EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs Alice Cubbin	**v**	Suffolk County Council

Heard at: Bury St Edmunds by Cloud Video Platform

On: 30 November 2020 and 1, 2, 3 and 4 December 2020

Before: Employment Judge Finlay

Appearances
For the Claimant: Mr C Murray, Counsel
For the Respondent: Mr A Hodge, Counsel

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (CVP). A face-to-face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

RESERVED JUDGMENT

1. The Claimant's complaints of unfair dismissal and breach of contract (wrongful dismissal) succeed.

2. The issue of remedy will be determined at a separate remedy hearing.

REASONS

INTRODUCTION

1. This claim was listed for hearing on seven consecutive days commencing 30 November 2020. I was allocated this claim having been booked to sit on five days between 30 November 2020 and 4 December 2020. For this reason, although the evidence and submissions were completed within that five day period, the Judgment was reserved.

2. The claim was presented on 17 April 2019 following a period of Acas Early Conciliation between 6 and 22 March 2019. The Claimant was dismissed

summarily with effect from 15 December 2018 and brought complaints of unfair dismissal and breach of contract / wrongful dismissal.

3. Shortly before the final hearing, the parties had agreed a list of issues to be determined by the tribunal. The reason for dismissal was disputed, as was the reasonableness of the Respondent's actions. The list of issues set out nine matters to be considered by the tribunal when determining whether or not the Respondent acted reasonably, as augmented by paragraphs 51 and 52 of the Claimant's witness statement. The questions of a "Polkey" reduction, "contributory" conduct and potential breach of the Acas Code on Disciplinary and Grievance were also in issue.

4. The Hearing proceeded by CVP. Despite some technical issues from time to time, all witnesses were able to give their evidence. The advocates and the witnesses should be commended for their adaptability and cooperation and the Employment Tribunal is grateful to Mr Murray and to Mr Hodge for the courteous and helpful way in which they conducted their cases.

5. I heard evidence from the Claimant and Mr O Doran, a former Head Teacher of the school where the Claimant worked, gave evidence on her behalf. For the Respondent, I heard evidence from six witnesses, who were:

   - Mr A Dickens, the Head Teacher of the school at the time the Claimant was suspended;
   - Mrs A O'Rourke, the Assistant Head Teacher at that time and the Head Teacher at the time of the Claimant's dismissal;
   - Mr M Jude, who conducted the Claimant's disciplinary investigation;
   - Mr T Slater-Robins, the Chair of the disciplinary panel which dismissed the Claimant;
   - Mr R Harding, the Chair of the appeal panel which heard the Claimant's appeal against dismissal; and
   - Ms C Challenger, an HR professional. Ms Challenger's direct involvement covered a period of only three days, but the main HR contact was unable to attend the hearing having been unwell for some time.

6. I was also provided with a bundle of documents comprising almost a thousand pages. I made my view about this bundle clear during the hearing. It is all the more important that solicitors preparing claims for the Employment Tribunal should abide by the directions issued by the tribunal, particularly when the hearing is by CVP. Those directions are made for a reason, in order to assist the tribunal, the parties and their witnesses.

7. Both representatives produced outline written submissions which they amplified orally. I was grateful to them for their help with submissions. They referred me to the following cases:

- *James v Waltham Holy Cross UDC [1973] IRLR 202, [1973] ICR 398 NIRC*
- *W Devis and sons ltd v Atkins [1977] AC 931*
- *British Home Stores v Burchell [1978] IRLR 378*
- *Nelson v BBC (No 2) [1979] IRLR 346*
- *W Weddel and Co Ltd v Tepper [1980] IRLR 96*
- *Iceland Frozen Foods v Jones [1982] IRLR 439*
- *Post Office v Foley [2000] IRLR 827*

Mr Murray also referred to an extract from Harvey.

8. Mr Hodge's exposition of the "reasonableness" test in *British Homes Stores v Burchell [1978] IRLR 378* for complaints of unfair dismissal for conduct, as set out in his outline submission, was agreed by Mr Murray.

THE FACTS

9. Having heard the evidence of the witnesses and considered the documentation to which I was referred, I make the following findings of fact.

10. The Bridge School is a vulnerable special educational needs school in Ipswich. At the relevant time in 2017 and 2018, it had some 150 pupils with complex and special educational needs. Those pupils needed special care, including toilet assistance and changing. A significant proportion were non-verbal or had different communication requirements, for example: British Sign Language or Computer Generated Talkers. Approximately 150 staff worked at the school, including teachers, teaching assistants, clerical and administration staff, cleaners and IT staff. Most of the students were local and they ranged in age from around 4 to 19 years old.

11. The Claimant was employed by the Respondent at The Bridge School. She is qualified in School Business Management. She started her employment with the Respondent in 2000 and in 2002 she became the Finance Secretary at Heathside School which then merged with Belstead Special School to form The Bridge School in 2010. At that time, the post of School Business Manager of The Bridge School was created and the Claimant held that post until her dismissal in December 2018. As School
Business Manager, the Claimant managed aspects of HR, Finance, Payroll, Health and Safety and Premises. She line-managed the school's administration team, cleaners and caretakers. Whilst the Head Teacher was ultimately responsible for all recruitment, the Claimant dealt with all aspects of the recruitment of those she managed and the administrative aspects of the recruitment of teaching staff. Hers was a senior management position and she was a member of the school's senior leadership team ("SLT").

12. In September 2017, the Claimant contacted the Respondent to report a Health and Safety / Safeguarding issue at the school. She was praised for

doing so by the Respondent, but her disclosure inadvertently set off a chain of events which led to her dismissal over a year later. In response to the disclosure, the Respondent undertook a wider investigation of pupil safeguarding at the school. The Head Teacher (Mr Doran), a former Head Teacher and an Assistant Head Teacher were suspended. This led the entire Board of Governors to resign. Mr Doran had been the Claimant's manager since 2002, both at Heathside and at The Bridge School and he clearly thought very highly of her.

