EMPLOYMENT TRIBUNALS

Claimant: Mr A M McCann

Respondent: Acorn Care and Education Limited

Heard at: Manchester (by CVP) **ON:** 11, 12 and 13 January 2021
25 January 2021
(in Chambers)

Before: Employment Judge Ross

REPRESENTATION:

Claimant: In person
Respondent: Mr Sugarman, Counsel

JUDGMENT

The judgment of the Tribunal is that the claimant's claim of unfair dismissal is not well founded and fails.

REASONS

1. The claimant was employed by the respondent as a Pastoral Coordinator at a secondary school operated by the respondent. The young people who attend the school have significant social, emotional and/or behavioural needs. Many of the pupils at the school have suffered serious trauma and abuse in their early childhood and are looked after by foster carers or reside in a Children's Home.

2. The respondent owns and operates around 50 schools across the country, all of which provide specialist education for children with a range of complex needs.

3. The claimant was employed at the school for 15 years. He held a number of roles prior to being appointed Pastoral Coordinator, including as a history and a PE teacher.

4. At the time of his dismissal the claimant was also the Deputy Safeguard Lead, Educational Visits Coordinator, a Duke of Edinburgh Coordinator and an Outdoor Education Coordinator.

5. At the time of his dismissal the claimant and his partner had applied to become foster carers.

6. The claimant was dismissed for gross misconduct on 12 April 2019 for (1) breaching professional boundaries and (2) breaching company policy, in particular GDPR regulations and the respondent's policies in relation to IT.by sending a work-related email containing sensitive information to a personal email address.

7. The claimant appealed against his dismissal but the appeal was unsuccessful and he brought a claim to this Tribunal.

8. I heard from the dismissing officer, Ms A Henderson, and the appeal officer, Ms L Edwards. For the claimant I heard from the claimant himself, Mr A Ashton and Ms J Cornish.

9. Although on some occasions during the course of his evidence the claimant referred to "whistleblowing" he confirmed that the claim was for unfair dismissal pursuant to section 95 and section 98 of the Employment Rights Act 1996 only. He confirmed he was not bringing a claim that he was automatically unfairly dismissed pursuant to section 103A Employment Rights Act 1996 for making protected disclosure(s).

10. At another stage of the Tribunal hearing the claimant alleged that a comment made by one of the respondent witnesses had been homophobic. This was strongly disputed by the witness. The claimant confirmed that he was not bringing a claim for discrimination on the basis of sexual orientation.

11. Evidence was given in relation to a pupil at the school. It was agreed that to protect that child, the pupil would be referred to only as "child G".

12. Likewise, to protect the child, the child's foster carer was referred to only as "P".

13. It was agreed that any statements referring to the full names of the child or foster carer would be redacted accordingly.

The Law

14. The relevant law is found in section 95 and section 98 of the Employment Rights Act 1996. **British Home Stores v Burchell [1980] ICR 303** is relevant, as is **Salford Royal NHS Foundation Trust v Roldan [2010] ICR 457**. Given that the claimant was a Pastoral Coordinator and was dismissed for gross misconduct for breaching professional boundaries as well as breaching GDPR, his ability to work with children in future is likely to be compromised.

The Issues

15. It was agreed the issues were as follows:

(1) Has the respondent shown the reason or principal reason for dismissal? The respondent relies on conduct, a potentially fair reason under section 98 Employment Rights Act 1996.

(2) If so, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as sufficient to dismiss the claimant?

(3) If the reason was conduct, did the respondent act reasonably in all the circumstances in treating that as sufficient reason to dismiss the claimant? The Tribunal will consider:

Whether the employer who discharged the employee on the ground of misconduct entertained a reasonable suspicion amounting to a genuine belief in the guilt of the employee of that misconduct at that time. To answer that question, I must answer three elements:

(i) The fact of that belief;

(ii) That the employer had in his mind reasonable grounds on which to sustain that belief; and

(iii) The employer at the stage at which she/he formed that belief on those grounds had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

16. I remind myself that it is not for me to substitute my own view, either with regard to the grounds (**British Home Stores v Burchell**) or the investigation (see **Sainsbury's Supermarket v Hitt IRLR 23 CA**).

17. In answering the question whether the dismissal was fair or unfair within the meaning of section 98(4) of the Employment Rights Act 1996, I must have regard to the size and administrative resource of the employer's undertaking and I must have regard to equity and the substantial merits of the case. I must have regard to the band of reasonable responses of a reasonable employer.

