EMPLOYMENT TRIBUNALS (ENGLAND & WALES)
LONDON CENTRAL

BETWEEN

Claimant Ms A Palmer
AND
Respondent Academies Enterprise Trust

Employment Judge: Mr J S Burns
Members Ms K Harr and Ms D Olulode

Representation
Claimant: Mr F Neckles (trade union rep)
Respondent Mr T Cordery (Counsel)

Heard by CVP on 14, 15 and 16 April (evidence and submissions) and 19 April (decision making in chambers).

JUDGMENT

1. The claim of unfair dismissal succeeds, but on the basis that no compensation is due to the Claimant.
2. The claims of (i) wrongful dismissal and (ii) detriment on the grounds prohibited by Section 12 Employment Relations Act 1999 (claimed under section 48 Employment rights Act 1996), are dismissed.

REASONS

Introduction

1. The above judgment is unanimous and these reasons have been read and approved by the members.

2. The claims we had to consider were those referred to in the judgment.

3. The hearing was conducted by CVP, also made available to members of the public. There were no technical problems. The participants were warned not to make any recordings.

4. The documents were in a main bundle of 622 pages, a supplementary bundle produced by the Claimant of 19 pages and a further bundle produced by the Respondent (pursuant to an order for specific disclosure we made during the course of the hearing) of a further 6 pages numbered 644 to 649.

5. The admission into evidence of the 19-page supplementary bundle produced by the Claimant was opposed by the Respondent on the basis that its contents were irrelevant, but we ruled that it should be admitted, so that we would rely on it if relevant but not otherwise.

6. During the course of the hearing Mr Neckles sent an email to the Respondent's solicitor requesting disclosure of an unredacted version of pages 387 to 390 of the bundle but when we raised this with him at the beginning of the third day of the hearing he stated that he did not wish to pursue the matter and was content with the disclosure already given.

7. We also received an agreed list of issues, chronology and cast list, and at the end, outline final written submissions from Mr Cordery. Oral submissions were made. We also received from Mr Neckles 23 case reports of previously decided cases which he referred to in his final submissions, all of which we have considered although we have not felt it necessary to refer to any of them expressly in these reasons.

8. We heard evidence from the following witnesses in the following order: Robert Turner (R's Regional Chair of Governors – the investigator); David Hatchett (R's National Director of Secondary Schools and C's line manager); Kevin Parish – (R's Director of HR – who chaired the appeal panel on 19/8/2019); Lauren Costello (R's National Director of Primary and Special Educational Needs and Disabilities, who chaired the disciplinary hearing); from the Claimant, (from 1/9/2015 – 1/7/2018 Head Teacher and Principal of Nightingale Academy Non-Selective Secondary Academy at 34 Turin Road Edmonton London N98DQ); and then Mr Neckles (who submitted with our permission during the course of the hearing a short witness statement to deal with two discrete matters arising out of his representation of the Claimant prior to the ET proceedings).

9. At the beginning of the hearing on the first day the judge Mr J Burns (hereafter referred to in the first person) had various "housekeeping matters" to deal with. The time allocation for the trial (three days) appeared tight given the number of witness, the extent of the evidence and the number of issues and complaints raised by the Claimant, not all of which appeared to be set out in the list of issues. The discrimination claims previously had all been withdrawn or struck out, and there was no whistleblowing claim, yet members had been warned for the hearing, although they had not been sent any papers. After one hour of the hearing had elapsed I was still discussing with the parties' representatives whether members were required. Mr Neckles made a speech suggesting that they were but gave no reasons. I thanked him for his submission but said that I would prefer it if he could give a reason rather than make bare assertions. Mr Cordery was however equally unable to assist. I was anxious to get to the point when we could start hearing evidence.

10. I eventually ruled that members would be required, because of the Section 12 claim. Mr Cordery then submitted that I should strike out the Section 12 claim without further ado, on the grounds that on its face it had no reasonable prospect of success; and because, if the said claim was struck out at the outset, it would follow that I could sit alone, as members would not be required for the remaining claims. I responded that it was inappropriate for the Respondent to make such an application without prior notice at the beginning of the trial and that any such application should have been made during the case-management stages of the proceedings, which had occurred many months before.

11. After I had given that response, Mr Neckles, who evidently either had not listened to or had not understood what I had just said to Mr Cordery, submitted that the real reason Mr Cordery had made the application, which was opposed by the Claimant, was because I was demonstrating and had in the past demonstrated an aggressive manner to Mr Neckles and that Mr Cordery was wishing to capitalise on the possible advantages which would accrue to the Respondent from that, if I was not restrained by the members. Mr Neckles went on to say that on some

previous occasion I had described (to another union rep who was standing in for Mr Neckles) certain submissions or writings of Mr Neckles as “complete rubbish” or similar.

12. I have no recollection of the “complete rubbish*”* and as far as I am aware and can recall I had, prior to 14/4/21, only one prior encounter with Mr Neckles – this being a case management hearing of this case by telephone on 16/7/2020 which proceeded smoothly. Equally while I was perhaps a little terse and hurried in my dealings with both representatives during the final stages of a long housekeeping session, I do not recognise any conduct on my part which can be fairly characterised as “aggression” at any stage of the hearing which started on 14/4/21. Furthermore, by the time Mr Neckles made his submission, I had already told Mr Cordery that I would not accede to the latter’s late strike-out application. I regarded the submission from Mr Neckles as unnecessary and unjustified and told him so.

13. Mr Neckles, is to say the least, forthright and assertive in his advocacy, and later was himself the subject of a complaint of rudeness made by one of the witnesses while under cross-examination by him. However, in fairness to Mr Neckles it is recorded that it is plain that he had prepared thoroughly and worked hard throughout the final hearing to present the Claimant’s case. These minor difficulties played a very small and no substantive role in the hearing and have had no effect on the outcome.

14. After I had ruled that members were required, and dismissed the strike-out application, I arranged for the bundles, witness statements and other documents to be distributed by email to the members (who had not been sent them before) and adjourned for an hour and a half so they could read the pleadings and the Claimant’s and Mr Turner’s witness statement, before we started with Mr Turner as the first witness.

15. Given the available hearing time, (three days) we had to timetable the proceedings and did so with the agreement of the representatives. Mr Neckles requested and was allowed the following cross-examination times: 90 minutes for Mr Turner, 1 hour for Mr Hatchett, and 2 hours each for Mr Parish and Ms Costello, while Mr Cordery requested and was allowed 2 and a half hours for the Claimant and spent about 10 minutes cross-examining Mr Neckles. Each side was limited by consent to 45 minutes for final submissions.