13. Between September 2017 and January 2018, a number of interim Head Teachers had worked at The Bridge School. By mid-January 2018, the Respondent had appointed Mr Dickens to be Interim Head Teacher and Mrs O'Rourke to be Interim Deputy Head Teacher. Mr Dickens retired as Interim Head in October 2018, whereupon Mrs O'Rourke took over as Head until the school became an academy in July 2019. The Respondent had also replaced the Board of Governors with an Interim Executive Board ("IEB") chaired by Mrs Maureen Ede and which also included Mr Harding. Mr Slater-Robins was nominally elected to the IEB in November 2018 for the purpose of sitting on the disciplinary panel convened to determine the Claimant's fate. Mr Dickens explained to me that an IEB is not the same as a Board of Governors. The Chair of an IEB is a salaried position and the IEB will often be appointed to a struggling school and / or when there is a potential conversion to academy status.

14. Mr Dickens and Mrs O'Rourke arrived at the school at a time of substantial turmoil. Serious safeguarding malpractices had been uncovered, including the locking of vulnerable children in what was described as a padded cell. There is no doubt that they faced a considerable task and required the wholehearted support of the staff at the school, particularly the remaining senior staff.

15. Neither Mr Dickens nor Mrs O'Rourke felt that they had that support from the Claimant, whom they considered to be reluctant to change. I should say at this stage that unlike the evidence of Mr Dickens, I did not find the evidence of Mrs O'Rourke always to be reliable. She appears to have taken against the Claimant from the outset and acknowledged in her witness statement that on arrival at the school she was surprised that the Claimant as a member of the senior leadership team had not had disciplinary proceedings brought against her, like other members of the SLT. Mrs O'Rourke was highly regarded by Mr Dickens and members of the IEB and came across as exceptionally passionate about education and in particular, the safeguarding of vulnerable children. However, I found that she had a tendency to exaggerate in relation to the Claimant, for example in relation to the Claimant's alleged reluctance to follow instructions and the results of the audit discussed below. In addition, Mrs O'Rourke presented a different description of the report made by the Claimant to the Respondent in September 2017, which was at odds with that given by the other witnesses of the Respondent.

16. Recruitment and the maintenance of staff records are vital parts of safeguarding in any school, but particularly a school for vulnerable children such as The Bridge School. There is statutory guidance for schools and colleges entitled "Keeping Children Safe in Education" and I was provided in the bundle with an extract entitled "Safer Recruitment", dealing with recruitment, selection and pre-employment vetting. The guidance covers the pre-employment checks which need to be made before employing staff to work with children, including DBS (disclosure and barring) checks, prohibition checks (to ensure a candidate for a teaching position is not subject to a prohibition order made by the Secretary of State) and right to work checks.

17. The guidance also includes sections on employment experience and references and on the single central record ("SCR"). All schools are required to maintain an SCR listing all staff working at the school. The guidance states that the SCR must set out whether eight separate checks have been carried out or certificates obtained as well as the date of the check or certificate.

18. Not all checks will be relevant to every member of staff and not all checks need to be undertaken by the school. The Respondent agreed that, for example, prior to the Soham Murders in 2002, there was no requirement to carry out DBS checks and until 2007 those checks were undertaken by the local authority and not by the school. Another of the checks is only required when a member of staff has lived or worked outside of the UK and the prohibition from teaching checks is only required in respect of candidates for teaching roles.

19. Although the Respondent chose not to include a copy in the bundle, it is common ground that the SCR at The Bridge School was an excel spreadsheet and that the Claimant had full responsibility for maintaining it. She also had sole responsibility for maintaining the HR files for all staff at the school.

20. Prior to 2017, the school's SCR had been checked periodically by Mr Doran and by Governors of the school. For example, there was an SCR record meeting on 21 June 2017 attended by a Governor, an Assistant Head and the Claimant. Nothing was found to be untoward on the SCR. A random check of three HR files was carried out and all were found to be in order.

21. Following the recognition of the safeguarding issues in September 2017, the Respondent appointed an independent investigator, Beverly Dobson, to undertake a review of leadership and management at The Bridge School. Ms Dobson reported on 15 January 2018. In her report, she identified issues with the school's recruitment processes and in particular, she found flaws in the evidence of pre-employment checks and the recording of that evidence. She criticised Mr Doran for failing to hold the Claimant to account and

suggested that the Claimant's actions were putting the safety and welfare of pupils at risk and that she needed to be answerable for these failures. She went on to say that further consideration was required into the Claimant's alleged behaviours as she considered them to be sufficiently serious to be considered as potential serious professional negligence. However, it seems that this report was never provided by the Respondent to the School and it was not seen at any time by the Claimant, Mr Doran, Mr Dickens, Mrs O'Rourke, Mr Jude, Mr Slater-Robins or Mr Harding.

22. A further lengthy report had been prepared in November 2017 by Jan Hatchell, one of the Acting Heads. This identified what were thought to be a number of errors on the SCR and that not all documents required on the SCR were located on a single file. Once again, however, it seems that this report was not shared with the Claimant who was oblivious to any criticism within it.

23. For the sake of completeness, I add that another Acting Head, Chris Baker, also prepared a brief report prior to leaving which did not comment on the Claimant's areas of responsibility.

24. Up until February 2018, the Head held SLT meetings on a weekly basis. After 18 February 2018, Mr Dickens discontinued those meetings. He preferred to meet with Mrs O'Rourke and individual senior staff whenever a matter relevant to that person's area of responsibility was to be discussed. It is of course a matter for the Head Teacher how to manage his senior team. The Claimant was not isolated from relevant decisions, nor was there a complete lack of communication between Mr Dickens and the Claimant, but a reluctance to hold SLT meetings with the Claimant is perhaps indicative of the lack of confidence in the Claimant felt by Mr Dickens and Mrs O'Rourke.

25. Mr Dickens' office was directly opposite the Claimant's office and he became concerned at the disorganised state of the Claimant's office. He also began to have concerns regarding the accuracy of the SCR and the HR files. He carried out a check in February discovering that one file contained a DBS certificate (which it should not do) and that 20 staff did not have DBS certificates recorded on the SCR. Mr Dickens accepted that this was not a requirement for staff employed before 2002, but he felt that it was best practice to do so and he authorised funds for the DBS checks of those 20 to be completed, instructing the Claimant to carry out this task. Mr Dickens complains that the Claimant was reluctant, but the Claimant was concerned that as it was not something which was legally required, this was not a good use of public money. Having been a member of the SLT, I consider it entirely appropriate that the Claimant should be able to speak her mind in this way. Although Mr Dickens complained that the Claimant misled him as to the progress of this task, the documentation showed that she began it shortly after the funds had been authorised. This incident again shows the deteriorating trust between Mr Dickens and Mrs O'Rourke on the one hand and the Claimant on the other.