Applying the Law to the Facts

18. I turn to the first issue: what was the reason for dismissal?

19. There is no dispute in this case that the reason for dismissal was the claimant's conduct. The specific conduct relied upon by the dismissing officer was that with regard to the first allegation that he had breached professional boundaries, because he had:

(1) unauthorised contact with the pupil outside the school;

(2) had regular contact with the pupil's carer not declared to the school;

(3) shared personal information about himself, including his personal address with the pupil's carer leading to the pupil being aware of his personal address;

(4) purchased a gift for a pupil that was not approved or declared by the school or SLT; and

(5) treated one pupil differently in comparison with other pupils.

20. The claimant admitted some but not all of the facts which gave rise to allegation 1. He did not accept he had breached professional boundaries.

21. The second allegation was a breach of General Data Protection Regulations "GDPR" by sending a work-related email containing sensitive information to a personal email address. The claimant admitted the breach but relied on mitigating factors.

22. Although he did not explain it clearly, the claimant appeared to suggest that there was a reason other than conduct for his dismissal. He suggested that an affair between the Operations Manager and another staff member was behind his dismissal. He suggested that the person who had the affair with the Operations Manager now had his job and that was somehow connected to the disciplinary investigation and outcome against him. No clear evidence was provided for this contention by the claimant.

23. I find the dismissing officer dealt with this issue in the disciplinary outcome letter, namely that the Operations Manager was not the person who raised the concerns which led to the disciplinary hearing and investigation. The dismissing officer explained that the concern had been raised by someone outside the school. Thus the commencement of the disciplinary process against the claimant was not instigated by the Operations manager or the other staff member.

24. Further, the majority of the conduct for which he was dismissed was admitted by the claimant.

25. I am therefore satisfied that the respondent has shown that the reason for the claimant's dismissal was his conduct. Conduct is a potentially fair reason for dismissal.

26. I turn to consider whether the dismissing officer, Ms Henderson, or the appeal officer, Ms Edwards, had a genuine belief based on reasonable grounds following a reasonable investigation of the claimant's conduct.

27. I was impressed by Ms Henderson, the dismissing officer, as a witness. She was a clear and honest witness who made concessions where necessary. She confirmed that with hindsight her dismissal letter could have been more specific in dealing with the information she relied upon in reaching her conclusion. Greater detail is given in her witness statement about her thought process.

28. Allegation 1 is Breach of Professional Boundaries. There are 5 separate parts to this allegation.

29. I turn to the first part of the allegation**: that the claimant had "unauthorised contact with pupils outside school**". There were a number of different incidents relied upon by the respondent.

30. Ms Henderson confirmed that this should read "pupil" not "pupils". I accept her explanation that the additional "s" was an error. The minutes of the investigatory hearings and the minutes of the disciplinary hearing make it clear that the concern relates to child G only. The examples of the unauthorised contact were as follows:

(a) The claimant attended a day trip with child G and his foster carer on 28 August 2018 (during the school holidays);

(b) The claimant attended a Manchester United football match at Old Trafford alone with child G in October 2018;

(c) The claimant invited child G and his foster carer to his home on 27 December 2018 and asked for permission from child G's social worker for child G to stay with the claimant overnight;

(d) The claimant emailed child G on two occasions, once with a colleague copied in (pages 82-85) and once without anyone else copied in (page 91);

(e) The claimant attended football matches where child G played on Saturdays and took child G home in his private vehicle on at least two occasions.

31. The first occasion was a climbing trip. I find Ms Henderson accepted that although at the investigatory stage there was a dispute as to whether or not the claimant had obtained permission for that outing (see page 288), she accepted by the time of the disciplinary hearing that the claimant had provided "evidence of a Facebook conversation between you and the Head Teacher" (page 95).

32. However, she found there were other examples of where "you had contact with the pupil and not shared with this school, and also times when you had gone directly against the advice of the Head Teacher and had contact regardless".

33. She relied on the second example -when the claimant attended a Manchester United football at Old Trafford alone with child G in October 2018. The claimant admitted attending the evening football match with the pupil, and at the investigatory stage said, "yeah, looking back it was not advisable" (page 262). The child's foster care who at the claimant's request provided answers to questions for the disciplinary hearing, said "in hindsight maybe this was blurring professional boundaries" (page 376).