16. We held regular short breaks during the hearing and reserved our decision once submissions were completed at 5.12pm on 16/4/21.

17. In the internal disciplinary proceedings, in her ET1 and in her witness statement the Claimant had made many and various complaints about the procedural and substantive lawfulness and fairness of her suspension, investigation, dismissal and appeal. Mr Neckles and Mr Cordery had agreed a formal list of issues for us and Mr Neckles confirmed at the outset that this exhaustively set out the matters relied on by the Claimant which we were called on to decide.

18. However, it was evident from the outset and during the course of the hearing that various additional complaints or accusations had been and were made by or on behalf of the Claimant which went beyond the list of issues. In our conclusions we have dealt primarily with the issues in the list but also tried to address the other main Claimant points which were not included in it.

19. Our findings of fact are set out first in an overview and then in more detail when we deal with specific themes in our conclusions.

Findings of fact- Overview

20. The Respondent is a multi-academy trust comprising more than 60 academies, one of which is Nightingale Academy in London. Although the Claimant was located at the Academy, she was at all material times employed by the Respondent.

21. The Claimant commenced employment with the Respondent on 1 September 2015, in the role of Principal of the Academy.

22. In April 2018 the Academy received about £500000 in additional "growth funding" from the Department of Education.

23. On 8/5/2018 the Respondent's Chief Financial Officer James Nicholson emailed the Claimant stating *"The expectation is that this will improve your academy's financial performance for 17/18 by the total value of the growth funding account. The budgets for 17/18 were agreed on the basis that growth funding would be received, with the budget target set net of growth funding…. if you have any questions please do not hesitate to get in touch*".

24. On 9/5/2018 Clare Overy, the Respondent's Regional Finance Manager, sent an email to Soheb Alam, (the Nightingale Academy Business Director and who was line-managed by the Claimant), stating inter alia "*As you are aware, this growth funding although entered into 17/18 will not be available to the academy to spend"* …

25. The reasons for these instructions (which were intended to mean the same thing), was that the Academy had been in a very poor financial position and the Respondent wished to retain the additional funding so as to improve the situation.

26. Nevertheless, in May to July 2018, the Claimant spent or caused to be spent £241000 of the growth funding in contravention of the Respondent's directions, and without referring back to Mr Nicholson or Clare Overy before doing so. The largest item within this exceptional expenditure was £65676 on new IT equipment which the Claimant had purchased without asking whether the Respondent could obtain it cheaper elsewhere. Included in the list were items which the Respondent subsequently regarded as obviously unnecessary, such as £13500 spent on two "sculptures" of nightingales which were intended to adorn the exterior of the Academy building and its reception area.

27. Mr Nicholson discovered this expenditure in July 2018 and raised the alarm and commissioned an internal audit of the Academy (to be carried out however by an external company called RSM). There were considerable difficulties and delays in Mr Hatchett and Mr Nicholson getting a response from the Claimant, which delays she attributed to holidays and then a full diary at the beginning of the new term.

28. On 13 and 14 November 2018, the Academy was subject to an unannounced inspection from OFSTED which determined that the Academy was 'Inadequate' and it was placed into special measures. The OFSTED findings highlighted a general decline from the previous inspection, when the Academy had been graded as 'Requires Improvement' (RI). Leadership and management were identified as a key area for improvement. A particularly serious concern was a perceived failure in safeguarding children at the Academy. A large contingent of Bulgarian children were unaccounted for, and many others had been off-rolled without compliance with the applicable Local Authority requirements. There were also problems with

truancy, students leaving the Academy Site during school hours, or attending classes to which they were not assigned.

29. During the inspection the OFSTED Inspectors gave oral feedback to Mr Hatchett and the Claimant about the dismal performance of the school, which feedback was subsequently confirmed in the later formal report.

30. Shortly after the OFSTED inspection, on 21 November 2018, the Respondent received the RSM audit report, which identified specific concerns in relation to the Claimant's involvement in spending the growth funding, and also in relation to breaches of the Respondent's regulations pertaining to tendering for and documenting significant purchases.

31. The following is a pertinent extract from the RSM report "*As noted above, in May 2018 the Principal was advised that the growth funding was expected to improve the academy's financial performance in 2017/18 and therefore should not have been considered as being available for use. Discussions with the Principal and School Business Director confirmed that they were both aware of this stipulation, however, considered that expenditure approved and incurred from June onwards related to necessary academy expenditure. Whilst we have confirmed that, for the transactions reviewed, the expenditure does relate to the Academy and that the items purchased, such as IT equipment, statues and the canopy are in use at the Academy, there is no evidence that the Principal or School Business Director discussed any of this expenditure with AET before placing orders with suppliers, or that value for money was considered in relation to the purchases.'*

32. Mr Hatchett and James Nicholson, met with the Claimant on 22 November 2018 to set out two specific allegations relating to the financial matters and the OFSTED report. The Claimant made a covert audio recording of which a transcript was provided to us.

33. Mr Hatchett suspended the Claimant on full pay pending an investigation.

34. Robert Turner, the Respondent's Regional Chair of Governors, was then appointed as investigating officer, to deal with the disciplinary investigation. The Claimant was invited to an investigation meeting on 13 December 2018. The matters to be investigated were described as follows: "(*that the Claimant) Failed to follow Financial Regulations and Accounting Procedures in relation to purchasing and tendering at the academy; and Failed to adequately prepare the academy and Trust for an OFSTED inspection".*

35. Before the meeting on 13/12/2018 was due to take place, the Claimant requested a postponement due to the unavailability of her chosen representative and this request was granted.

36. On 19 December 2018, the Claimant submitted a grievance, raising a number of concerns about the disciplinary process. As her grievance related to the disciplinary process, Mr Parish decided that her grievance would be investigated alongside the disciplinary investigation.

37. The Claimant was invited to a reconvened disciplinary investigation meeting on 11 February 2019, but again she requested a postponement due to her representative's unavailability. The meeting was rescheduled again and finally went ahead on 25 February 2019.

38. Additional time was required to complete the investigation meeting and a further meeting was therefore arranged for 5 March 2019. The Claimant was subsequently signed off work sick and the meeting was rescheduled, because the Investigating Officer had to deal with a family emergency. The adjourned investigation meeting eventually took place on 12 March 2019. This was a two-hour meeting of which a detailed note was taken.

