 1 pm and 3 pm. Accordingly, the School permitted the children to stay on the School premises between 11.45 and 1 pm. They were looked after and were allowed to eat their packed lunches in the school hall.

12. A central dispute both in the disciplinary proceedings and before the Employment Tribunal was whether, in these circumstances, it had been necessary to register the Wraparound provision at Llangiwg Primary School. This depended on the status of the period between 11.45 am and 1 pm. If this counted as part of the daily Wraparound provision, then the Wraparound lasted for 3 and ¼ hours and there was no doubt that it would need to be registered with CSSIW. If, however, the hour and a quarter between 11.45 am and 1 pm did not count as Wraparound, there had been no need to register the Wraparound at Llangiwg.

13. The Respondent's position was that the extra hour and a quarter was plainly a period when care was being provided to the nursery-age children and so it equally plainly counted as Wraparound. The Respondent said that the Claimant had not registered Wraparound because she regarded it as too much hassle.

14. The Claimant's position was that the hour and a quarter did not count as Wraparound. It was not, as was Wraparound, the provision of care. Rather, it was the extension of the provision

of education, which had been taking place for the children at nursery earlier in the day. The Claimant said that she had been told by an employee of the County Borough Council's Education Department, Nicola Hire, that she did not have to register the Wraparound at Llangiwg Primary School. Ms Hire's recollection, given in a statement in the disciplinary proceedings, was that she may well have said at a meeting with parents, at which the Claimant was present, that if the Head Teacher was kind enough to look after the children from 11.45 am to 1.00 pm it would be ok to do so. However, she said that she also made clear to the Claimant that this was a temporary expedient to get the Wraparound provision up and running until registration. She said that she would never have said that this was something that could be done to avoid having to be registered with the CSSIW. The Claimant also said that the School Governors were well aware of the arrangements for Wraparound at the School: two Governors' children attended Wraparound and one Governor had audited the Wraparound provision.

15. The arrangements for Wraparound at the School were informal. The fees paid by parents were not normally paid into the bank accounts related to the School's delegated budget, or into any other bank account belonging to the School. They were paid mainly in cash and were placed in a tin which was kept in a lockable drawer in the School office. By June 2015 the sum of £1,863 was kept in the drawer. Very occasionally, the fees were paid by cheque, in which case they would be paid into the School's private school account. The adults who looked after the children at Wraparound and during the period from 11.45 am to 1 pm were paid cash in hand, with money from the tin. They were not treated as employees of the School for the purposes of their work looking after the children. There was no paperwork recording their employment. There was no budget and there were no accounts for the Wraparound provision. A handwritten "petty cash" ledger was kept which recorded the sums received and paid out to employees.

16. Concerns about Wraparound were first raised in about April 2015, shortly before the Claimant's suspension, by Ms Sarah Bell, an employee of the County Borough Council. Mr Stephen Davies, a Senior Auditor with the County Borough Council began an investigation in June 2015 (after the Claimant had been suspended) and he provided a report on 6 July 2015. Mr Davies concluded that the Wraparound provision at the School was being conducted unlawfully, that the Claimant was ultimately responsible for running the provision, and that the way that it was being operated amounted to gross misconduct. Following Mr Davies's report, the County Borough Council appointed Mr Philip Jones of Servoca Managed Services to investigate. Mr Jones conducted a substantial number of interviews, including three interviews with the Claimant, and produced an 89-page report. He did not make specific findings or recommendations. Rather, he recorded the evidence he had gathered, and highlighted disputes of fact. On 4 August 2016, a decision was taken that the allegations against the Claimant should proceed to a disciplinary hearing.

17. The allegations were in four parts. These were that the Claimant was guilty of:

(1) A serious breach of the National Minimum Standards for Regulating Childcare, posing potential safeguarding risks to children and staff. This was a reference to the failure to register Wraparound at the School;

(2) A serious breach of employee payment protocols, making potentially illegal cash in hand payments without taking into account tax and national insurance;

(3) A serious breach of cash handling protocols; and

(4) Non-compliance with the Education Authority's safer recruitment policy and procedure.

18. I should make clear that there was no suggestion of fraud or embezzlement on the part of the Claimant: this was never any part of the allegations against her.

19. The disciplinary hearing took place on 15 and 22 November 2016. The disciplinary panel decided that the Claimant should be dismissed for failing to register the Wraparound provision (allegation 1) and for breaching the cash handling protocols (allegation 3). The other two allegations were found proved but the disciplinary panel decided that these allegations only merited a final written warning.

20. The Claimant appealed. The appeal panel dealt with the matter as a rehearing and heard evidence from witnesses. However, the Claimant withdrew from the appeal proceedings, part-way through, because it had been suggested by a HR adviser, employed by the County Borough Council, that the allegations should be treated as Child Protection allegations (in which case a different procedure should have been followed). She did not give evidence to the appeal panel but the appeal panel took account of documentation that had been submitted by the Claimant.

21. The appeal panel set out its decision on the Wraparound allegations in a letter dated 19 April 2017. The appeal panel upheld the decision of the disciplinary panel in relation to each of the allegations. The appeal panel considered that the disciplinary panel should have found that allegation (2) (breach of employee payment protocols) was also gross misconduct, but did not disturb the disciplinary panel's finding that this merited only a final written warning. As a result of this decision, the Claimant was dismissed with effect from 20 April 2017.

SEN

22. As well as being Head Teacher, the Claimant was, until her suspension, the School's Special Educational Needs Co-Ordinator ("SENCO").

23. Following a visit to the School by officers of the County Borough Council on 21 September 2015, shortly after the Claimant's suspension, an independent investigator, Sharon Davies, conducted an investigation into SEN practice at the School. She produced a report which was accompanied by over 600 pages of appendices. The report investigated allegations that, as Head Teacher and SENCO, the Claimant was responsible for seriously unsatisfactory standards of work, in four respects, namely ensuring that SEN practice within the School complied with the Statutory Code of Practice; ensuring that pupil assessment and/or support was progressed in a proper and timely manner; misleading parents and others regarding progress upon referrals for assessment and support; and ensuring that health care plans were created and implemented in respect of pupils with health care needs. Ms Davies's report found that the allegations were substantiated.

24. The disciplinary panel decided, following a hearing between 15-22 November 2016, that the SEN allegations against the Claimant were proved and that they amounted to gross misconduct meriting summary dismissal.