34. The Head Teacher said she had not given permission for this trip (page 236-7). This was corroborated by another staff member (pages 238-239). The corroborated account states the Head Teacher "reiterated that she felt it wouldn't be a good idea to attend" and that "a few weeks later during a conversation the subject of football came up to which [the claimant] admitted he had gone to the match". I find this is the example relied upon by Ms Henderson that the claimant had gone directly against the advice of the Head Teacher in taking the child, alone, to the evening football match.

35. The third example was that the claimant invited child G and his foster carer to his house on 27 December 2018 and then asked for permission from the child's social worker for him to stay with the claimant overnight. I find the dismissing officer relied on an email from the claimant to the child's social worker dated 15 December 2018 (p 641) where he states:

> "We have invited P and G over for a meal on 27 December. I hope that is ok. G has asked if it might be possible to stay overnight if he feels comfortable enough to do so on the day.
>
> I have informed him that I would have to clear this with yourself before allowing it.
>
> Would that be acceptable with yourself? I would hate to do something which we were not permitted to do, so that want to ensure you are in the loop on anything and have your permission before discussing it further with G and any other parties who might need to know."

36. The permission was sought in the email on the basis that child G could stay over as a "family friend" agreement with his carer. The claimant omitted to mention having invited G and P to his home at the investigation meeting (pages 229-235). I find the dismissing officer noted that having first invited P and G the claimant then sought permission from the Head Teacher who refused it (pages 185-189).

37. The fourth example is that the claimant emailed child G on two occasions: once with a colleague in copy (pages 82-85) and once without anyone else in copy (page 91).

Email at pages 82-85

38. The dismissing officer could see that the claimant had emailed the child on the child's Gmail address which appeared to be his personal email account. In addition, the claimant appeared to have initiated the correspondence using his own personal email which he had sent to his work email and then forwarded to the child. The claimant had copied in the Operations Manager to this email chain. The email relates to a fantasy football league. The dismissing officer said in the dismissing letter:

> "This is an example where you have clearly emailed from your personal email address to the personal email address of G. This conversation was in relation to a fantasy football league but the conversation between yourself and the pupil was not within what would be considered professional boundaries."

Email at page 91

39. The second email at page 91 was an email chain between the claimant and the child on 23 February 2018. In the email sent by the child at 23:41 the child says, "Have a nice night drinking and a good weekend". The claimant responded at 23:49 to the child's personal email address, "I do not drink. I am an angel". At the disciplinary hearing the claimant told the dismissing officer that he believed he was emailing the child's school email rather than his personal email. The dismissing officer found the contact was clearly via personal email and the content inappropriate for a responsible adult where the child was a vulnerable young person and also the timing, which was late at night, was inappropriate.

40. The fifth example was that the claimant attended football team matches where the child played on Saturdays and took the child home in his private vehicle on at least two occasions. I find the dismissing officer relied on the minutes of the

investigatory hearing where the claimant admitted he had taken the child home after the football match, and he said “yeah, I think twice” and then he said, “may have been three times, maybe another time”. He confirmed that child G was the last one he would drop off and that he would go in the house, “yeah, I would drop in like I would with detention when I do drop off, I would never just run away. I would use the loo or have a brew, never drop at the doors” (page 265).

41. I find the dismissing officer considered this to be inconsistent with the previous account at page 231. At the disciplinary hearing when asked about transporting child G home from football the claimant said, “Twice – once when he had his car MOT, another time P was drenched so I said I’ll bring G”. The claimant said it was “to help them both out but I wouldn’t do it again”.

42. I find that although the dismissing officer accepted that the Head Teacher or the Operations Manager knew of some of the contact, other contact was not known to the school and was inappropriate.

43. The Dismissing Officer had regard to the fact that the claimant was a Deputy DSL in school and had a level of training which would have made him acutely aware that this was inappropriate. She knew that the claimant had achieved Level 5 in DSL training, which was the highest level of safeguarding training available. He had attended that training on 28 February 2018 (pages 40-43), not that long before the events which were the cause of concern.