39. Mr Turner issued his lengthy and detailed investigator's report on 12/4/2019 which had various appendices of the evidence he had referred to, including the OFSTED report, the RSM audit report, and witness statements from Mr Hatchett and Nicholson. He decided that there was a case to answer in relation to the disciplinary matters against the Claimant but no case to answer regarding the Claimant's grievance. He referred the matter to a disciplinary hearing, to take place on 25/4/19.

40. The Claimant sought a postponement on 23/4/19 on the grounds that insufficient notice had been given. The Respondent agreed to the postponement, re-arranging the hearing for 29/4/10. The Claimant sought a second postponement, this time on grounds of ill-health, on 26/4/19. The Respondent agreed to a further postponement and referred the Claimant to OH. Mr Turner wrote to the Claimant on 24/5/2019 informing her that the disciplinary hearing would proceed on 24th June 2019 at 2pm and that she was invited to attend and or arrange for a representative and witnesses, or make written submissions.

41. Dr Remington at OH having met the Claimant on 11/6/2019 sent a letter to the Respondent dated 11/6/2019 confirming that the Claimant has been signed off with stress-related problems since 26/4/2019, and that she was unfit to attend a face-to-face hearing "for the present time" and that *"I have recommend(ed) to her that …she considers having communication from the employer directed to a third party and then discussed with her with a view to being better able to cope with discussion of the issues"*. The letter recommended a further review after a month but made no specific forecast as to when the Claimant might be able to attend a hearing in person.

42. The Respondent's HR sent an email to the Claimant on 19/6/2019 referring to the OH letter *"which advises that to minimise your anxiety correspondence should go through your representative*", and asking her to nominate a representative. The next day the Claimant replied by email nominating Mr Neckles, and cc-ing him on the email, and giving permission for HR to contact him directly.

43. On 21/6/2019 the Respondent sent an email and letter to Mr Neckles at the address used on the Claimant's email, to confirm the hearing would go ahead on 24th June and inviting him to attend, or submit written representations, but it did not receive a response or any request for a further postponement.

44. Mr Neckles suggested in his evidence that he did not see the email or find out about the disciplinary hearing until he found the email in his spam folder on 1/7/2019. Under cross-examination on this point he agreed that he had not produced any evidence (for example a screenshot) to support this explanation. It was also an explanation which he had not provided when attending the Claimant's appeal, despite the subject of the Claimant's non-appearance in person or by proxy at the disciplinary hearing having been discussed during the appeal.

45. We accept however that, for some reason, Mr Neckles had not read the 21/6 email and letter to him before the hearing took place on 24 June. Had he read them before the hearing, we are sure he would have contacted the Respondent to ask for a postponement.

46. In the event the disciplinary hearing went ahead on 24 June 2019 in the Claimant's absence and with no appearance by Mr Neckles, chaired by Ms Costello with John King (Chair of Governors) and John Bolton (HR). The committee had the investigator's report and heard oral evidence from Messrs Hatchett and Nicholson.

47. The Respondent wrote to the Claimant on 28 June 2019, confirming her summary dismissal for gross misconduct. The dismissal letter included the following;

> *"On the basis of the evidence presented, we found both allegations to be substantiated. In respect of allegation 1 the Committee considered all of the written paperwork submitted and the oral evidence presented by Mr Turner and Mr Nicholson. The Committee is satisfied based on the evidence presented that allegation 1 is proven. The audit report highlighted a failure by the Academy to follow correct procedures for procurement and accounting. In addition, there was a significant spend by the Academy during the Summer Term 2018 for which there was no authorisation or budget. The cost of this expenditure was met from additional funding to the Academy by the ESFA which was ring fenced with an instruction from the Trust that it was not to be spent, which you failed to follow. The Committee considered the representations that you had made to Mr Turner during your meeting with him on the 12th March 2019. During this meeting you had stated that you were not responsible for the operational purchasing and tendering at the Academy and this was the responsibility of the School Business Manager. The Committee does not accept this view, it is the responsibility of the Principal to hold their staff to account and ensure that all aspects of the Academies performance is compliant with legislation and regulatory policies and procedures. The Committee therefore finds that you have breached the Employee code of conduct. We consider that you have been negligent in your duty as a Principal to follow AET's financial procedures and have abdicated your responsibility for maintaining a robust and accountable financial culture.*
>
> *In relation to allegation 2 the Committee considered the oral evidence of Mr Turner and Mr David Hatchett, National Director of Secondary Schools. The Committee considered at length the SEF[1] for Nightingale Academy and the discussions that took place during the KAOC calls, and with David Hatchett during the Spring /Summer term 2018. Based on the evidence presented the Committee find this allegation to be proven. The SEF document does not accurately reflect the performance of the Academy and the overview presented by you of the Academy to the Trust was inaccurate. The Committee considered your representations to Mr Turner during the meeting of the 12th March 2019 that you had felt unsupported by the Trust and unable to challenge however we could find no evidence to support this assertion. The Committee was particularly concerned that you did not consider yourself to be responsible for the safeguarding and off rolling issues that were highlighted in the OFSTED report and had again abdicated your responsibility as Principal to hold your staff to account and challenge inappropriate practice.*

[1] The self-evaluation form completed by the Claimant for the period running up to the OFSTED inspection in which she had typically evaluated the school's performance as "good".

Having considered all of the evidence presented it is the collective view on the Committee that there is compelling evidence to suggest that your actions in respect of the two allegations were taken wilfully and we therefore find on the balance of probabilities that both allegations are proven and constitute gross misconduct. You are therefore dismissed from your post as Principal at Nightingale Academy with immediate effect. "

48. The Claimant received and read the dismissal letter on 1/7/2019.

49. The Claimant appealed against her dismissal on 2 July 2019 and an appeal hearing was convened on 19 August 2019 before Mr Parish and Francis Soul, National Director of Education.

50. Mr Neckles attended with the Claimant, and over a lengthy hearing presented written and amended grounds of appeal and made full submissions including references to case law. Again, the Claimant made a covert audio recording of the hearing of which a transcript was produced to us.

51. By the end of the appeal hearing Mr Parish and Francis Soul had decided between themselves that they would dismiss the appeal but, in the circumstances, decided not to issue a letter confirming this because they believed to do so would impede possible negotiations which they anticipated might lead to a compromise of the dispute.

52. By the time the ET1 was issued and indeed by the time of the final hearing before us no letter confirming the outcome of the appeal had been issued.