25. Although the disciplinary panel found, following the hearing in November 2016, that the Claimant should be summarily dismissed, in accordance with the Claimant's contract of employment and the relevant disciplinary procedures, dismissal would not take effect unless and until the decision was upheld by an appeal panel. In the event, the Claimant had already been summarily dismissed, as a result of the Wraparound allegations, before the appeal panel met, in July 2017. Nevertheless, the appeal panel went ahead and considered the appeal. The Claimant and her representative attended the first day of the appeal hearing and then withdrew and took no part on the second day, because of concerns about the procedures that were being adopted and the identity of a member of the appeal committee.

26. The appeal panel concluded, in a decision letter dated 24 July 2017, that all four allegations relating to SEN were proven and amounted to gross misconduct. This means that, had the Claimant not already been dismissed for gross misconduct for the Wraparound allegations, she would have been dismissed for gross misconduct for the SEN allegations.

The alleged conspiracy

27. In her Claim Form, the Claimant alleged that the County Borough Council had an "agenda", which was the removal of the Claimant from the School. It was alleged that the Educational Psychology department at the County Borough Council had conceived the view that the Claimant was incompetent and that the agenda was conveyed to the Senior Management Team of the County Borough Council which colluded with steps to drive the Claimant out of the School. It was alleged, in particular, that senior managers and staff at the County Borough Council had conspired together to pursue false allegations against the Claimant and to destroy documents relevant to the SENCO allegations whilst the Claimant was suspended. The Claimant contended that the guiding force behind this agenda was Ms Naomi Erasmus, the County Borough Council's Educational Psychologist, and that she had kept a secret record on the Claimant from 2014 onwards, with a view to ensuring that the Claimant was dismissed from her post.

28. The Employment Judge noted that this allegation was inherently improbable but recognised that this does not of itself make it untrue and so he examined the allegation of an agenda in detail at paragraphs 23-30 of his judgment, which it is not necessary for me to set out. The Employment Judge concluded that there was no basis for the allegations of an agenda as being the reason for the disciplinary allegations against the Claimant. He found that Ms Erasmus had entirely genuine and well-founded concerns as to the procedure she found in the school. She was not only entitled but obliged to voice them, and the Respondents were not only entitled to

A but obliged to investigate them when they came to a head (judgment, paragraph 26). He found that the agenda/conspiracy allegation was not supported by the evidence and had in reality nothing to support it save the Claimant's belief in it (paragraph 29).

B **The decision of the Employment Tribunal**

Unfair dismissal

C 29. The Employment Judge found that the Claimant had been dismissed as a result of the Wraparound allegations (paragraph 31). He found that there was a wealth of evidence supporting the basic proposition that Wraparound was being run both unlawfully and unprofessionally. The D conclusion that Wraparound was being run unlawfully was certainly reasonably open to the disciplinary panel, and in reality was all but inevitable on the basis of the evidence (paragraph 36).

E 30. Accordingly, the finding that there was a failure to register Wraparound (allegation (1)) was one that was reasonably open to the disciplinary panel (para 37). Similarly, it was reasonably open to the disciplinary panel to conclude that to engage staff informally and on a cash in hand F basis (allegation (3)) was fundamentally inappropriate and the Claimant must have known that it was. However, he noted the apparent illogicality that the panel found gross misconduct in relation to allegation (3) and yet not in relation to allegation (2), the employee handling protocols G (judgment, paragraphs 41-42).

31. The Employment Judge further found that the factual findings of the appeal panel dealing with Wraparound were clearly reasonably open to them on the evidence, as was the conclusion H that they constituted sufficiently serious misconduct to justify dismissal (paragraph 66).

32. I should record here that Mr Walters, on behalf of the Respondents, fairly accepted that there was an inconsistency in the way in which Wraparound allegation (3) had been dealt with. It is difficult to see why, if allegation (2) only merited a final written warning, allegation (3), which was similar in nature, merited summary dismissal. Accordingly, he conceded that if I was minded to allow the appeal on the basis that the ET's reasoning in relation to the dismissal for failing to register Wraparound was defective, then he could not support the decision by reference to the alternative ground in relation to the cash handling protocols.

33. The Employment Judge also considered and rejected a number of procedural challenges to the decision to dismiss as a result of the Wraparound allegations. He dealt with them at paragraphs 43-60 of his judgment. These were:

(1) Unreasonable delay in the disciplinary process. The Employment Judge decided that though the delay was lengthy, the Claimant was not prejudiced by it in her ability to meet the disciplinary charges;

(2) The length of the Claimant's suspension. The Employment Judge decided that the suspension had not affected the fairness of the dismissal;

(3) Three witnesses, Rebecca Clarke, the School Secretary, Nicola Hire, and Naomi Erasmus, did not give evidence in person to disciplinary panel (though the panel had witness statements from them). The Employment Judge decided that this did not fundamentally affect the fairness of the process;

(4) The Governors had not been interviewed by Mr Jones of Servoca, even though the Claimant had said that several of them were aware of the situation in relation to Wraparound. The Employment Judge rejected the contention that this rendered the process unfair, saying that whilst it was clear that several of the Governors were necessarily aware of Wraparound, there was no evidence that any of them were aware of

how it was being administered, and the failure to interview them had no bearing on the issues before the panel;

(5) Procedural defects in the decision to proceed to a disciplinary panel hearing. The Claimant said that Welsh Government Guidance, and the disciplinary procedure, required that the decision to proceed to a disciplinary hearing had to be made by two Governors, who had no prior knowledge or involvement in the proceedings. She said that the Respondents had breached this in both respects, as the decision had been taken by a single Governor, Ms Hunt, who had a degree of prior knowledge of at least the medication allegation. The Respondents said that this was only guidance and that it made sense for the decision to be taken by only one Governor as the Governing Body was small and the decision-maker would be barred from taking any further part in the disciplinary process. The Employment Judge agreed with the Respondents, and said that this did not fundamentally prejudice the Claimant, as it was inconceivable that any panel, however composed, could reasonably have concluded that the allegations should not proceed to a disciplinary hearing, given their seriousness and the evidence in support of them; and

(6) Failure to make arrangements for the constitution of the disciplinary panel and appeal panel on the basis that the allegations involved Child Protection. The Claimant's own position was that none of the allegations involved Child Protection issues. However, at one stage in the process a HR Adviser employed by the County Borough Council took a different view. The Employment Judge said that if the Claimant asserts that the allegations do not give rise to any Child Protection issues, it follows that she can have suffered no prejudice by having a disciplinary panel that was constituted as it had been.