44. I find the Dismissing Officer, an experienced senior manager and Headteacher, relied on her own knowledge that she had been trained to the same safeguarding level as the claimant and she considered there was no way the claimant could not have known about safeguarding requirements and professional standards and the relevant Safeguarding Policy and Statutory Guidance

45. I find she considered that since the young people attending the School were so vulnerable, it was absolutely paramount that the School (and all staff at the School) comply with applicable safeguarding policies, statutory guidance notes and procedures. In fact, she said safeguarding was so fundamental in any learning environment (let alone at the School) that all staff are required to receive safeguarding training as part of their induction and beyond, up to Level 2. In addition, compliance with the applicable safeguarding policy ensured that the staff working with children would not put themselves at the risk of serious allegations being made against them.

46. I find she relied on the fact that the claimant had received the highest level of safeguarding training (level 5) available at that time because he was the deputy designated safeguarding lead which gave him particular responsibility for safeguarding children.

47. She relied on the fact that the School operated the Child Protection and Safeguarding Policy, which can be found at p123 — 141. The policy specifically refers to the school (p123) although it is a policy used across the NFA Group. The policy requires all staff to read a number of other policies including the Data Protection Policy (p127) which incorporates GDPR (p128).

48. Paragraph 1.2. on p. requires all employees to ensure that they give children and young people the opportunity to learn about appropriate relationships with adults and recognise unacceptable behaviour by adults. Paragraph 4.1. on page 127 requires staff to read the Policy in conjunction with Keeping Children Safe in Education (2018) and, importantly, to follow this Policy and supporting guidance. It states, "All staff are expected to follow this policy and statutory guidance including Keeping Children Safe in Education 2018".

49. The dismissing officer was aware that the claimant had signed to say he had read the School's Safeguarding policy (p56).

50. The Guidance for Safer Working Practice (pp. 59.1 — 59.26) sets out professional boundaries for professionals working with vulnerable children. The dismissing officer found the Claimant to be aware of this document because he was a very experienced member of staff and also a trained DSL. There was no doubt in her mind that he must have been aware of this guidance document because of his DSL training. Among other things, the practice note sets out the following requirements: that staff should avoid any conduct which would lead any reasonable person to question their intentions (59.4-5) and reminds them any breaches of professional guidelines could led to disciplinary action.

51. In particular paragraph 5 deals with the importance of keeping to professional boundaries, paragraph 6 reminds staff that they are in a position of trust and the relationship is not one of equals, and that adults have a responsibility to ensure "that an unequal balance of power is not used for personal advantage or gratification". Paragraph 6 deals with the importance of confidentiality in processing personal data of children in accordance with GDPR. Paragraph 7 deals with conduct and avoiding behaving in a manner which would lead any reasonable person to question their suitability to work with children and the requirement to act as an appropriate role model. Paragraph 9 warns against giving personal gifts. Paragraph 11 warns of social contact outside the workplace. Paragraph 19 says arranging to meet pupils outside work premises should not be permitted unless there is a clear need for it and approval has been obtained from a senior member of staff, the pupil and their parent/carer. Paragraph 20 deals with the expectation around home visits and paragraph 21 addresses transport of pupils. Paragraph 26 reminds staff not to invite pupils to their living accommodation unless the reason to do so has been firmly established and agreed with senior managers and the pupil's parent/carer.

52. In the letter of dismissal Ms Henderson also stated:

> "During our discussions at the hearing you have demonstrated you have made G aware of your own address as you acknowledge that you took him to your house."

53. I rely on the evidence of the appeal officer, Ms Edwards, that she found this to be factually incorrect. She found there was no specific evidence of this allegation and she upheld the claimant on appeal in relation to that matter.

54. **The second part of the first allegation was that the claimant had "regular contact with the pupil's carer not declared to the school" and the third part of the first allegation was the claimant "shared personal information about**

himself, including his personal address with the pupil's carer leading to the pupil being aware of his personal address."

55. This was admitted by the claimant. The claimant admitted that he and his partner attended the child's foster carer's home while the child was present on 2 January 2019. The claimant told the disciplinary hearing that the reason for the visit was because the claimant's partner was nervous about an upcoming fostering interview and wanted reassurance from child G's foster carer, who formed part of the claimant's fostering "support network". The dismissing officer found that this visit was therefore a social one for the benefit of the claimant rather than for the benefit of the child. She was not satisfied that the visit had been approved by the school or recorded by the claimant.