Relevant law pertaining to misconduct dismissals

53. Where the conduct of the employee is established by the employer as a potentially fair reason for dismissal under section 98(1) and (2) of the Employment Rights Act 1996, then section 98(4) must be considered which provides as follows:

Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – depends upon 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 shall be determined in accordance with equity and the substantial merits of the case.'

54. A dismissal for misconduct will not be unfair if it is based on a genuine belief on the part of the employer that the employee had perpetrated the misconduct, which belief is based on reasonable grounds following a reasonable investigation BHS v Burchell [1978] IRLR 379.

55. An Employment Tribunal should not substitute itself for an employer or act as if it were conducting a rehearing of or an appeal against the merits of an employer's decision to dismiss. The employer not the Tribunal is the proper person to conduct the investigation into the alleged misconduct. The function of the Tribunal is to decide whether that investigation is reasonable in the circumstances and whether the decision to dismiss, in the light of the result of that investigation, is a reasonable response. HSBC v Madden [2000] ICR 1283.

56. The range of reasonable responses test (or to put another way, the need to apply the objective standards of the reasonable employer) applies as much to the question whether the investigation into the suspected misconduct was reasonable in all the circumstances, as it does to the reasonableness of the decision to dismiss for the conduct reason. Sainsbury v Hitt 2002 EWCA CIV 1588

57. The ACAS Code of Practice No.1, Disciplinary & Grievance Procedures (2009) provides that that an employer wishing to discipline an employee should carry out an investigation to formally establish the facts; inform the employee in writing of the problem; after a proper interval, hold a meeting to discuss the problem; decide fairly on the appropriate action, and provide an opportunity to appeal. If these steps are not taken then, even if the employee has been guilty of misconduct, it is likely that the dismissal will be unfair and, under Section 207A of the Trade Union and Labour Relations Consolidation Act 1992, an Employment Tribunal, in awarding compensation for unfair dismissal can, if it considers it just and equitable in all the circumstances to do so, increase the award it makes to the employee by no more than 25%.

Analysis and conclusions about the Unfair and Wrongful Dismissal Claims

58. The Claimant submits that the effective date of termination was the 1st July 2019, which is when she first became aware of her dismissal letter dated 28th June 2019 and read it. We accept that submission. Nothing else turns on this however.

Did the Respondent genuinely believe the Claimant to be guilty of Gross Misconduct?

59. We find that the Respondent's decision makers did. It was not put to any of the decision makers that they were pretending to believe in the Claimant's guilt.

Was that belief on reasonable grounds?

60. The Claimant's case was that she was unaware of the prohibition against spending the growth funding, that the email to her dated 8/5/2018 was ambiguous and that the clearer instruction sent to Mr Alam[2] on 9/5/2018 was not copied to her. She also said that she had adhered to the government guidelines on spending growth funding.

61. The letter confirming Mr Alam's dismissal (by another panel) found in relation to the 9/5/2018 email "*There is no evidence to show you (Mr Alam) had taken any reasonable steps or actions*

[2] On 17 May 2019 Mr S Alam was summarily dismissed by the Respondent for his part in the financial irregularities and in particular the spending of the growth funding in May – July 2018. The letter confirming his dismissal records inter alia as follows "The Panel, having considered all of the evidence presented find that you were aware of the unauthorised expenditure of the growth funding. There is no evidence to show you had taken any reasonable steps or actions as the Director of Business to either advise the Headteacher of the email instruction from the RFM, nor did you alert or inform the RFM, the central AET school support services team or the Governing Body of the unauthorised expenditure despite having the opportunity to do so. The Panel considered that it is your responsibility as Director of Business to ensure that financial propriety is maintained at the Academy, in accordance with the statutory guidance and you had failed to fulfil statutory responsibilities in this regard…….The panel took into consideration the mitigating circumstances you outlined in your responses to the case, namely that you stated you were bypassed by the Headteacher on a number of occasions. You stated that Headteacher had previously chastised you for raising concerns with the Deputy Director of Finance and you felt unable to voice your concerns…". Mr Alam subsequently appealed his dismissal but his appeal was dismissed on 8/7/2019.

as the Director of Business to either advise the Headteacher of the email instruction (a reference to the 9/5/2018 email) from the RFM".

62. However, it was not a matter of dispute that the Claimant knew that the Nightingale Academy was in a very poor financial position and that despite any savings, a substantial deficit had remained. For example, a report from the Education Adviser on 15/12/17 which the Claimant read stated that "*There remains a large deficit budget"* and the academy was on track to receive growth funding "*which will support the reduction in the current deficit".*

63. We find that in context the email of 8/5/2018 which was sent to and received by the Claimant, would not have been ambiguous to the Claimant. It states in terms that the total value of the growth funding received must be used to improve your academy's financial performance. This means that none of it should be spent.

64. There was evidence that other head teachers were sent "completely the same" wording and "there was no confusion" from them – they had not spent any growth funding money without seeking authorisation.

65. Furthermore, the Claimant had not taken up the CFO's offer "If you have any questions please do not hesitate to get in touch", suggesting she understood what the e-mail meant.

66. The fact that the spending may have been in accordance with the government guidelines is irrelevant because once the money was received it was subject to the control and directions of the Respondent and the Claimant was obliged to comply with those directions.

67. The budget was set on the basis that the growth funding would be received. The obvious implication of that is that items of exceptional expenditure were not budgeted for.

68. Furthermore, as recorded above, it was reported in the RSM report that the Claimant confirmed to the independent auditors that she was "*aware of this stipulation*", not to spend the growth funding.

69. During an interview with the CFO in September 2018 she had "*apologised for spending the money".*

70. The amount and pattern of expenditure was unusual. Knowing this, and also knowing the significant financial constraints, but without consulting or informing the Respondent's senior finance officers at all, the Claimant spent very large sums of money in the final month or so of the school year, having previously kept within the budget for every other month. (The auditors identified 13 large expenditure items totalling £241,725 in a two-month period with a total budget variance by the end of the academic year of nearly £400,000 - from a position where the budget had been on-target as late as May 2018).

71. The Claimant had previously worked as a Headteacher for a multi-academy trust as well as for a local authority. She would have been aware of her accountability to the Trust (as well as to the Governors of the Academy) for the financial management of the school.

72. When the Respondent's senior officers tried to contact the Claimant to discuss these matters it proved difficult to do so. Urgent attempts to contact her by e-mail, phone and voicemail from 25/7/18 onwards initially failed and then there were significant delays before the Claimant made herself available to discuss the matter.