34. Finally, in respect of unfair dismissal, the Employment Judge considered an argument that the disciplinary panel should have regarded the allegations as being a capability rather than a conduct matter. The Employment Judge said, "The difficulty with that proposition is that it is

not in reality an argument that the Claimant ever advanced." Her case was that the allegations were untrue and she was the victim of an agenda/conspiracy. There was no evidential basis for concluding that it should have been treated as a capability matter, and so the Judge concluded that this was not a reasonable or tenable criticism of the conclusion as to sanction (paragraph 61).

35. For all of these reasons, Employment Judge Cadney found that the dismissal was fair.

Polkey

36. Neither the medication allegation nor the SEN allegations was strictly relevant to the unfair dismissal issue, save to the extent that they were relevant to the agenda/conspiracy allegation, as they were not the reason put forward for dismissal. But the SEN allegations were potentially relevant to remedy, on the basis that the Respondents contended that the Claimant would have been dismissed in any event in July 2017, because of the SEN allegations.

37. In relation to these allegations, the Employment Judge found that the decision to dismiss fell clearly within the range reasonably open to the Respondents, and that any dismissal would inevitably have been fair. Accordingly, had the Claimant not already been dismissed, she would have been fairly dismissed at the conclusion of the SENCO appeal (paragraph 82). This means that she would not, in any event, have been entitled to any compensation in relation to the period from that date onwards, in light of the principle laid down in **Polkey v AE Dayton Services Limited** [1988] ICR 142 (HL).

Wrongful dismissal

38. As the Employment Judge noted, the issue for wrongful dismissal was whether as a matter of fact the Claimant had acted in fundamental breach of contract, such that the County Borough

Council was entitled summarily to dismiss her. This fundamental breach could take the form of gross misconduct or gross negligence. The Employment Judge concluded that the Claimant was responsible for the running of the Wraparound provision and ran it unlawfully, and that this was a fundamental breach of the implied term of mutual trust and confidence which was contained within her contract of employment. In addition, the shockingly lax way in which she ran the record keeping and administration for SEN inevitably destroyed the mutual relationship of trust and confidence. Accordingly, the wrongful dismissal claim was dismissed (judgment, paragraphs 83-85).

The relevant law

39. The grounds of the Claimant's appeal, at least in major part, are based on the contentions that the Employment Judge failed to take into account material evidence, and failed to give adequate reasons for his findings. The Claimant also submits that it is relevant that the Employment Judge took over six months to provide his judgment, though she does not submit that this is, of itself, and on its own, a reason to allow her appeal.

The duty to give reasons and to deal with material evidence

40. The scope of an Employment Tribunal's obligation to give reasons for its rulings is set out at rules 62(4) and (5) of the Employment Tribunal Rules of Procedure, set out in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (SI 2103/1237). They provide that:

> "(4) The reasons given for any decision shall be proportionate to the significance of the issue and for decisions other than judgments may be very short.

> (5) In the case of a judgment the reasons shall: identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues. Where the judgment includes a financial award the reasons shall identify, by means of a table or otherwise, how the amount to be paid has been calculated."

41. The requirements of rule 62(5) are "a guide and not a straitjacket" (**Balfour Beatty Power Networks v Wilcox** [2006] EWCA Civ 1240; [2007] IRLR 63, at paragraph 25). There is a parallel obligation, pursuant to Article 6 of the European Convention on Human Rights, imported into UK law by the Human Rights Act 1998, to give reasons. Such reasons should be "candid, intelligible, transparent and coherent": **Clark v Clark Construction Initiatives** [2008] EWCA Civ 1446; [2009] ICR 718, at paragraph 5.

42. The relevant principles were helpfully summarised by the President, Chaudhury J, in **Kelly v PGA European Tour** (UKEAT/0157/17/JOJ, unreported). Having referred to rule 62(5), he said:

> "19. The scope of the Tribunal's duty in giving reasons is well-established. In **Meek v City of Birmingham District Council** [1987] IRLR 250 (at page 251), Bingham LJ stated that a Tribunal's reasons should:
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> "8. … contain an outline of the story which has given rise to the complaint and a summary of the Tribunal's basic factual conclusions and a statement of the reasons which have led them to reach the conclusion which they do on those basic facts. The parties are entitled to be told why they have won or lost. There should be sufficient account of the facts and of the reasoning to enable the EAT or, on further appeal, this court to see whether any question of law arises; …"
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> 20. In his judgment, Bingham LJ relied on a dictum of Donaldson LJ in **Union of Construction, Allied Trades & Technicians v Brain** [1981] ICR 542 (page 551):
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> "[Employment] Tribunals' reasons are not intended to include a comprehensive and detailed analysis of the case, either in terms of fact or in law … their purpose remains what it has always been, which is to tell the parties in broad terms why they lose or, as the case may be, win. I think it would be a thousand pities if these reasons began to be subjected to a detailed analysis and appeals were to be brought based upon any such

analysis. This, to my mind, is to misuse the purpose for which reasons are given."

21. In **English v Emery Reimbold & Strick Ltd** [2002] 1 WLR 2409 , Lord Phillips MR found (at paragraphs 17 to 22) that the duty to give reasons was a duty to give sufficient reasons so that the parties could understand why they had won or lost and so that the Appellate Tribunal/Court could understand why the Judge had reached the decision which s/he had reached. Lord Philips said:

> "16. We would put the matter at its simplest by saying that justice will not be done if it is not apparent to the parties why one has won and the other has lost.
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> 17. As to the adequacy of reasons, as has been said many times, this depends on the nature of the case: see for example **Flannery's case** [2000] 1 WLR 377 , 382. In **Eagil Trust Co Ltd v Pigott-Brown** [1985] 3 All ER 119 , 122 Griffiths LJ stated that there was no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case:
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> "When dealing with an application in chambers to strike out for want of prosecution, a judge should give his reasons in sufficient detail to show the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. I cannot stress too strongly that there is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what he says shows the parties and, if need be, the Court of Appeal the basis on which he has acted … (see Sachs LJ in Knight v Clifton [1971] Ch 700 , 721)."
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> 18. In our judgment, these observations of Griffiths LJ apply to judgments of all descriptions. But when considering the extent to which reasons should be given it is necessary to have regard to the practical requirements of our appellate system. A judge cannot be said to have done his duty if it is only after permission to appeal has been given and the appeal has run its course that the court is able to conclude that the reasons for the decision are sufficiently apparent to enable the appeal court to uphold the judgment. An appeal is an expensive step in the judicial process and one that makes an exacting claim on judicial resources. For these reasons permission to appeal is now a nearly universal prerequisite to bringing an appeal. Permission to appeal will not normally be given unless the applicant can make out an arguable case that the judge was wrong. If the judgment does not make it clear why the judge has reached his decision, it may well be impossible within the summary procedure of an application for permission to appeal to form any view as to whether the judge was right or wrong. In that event permission to appeal may be given simply because justice

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> requires that the decision be subjected to the full scrutiny of an appeal.
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> 19. It follows that, if the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, in may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon.
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> 21. When giving reasons a judge will often need to refer to a piece of evidence or to a submission which he has accepted or rejected. Provided that the reference is clear, it may be unnecessary to detail, or even summarise, the evidence or submission in question. The essential requirement is that the terms of the judgment should enable the parties and any appellate tribunal readily to analyse the reasoning that was essential to the judge's decision."

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43. Chaudhury J also referred, at paragraph 23, to the following passage from the judgment of Sedley LJ in **Anya v University of Oxford** [2001] ICR 847:

> "26. … The courts have repeatedly told appellants that it is not acceptable to comb through a set of reasons for hints of error and fragments of mistake, and to try to assemble these into a case for oversetting the decision. No more is it acceptable to comb through a patently deficient decision for signs of the missing elements, and to try to amplify these by argument into an adequate set of reasons. Just as the courts will not interfere with a decision, whatever its incidental flaws, which has covered the correct ground and answered the right questions, so they should not uphold a decision which has failed in this basic task, whatever its other virtues."

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44. In **Tran v Greenwich Vietnam Community** [2002] EWCA Civ 553; [2002] ICR 1101, at paragraph 17, Sedley LJ said that it is not enough for the Tribunal to set out is findings of fact

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and its conclusion. It is necessary for the Tribunal to explain ***how*** it got from its findings of fact to its conclusions.

45. In **Co-Operative Group v Baddeley** [2014] EWCA Civ 658, the Court of Appeal stressed the importance of the judgment having a coherent structure.

46. However, in **High Table v Horst** [1997] IRLR 513 (CA), at 518, Peter Gibson LJ said that "whilst [the Tribunal] must consider all that is relevant it need only deal with the points which were seen to be in controversy relating to those issues, and then only with the principal important controversial points."

47. The relevant principles can be summarised as follows:

(1) The duty to give reasons is a duty to give sufficient reasons so that the parties can understand why they had won or lost and so that the Appellate Tribunal/Court can understand why the Judge had reached the decision which s/he had reached;

(2) The scope of the obligation to give reasons depends on the nature of the case;

(3) There is no duty on a Judge, in giving his or her reasons, to deal with every argument presented by counsel in support of his case:

(4) The Judge must identify and record those matters which were critical to his decision. It is not possible to provide a template for this process. It need not involve a lengthy judgment;

(5) The judgment must have a coherent structure. The judgment must explain how the Judge got from his or her findings of fact to his or her conclusions;

(6) When giving reasons a Judge will often need to refer to a piece of evidence or to a submission which s/he has accepted or rejected. Provided that the reference is clear, it

may be unnecessary to detail, or even summarise, the evidence or submission in question; and

(7) It is not acceptable to use a fine-tooth comb to comb through a set of reasons for hints of error or fragments of mistake, and try to assemble them into a case for oversetting the decision. Nor is it appropriate to use a similar process to try to save a patently deficient decision.

48. Additional considerations apply where there is a dispute of expert evidence (see **English** at paragraph 20) and where there is an issue regarding the credibility of the evidence of a key witness (see **Anya**, at paragraphs 24 and 25). Neither of these sets of considerations is relevant in the present appeal.

The relevance of delay

49. The significance of a delay in producing a judgment was set out by Arden LJ in **Graham Henry Bond v Dunster Properties** [2011] EWCA Civ 455, a case in which there had been a delay of 22 months, at paragraph 7:

> "Findings of fact are not automatically to be set aside because a judgment was seriously delayed. As in any appeal on fact, the court has to ask whether the judge was plainly wrong. This high test takes account of the fact that trial judges normally have a special advantage in fact-finding, derived from their having seen the witnesses give their evidence. However there is an additional test in the case of a seriously delayed judgment. If the reviewing court finds that the judge's recollection of the evidence is at fault on any material point, then (unless the error could not be due to the delay in the delivery of judgment) it will order a retrial if, having regard to the diminished importance in those circumstances of the special advantage of the trial judge in the interpretation of evidence, it cannot be satisfied that the judge came to the right conclusion. This is the keystone of the additional standard of review on appeal against findings of fact in this situation. To go further would be likely to be unfair to the winning party. That party might have been the winning party even if judgment had not been delayed."

A 50. Although Arden LJ was dealing in the **Bond** case with findings of fact, the same approach applies where the challenge is to an alleged omission to give adequate reasons or to deal fully with material evidence. Mr Small, for the Claimant, submitted that, given the delay in the present case, the Appeal Tribunal must look at the judgment with a very critical eye. I accept that the delay means that the reasoning in, and contents of, the judgment in this case must be examined with particular care. Quite rightly, Mr Small did not submit that the mere fact that there was a delay in producing the judgment meant that his client's appeal must be allowed.

The grounds of appeal

Wraparound

Grounds (a)(i) and (iii)

51. In these grounds, the Claimant contends that the Employment Judge failed to take account of relevant evidence relating to Wraparound, and erred by failing to determine whether the Respondents had shown that the Claimant's dismissal was related to conduct rather than capability. Mr Small submitted that the judgment had focused on whether the period between 11.45 am to 1 pm counted as Wraparound, so that the Wraparound provision should have been registered with the CSSIW. The Employment Judge had failed to consider whether the Claimant was at fault for the non-registration. He had failed to focus on her reasons for not doing so. She had contended that she had been told by Ms Hire that there was no need to register,

52. Mr Small submitted that judgment did not deal, therefore, with whether the Claimant was wilfully at fault, or grossly negligent, or whether it had just been an understandable mistake or

genuine misunderstanding. In other words, the Employment Judge did not deal with the question ***why*** the Claimant acted as she did in relation to Wraparound. He did not deal with whether the reason for dismissal was capability, rather than conduct, and he did not deal with whether the Claimant's actions, whether they were capability or conduct, were insufficiently at fault to merit dismissal.