56. The dismissing officer also relied on the fact that the claimant had named the child's foster carer as a member of his support network for his fostering application, which was blurring of professional boundaries. She relied on paragraph 11 of the guidance for safer working practices which suggests that contacting children and/or their families outside the school setting could be a warning sign of grooming. She considered the claimant should have appreciated that adding the child's foster carer to his support network was inappropriate and could have led to a reasonable person questioning his motives. The arrangement could have easily given rise to a conflict of interest in the claimant's personal and professional interests and should have been declared to the school.

57. The claimant admitted having invited the child's foster carer to his birthday party and to his home for a cup of tea (page 386).

58. The dismissing officer also found the claimant admitted to having given the foster carer his personal details including his home address. He told the dismissing officer that he had shared his personal address with G's carer as a kind gesture and he did not think that the carer would pass that information on to the child. She found that regardless of the claimant's alleged intentions by sharing his personal address with the child's foster carer, it led to a situation where a very vulnerable pupil found out the claimant's address (page 393).

59. **The fourth part of allegation 1 was that the claimant purchased a gift for a pupil that was not approved or declared by the school or SLT**.

60. The claimant admitted he bought child G a present (page 261).

61. The claimant said the gift had been a "tongue in cheek" gift because the child had taken a liking to the claimant's crocs on a school trip. The claimant said he had given various items of clothing and accessories to other children on the trip, which were not new, at the time of the trip. The dismissing officer found that the gift of a pair of croc sandals to child G was a new item. The claimant said he thought that the Head Teacher was aware of it and that there was a custom and practice of staff purchasing gifts for pupils at the school, and that the Head Teacher had purchased a gift for a student. The claimant also relied on a statement by Ms Cornish (pages 363-366) to show that gifts are regularly given to the pupils at the school. However, the dismissing officer relied on Ms Cornish's response to question 2, which suggested that she could provide a full list of staff who bought pupils gifts, which indicated to the dismissing officer that there may have been some sort of procedure

followed by others. The dismissing officer found it was inappropriate to purchase a gift for a pupil in the way the claimant did and was not satisfied any record was made.

62. **The fifth and final part of allegation 1 was that the claimant had treated one pupil differently in comparison with other pupils**.

63. The dismissing officer found, relying on the above evidence, that the claimant had treated child G differently to other pupils, by taking him home from football, including him in a fantasy football league, taking him to a Manchester United football match, sending 2 emails to his personal email address and going to his foster carer's home and giving G a gift.

64. The second allegation was that the claimant had "sent a work-related email containing sensitive information to a personal email address, therefore breaching GDPR regulations, and "our own policies and procedures in relation to IT".

65. The claimant did not dispute that he had sent a confidential report from his school email to his personal Hotmail account. p142-144. The information was a police evidence request form for child G containing sensitive information. The claimant said at the investigatory hearing that the reason he had done it was, "it was something to do with being password protected". At the disciplinary hearing he admitted breaching GDPR, "I made a mistake here and I hold my hands up". He went on to say that the policy was "only issued in February. It is covered in 'acceptable use' policy but I didn't recall that or think about that". He went on to say, "and I hold my hands up". P392-3

66. At the investigatory stage meeting the claimant admitted he had received the GDPR training. His certificate dated 16 May 2018 notes that he successfully completed an introduction to GDPR with a score of 80%. At the appeal stage the claimant said, "If I'm still dismissed on the GDPR, fair enough I can walk away and say you know I made a big mistake there, I've learnt from it". (p416.44)

67. Although the claimant suggested that he was not "tech savvy" and that he needed "further training", he did not say that he did not understand the policy or that the policy had not been issued to him. He did say the policy had only been issued in February but went on to say, "it is covered in acceptable use policy". He said, "nothing was sent to third party, nothing was stored". He did not explain to the dismissing officer why he had forwarded the document to his home email and why he thought doing that would enable him to "password protect it".

68. The dismissing officer was aware that the acceptable use policy was applicable. The acceptable use policy at page 250 identifies four methods enabling an individual to send emails securely. They do not include sending a work email with a sensitive document to one's personal email address.

69. Furthermore, it was clear that the claimant (from his comments at the disciplinary hearing and appeal hearing) accepted that what he had done was wrong.

70. The dismissing officer also took into account that the claimant had passed the GDPR training as his certificate showed.