73. Furthermore, the Claimant was Mr Alam's line manager and worked with him closely. It is unlikely that Mr Alam would not have discussed the prohibition (which he had been plainly and expressly informed about) with the Claimant when she was making decisions and directing him to spend these exceptional sums of money.

74. The Claimant pointed out that the Respondent's Financial Regulations Manual Version 1.2 February 2015 at paragraph 2.4 stated that "*much of the financial responsibility has been delegated to the Finance Manager*". However, the same paragraph confirmed that the Principal/Head has overall executive responsibility for the Academy's activities including financial activities; and also confirmed that the Principal/Head Teacher was operationally responsible for "*Authorising expenditure up to the designated authorisation level".*

75. There were other problems identified in the RSM audit. The Claimant had failed to comply with tendering procedures so that for £115,000 of purchases there was "no formal documentation or report" showing how conclusions were drawn on which quote to accept. There had also been a failure to go out to tender at all, and therefore not obtaining value for money, on the nightingale statues. While tendering was Mr Alam's primary responsibility the Claimant should have maintained oversight especially in the context of a serious deficit.

76. In these circumstances, even on the basis that the email of 9/5/2018 was not sent on to the Claimant, there were reasonable grounds for concluding that the Claimant, who was a very experienced Head Teacher, must have known about the prohibition and other regulations which she was breaching or causing to be breached. Furthermore, if she had not, that would itself indicate a serious dereliction of her executive responsibilities.

77. The Claimant's case was that the Respondent should not have relied on the OFSTED report, which she claimed was wrong and misinformed especially in its negative findings about the state of safeguarding at the Academy in November 2018, and that the Respondent should have carried out its own "on the ground" investigations into the matter. We reject this submission. OFSTED was the specialist body for the purpose of such investigations.

78. The failures it identified were serious and in breach of the requirements of the local authority, which was contacted by the inspection officers during their investigation. The whereabouts of "a large number of Bulgarian pupils" was not known. The Claimant had not reported any of these issues to the Respondent and this had prevented the Respondent from deploying its specialist safeguarding team to address these matters. In her oral evidence the Claimant did not really dispute the fact that numerous children were unaccounted for, but rather sought to mitigate this by suggesting that the Academy served a transient population who took holidays when they felt like it.

79. In addition there were significant issues such as truancy, inaccurate class registers, people leave the school site, pupils entering classes and lessons to which they were not assigned. The Academy is in a high-knife crime area and that being the case it was particularly important to know where pupils were at all times.

80. During the investigation and subsequently the Claimant was given an opportunity to adduce evidence to show that she had complied with the safeguarding obligations and invited to request any documentation she needed for the purpose, but she did not do so.

81. A closely-related matter which also fell under the charge of "*not preparing the Academy and the Respondent for the OFSTED inspection*" was the significant mismatch between the Claimant's Self-Evaluation Form (SEF) that the performance at the Academy was "Good" in almost all areas, whereas when subjected to the OFSTED inspection it was found to be inadequate in all areas. The Respondent concluded that someone as experienced as the Claimant could not have mistakenly produced such an unrealistic SEF and that it must follow that she had wilfully done so to create the impression the school was in a better state than it actually was.

82. When Mr Turner had asked Mr Hatchett about this the latter had stated "*if AP had indicated to the inspector that the Academy was RI then he could have supported her. He stated that he believed her decision to mislead the Trust was wilful, when viewed alongside the results data. He stated that AP had told him that she was a HT with 20 years' experience and therefore to conclude that this was a capability issue did not stack up*"

83. It was not in dispute that the Claimant had told the Respondent that the school was operating reasonably well, (in the Self Evaluation document which was described as a "living document'' which was regularly undated by the Claimant and others until shortly before the Ofsted audit) whereas it was not. The Claimant's case was that her over-optimistic self-evaluation of the Academy had been done because she was "*fighting for her school by putting up a higher rating and challenging Ofsted to prove the contrary*". However the Ofsted inspection in November 2018 was unannounced so the entries by the Claimant onto the self-evaluation form cannot have been made with a specific planned Ofsted visit in mind. She did not deny that the over-evaluation had been a deliberate act. The Respondent required to be told the real situation so it could have worked with the Claimant to improve matters.

84. Taken as a whole, there were reasonable grounds for concluding that the Claimant had been guilty of gross misconduct in several respects.

85. The fact that the particular details of the Claimant's misconduct do not appear expressly in the list of examples of Gross Misconduct in the Respondent's Disciplinary Policy, is irrelevant, because the list is non-exhaustive, and the characterisation of the misconduct as "gross' is a matter of judgment to be reasonably exercised having regard to the severity of the matter in its particular circumstances.

Were the suspension/investigation and dismissal procedures reasonable?

The suspension

86. The Claimant complained that the decision to suspend her (on full pay) was an unjustified "knee jerk reaction" which "changed her status from work to non-work" and which caused her unnecessary reputational damage and personal stress; and that further investigation should have been carried out before any decision to suspend was made. She also complained that the suspension prevented her from accessing information at the Academy which she would have wanted to obtain to defend herself with.

87. We reject that complaint. At the suspension stage the Respondent already had substantial evidence (the mis-spent funds, the RSW audit report and the oral feedback in the OFSTED inspection) to suggest that the Claimant may be guilty of gross misconduct which may be incompatible with her further employment in the Academy and that an investigation was required.

88. In addition, Mr Hatchett was concerned that the Claimant might jeopardise its investigation if she were to remain in work. Given the nature of the allegations, that was a reasonable concern. Mr Hatchett decided that due to her role and status within the Respondent, it was not possible to redeploy the Claimant to another academy.

89. As we discuss below, the Claimant was given reasonable facilities to access and obtain information after her suspension.

The disciplinary charges

90. The allegations in the investigation and the charges for the disciplinary hearing were the same namely *"(that the Claimant) Failed to follow Financial Regulations and Accounting Procedures in relation to purchasing and tendering at the academy; and Failed to adequately prepare the academy and Trust for an OFSTED inspection*"

91. The Claimant complains that these charges failed to refer expressly to the Claimant having been guilty of gross misconduct or wilful rather than merely negligent behaviour and hence it was unfair to bring in findings that she had been guilty in that way.

92. We agree that the charges and allegations were somewhat generalised but as the misconduct covered a wide range of issues and these were necessarily framed in broad fashion to cover these.