53. Also, Mr Small said that the judgment had not dealt with evidence consisting of the acceptance by Ms Hire in her evidence to the Employment Tribunal to the effect that the hours between 11.45 am and 1 pm were educational. If this was so, then there was no need to register Wraparound at the School. Notwithstanding Ms Hire's evidence, the Employment Judge had found that the period between 11.45 am to 1 pm counted as care provision, rather than educational provision.

54. Also, he submitted that the Employment Judge placed undue reliance on his expectation that if the Claimant had regarded Wraparound as being educational provision, she would have treated the funds relating to it as part of the School's delegated budget and would have placed the funds in the bank account related to the School's delegated budget. This ignored the evidence that the grant monies that had been paid to the School for Wraparound at the time when the facility was first introduced had been paid into the Schools private school fund account.

55. Mr Small submitted that the Employment Judge also failed to take account of the evidence to the effect that the Claimant had been told by Ms Hire that it was ok to keep nursery children in school between 11.45 am and 1 pm until Wraparound began. Also, he failed to take account of the Claimant's explanation for posters which referred to Wraparound beginning at 11.45 am, which was that this was simply to reassure working parents that they could leave their children at the School in the middle of the day.

56. In addition, the Claimant had contended that a woman called Kath Gibson, not the Claimant, was in charge of Wraparound.

57. I do not accept that these are valid criticisms of the Employment Tribunal's judgment.

58. It is important to emphasise two points at the outset, which provide the context in which these grounds of appeal must be considered.

59. The first point is that the Employment Tribunal heard and saw a great deal of evidence. The Tribunal heard from 26 witnesses (see judgment paragraph 2), and the bundle of documents ran to about 3,000 pages. It was not realistic, feasible, or sensible, in these circumstances, for the written judgment to deal with every piece of evidence that was placed before it.

60. The second point is that, as Mr Walters for the Respondents emphasised, the main thrust of the Claimant's arguments before the Employment Tribunal was two-fold. First, she contended that her dismissal had been the result of an agenda, or conspiracy, on the part of senior employees at the County Borough Council. Second, she contended that the period from 11.45 am to 1 pm was educational and so that there had never been any need to register Wraparound at the School. Her case was that there had been nothing unlawful in the way that Wraparound was treated. She was cross-examined about this at the Employment Tribunal, and remained adamant. This was described in the judgment, at paragraph 12(ii), as "one of the fundamental disputes in the case." As a result, the Claimant had not focused her submissions on the contentions either that, if Wraparound should have been registered, she was not culpable for failing to do so, or that any failing should have been regarded as an issue of capability rather than misconduct. She had never argued in the disciplinary process that the issue was one of capability.

61. In these circumstances, it is entirely understandable that the Employment Judge concentrated in his judgment on the questions whether there had been an agenda/conspiracy and,

A if not, on whether the Claimant was right to say that there had been no need to register Wraparound because it was educational.

B 62. In any event, however, it is clear from paragraph 33 of the judgment that the Employment Judge understood that he had to decide whether dismissal was fair in light of the extent of the Claimant's culpability. He said, in that paragraph, that in light of the test in **British Home Stores v Burchell** [1978] IRLR 379, the employer must draw reasonable conclusions (assessed by reference to the range of reasonable responses) as to the misconduct and the appropriate sanction.

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63. Moreover, at the end of paragraph 35 of the judgment, the Employment Judge referred to the Claimant's submission that if it had been open to the Respondents to conclude that there was a requirement to register Wraparound, "the claimant's failure to register the scheme should have and could only reasonably have been regarded as arising from a genuine misunderstanding as to whether registration was in fact required." Therefore, the Employment Judge understood that one of the arguments being advanced by the Claimant was that, even if registration should have taken place, it had not been fair to dismiss her for the failure, because there was no misconduct or gross negligence.

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F 64. This contention was addressed by the Employment Judge at the start of paragraph 36 of the judgment. He found that "there was a wealth of evidence supporting the basic proposition that Wraparound was being run both unlawfully and unprofessionally". In its context, this was plainly a rejection of the argument that there had just been a misunderstanding on the Claimant's part. He then went on to explain why it was self-evident that the period from 11.45 am to 1 pm was part of Wraparound. This can only be understood to mean that he accepted that the Respondents were entitled to decide that the Claimant was at fault for permitting Wraparound to operate for more than two hours a day without registering it. It meant that the Employment Judge was accepting that the Respondents were entitled to conclude that the Claimant was well aware

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A that she should have registered Wraparound, and that dismissal was a reasonable sanction in light of the extent of the misconduct.

65. In the section of the judgment which dealt with the allegation concerning cash handling, B the Employment Judge asked himself whether it had been appropriate to the disciplinary panel to conclude that the Claimant's acts and omissions fell way below the standards expected of a head teacher and was sufficiently serious to constitute gross misconduct for which dismissal was a C reasonable and permissible sanction (paragraph 39). This is a clear sign that the Employment Judge fully appreciated that he had to decide whether the Claimant was wilfully at fault and whether she had committed misconduct which was capable of meriting dismissal.

D 66. At paragraph 60, the Employment Judge directly addressed the question whether there had been gross misconduct. He said;

> "In summary my view is that there was ample evidence before the E disciplinary panel for it to reasonably conclude that the claimant had committed the misconduct alleged in respect of both allegations. In respect of allegation 1 [the failure to register Wraparound] it was reasonably open to it to conclude that it was gross misconduct and that dismissal was a reasonable sanction."

F 67. At paragraph 66, the Tribunal judgment said that:

> "In my view the factual findings of the appeal panel were clearly ones reasonably open to them on the evidence, as was the conclusion that they constituted sufficiently serious misconduct to justify dismissal."

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68. At paragraph 69, the Employment Judge said:

> "the Wraparound appeal panel formed conclusions as to the misconduct of both the disciplinary and appeal panels as to the misconduct and the sanction which fell well within the range of reasonable responses."