26. The documents also show that disciplinary action against the Claimant was contemplated as early as February 2018, when terms of reference were drawn up for a disciplinary investigation in very similar terms to what I have described below as Allegation 1 two months later. However, the Claimant was totally unaware of this at the time. With regard to the state of her room, Mr Dickens asked her to tidy it on more than one occasion but did so only on an informal basis and without keeping a record of his requests.

27. On 6 March 2018, Ofsted made an unannounced inspection, giving only 10 minutes notice. The previous Ofsted inspection had taken place in January 2015. Ofsted inspections would normally occur about every four years, but as Mr Dickens explained to me, whenever an interim Head is appointed, in his experience Ofsted tend to follow shortly afterwards. The inspection was therefore not a surprise.

28. The inspection took place over two days. Although she was not excluded and did speak to the Inspector, the Claimant was not as involved as she would normally have been and Mr Dickens and Mrs O'Rourke dealt personally with the inspector in relation to issues which the Claimant would have dealt with had Mr Doran still been the Head Teacher. In addition, the Claimant was not invited to the feedback meeting on the second day, in common with other pre 2018 senior staff. Mr Dickens was concerned that what he saw as the Claimant's dismissive attitude to problems identified would not have been helpful.

29. The feedback and the subsequent written report (which was produced after the Claimant had been suspended) were extremely damning. There are four potential ratings in an Ofsted report – Outstanding, Good, Needs Improvement and Inadequate. Having been rated Good in previous Ofsted reports, The Bridge School was rated Inadequate in March 2018. Altogether, some 50 negative statements were made by the inspector about all aspects of the school. Amongst those were two which related directly to the Claimant's responsibility, the inspector commenting that safeguarding systems were,

    "woefully ineffective, including procedures to recruit staff"

    and that systems to recruit staff were,

    "sloppy".

30. It was also stated that leaders did not have a clear system for recruiting staff or for keeping an up to date list of those employed by the staff. Leaders did not check the recruitment information that they received thoroughly to make sure that they had taken all reasonable precautions when employing staff. In more general terms, the inspector stated that there had been a serious

and ongoing decline in all standards of the school since the previous inspection and that the local authority acknowledged that it had not become fully aware of the underperformance and significant concerns in the school until they had become entrenched issues by Autumn 2017.

31. I accept the evidence of the Respondent's witnesses that it is unusual to see such strong language in an Ofsted report and that the inspector commented orally and unofficially that this was the worst school she had inspected.

32. It would appear that one of the reasons for the inspector's concern about recruitment related to a supply cleaner. Mrs O'Rourke relates in her witness statement that the inspector saw this cleaner outside the room where their meeting was taking place and asked about her. Neither Mr Dickens nor Mrs O'Rourke knew who the cleaner was (probably because the cleaner had been taken on prior to their employment), and the inspector went to the Claimant's office to find out, returning to say that she was the sister of a cleaner who had been hired by the Claimant without record of interview, references on file or her name being on the SCR. Mr Dickens, however, does not refer to this incident of the cleaner being outside the room and I do not accept that it occurred precisely as Mrs O'Rourke suggests. There was nothing in the documentary evidence available to me to suggest that there was anything remiss with the recruitment of this cleaner, or that she had not been entered on the SCR. I find that the inspector did raise issues regarding this cleaner, but it is not possible for me to determine whether her concerns were well founded.

33. The inspector also found that there were staff listed on the SCR who were no longer employed at the school. The Claimant says that the inspector was provided with an out of date staff list for comparison and having heard the evidence of the Claimant and of Mr Dickens and Mrs O'Rourke, I find that the most likely explanation was that the staff list provided to the inspector was out of date.

34. The Claimant then carried on her normal duties from the time of the Ofsted inspection until 23 April 2018 when Mr Dickens suspended her. He confirmed the suspension by letter dated 24 April 2018 in which he set out five allegations. The first, which I will describe as Allegation 1, was set out as follows:

35.1 *"Paragraph 1. Serious professional misconduct, negligence and / or omission in that you failed to ensure the processes for staff recruitment, selection and pre-employment vetting of staff and volunteers are compliant with statutory guidance. This includes but is not limited to, ensuring that there is evidence that:*

35.1.1 the minimum number of employee references are securely held on file for each employee, and for volunteers, where necessary;

35.1.2 the appropriate level of Disclosure and Barring Service check (all the relevant checks prior to the introduction of the DBS check) has been undertaken for new employees, and volunteers, where necessary;

35.1.3 the appropriate check of the Children's Barred List (or other relevant lists in place prior to the introduction of the Children's Barred List) has been undertaken for new employees and, where relevant, for volunteers as necessary;

35.1.4 that appropriate evidence of each employee's identity, right to work in the UK and, where relevant, qualifications is held securely on file;

35.1.5 prohibition from teaching checks have been undertaken for relevant roles;

35.1.6 appropriate health clearances have been undertaken for relevant roles; and

35.1.7 further checks on people who have lived or worked outside of the UK."

35. The second, third and fifth allegations were subsequently withdrawn as set out below. The fourth allegation was also an allegation of serious professional misconduct, in that it was alleged that the Claimant had failed to take appropriate action to ensure the completion of actions identified in a Health and Safety audit undertaken for the school in Spring Term 2017.

36. At around this time, Mr Dickens decided to undertake a full review of the HR files. He engaged a temporary agency worker to do this. His primary purpose was to ensure that the files were not only compliant but structured as he wanted them rather than to create a document which could be used as evidence in subsequent disciplinary proceedings against the Claimant. He wanted the files to be structured in accordance with best practice, not simply in accordance with the statutory requirements.

37. This audit took considerable time. An initial audit was undertaken in relation to 75 files towards the end of the summer term. The school then had to take on another temp to undertake the full audit in the Autumn term. The Claimant did not see the audit documents until October 2018. They comprise spreadsheets listing staff by initials with columns identifying "wrong or incomplete paperwork", "missing documentation", "inconsistencies with SR spreadsheet" and another column which was illegible to me. Crucially, the spreadsheets do not identify the member of staff save by initials, nor the date on which the member of staff commenced employment, nor the role undertaken by that member of staff.