71. Accordingly, the dismissing officer had a genuine belief based on reasonable grounds that the claimant had breached professional boundaries in allegation 1. Much of the behaviour was admitted and the dismissing officer was satisfied the claimant was aware of the relevant professional boundaries, particularly as he was a deputy designated safeguarding lead.

72. The dismissing officer also had a genuine belief based on reasonable grounds the claimant had breached GDPR regulations. He admitted the breach.

73. I turn to consider the investigation. I remind myself that the question is whether a reasonable employer of this size and undertaking could have carried out such an investigation.

74. I find that the answer to the question is yes. The claimant had two opportunities to comment at an investigatory interview. He attended a disciplinary hearing at which he was sent all the documentation listed in the invitation to disciplinary hearing. The only document which was missing was the acceptable use policy.

75. The claimant did not challenge paragraph 19 and paragraph 20 of Ms Henderson's statement where she said the school abides by its data protection policy issued by the NFA and referred to in the School's own policy, which the claimant had signed to say he had read. In addition, I find she relied on the claimant's certificate for his GDPR training. The comment from the claimant at the disciplinary stage shows that he was aware of the acceptable use policy. (p393)

76. The claimant complains that the investigation was not fair because he did not have an opportunity to cross examine witnesses at the disciplinary or appeal hearing. There is no legal entitlement for a claimant to require witnesses to attend a disciplinary or appeal hearing. Throughout the Tribunal hearing the claimant repeatedly stated that this was an ACAS requirement. It is not.

77. The respondent put written questions to witnesses and they were referred to at the disciplinary and appeal hearings. It also afforded the claimant the opportunity to put written questions to witnesses, which he did and these were also referred to at the disciplinary and appeal hearings.

78. Very surprisingly the claimant wished to put questions to the vulnerable child, as part of the disciplinary process. It was wholly unsurprising that the social worker refused access to child G (page 397) as not being in the child's best interests.

79. There was no unfairness in the disciplinary procedure in not allowing cross examination of witnesses. The claimant was given an opportunity to put written questions to adult witnesses. In addition, in relation to cross examination of witnesses the claimant stated at the disciplinary hearing that calling witnesses would probably add "very little" (page 386). The union representative indicated they were happy to proceed.

80. The disciplinary hearing was conducted by an independent person who did not know the claimant. The claimant had a full and fair appeal hearing by an independent person. The claimant was represented by his trade union at those hearings.

81. The claimant made a complaint about a member of the HR team and that person, Carmel, did not take further part in advising.

82. I find the respondent had a genuine belief based on reasonable grounds following a reasonable investigation of the claimant's conduct.

83. I turn to whether the dismissal was fair or unfair within the meaning of section 98(4) Employment Rights Act 1996. I remind myself it is not what I would have done which counts: it is whether an employer of this size and undertaking could have dismissed the claimant for this conduct, and whether dismissal was within the band of reasonable responses of a reasonable employer.

84. The claimant was in a position of trust, not only in his role as Pastoral Coordinator but also in his role as Deputy Designated Safeguarding Lead (DSL) and in that role, together with the Head DSL, he had ultimate responsibility for safeguarding and child protection at the school. He had training up to level 5, the highest level at that time, in safeguarding training.

85. The claimant worked at a school with children who were particularly vulnerable because of their past history. The claimant did not dispute Child G was vulnerable.

86. I accept the evidence of the dismissing officer and the appeal officer that they considered whether any other sanction was suitable once they had concluded that the claimant was responsible for the conduct in allegations 1 and 2.

87. They took into account that the claimant appeared to have no insight into his behaviour. Although he admitted much of the behaviour which gave rise to the allegation of relation to the blurring of professional boundaries such as sending emails to the child's personal email address or taking the child alone to an evening football match at Manchester United, despite his role as a Deputy Designated Safeguarding Lead he acknowledged no responsibility for what he had done. This caused the dismissing officer and the appeal officer to be concerned as to whether he could change. If he had no insight into his behaviour they believed he could not change it. Furthermore, he had already received the highest level of safeguarding training.

88. Accordingly, given the nature of the claimant's role and the vulnerability of the children with whom he worked and the lack of the claimant's insight into his behaviour, the respondent has shown that for an employer of this type dismissal was within the band of reasonable responses of a reasonable employer, despite the fact this sanction is likely to affect the claimant's ability to work with children in future.