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69. In light of the above, the Employment Judge did not fail to make findings, with reasons, about whether the Claimant was guilty of gross misconduct, rather than a misunderstanding. He considered this issue and decided that, in light of the evidence before the disciplinary and appeal panels, the Respondents had been entitled to find that the Claimant had been guilty of gross misconduct, for the reasons given in the decision letter of the appeal panel. Acts or omissions which amount to gross negligence may amount to gross misconduct: **Adesokan v Sainsbury Supermarkets Ltd** [2017] EWCA Civ 22; [2017] IRLR 346, at paragraph 23, per Elias LJ.

70. The Employment Judge also considered and rejected the contention that any failings on the part of the Claimant in relation to Wraparound should be considered as capability issues, rather than misconduct issues, at paragraph 61 of the judgment.

71. Still further, it is clear that the Employment Judge did not overlook material evidence.

72. The judgment shows that the Employment Judge considered and took account of the Claimant's contentions that, if she was wrong about whether Wraparound needed to be registered, it was an understandable mistake because of what Ms Hire had said to her, and that it could not be gross misconduct on her part because the person in charge of Wraparound was Kath Gibson, not her, or because the Governors knew what was going on. All of these matters were dealt with in the judgment.

73. At paragraph 63 of the judgment, when dealing with the appeal, the Employment Judge specifically dealt with the contentions that Ms Gibson, not the Claimant, was responsible for the Wraparound provision and that the Governors were unaware of the detail of the arrangements. The judgment said:

> "[The appeal panel] did not accept the claimant's case that the Wraparound provision was the responsibility of Ms Gibson and that the failing were her responsibility. Equally they concluded that the Governors were aware of the facility but left operational issues to the Head Teacher. In my judgement this conclusion, being based on the documentary evidence and oral evidence before them was necessarily a rational and reasonable conclusion open to them to draw. Similarly detailed findings were made in relation to the other conclusions, and it is not necessary to set them out in this decision."

74. It is clear that one of the "other conclusions" which was being referred to in the last sentence of that extract was the conclusion that the Claimant's failure to register Wraparound was not excused by what she had been told by Ms Hire.

75. The Tribunal judgment referred specifically to the Claimant's case about what she was being told by Ms Hire at paragraph 51. The Employment Judge said:

> "The only directly relevant witness to the wraparound allegations was Nicola Hire. However, in relation to the crucial question of whether it was being run illegally there was no dispute that the claimant correctly understood that it could not operate for more than two hours per day. The question was whether the claimant was or was not correct in her assertion that wraparound was not being operated between 11.45 and 1.00 pm This was a straightforward question of fact and it is hard to see how Ms Hire's oral evidence could fundamentally alter any conclusions on that issue."

76. The reference to the Claimant's understanding shows that the Employment Judge was considering whether the Claimant was at fault for failing to register Wraparound.

77. The judgment referred, at paragraph 36, to the possibility that Wraparound might have been simply a period of time during which parents were entitled to leave the children on the premises for a small fee. The Employment Judge rejected this on the basis that it was unrealistic as the School was providing paid child-care during that period and the advertisements sent out

for Wraparound referred to Wraparound beginning at 11.45 am. It is true that this paragraph of the judgment did not refer specifically to Ms Hire's comments, but is clear from paragraphs 36 and 51, and also from the Employment Judge's findings that the Respondents had been entitled to find that there was gross misconduct, that the Judge rejected the Claimant's contention that she had been led by Ms Hire to believe that there was no duty to register Wraparound even if the nursery-age children stayed in the School between 11.45 and 1.00.

78. As for the contention that it was not open to the Tribunal to find that the period between 11.45 am and 1 pm was not educational because Ms Hire had said to the Tribunal that she considered this period to be educational, I do not accept this. Even if she made this concession in evidence before the Tribunal (and I have seen no note of evidence) Ms Hire's evidence to the disciplinary process had not been to the effect that this period was educational. In any event, there was ample material to justify the Judge's conclusion that the Respondents had been entitled to conclude that the period was not educational, whatever Ms Hire might say. This period was not an extension of the nursery hours (which were educational). It was a period in which the children were being cared at School. The parents paid a fee for the period. This would not have been the case if it was part of nursery education. As the Employment Judge found, it was inevitable on the evidence before the panels that the conclusion would be reached that the period was care, not education.

79. Finally, there is no basis for the contention that the Employment Judge placed undue reliance on the way in which the funds relating to Wraparound were treated. This did not form a major part of his analysis. In any event, the key point is that if the period between 11.45 pm and 1 pm was educational, there would be no basis for a fee being charged for it.

Ground (a)(ii)

80. Ground (a)(ii) is that the Employment Judge failed to give adequate reasons for his findings.

81. I do not accept this. The judgment runs to 85 paragraphs over 21 pages. The Employment Judge sets out his findings of fact and his reasoning under various headings clearly and conscientiously. There is no indication from the content of the judgment that the delay had any adverse effect on the Judge's recollection of the evidence or the arguments, or has had any impact on his analysis and reasoning. The Employment Judge has not overlooked any of the key points relied upon by the Claimant.

82. The matters relied under this heading by the Claimant, in my judgment, are, in reality, complaints that the Employment Judge did not accept the arguments advanced on her behalf. Applying the guidance on the requirement for judgment-writing in the authorities set out above, it is clear that the judgment is sufficiently detailed. It has provided findings of fact and explanations which enable the parties to know why they have won or lost. It has addressed the key arguments and has made findings and given reasons for the Tribunal's conclusions on the main arguments.

Ground (a)(iv)

83. Mr Small frankly and fairly acknowledged that this ground – failure to scrutinise the evidence – is in reality just another way of putting the grounds in (a)(i) and (a)(iii).

Ground (a)(v)

84. In this ground, the Claimant submitted that the Employment Judge erred in concluding that the Claimant's suspension was reasonable by applying the wrong legal test.

85. The Claimant pointed out that she was suspended on 5 June 2015 and the disciplinary hearing did not take place until November 2016. Under the disciplinary procedure, the Claimant's suspension should have been kept under review but, she said, this did not happen.

86. The Employment Tribunal judgment dealt with the length of the suspension at paragraphs 47-49 of the judgment. The judgment referred to the matters set out in the preceding paragraph of this judgment, and also the Claimant's submission that, as she had been suspended because of the medication allegation, the suspension should have been lifted when Mr Tudor Jones produced his report in July 2015.