38. In the meantime, the Respondent appointed Jeanette Rouse to prepare an investigation report into the allegations against the Claimant set out in her suspension letter. Ms Rouse was also investigating allegations against two other senior members of staff. She interviewed the Claimant on 5 June

2018, but in July, she withdrew from all three investigations for personal reasons. It would appear that she had done very little to progress the Claimant's investigation apart from meeting her in June.

39. The Respondent then appointed three different inspectors to undertake the three separate investigations. Mr Jude was appointed to carry out the investigation in relation to the Claimant and commenced work at the beginning of October 2018. The Claimant remained suspended. Although she did have a few conversations with her named contact at the Respondent, there were no steps taken by the Respondent to review her suspension or even to keep her informed about the (lack of) progress of the investigation, such that on 9 August, the Claimant telephoned to enquire. She then received an email on 17 August 2018 telling her that Ms Rouse was no longer investigating and that a new Investigator was to be appointed. A review meeting did then take place at the request of the Claimant on 19 September 2018. This meeting was with Mr Philip Illsley, who by that point had become Chair of the IEB. Following that meeting, Mr Illsley wrote to the Claimant on 26 September 2018 confirming to her that Allegations 2, 3 and 5 in the suspension letter had been dropped, but also advising her of two new allegations.

40. The first of those allegations was an allegation of serious professional misconduct that the Claimant had failed to follow effective business procedures to manage, action and store incoming information. This was alleged to have led to work not being completed and, in some cases, confidential and / or highly sensitive information not being stored securely, but instead being openly available in the Claimant's office. Mr Illsley's letter gave examples of such information. I will describe this allegation as the 'Office' allegation. Mr Illsley's letter was the first time that an allegation regarding the condition of her office had been put to the Claimant in any formal way.

41. The second was an allegation of professional misconduct and was that the Claimant had failed to ensure that the school's bank signatories were properly updated. I will describe this allegation as the 'Bank' allegation.

42. The Office allegation was subsequently supported with a 73 page list of documents alleged to have been found in the Claimant's office after the Claimant had been suspended five months previously.

43. As for the Bank allegation, Mr Dickens had been told by the Claimant in February 2018 that he had been approved by the bank as a signatory for cheques. Some time later, he discovered that this had not actually happened, even though he had been signing cheques since then. This issue was resolved in June 2018 and Mr Dickens had been formally added as a signatory. There were then four authorised signatories, but at the Respondent's request, the Claimant had been removed as a signatory, even though she was at that time still the school's Senior Business Manager.

44. Mr Jude then proceeded to carry out his investigation, interviewing the Claimant on 11 October 2018 and other witnesses around that time. He finalised his report on 22 October 2018. On 16 November 2018, the Claimant was invited to a disciplinary hearing to answer the five charges. She was provided with Mr Jude's report and appendices which numbered nearly 300 pages.

45. The disciplinary hearing took place on 5 and 6 December 2018. It was chaired by Mr Slater-Robins. During the hearing, it came to light that another member of staff had taken some photographs of the Claimant's office, apparently on the day of suspension. However, neither the Claimant nor the disciplinary panel had seen them before. The copies provided are very poor black and white copies, but do show a room in a disorganised mess. The Claimant was asked the direct question:

"Do you accept that these photos were a record of how your office was?"

to which she replied: *"Yes"*.

46. Having had more chance to consider the photos, the Claimant later resiled from that stance somewhat and questioned whether the photos could have been taken on the day of her suspension as it appeared to her that certain items of furniture had changed or been moved. Having heard the evidence given to me and read the notes of the disciplinary hearing, I find that the photos in question were taken of the Claimant's office shortly after her suspension.

47. During the disciplinary hearing, the Claimant volunteered that she had been to the bank to try and find out information regarding the Bank allegation. The panel considered that this may constitute a serious breach of her suspension and convened a further day's hearing on 12 December 2018. The Claimant explained that she had become frustrated with the Respondent's inaction and went to the bank herself because she did not believe that the Respondent would take steps to elicit vital information regarding the Bank allegation.

48. After deliberating, the disciplinary panel upheld all three remaining allegations against the Claimant. Mr Slater-Robins confirmed the decision in a comprehensive and detailed letter to the Claimant dated 14 December 2018. Allegation 1 and the Office allegation amounted to gross misconduct and the Bank allegation to misconduct. Having taken into account the Claimant's mitigation, the panel decided that Allegation 1 and the Office allegation would each lead to dismissal, whereas a final written warning for 12 months was awarded for the Bank allegation. In accordance with the Respondent's procedure, the Claimant then received a letter from the Director of Children's Services confirming her dismissal which took effect from 15 December 2018.

49. On 27 December 2018, the Claimant appealed the decision in its entirety, requesting a re-hearing of the case. The appeal hearing was eventually arranged for 24 and 25 April 2019. The delays were predominantly due to difficulties in finding dates when all could attend. Those involved included the three members of the panel, the Claimant and her union representative, Mrs O'Rourke and the various witnesses for each side.

50. The appeal panel's decision was to uphold the decision with regard to Allegation 1, but to downgrade the decision on the Office allegation to a finding of misconduct and a sanction of a final written warning. It upheld the original decision on the Bank allegation. Mr Harding confirmed the appeal panel's decision by letter dated 30 April 2019. The Claimant's dismissal therefore took effect in respect of Allegation 1 only.

51. During the appeal hearing, there was a discussion about the Claimant's practice of not insisting on seeing the original DBS certificate of recently appointed staff, relying on email confirmation that the check was clear. This is also in breach of the statutory guidance, although HR guidance from the Respondent's HR provider produced by the Claimant is to the contrary. The Claimant has also produced guidance from another local authority supporting the contrary view.

52. The appeal panel also considered the Claimant's visit to the bank during her suspension and concluded that had she not been dismissed, this matter may have been treated as grounds for further disciplinary action.

RELEVANT LAW

53. Section 94(1) of the ERA provides that "an employee has the right not to be unfairly dismissed by his employer." Dismissal is defined by section 95(1). Once a dismissal has been established it is for the employer to show the reason or principal reason for the dismissal and that it is either a reason falling within sub section (2) or "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held." (section 98(1)).