89. In relation to general procedural unfairness,the claimant raised several concerns at the Tribunal hearing.

90. In addition to the concerns he raised about the investigation the claimant also raised concerns that dismissal as unfair because Ms Henderson wrongly took into account an expired warning.

91. Although the disciplinary letter is ambiguously worded I entirely accept the evidence of Ms Henderson that the only reason she referred to this matter was

because the claimant had stated unequivocally that he had an unblemished record. When she checked the point, it turned out that this was inaccurate. The claimant had received a written warning for his behaviour in relation to other incidents concerning children some ten years previously. I find that Ms Henderson did not take this into account when issuing the disciplinary sanction, rather she was referring to it on the basis that the claimant had not been entirely truthful in asserting he had an unblemished record.

92. At the Employment Tribunal the claimant said that his dismissal was unfair because it was unfair to criticise him for policies he had not seen at the relevant time. He said the acceptable use policy was missing as set out in the disciplinary letter, and that the policies referred to in the respondent's statements were not the policies of which he was aware.

93. Interestingly the claimant did not raise an argument either at his disciplinary hearing or his appeal hearing that he was unaware of policies in relation to safeguarding or GDPR or Acceptable Use.

94. The School Child Protection Safeguarding Policy for which the claimant signed, although his signature is undated, is at page 123 of the bundle. That policy refers to the respondent's other policies. Furthermore, I find it is inconceivable that the claimant was unaware of the other policies, in particular the statutory guidance, particularly having been a Deputy Designated Safeguarding Lead and having received training in safeguarding. He had received the highest level of safeguarding training and I rely on the evidence of Ms Henderson, who had received the same level of training as the claimant, as to the content. I am satisfied that the respondent found the claimant was well aware of those policies and certainly the spirit of them in terms of professional boundaries.

95. The claimant complained of the way his appeal was conducted. However, the appeal minutes make it clear that he agreed at the appeal hearing as to how the appeal should proceed, namely by going through his appeal letter (see page 416.1).

96. Insofar as the independence of the appeal is concerned, the fact that the appeal manager came to the hearing with an impartial viewpoint is evidenced by the fact that she overturned one item in relation to Ms Henderson's finding, namely that she accepted the claimant's evidence that he had not specifically invited the child to his home, and she upheld that element of the appeal.

97. I find the appeal manager to have been a full and frank witness, conceding that she had not listened to all of the audio record of the previous disciplinary hearing, although she did read the investigatory and disciplinary meeting minutes and relevant documents.

98. The other procedural error relied upon by the claimant was that the Head Teacher's evidence was contradictory in places. Witnesses can be contradictory and forgetful. It does not necessarily mean a witness is unreliable or untruthful. Ms Henderson was entitled to rely on the Headteacher's evidence as she did on some occasions, particularly where it was corroborated (Manchester United game). She accepted the claimant's evidence that the Head Teacher had been made aware of contact on some occasions (the climbing trip).

99. In any event, the bulk of the factual matters relied upon by the respondent as a breach of allegation 1 were admitted by the claimant. He admitted allegation 2 completely.

100. Finally, the claimant sought to suggest that the culture within the school of seeking permission, for example taking pupils out of school without formal permission and of giving gifts to pupils, was endemic. The dismissing officer and appeal officer were entitled to find that given his role as Pastoral Coordinator, his safeguarding training and his role as Deputy Designated Safeguarding Lead, even if there was such a culture the claimant should have been aware it was inappropriate.

101. The claimant also suggested Ms Henderson wrongly took into account the confidential professional meeting minutes at p206-12 in making her decision.

102. I rely on the candid evidence of Ms Henderson that, although she had read the professional meeting minutes, she did not take them into account in her decision making. I rely on the fact she is an experienced senior manager, capable of putting that information to one side and focussing on the information relevant to the disciplinary hearing, which the minutes show she did.

103. I find for the reasons given in this Judgment that the respondent had a genuine belief, based on reasonable grounds following a reasonable investigation of the claimant's conduct. The dismissal was procedurally fair and dismissal was within the band of reasonable responses.

104. Therefore the respondent fairly dismissed the claimant and his claim fails.

105. The remaining issues were **Polkey** and contributory fault but there is no need for me to consider these issues because I have found the dismissal was fair and they would only be relevant if the dismissal was unfair.

Employment Judge Ross
Date 25 January 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
1 February 2021

FOR THE TRIBUNAL OFFICE