87. The Respondents' response was that there were three allegations against the Claimant, two of which only arose after the Claimant had already been suspended. These were very serious allegations which called into question her capacity to fulfil the role of head teacher. Until those allegations were resolved, suspension was inevitable. The fact that this took a significant amount of time does not detract from this. In any event, the length of the suspension did not fundamentally affect the Claimant's ability to answer the disciplinary allegations.

88. The Tribunal found that the Respondents were correct. There was no evidence that the suspension, either on its own or taken together with the delay in the disciplinary process, had an adverse effect on the Claimant's ability to answer the underlying allegations. This meant that the length of the suspension was a significant factor in the fairness or otherwise of the dismissal.

89. Mr Small submitted that the Tribunal wrongly concentrated on the effect of the delay, rather than whether it was reasonable and the reasons for it. He also submitted that the Judge

was wrong that the length of the suspension did not prejudice the Claimant, because it meant that she could not properly dealt with the SENCO allegations, as she did not have access to the children's files. He also said that the suspension was longer than it needed to be because the Respondents had waited until December 2015 before commencing the SEN investigation.

90. In my judgment, the Tribunal did not err in law in the way in which it dealt with the complaint about the length of the suspension. It is true that an Employment Tribunal needs to look at the length of a delay (or a suspension) and the reason for it: see **Secretary of State for Justice v Mansfield** (UKEAT/0530/09/RN, unreported) at paragraph 27. However, in the present case it was clear beyond doubt that the reason for the suspension was that the Claimant had serious disciplinary allegations hanging over her. The Claimant complained of the delay in starting the investigation into the SEN issues, but this was an aspect of her complaint of an agenda/conspiracy, which was rejected by the Tribunal. When that is discounted, it was clearly open to a reasonable employer to continue to suspend the Claimant for as long as to took to investigate allegations as serious as these.

91. In my view, the Employment Judge was right to focus on the question whether the length of the suspension affected the fairness of the dismissal. The cause of action is concerned with unfair dismissal, not unfair suspension, and the Claimant was not advancing a constructive dismissal claim based on the length of her suspension. The Employment Judge was entitled to find that the delay did not prejudice the Claimant's position. Any challenge to this finding is a perversity challenge. This finding was not perverse. The Claimant was not at a disadvantage by not being in School, with access to the files. She was given disclosure of relevant documents during the disciplinary process and she was interviewed several times.

Ground (a)(vi)

92. In this ground, the Claimant contends that the Employment Judge erred in his analysis of defects in the procedure adopted by the Respondents, in a number of respects. I will focus on the challenges that were advanced in Mr Small's oral submissions.

93. First, he pointed out that at a meeting between Chris Walsh, a HR officer employed by the County Borough Council, and a School Governor, Ms Hunt, it was suggested that the Wraparound allegation was a Child Protection allegation. If that were so, a different disciplinary procedure should have been followed. The Claimant says that her dismissal was unfair because this was not done. The Employment Judge dealt with this at paragraph 59 of the judgment. He pointed out that the Claimant's own position was that the Wraparound allegation did not give rise to any Child Protection issues. He said that if she accepts that this is so, then it follows that she can have suffered no prejudice by having a disciplinary panel that was in fact correctly constituted.

94. In my judgment, it is clear that, not only was this a conclusion that the Employment Judge was entitled to come to, but he was plainly right, for the reason that he gave.

95. Next, Mr Small submitted that the Tribunal should have found that the Claimant's dismissal was procedurally unfair because the decision to proceed to a disciplinary hearing was taken by one Governor, rather than two, as the Statutory Guidance and the disciplinary procedures required.

96. The Employment Judge dealt with this at paragraphs 56-58 of the judgment. He accepted the Respondents' submission that the Guidance is precisely that, and in this case the reason why only one Governor took the decision was because the Governing Body was small and any Governor who participated in the decision would be barred from taking any other part in the disciplinary or appeal process. He said that no prejudice flowed from this as it was, in his view,

A inconceivable that any panel, however composed, would have decided that the allegations should not proceed to a disciplinary hearing, given their seriousness and the weight of the evidence in support of them.

B 97. In my judgment, the Employment Judge was fully entitled to come to this conclusion. Ordinarily Statutory Guidance should be followed. But such Guidance need not be followed if there is a good reason for departing from it. In the present case, the small size of the Governing C Body provided such a good reason. Mr Small said that in cross-examination at the Tribunal, Ms Hunt said that other Governors could have been found to participate in the disciplinary process. Nonetheless, it was open to the Employment Judge to find that it was a good idea, given the size of the Governing Body at this small primary school, to limit the number of Governors who would D be barred from taking any further part in the process. In any event, the Employment Judge was plainly entitled to find that even if there was a procedural defect in this regard, it did not render the process as a whole unfair. Not every procedural defect renders a dismissal unfair. The E Employment Judge was entitled to find that the outcome would inevitably have been the same if two Governors had taken the decision.

98. The third procedural matter relied upon by the Claimant was what Mr Small described as F the extreme delay in the disciplinary process. As I have said, the Claimant was suspended in June 2015 and the first disciplinary hearing did not take place until November 2016.

99. The Employment Judge dealt with the delay allegation at paragraphs 44-46 of his G judgment. He concluded that although the delay was very lengthy, the Claimant was not prejudiced in her ability to meet the disciplinary charges, especially as the Wraparound and Senco allegations were primarily based on written allegations.

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100. Once again, this was a decision which the Employment Judge was entitled to come to. It is not perverse. He gave reasons for his conclusion.

101. The fourth procedural matter is that there was no review of the Claimant's suspension. The disciplinary procedure stated that suspension is a serious step which is kept under review. Again, I think that there is no substance in this ground of appeal. It was reasonably open to the Employment Judge to decline to find that the failure to hold formal reviews of the suspension rendered the dismissal unfair. I have already dealt with the challenge to the length of the suspension. In my judgment, given the seriousness of the allegations, it is inevitable that the suspension would be extended until the disciplinary process was at an end, and so the failure to hold formal reviews (even if such a formal obligation existed) did not render the dismissal unfair.

102. The fifth point under this head is that the Employment Judge should have found that the dismissal was unfair because three witnesses, Rebecca Clark, Nicola Hire and Naomi Erasmus, were not called to give oral evidence in person at the disciplinary panel. This was dealt with by the Judge at paragraphs 50-52 of the judgment. He said that, looked at overall, the absence of the witnesses did not fundamentally affect the fairness of the process.