54. Section 98(2) sets out five potentially fair reasons, one of which conduct (section 98(2)(b). A reason for dismissal is a set of facts known to the employer or beliefs held by the employer which cause it to dismiss the employee (*Abernethy v Mott Hay and Anderson [1974] IRLR 213 CA*).

55. Once the reason for the dismissal has been shown by the employer, the Tribunal applies section 98(4) to the facts it has found, to determine the

fairness or unfairness of the dismissal. The burden of proof is neutral. Section 98(4) provides:

"In any other case where the dismissal has fulfilled the requirement of sub section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reasons shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case".

56. In considering section 98(4) the Tribunal asks itself whether the decision to dismiss fell within the range of reasonable responses open to a reasonable employer. It is not for the Tribunal to substitute its own view for that of the decision makers in this case.

57. In the case of *Iceland Frozen Foods Limited v Jones [1982] IRLR 439 E*AT it was established that the correct approach for a tribunal to adopt in answering the questions posed by section 98(4) is as follows:

57.1 The starting point should always be the words of section 98(4).
57.2 In applying the section, a Tribunal must consider the reasonableness of the employer's conduct not whether the Tribunal consider the dismissal to be fair.
57.3 In judging the reasonableness of the employer's conduct, the Tribunal must not substitute its decision as to what the right course to adopt should have been.
57.4 In many (although not all) cases there is a band of reasonable responses within which one employer might reasonably take one view whilst another might quite reasonably take another.
57.5 The function of the Tribunal is to determine whether in the particular circumstances of the case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band of reasonable responses, the dismissal is fair. If it falls outside the band, it is unfair.

58. In considering a dismissal on the grounds of alleged misconduct the Tribunal has regard to the guidelines in the case of *British Homestores Limited v Burchell [1978] IRLR 379 EAT*. Those guidelines involve three elements. Firstly, there must be genuine belief on the part of the employer that the employee was guilty of the alleged misconduct. Secondly the employer must have had reasonable grounds for that belief. Thirdly the employer must have

carried out as much investigation as was reasonable in all the circumstances of the case.

59. In *Sainsbury's Supermarket Limited v Hitt [2003] IRLR 23 CA* the Court of Appeal held that the objective standards of a reasonable employer must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed, including the investigation.

Polkey

60. In *Polkey v AE Dayton Services Ltd 1988 ICR 142* the House of Lords made it clear that procedural fairness is an integral part of the reasonableness test. The House of Lords decided that the failure to follow the correct procedures was likely to make a dismissal unfair, unless, in exceptional circumstances, the employer could reasonably have concluded that doing so would have been futile. The question: "would it have made any difference to the outcome if the appropriate procedural steps had been taken?" is relevant only to the assessment of the compensatory award and not to the question of reasonableness under section 98(4).

Conduct/Contribution

61. By Section 123(6) of the Employment Rights Act 1996: "where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such perforation as it considers just and equitable, having regard to that finding".

62. By section 122(2): "where the tribunal considers that any conduct of the complainant before the dismissal was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly".

Uplift

63. By section 207(2) of the Trade Union & Labour Relations (Consolidation) Act 1992: "if, in any proceedings to which this section applies, it appears to the employment tribunal that - (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies, (b) the employer has failed to comply with that Code in relation to that matter, and (c) the failure was unreasonable, the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%".

CONCLUSIONS

64. Applying the relevant Law to the facts as found, I have reached the following conclusions.

Reason (or principal reason) for dismissal – Section 98(2) ERA

65. The Respondent says that the reason, or principal reason, for the Claimant's dismissal was a reason related to her conduct. This is disputed by the Claimant who says that the real reason was the desire of the new management of the school to sweep away the old guard, or alternatively, this was not a conduct but a capability dismissal.

66. I have no doubt that Mr Dickens, Mrs O'Rourke and the IEB were faced with a daunting task when appointed in early 2018. They felt that some staff were not on board with the need to make significant changes, the Claimant amongst them. Most of the *"*old guard*"* were already absent and no doubt it was easier to make the changes without the Claimant present. However, I do not consider that this was the reason or principal reason for her suspension and dismissal. The true reason was the way in which the school's senior management perceived that the Claimant managed the HR files and the SCR. I have considered whether this was simply a convenient excuse to remove the Claimant, but having heard the evidence, I am satisfied that Mr Dickens, Mrs O'Rourke, Mr Jude, Mr Slater-Robins and Mr Harding all based their decisions on their view of the Claimant's management of the files and the SCR. I therefore reject that the reason or principal reason for her dismissal was a desire to sweep away the old guard, which might have constituted *"*some other substantial reason*"* under section 98.

67. This then leads to the question of whether the reason was conduct or capability. It can be difficult to distinguish between the two and the line is often blurred. I note that in his witness statement, Mr Slater-Robins commented that he believed the Claimant to be *"out of her depth and beyond her capabilities"*. This would point towards capability, as would the many references in the evidence to the Claimant's *"performance"*. However, I am satisfied on balance that the dismissal related to the Claimant's conduct. Whilst it is true that paragraph 7.3 of the Respondent's Disciplinary Procedure states:

> *"…where any deficiencies in performance on the part of the employee arise from the lack of aptitude or skill rather than any wilful or negligent failure to carry out his / her duties, the capability procedure should normally be used".*

it is not as if the Claimant did not have the skills or experience to carry out the tasks. She does not argue that these tasks were impossible due to a lack of resources. The Claimant was a senior manager carrying out what were essentially administrative tasks. The maintenance of the SCR and the

HR files was a fundamental and vital part of her role. If she failed in this responsibility, it was not down to a lack of capability on her part. For these reasons, the Respondent has satisfied me that the dismissal of the Claimant related to her conduct.

Fairness of Dismissal – Section 98(4) ERA

68. I reminded myself that the burden of proof is neutral and that I need to look at the issues from the perspective of a reasonable employer without substituting my own views.

69. The first *Burchell* question is whether or not the Respondent had a genuine belief that the Claimant was guilty of Allegation 1. Having heard the evidence of the Respondent's witnesses, I am entirely satisfied that it did.