93. We are satisfied that the Claimant understood the charges and their gravity. She had been told what the substance was at the suspension meeting and warned "*We are also talking potentially of gross misconduct"*. The Respondent could not be expected to state in advance that the conduct was wilful – that was a matter for investigation.

Evidence supplied to C

94. The Claimant complained that she had not been provided with the relevant documentation relied on by the decision makers. Under cross-examination however she was very vague about this and said she could not remember what she had been sent.

95. We find that she was provided with and given access to all the necessary documentation for a fair investigation and disciplinary process:

96. For example, on 22/11/18 in the suspension meeting the Claimant was told that she could contact Jill Fuller (the Respondents head of Employee Relations) "[if] there is anything you need" and was offered a copy of the disciplinary policy. The Claimant understood this facility as shown by her e-mail to Ms Fuller the following day requesting a copy of the minutes of the suspension meeting and a copy of the financial audit.

97. On 19/12/18 the key audit report was sent to the Claimant along with minutes of the suspension meeting and a covering letter.

98. On 12/4/19 she was sent the final investigation report including 13 appendices, including the key OFSTED Report (and also notes of the investigatory interviews with other witnesses). It is evident that she received the report and appendices because she responded on 25/4/19 requesting that all the witnesses interviewed should be present at the disciplinary hearing a

asking for a copy of the "written complaint from my accusers" but not seeking any other documentation such as the OFSTED report or interview notes.

99. The Respondent responded on the same day, 25/4/19 to say "There is no written complaint against you. You have been provided with all of the documentary evidence that will be presented to the panel at the Disciplinary Hearing" also stating that "The invite to the disciplinary hearing and supporting paperwork was sent to you on Tuesday 16th April 2019" – the Claimant did not reply to dispute she had been sent the supporting paperwork;

100. Mr Turner emailed the Claimant on 24/5/19 stating "Further details of the allegation are outlined in the report and supporting evidence that were sent to you previously" Again, the Claimant did not respond to deny that she had received such evidence.

101. On 22/7/19 the Respondent wrote to the Claimant in advance of the appeal stating "Finally your representative Mr Neckles has requested copies of all of the documentary evidence that the Dismissal Committee relied upon when making their decision on the 24th June 2019. All the paperwork that was considered on the 24th June 2019 was shared with you with your invite to the Dismissal Hearing in April 2019. If there is any additional paperwork that Mr Neckles believes the Committee referred to that has not already been shared with you I would be grateful if you could provide a list of the relevant documents and arrangements will be made to share these with you in advance of the hearing". No such list was provided by the Claimant or Mr Neckles prior to the appeal and at the appeal hearing they were all in the same room together and all had copies of the bundle of documents.

The investigation

102. The Claimant complained that the investigation was carried out selectively to find evidence which proved her guilt only, that it was unreasonable for the interviewer Mr Turner not to interview Mr Alam (the Academy Business Manager) and also that 6 suggested lines of enquiry raised by her in her lengthy "Response to allegations" note of 5/3/2018, had not been followed up.

103. We accept that Mr Turner was senior, experienced and independent having no prior involvement in the Nightingale Academy or with the Claimant. His interviewed Mr Nicholson, Mr Hatchett and the Claimant (on more than one occasion), and had the RSM audit and Ofsted reports. It is not for the person the subject of the investigation to dictate the scope and extent of the investigation. No investigation can exhaustively cover every possible angle of possible investigation. The Claimant was at liberty to adduce her own evidence to the investigator if she wished.

104. During the investigation meeting, it was put directly by a member of HR to the Claimant for her comment, what Mr Alam, the School Business Manager, had said (apparently during Mr Alam's disciplinary process) about the unauthorised spending.

105. However, given the importance of the financial matters we take the view that Mr Turner himself should have interviewed the business manager Mr Alam and obtained direct and documentary evidence pertaining to Mr Alam's evidence. No direct evidence from Mr Alam was included in the investigation report or made available to the Claimant.

106. Furthermore, the Respondent did not tell the Claimant what had happened to Mr Alam, nor did the Respondent disclose to the Claimant at any stage, (and until after we made a direct order about this), Mr Alam's dismissal letter and appeal letters. Having been disclosed, the dismissal letter (see footnote two above) is seen to contain material relevant to any fair assessment of the Claimant's culpability, which material however did not feature in the Claimant's disciplinary process, (nor for that matter in any of the Respondent's evidence for the Tribunal proceedings).

The decision not to postpone the disciplinary hearing

107. We have set out above, in the overview, our findings about the run up to the disciplinary hearing which finally took place in the Claimant's absence on 24/6/2019.

108. The reasons for the Respondent going ahead included: the length of time which had already expired since the misconduct was discovered; the disciplinary process had already been postponed twice at the Claimant's request; it was specifically notified to the Claimant that it was planned the meeting would go ahead in her absence if she did not attend and she being afforded the right to submit written representations or have a union representative attend on her behalf; with an invitation being made to request a further postponement if Claimant wished to; and no forecast when she would herself be able to attend a disciplinary hearing. In addition, Mr Neckles told us that he had successfully communicated with the Respondent in the past using the same email address to which his invitation email and letter were sent.

109. The Claimant complained that it is evident from Mr Alam's dismissal letter that before his disciplinary hearing went ahead (in his absence) it had already been "re-scheduled for him on three occasions" which made it unfair for the Respondent to go ahead with the Claimant's disciplinary hearing on 24/6/2019 having rescheduled it for her only twice. However, the comparison is not valid because Mr Alam had requested a rescheduling of the disciplinary hearing three times but the Claimant had done so only twice. The Respondent had shown itself willing to accede to reasonable postponement applications, as also indicated by the fact that at an earlier stage there had been two postponements of the investigation meetings at the Claimant's request.

110. However, the consequences to the Claimant of being dismissed for gross misconduct were very serious. She was known to be ill and unable to deal with matters herself. Given her approach to the process up to that point, it was very likely that she would wish to attend her disciplinary hearing and very unlikely that she would simply decide to not attend and not be represented at it. Equally it was unlikely that nothing would have been heard from Mr Neckles if he had read the email and letter to him on 21/6/19. It was a reasonable possibility that the Claimant, who had herself received a copy of the OH report, would have assumed that the Respondent would have unilaterally re-postponed the disciplinary hearing in response to it.