103. This is, again, a decision which in my view the Employment Judge was entitled to reach. The Judge explained why none of these witnesses' evidence was essential: Ms Clarke's evidence was mainly about the medication issue which did not lead to the Claimant's dismissal; Ms Erasmus's evidence went to the agenda/conspiracy allegation and there was a wealth of evidence, even without her evidence, on this topic, which showed that there was nothing in this; and it was hard to see how Ms Hire's oral evidence could fundamentally affect the conclusions.

104. These were all valid considerations. It not obligatory in every case that every potentially relevant witness must be called to a disciplinary hearing. The disciplinary panel had witness

A statements from these witnesses and the Claimant was able to challenge them with her own evidence. The appeal panel heard oral evidence from Ms Hire.

105. In all of these circumstances, the decision that the dismissal was fair notwithstanding that B these three witnesses did not give evidence to the disciplinary panel was not perverse and contained no error of law.

106. The sixth and final criticism is that the Tribunal should have found that the dismissal was C unfair because of apparent bias, in that Ms Hunt had a degree of prior knowledge of the medication allegation, and the Chair of the disciplinary panel, Mr Nedin, should not have involved himself in the decision to proceed with the hearing. In my judgment, these criticisms D are minor and do not come anywhere close to grounds for a ruling that the dismissal was unfair as a result, let alone giving rise to a good argument that the Employment Judge erred in law in failing to find that the dismissal was unfair for these reasons.

E **SEN**

Ground (b)(i)

107. Since I have found that the Employment Judge was entitled to find that the Claimant was F fairly dismissed because of the failure to register Wraparound, the question of the fairness or otherwise of the decision to dismiss the Claimant because of the SEN issues does not, strictly arise. This would only arise if she was unfairly dismissed and the **Polkey** issue arose. Similarly, G it is not strictly necessary to address the SEN allegations for the purposes of the wrongful dismissal claim, as the Employment Judge's conclusion on wrongful dismissal can stand or fall on the Wraparound allegation itself.

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108. I will, therefore, only briefly deal with the ground of appeal relating to SEN.

109. In this ground, the Claimant contends that the Employment Judge did not deal with the Claimant's case at all, and has simply accepted the Respondent's findings without any critical analysis. He also failed to deal with the individual allegations against the Claimant and failed to take into account or to give adequate reasons as to why the Claimant's evidence was dismissed.

110. The Employment Judge dealt with this matter at paragraphs 71-82 of the judgment. In my view, the Judge undertook a careful review of the evidence, considered the key issues, and gave reasons which were (at least) sufficient to satisfy his obligation to give adequate reasons. The Claimant's complaint is essentially that he did not accept her evidence or the arguments advance on her behalf in relation to SEN. The Employment Judge referred to the report of the investigation of Ms Sharon Davies which said, in reference to the Claimant's evidence in the investigation:

> "The Head Teacher was unable to direct the Investigating Officer to evidence which countered the allegations made against her. Her prime concern throughout this investigation was to stress that she had been a victim of a witch hunt by some staff in her school, the Chair of Governors and Senior Local Authority officers….. She made it clear that she felt evidence had been shredded and files tampered with."

111. The Employment Judge set out the conclusions of the Sharon Davies report and said that the conclusions in the report were supported by a wealth of evidence, whereas the defence of conspiracy/agenda put forward by the Claimant was entirely unsupported.

112. The essence of the Claimant's criticism is that the Employment Judge did not set out all of the allegations in relation to the SEN matters, and then deal in turn with the points that the Claimant wished to make in relation to the findings of the Sharon Davies report and the appeal panel decision. In my judgment, this is a misconceived criticism. By the time he came to address the SEN issues in his judgment, the Employment Judge had already found that the dismissal was

fair. As he said in paragraph 71 of the judgment, strictly speaking it was not necessary for him to consider the SENCO allegations. In those circumstances, it would have been disproportionate for him to have to gone into them in the level of detail which the Claimant contends that he should have done. This is especially so as the Claimant's main argument was that there had been a conspiracy against her, and that files had been deliberately tampered with and destroyed. The Employment Judge considered the allegations of a conspiracy at paragraphs 23-30 and rejected them.

113. In his oral submissions, Mr Small took a specific point about there being no documentation confirming the appointment of one particular member of the appeal panel, Ms Sarah Smith. In my judgment, this is a technical objection only, as she was plainly appointed to the appeal panel, whether or not there was any written documentation to evidence it. In any event, it is clear from the Tribunal judgment that the Employment Judge took the view that the appeal panel's conclusion on the SEN allegations was pretty much inevitable, as the evidence was entirely consistent with Ms Sharon Davies's conclusions (paragraph 74), and as these were failings of the utmost seriousness, it was clear that there was gross misconduct and that dismissal was a reasonable sanction. Any technical irregularity in the appointment of, or number of, members of the appeal panel therefore made no difference.

Ground (b)(ii)

114. This ground is that the Employment Judge erred in law in failing to consider and determine whether the Claimant's dismissal on the SEN grounds was a dismissal on the ground of capability, rather than conduct.

115. In my judgment, this ground is misconceived. It is clear from the section in the judgment that deals with the SEN allegations that the Employment Judge accepted that the allegations were

of failings consisting of gross negligence of such seriousness as to amount to gross misconduct (judgment, paragraph 81).

Ground (c)

116. This ground is that the Employment Judge erred in finding that the Claimant's conduct was so serious as to destroy the relationship of mutual trust and confidence, in that he wholly failed to say why there was a repudiatory breach and wholly failed to deal with the evidence that was in front of him.

117. This ground, too, is misconceived. The Employment Judge held that the Claimant was responsible for the running of the Wraparound provision and ran it unlawfully. In relation to the SEN allegations, she was Head Teacher and SENCO and ran a system in which the record keeping and administration was shockingly lax (paragraph 85). He said that the evidence was simply overwhelming. It would have been unreasonable and disproportionate for the Judge at this stage to repeat the evidence that he had set out in detail in the preceding sections of the judgment, which dealt with unfair dismissal and **Polkey**. He was entitled to say simply that this conduct was so serious that it inevitably destroyed the relationship of mutual trust and confidence.

Conclusion

118. For the reasons set out above, this appeal is dismissed.