70. I then turn to whether the Respondent had reasonable grounds for that belief. The letter of dismissal states the disciplinary panel paid particular attention to the two audit reviews and the Ofsted report (as well as the Claimant's job description, training record and her initial application for the role). The Ofsted report is damning, particularly in the context that Ofsted generally do not use such strong language. In themselves, however, those general comments do not give any reasonable employer reasonable grounds for concluding that the Claimant was guilty of the very specific allegations of gross misconduct which form Allegation 1, particularly in the context of the doubtful issue of the cleaner, the out of date staff list and the lack of involvement in the Ofsted inspection by the Claimant.

71. As for the file audits, they provide reasonable grounds to any reasonable employer to demonstrate that the files were not maintained in a structured manner and that the SCR did not always align with the files themselves. However, the allegation against the Claimant is not that the files were unstructured, or even, as witnesses of the Respondent put it, "in disarray" (which I take to mean completely disorganised). The files may have been chaotic, but the allegation relates very specifically to a failure to follow statutory guidance. It is notable that in his report, Mr Jude concluded that the findings from the audit of the HR files confirmed the Ofsted findings that recruitment processes were weak and poorly organised. However, this is not the same as to say they were not in accordance with specific statutory guidance. The file audits lack what any reasonable employer would have seen as essential information, notably the date of commencement of employment, name of staff member and role of staff member. These omissions make it impossible for any reasonable employer to determine whether or not there has been a breach of the statutory guidance, based on the audits alone. It is remarkable that an audit to be relied on in disciplinary proceedings would not have included this information, but this is explicable by the fact that Mr Dickens' predominant purpose was to ensure that the HR files were as he wanted them to be, which was *"*gold plated*"*, going beyond the legal requirements. The result is that whilst the file audits demonstrate

that a huge amount of work was needed to bring those files up to Mr Dickens' standard, it is not obvious to a reasonable employer that they are in breach of statutory guidance.

72. I consider that no reasonable employer would have relied upon the wording in the Ofsted report and the file audits as evidence that the Claimant was guilty of this specific allegation against her. To do so would be outside the range of reasonable responses to that evidence.

73. However, even if the Respondent did have reasonable grounds, I would still need to consider the sufficiency of the investigation and the sufficiency or otherwise of the process, viewed objectively. Many elements of the investigation were those of a reasonable employer. There was a lengthy and detailed disciplinary hearing over three days followed by an appeal hearing which took effect as a re-hearing over two days. The Claimant had trade union representation throughout the process. Each allegation was discussed in considerable detail. The Claimant was provided with all necessary documents in advance (save for the photos discussed above). The Claimant was given every opportunity at every stage to put her case, call witnesses and question the Respondent's witnesses.

74. Nevertheless, the process took almost nine months from suspension to dismissal. There is no reasonable explanation for such a delay. It seems to have taken over six weeks for Ms Rouse to interview the Claimant and it is difficult to see what else she did to progress the Claimant's investigation until she withdrew over a month later. The audit check did not commence until 29 May 2018, nearly six weeks after the suspension had begun and over three months since the allegation had first been formulated. Ms Rouse's withdrawal was unfortunate and not the Respondent's fault, but it is hard to avoid the conclusion that Ms Rouse took on too much with three separate and presumably complex investigations. This should have been obvious to the Respondent at an early stage and would have been obvious to any reasonable employer.

75. The Respondent then took until 1 October 2018 for Mr Jude to properly begin work, by which point the Claimant had been suspended for over six months. There can be no criticism of the speed in which Mr Jude carried out his investigation, but it did take another two and a half months before the Claimant was dismissed. The appeal then took a further four months. I do have more sympathy for the Respondent over the delay in relation to the appeal, in that there were a lot of people involved and it was difficult to find suitable dates for everyone, but the fact remains that the Claimant was suspended for over 12 months before she received her appeal outcome and at the time of the dismissal, the school was well into another academic year. The delays were hugely prejudicial to the Claimant. As Mr Jude acknowledged in evidence, it would have been very difficult for her to be able to return to her job in January 2019, let alone in April 2019. I also note that on two occasions, Mr Jude referred to the Claimant as having "left" at

the time when he was carrying out his investigation, which seems to have been the mindset of the Respondent. There was no explanation why the Claimant had been removed from the bank mandate in June 2018. It is also relevant that the Claimant's dismissal was for what should have been a relatively straightforward issue. The allegations were formulated as early as February 2018. It would not have been difficult for a reasonable employer to collate evidence of any inaccuracies in the SCR against a selection of HR files. It is almost incredible that it took from February to October 2018 to do this. Added to this, the suspension was not kept under review by the Respondent and it was only the intervention of the Claimant in July which led to the meeting with Mr Illsley in September. No reasonable employer would wait five months before reviewing the suspension of an employee, particularly where so little progress had been made in the investigation.

76. The prejudice to the Claimant was compounded by the quality of the file audit. As the Respondent's witnesses admitted, it is not possible to ascertain whether a DBS check is required if you cannot identify when the staff member commenced employment. It is also not possible to state whether a prohibition check was required if you do not know who the person is. Furthermore, the Claimant stated that prohibition checks were undertaken by the local authority and would not be in the file and this was agreed by Mr Slater-Robins.

77. There is no obvious reason why the names on the file audit had to be redacted. The Claimant was still the school's business manager and this was information which she would have had on a daily basis in her role. The Respondent has not explained why the names were confidential and could not be disclosed to the Claimant.

78. There is also no reason why the Claimant could not have been allowed to review the files at an early stage. I appreciate that by the time the audit had been completed, the files had been reorganised and would not have been in the same state as at the time of the Claimant's suspension, but any reasonable employer would have realised when framing the charges in the way that it did, that there was a need to preserve some evidence. A copy could have been taken of the SCR at the date of suspension, but this was not done. That copy could then have been compared by the investigator and by the Claimant against actual files at the time. It is hard to avoid the conclusion that the Respondent believes that the evidence was so overwhelming that the Claimant would be unable to defend herself. However, she was able to identify scores of possible errors or doubtful entries in the file audits even without knowing the names or dates of commencement.

79. There were also many other potential problems with the file audits. For example, it is noted that the date of commencement is in many incidences different to the date on the contract of employment. However, there is nothing in the statutory guidance that requires the SCR to incorporate the

contract start date. The approach of the Respondent can be summarised by a statement made by Mr Harding in the appeal outcome letter,

"…given the overwhelming number of errors found, there was no real prospect of your being able to explain each and every difference between the documents held in the files and the statutory requirements or the discrepancies between these documents and the information held on the SCR".