111. In these circumstances, we find that the Respondent should have taken further steps such as trying to make telephone contact with Mr Neckles and, failing that, to re-contact the Claimant, to ensure that she was aware that, notwithstanding the OH report, the hearing was still going ahead, and to check that there had not been a breakdown in communication, (as in fact there had been). If it was necessary to have a further short adjournment in order to carry out those extra steps, then the Respondent should have further adjourned. We do not find that in the circumstances it was necessary for the Respondent to significantly further delay or wait

until some unknown future date when the Claimant was able to attend in person. However, we think it was overly robust for the Respondent simply to proceed with the hearing in the absence of checks to ascertain whether or not the arrangements that Mr Neckles was to represent the Claimant at the hearing had been successful.

Reliance on OFSTED report

112. The Claimant complained that the Respondent's reliance on the OFSTED report was a breach of two paragraphs of the September 2018 OFSTED handbook, namely paragraph 62 which provides "*the lead inspector should…ensure that the headteacher is aware that OFSTEDs evidence from observations of teaching and learning, whether joint or otherwise, must not be used as evidence in capability/disciplinary proceedings or for the purpose of performance management*" and paragraph 77 which provides "*the lead inspector will ensure that the headteacher is aware that OFSTED's evidence must not be used in competency/disciplinary proceedings or for the purpose of performance management*"

113. As explained by Mr Hatchett, who is also works an OFSTED Inspector in another capacity, paragraph 77 is on any view irrelevant in this case because it relates to section 8 Education Act 2005 inspections, which the OFSTED inspection of Nightingale Academy in November 2018 was not.

114. We raised with the parties whether these paragraphs, which are addressed to the OFSTED inspectors rather than to the Schools themselves, related to a legal obligation possibly created by legislation or regulation, binding on the Respondent. Neither side's representatives have explained to us clearly whether and if so by what means instructions in an OFSTED handbook or the restrictions referred to in these paragraphs could effectively bind the Respondent or condition its relations with its own employee. In the absence of such an effect, legally the Respondent would have been at liberty to rely on the OFSTED report in disciplining its employees.

115. However, even if paragraph 62 or the restriction it refers to is binding on the Respondent as between it and its own employees, we do not find that the Respondent's reliance on the OFSTED report in this case breached that paragraph.

116. No evidence from observations of teaching and learning was used in the disciplining of the Claimant for the matters for which she was dismissed, namely unauthorised spending, misrepresenting the school's performance and failure to guarantee safeguarding.

The grievance

117. The Claimant was informed by Mr Parish he had decided that the grievance and disciplinary would be heard together and she did not object. Mr Turner took separate steps to investigate elements of the grievance and the Claimant ultimately received a carefully considered and detailed grievance outcome from Mr Turner in his report.

The appeal

118. The Claimant complained that Mr Parish should not have sat on the appeal because (i) he was an HR officer and (ii) he had been involved at earlier stages of the disciplinary proceedings.

119. No such complaint was made before or during the appeal hearing itself.

120. We have noted Mr Parish's explanation that there was a shortage of suitable personnel at the time of the appeal hearing given the "time frame and school holidays".

121. Mr Parish sat with Frances Soul who was a senior (non-HR) person with no prior involvement.

122. We do not find that Mr Parish was biased but to some extent agree with the Claimant's complaints about his involvement in the appeal. Mr Parish had been involved at an earlier stage in deciding for example that the grievance and disciplinary process should be run together. Although he was a member of the Executive Committee, he was also a senior HR officer, and if only from the point of view of the Claimant's perception, it would have been better it some other senior officer from outside HR and with no prior involvement could have dealt with the appeal.

123. The appeal hearing was described as a review in the invitation letter. As a matter of substance it was a lengthy and detailed hearing. Seven individuals from Respondent were present, including HR and legal counsel. It started at 12:10 and did not finish until 17:28. Bundles of evidence were considered during the hearing and Mr Neckles was allowed to make full representations on all issues which he and the Claimant wished to raise.

<u>The failure by the Respondent to issue any appeal outcome.</u>

124. The Claimant complained that she was entitled as a matter of contract under the Respondent's disciplinary procedures and the ACAS code to a formal determination of her appeal, but had not received it, and hence that there had been a breach of these provisions.

125. We do not find that the Respondent's disciplinary procedures were part of the Claimant's contract but agree that those procedures indicate that an appeal outcome should be supplied, and paragraph 29 of the ACAS code states "*Employees should be informed in writing of the results of the appeal hearing as soon as possible*".

126. It was explained in Mr Parish's oral evidence (which was fuller than his witness statement in this regard – we think because without-prejudice matters are not usually discussed in witness statements) that Mr Neckles made it clear on the Claimant's behalf at the end of the appeal hearing that she wished to "leave amicably", that settlement negotiations commenced, that an adverse appeal outcome was regarded as likely to impede a compromise, and that finally matters got overtaken by ACAS early conciliation and litigation.

127. The Respondent's note of the appeal hearing contains the following as the last words spoken by Mr Neckles: "*The Appellant wants you to rescind the decision to dismiss and to reinstate the appellant as though this appeal did not happen. However, the main motivation is to clear her name as she feels the decision is unjust. Will like to leave amicably*".

128. The important point here is whether or not Mr Neckles stated that the Claimant wished to leave amicably and "*as if the appeal did not happen*". If he did, then formally dismissing her appeal (which is what Mr Parish and Frances Soul would have done if they had issued an outcome letter), would have impeded that outcome because it would have demonstrated both that an appeal had happened and that the Claimant's summary dismissal for gross misconduct had been finally confirmed.

129. Paragraph 2(1) of Mr Neckles witness statement on this point is carefully drawn and omits confirmation or denial whether he stated that if the Claimant was re-instated, she would then "*wish to leave amicably as if the appeal did not happen*". In his oral evidence he denied that he referred to this at the appeal.

130. However, an e-mail of 21/8/19 from Russell Holland, the Respondent's legal counsel, to Mr Neckles, (which Mr Neckles himself produced attached to his witness statement) supports Mr Parish's version of events, stating "*At the end of the meeting you indicated that if Anne Palmer was to be reinstated she would like to seek to terminate her employment by way of mutual termination agreement. I am writing to ask if you would be free for a conversation today to discuss this".* In his response an hour or so later Mr Neckles did not dispute that he had made these overtures during the appeal meeting, rather saying that he was not free to discuss settlement until the following week.

131. The chronology also supports Mr Parish's account: the appeal hearing took place on 18/8/19; the first e-mails about settlement were on 21/8/19; settlement discussions were continuing as at 19/9/19 (as per other e-mails attached to Mr Neckles' witness statement); ACAS early conciliation commenced on 3/10/19 [1]; and the claim was lodged on 2/11/19 [2]. This is all consistent with Mr Parish's evidence that the appeal process was quickly overtaken by negotiations and litigation.