The problem with this statement is that the 'errors' identified in the file audits did not necessarily mean breaches of the statutory guidance and a reasonable employer would have given the employee a proper opportunity to challenge this evidence.

80. Instead, the Claimant was not presented with one HR file which was deficient or more than one entry in the SCR which either she or the Respondent could see was not in compliance with the statutory guidance. She continually stated that the accusations were general in nature. She was simply not able to defend herself properly and the delays and the inadequacies of the file audits were not the actions of a reasonable employer. They were not within the range of reasonable responses. No reasonable employer would have found the specific allegations proven against her and no reasonable employer would have given the Claimant had so little opportunity of defending herself. For these reasons, no reasonable employer would have dismissed the Claimant for Allegation 1 and the dismissal is therefore unfair.

81. For completeness, I will also deal with the Office allegation and the Bank allegation, and the specific allegations of unfairness made by the Claimant.

82. In relation to the Office allegation, it is a fact that the photographs taken in April 2018 presumably as evidence to support charges already formulated, were not presented until the disciplinary hearing in October 2018. Those photographs and their black and white copies clearly show evidence of a room which is untidy and disorganised, but they are such poor quality that it is difficult for any reasonable employer to conclude that they feature confidential information. However, the Respondent already had such evidence in the analysis of the items in the Claimant's room. The Claimant denied that anyone else could obtain access, but the evidence was that the cleaners and the IT staff could do so. It would be clear to any reasonable employer that it had reasonable grounds to find this allegation proven. However, the issue of delay applies equally to this allegation. No reasonable employer would have taken nine months to investigate whether the Claimant had left confidential items available to be seen in her room.

83. As for the Bank allegation, it seems that it is not possible to say for certain whether the failure to confirm Mr Dickens on the mandate was the fault of the Bank or the Claimant, but there is no suggestion that the Claimant

checked the position. A reasonable employer would have reasonable grounds to consider this allegation proven. However, it was not an allegation which formed part of the decision to dismiss the Claimant so I need go no further. It is, however, relevant to the allegation by the Respondent that the Claimant breached the terms of her suspension by going to the bank to try and obtain information which might assist her in defending herself against this allegation. I deal with the relevance of this allegation below.

84. Another point raised by the Claimant was that after the Health and Safety allegation had been dropped by Mr Illsley, there remained in the pack some comments critical of the Claimant, whereas the Claimant's explanation had been removed. The Claimant objected to this. But by then, the disciplinary panel had read those comments and the Respondent deemed it not practical to delay further. I consider this response to be within the range of reasonable responses. Mr Slater-Robins told the Claimant that he understood her complaint and he apologised, saying that the offending wording would not be considered. Mr Slater-Robins is extremely experienced in disciplinary matters and there is no reason to think that he and the panel could not ignore those comments and their considerations of the Claimant's conduct in relation to other allegations. However, those comments remained in the pack for the appeal. It was not explained why they were not removed after the decision to dismiss. Again, Mr Harding and his colleagues on the appeal panel were no doubt very capable of not taking the comments into account, but it is easy to understand why the Claimant was aggrieved. It was not the actions of a reasonable employer to keep those comments in the appeal pack. On its own, it would not make an otherwise fair dismissal unfair, but it did add to the general sense of unfairness.

85. During the appeal hearing, the suggestion was introduced that the Claimant should have seen the original DBS certificates, even when she had received confirmation that the check was clear. I have stated above that there was confusion over the requirements and it is hard to accuse the Claimant of gross misconduct when she appeared to be following a process approved by HR advice. Nevertheless, I accept the evidence of Mr Harding that this matter merely added weight to the decision of the appeal panel which would have been the same without it.

86. I now turn to the specific allegations of unfairness raised by the Claimant in her witness statement at paragraphs 51 and 52. I have dealt with a number of these allegations already, but for the sake of completeness, the remainder are as follows:

51(iv) The Claimant says that her right to have witnesses at the disciplinary hearing was compromised by the Respondent's failure to contact witnesses on her behalf after she had been forbidden to do this directly. I accept that there may have been some confusion and

inconsistency in the communications from the Respondent's HR provider, but it is a fact that all witnesses requested by the Claimant were contacted and all attended except for Rosie Gillon, who chose not to. The Claimant's argument is that had she been able to speak to Ms Gillon first, then she may have been prepared to attend, but I do not consider that it is outside the range of reasonable responses for HR to contact witnesses requested by the Claimant when arranging the disciplinary hearing.

51(vi) The Claimant pointed to a set of guidance notes prepared by HR which tended to suggest that the disciplinary panel should deal with evidence *"*in the round*"* and not in detail. Whether or not the disciplinary panel considered these guidance notes, the fact is that the panel members did consider the allegations in considerable detail.

51(ix) The Claimant complains that a statement taken by Ms Rouse from Mr Doran was not included in the evidence pack. Whilst this might be correct, Mr Doran attended both the disciplinary hearing and the appeal hearing as the Claimant's witness and the Respondent's failure to include his original statement was not outside the range of reasonable responses.

51(x) The Claimant complains that when she gave a statement to Ms Dobson in October 2017, the scope of Ms Dobson's investigation was not explained to her and she was not advised that she could have a representative present. There is a dispute of fact over whether the Claimant was advised that she could have a representative, although I am not convinced there was any legal requirement to allow a representative at that meeting in what was purely an investigative process. In any event, the report of Ms Dobson did not form part of the evidence considered by the disciplinary or appeal hearings and therefore played no part in the decision to dismiss the Claimant.

52(v) The Claimant complains that Mr Jude failed to interview previous Head Teachers and Governors. Whilst this may be correct, the Claimant had the ability to call whichever witnesses she wanted at both the disciplinary and appeal hearings. Indeed, she did call Mr Doran who gave evidence on her behalf at both.

52(vi) The Claimant also complaints that Mr Jude failed to interview some other staff who the Claimant had specifically asked him to interview. However, the same point is valid – the Claimant had the ability to call whichever witnesses she wanted.