132. We therefore prefer Mr Parish's evidence to that of Mr Neckles on this point.

133. Neither the Claimant nor Mr Neckles requested the appeal outcome at any point, but neither did they state at any time in the days or weeks following the hearing that they did not want one.

134. In these circumstances, it was perhaps reasonable for the Respondent not to issue an appeal outcome in the immediate aftermath of the appeal hearing, but we find that it was unreasonable not to issue an outcome at all once a few weeks had passed, with no settlement.

135. Both sides had spent considerable time and resources on the appeal and of course the Claimant was entitled to an appeal outcome. Both the Respondent's procedures and the ACAS code require a written outcome to be issued promptly, and until there has been an outcome, there has not really been a proper completed appeal at all.

136. The Claimant also complained that Mr Turner was not available at the appeal hearing, but in fact the Claimant was informed that he was available via video link and he remained available until the hearing ended.

<u>Dual role of Messrs Hatchett and Nicholson as "accusers" and witnesses</u>

137. The Claimant complains that Messrs Hatchett and Nicholson made allegations against her and were therefore unable to provide witness evidence during the disciplinary process. There is no principle of law that a member of management who identifies potential misconduct cannot

thereafter have any involvement in a suspension decision, an investigation or disciplinary process. Neither made the disciplinary or dismissal decisions.

Breaches of ACAS code.

138. The Claimant suggested various breaches of the ACAS code. Apart from the breach of paragraph 29 referred to above, we do not find any other breaches.

Overall assessment of procedural fairness

139. We have found problems in the procedure relating to the investigation into Mr Alam, the decision to press on with the disciplinary hearing, the participation of Mr Parish as appeal officer and the failure to issue an appeal outcome.

140. Taken as a whole we find that these problems have the consequence that the Respondent's process fell outside a range of reasonable processes

Was dismissal with a range of reasonable responses?

141. Ms Costello gave evidence that the disciplinary panel considered the mitigating factors of the Claimant's length of service and clean record before reaching the decision to dismiss. She also confirmed under cross-examination that consideration was given to alternatives to dismissal.

142. We heard oral evidence from Mr Hatchett about another academy in his management which went into special measures in 2017/2018 following an OFSTED inspection, but without the headteacher being dismissed as a consequence. Having heard this evidence, the Claimant and Mr Neckles suggested that dismissing the Claimant had been inconsistent and indicated unfair and possibly discriminatory[3] treatment.

143. However, the Claimant was not dismissed simply because the Nightingale Academy went into special measures, but rather for the Claimant's specific misconduct, part but not all of which was confirmed by the OFSTED inspection.

144. As the Claimant had been found guilty of gross misconduct in several respects which went to the heart of her role as headteacher/principal, summary dismissal was plainly within a range of reasonable responses.

Conclusion about the unfair dismissal and wrongful dismissal claims

145. We find that the Claimant's dismissal was unfair for the procedural reasons summarised in paragraph 139 above.

146. We find however that, absent the procedural unfairness we have identified, the Claimant would still have been summarily dismissed for gross misconduct, at much the same time. Even without a statement from Mr Alam, there was damning evidence in the RSM audit and Ofsted

[3] (although no claim under the Equality Act 2010 was before us)

reports and from Messrs Nicholson and Hatchett. We do not find that if Mr Neckles and or the Claimant had attended the disciplinary hearing or if Mr Parish had been replaced by another senior officer at the appeal that the outcomes would have been different. Although an appeal outcome should have been issued, if it had been, it would have been only to dismiss the appeal.

147. Therefore, this is was a dismissal in which the unfairness was purely technical in the sense that it made no difference to the outcome.

148. We are also satisfied that the Claimant's contributory fault was 100%.

149. For purposes of the wrongful dismissal claim we find that the Respondent has proved on a balance of probabilities that the Claimant was guilty of gross misconduct which amounted to a repudiatory breach of contract by her, and hence that the Respondent was entitled to dismiss her without notice.

150. It follows that we make no award of compensation for the unfair dismissal and dismiss the wrongful dismissal claim.

The claim under the Employment Relations Act 1999, s12

151. ERA 1999 s 12 provides "*Detriment and dismissal. (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that he— (a) exercised or sought to exercise the right under section 10(2A), (2B) or (4), or (b) accompanied or sought to accompany another worker (whether of the same employer or not) pursuant to a request under that section*".

152. The right under s 10(2A) is a right to be accompanied by a chosen companion at a disciplinary or grievance hearing, the right under 10(2B) is to that companion being allowed to address the hearing in question, and the right under 10(4) is to the meeting being re-arranged for an alternative reasonable time where "the worker proposes an alternative time".

153. The claimed detriments in the list of issues were *"(a) Denial of the rights under S.10 (2A) & (2B) ERA 1999 and (b) The right of an appeal against dismissal with a concluded outcome*."

154. To the extent that any right under section 10 was exercised, the Respondent facilitated and supported that right: by inviting Mr Neckles to the disciplinary hearing. There was no request from the Claimant under s10(4) for the 24/6/19 meeting to be postponed.

155. The Respondent encouraged the Claimant to have a union representative. Ms Fuller during the suspension meeting is recorded as having said "*I would strongly advise, as Mr Hatchett did at the beginning of the meeting, that you would seek advice from any representative that you have and they you are involved in the investigation*…" The Respondent then adjourned several meetings at the Claimant's request to facilitate Mr Neckles' attendance. Mr Neckles was allowed to and did attend several meetings including the appeal meeting.

156. The reason why Mr Neckles did not attend and speak at the disciplinary hearing was not because the Claimant had exercised her section 10 rights, but because Mr Neckles did not, until it was too late, read the email and its attached invitation dated 21/6/2019.

157. While it is true that the Respondent did not issue an appeal outcome letter, this was not because of the Claimant exercising her section 10 rights but because the Claimant, acting through Mr Neckles, indicated that she would favour a compromise including re-instatement "as if the appeal did not happen" followed by an amicable departure, which the appeal officers felt would be impeded or frustrated by their officially dismissing the appeal.

158. The Respondent did not subject the Claimant to any detriment because of Mr Neckles' involvement.

159. Hence the claim under section 48 ERA 1996 read with section 12 ERA 1999 also fails.

J S Burns Employment Judge
London Central
19/4/2021
For Secretary of the Tribunals

date sent to the Parties – 20/04/2021