52(vii) The Claimant complains that Mr Jude used comments from her 2014 appraisal in his investigation report referring to it as her most recent

appraisal when it was not. Firstly, I have not been provided with any compelling evidence that there was any subsequent appraisal and in any event, it is a judgment call for Mr Jude to decide from the evidence available to him what he does and does not put in his report. It is a matter for the disciplinary panel to interpret the report. Mr Jude's actions were within the range of reasonable responses.

87. Having determined that the dismissal of the Claimant was unfair, I have gone on to consider the various other issues raised by the parties which apply when adjusting any compensation which might be awarded to the Claimant.

Polkey

88. I consider that the nature of Allegation 1 is such that dismissal might be within the range of reasonable responses open to a reasonable employer if that reasonable employer had reasonable grounds for believing the employee to be guilty, having carried out a reasonable investigation. The examples of potential gross misconduct within the Respondent's Disciplinary Procedure include "serious professional negligence" and "serious breaches of safeguarding procedures". A failure to follow statutory guidance and to maintain the SCR accurately is capable of constituting serious professional negligence.

89. I have then asked the question whether a reasonable employer could have dismissed the Claimant fairly, absent the delay and the flaws in the evidence presented. In answering this question, I am required to speculate as to what might have been the outcome had the investigation been a 'reasonable' investigation. Would the Respondent then have had reasonable grounds? I have taken into account the previous report of Ms Dobson and the other indications that something was awry, as well as the evidence of Mr Dickens and Mrs O'Rourke. On the other hand, it would appear that neither Mr Doran nor any previous Governor had any real complaint or issue with the way in which the Claimant had managed the SCR and HR files. Weighing these matters against each other, and considering the evidence of the file audits in so far as it is possible to do so, I believe that there is a 20% chance that a reasonable employer would have been able to dismiss the Claimant fairly for Allegation 1. Based on the evidence I have heard and the documents read, I consider that there is this definite possibility that the Respondent could have presented the Claimant with sufficient evidence that the way in which she managed the files and the SCR was in breach of statutory guidance.

Unreasonable breach of ACAS Code of Practice on Disciplinary and Grievance Procedures

90. Mr Murray set out what he considered to be the unreasonable breaches by the Respondent. One example was as follows:

"employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmations of those decisions".

I have found there was unreasonable delay in both raising issues and investigating them promptly and there should therefore be an increase in compensation because of this unreasonable breach.

91. Although I indicated during the hearing that I would determine the extent of any uplift prior to a remedy hearing, I have reminded myself of the case of *Wardle v Credit Agricole Corporate and Investment Bank [2011] ICR 1290,* which is authority for the proposition that the amount of an uplift for breach of the statutory disciplinary and grievance procedures should not be decided until the overall size of the award has been determined. Those procedures have long since been repealed, but the same principle will apply to breach of the ACAS Code, the size of the award being relevant to the tribunal's determination of what is a just and equitable uplift.

(Contributory) Conduct

92. The Respondent also argues that any compensatory award should be reduced because of the Claimant's conduct. For this to occur, the conduct needs to have contributed to the dismissal and to be "culpable" or "blameworthy". I am conscious that there is no conclusive evidence that the SCR was inaccurate to any material extent, or that the HR files contained or failed to contain documents in breach of the statutory guidance. However, it is apparent that the Claimant carried out her role in some respects in a somewhat shambolic and disorganised manner, as demonstrated by the condition of her office (despite requests by Mr Dickens to tidy it) and the evidence of the way in which she managed the HR files. Whilst that might have been acceptable to previous Head Teachers, Mr Dickens made it clear to her from the outset that it was not acceptable to him, albeit informally. The claimant's conduct in this respect was culpable and/or blameworthy and although she was not dismissed for these specific actions or inactions, her conduct in these respect did contribute to her dismissal as they were the background and context to the investigation which did lead to her dismissal.

93. I consider that there should therefore be a reduction in the compensatory award in respect of the Claimant's actions, but as with the uplift for unreasonable breach of the ACAS Code, the precise amount of that reduction should be determined at the remedy hearing, the overall size of the award being a factor in deciding what is just and equitable in this respect.

94. The Respondent has not sought a reduction to the basic award on the basis of the Claimant's conduct.

The Bank allegation

95. The remaining matter in relation to the complaint of unfair dismissal is the effect of the Claimant's visit to the bank during her suspension. For perfectly sensible reasons, this allegation was not investigated in any detail by the Respondent at the time. It is arguable whether the Claimant did actually breach the strict terms of her suspension, although she must have realised that she was breaching the spirit of it. However, she would argue that she was justified in doing so bearing in mind the delays and inaction by the Respondent and that she did not disclose any confidential information to the bank. It is very hard to speculate how a reasonable employer would have dealt with this matter. Mr Murray argued that this incident should have no affect on any compensation payable to the Claimant. He said that the chances of a fair dismissal for gross misconduct based upon this incident are very low. He referred to it as a "quasi – Polkey" matter which should not have any impact on compensation.

96. For the Respondent, Mr Hodge questioned whether it was truly a Polkey issue and suggested that I should take it into account when deciding what sums it is just and equitable to award to the Claimant in the compensatory award.

97. It is not permissible to reduce the compensatory award for conduct made by the Claimant post dismissal. It is possible to make a Polkey reduction on the basis that a fair dismissal could have been effected for a different reason. However, I tend to agree with Mr Murray that there no more than a negligible possibility that the Claimant would have been fairly dismissed for this incident and it should therefore not impact upon the amount of compensation to the Claimant.

Breach of Contract / Wrongful Dismissal

98. The other complaint brought by the Claimant was that she was wrongfully dismissed, in that she was dismissed summarily without receiving any pay in lieu of notice. The issue to be determined is whether or not the Claimant was, in fact, guilty of gross misconduct (or in the words of the Respondent's disciplinary procedure, 'serious professional misconduct'). The burden of proof is on the Respondent to satisfy the tribunal on the balance of probabilities. I have stated above that I did not consider that the Respondent did not demonstrate grounds for concluding that the specific Allegation 1 was proven and in these circumstances, the Respondent has failed to discharge that burden. The claim for wrongful dismissal therefore succeeds.

99. This claim will now proceed to a hearing to determine remedy.

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Employment Judge Finlay

Date: 29 December 2020

Sent to the parties on:
7th January 2021

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T Henry-Yeo
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For the Tribunal Office