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## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mr M Hughes

**Respondent**

Beeston Hall School  
Trust Ltd

and

**Held by CVP on** 22, 23, 26 and 27 April, and in Chambers 14 to 16 July 2021

**Representation**

**Claimant:**

Mr R O'Dair, Counsel

**Respondent:**

Miss C Urquhart, Counsel

**Employment Judge** Kurrein

### Statement on behalf of the Senior President of Tribunals

This has been a remote hearing that has not objected to by the parties. A face to face hearing was not held because it was not practicable and all issues could be determined in a telephone hearing. The documents that I was referred to are in a principal bundle of 517 pages, the contents of which I have recorded.

## JUDGMENT

The Claimant's claims are not well founded and must be dismissed.

## REASONS

- 1 These reasons should be read in conjunction with all earlier case management orders and directions.
- 2 This case originally came before me for a full merits hearing on 25 January 2021. It was in a state of disarray and, having heard applications to amend and for disclosure of privileged material on 27 January 2021, I gave directions for the further conduct of the matter.

### The Issues

- 3 At that hearing the issues to be decided at the full merits hearing were defined as follows:-
  1. When did the Respondent become aware that the Claimant was a member of the NASUWT trade union?
  2. When did the Respondent become aware that the Claimant was the NASUWT school representative?
  3. What was the reason, or if more than one the principal reason, for the Claimant's dismissal? Was it that he:

- a. Was a member of an independent trade union, pursuant to s152(1)(a) TULR(C)A 1992? and/or
- b. Had taken part, or proposed to take part, in the activities of an independent trade union pursuant to s152(1)(b) TULR(C)A 1992?
- c. The Claimant relies on the following factual matters:
  - i. On 6 March 2019, the Claimant became the NASUWT contact at the Respondent (para 4, GoC);
  - ii. The Claimant arranged a NASUWT meeting at the Respondent to discuss pensions (paras 4-5, GoC);
  - iii. At the meeting on 14 March 2019 the Claimant was elected as the NASUWT School Representative (para 6, GoC);
  - iv. At the meeting on 14 March 2019 a ballot of union members confirmed they were willing to take industrial action regarding the pension dispute (para 6, GoC);
  - v. After the meeting, the Claimant put information on the staff notice board stating he was the NASUWT School Representative (para 7, GoC);
  - vi. The Claimant organised an appeal hearing about the Respondent's proposal to dismiss and re-engage staff on new contracts (para 9, GoC);
  - vii. On 26 March 2019, the Claimant attended the appeal meeting and spoke on behalf of NASUWT members (para 10, GoC).
4. Or was the reason for the dismissal that advanced by the Respondent, namely the Claimant's ability to conduct the role as a Deputy Headteacher. Specifically, concerns included:
  - a. The Claimant's visibility around the school and for parents;
  - b. Not taking on the responsibility as Deputy when the Headteacher was absent;
  - c. Reports not being submitted on time;
  - d. Lack of input with the boarding team;
  - e. Claimant's lack of willingness to work as a team with the Headteacher and other SMT staff.

Remedy

5. Should the Claimant's claim(s) succeed, to what remedy is he entitled?

**Procedural Matters**

- 4 Unfortunately, and despite the detailed directions I gave following the earlier hearing, the preparation for this hearing was very unsatisfactory. One of the issues, which had been noted at the previous hearing, was the extensive redaction of the identities of people who created or received emails and within other documents.
- 5 The Presidential Guidance on Remote and In Person Hearings had not been complied with, yet again, so that almost none of the documents in the bundle, and none of the Respondent's statements' contents, could be copied or pasted.

- 6 The documents in the principal bundle were far from in strict chronological order, as required, and there were two additional bundles of documents.
- 7 An issue also arose as to where the burden of proof lay in a case such as this, where the Claimant did not have sufficient continuous service to claim ordinary unfair dismissal, but alleged that he had been automatically unfairly dismissed for an inadmissible reason and therefore did not require that continuous service.
- 8 As a consequence of those matters it was agreed between and with the parties that the Respondent's evidence would be heard first.

**The Evidence**

- 9 I heard the evidence of Mr F de Falbe, Headmaster; Mrs S Lubbock, Bursar, Dr P Ripley, Governor, Lord Leicester, Governor; and Mr D Brown, Governor; on behalf of the Respondent.
- 10 I heard the evidence of the Claimant and that of Mr I A Turner, Head of English, Miss Dinn, Teaching colleague, Mr K Vollerthun, NASUWT Regional Official and Mr K Anderson, NASUWT Regional Organiser on his behalf.
- 11 I was also referred to some of the statements made by those witnesses for the original intended hearing.
- 12 I read the documents I was referred to in an extensive bundle and received written submissions and responses to written submissions from both Counsel. I am grateful to them for the assistance they gave me throughout the hearing.

**Findings of Fact**

- 13 The Claimant was born on 11 January 1973 and qualified as a teacher in 2006 following a career in the civil service and as a public relations consultant. Immediately prior to his engagement by the Respondent he had been employed as the Deputy Head Teacher at the Junior King's School in Canterbury.
- 14 The Respondent is an independent day and boarding preparatory School for boys and girls in the village of Beeston Regis. It was founded in 1948 and accommodates approximately 125 pupils aged 4 to 13.

**2017 – 2018 School Year**

- 15 The parties entered into a formal written agreement by which the Claimant was employed as the Deputy Head Teacher of the Respondent and which he signed on 19 April 2017. His appointment started on 1 September 2017. He, his wife and their three children lived on the premises. Two of their children attended the school.
- 16 The Claimant was provided with a copy of the Respondent's staff handbook. It contained detailed provisions in its capability procedure and also provided for annual appraisal. The only other relevant passage in it appears to have been the requirement that all visitors to the school must be directed to and collected from the main office and should sign in and out.
- 17 The Claimant's duties were not simply to act as the Deputy Head Teacher. He was also the Designated Safeguarding Lead for the school, Head of

Geography (teaching it to Years 6, 7 and 8), Year 8 form tutor and teacher of Religious Studies to Years 6 and 8.

18 Shortly after he started in post the Claimant was thanked by Mr de Falbe for taking on the “unglamorous tasks” at an event the previous evening.

19 On 16 March 2018 Mr de Falbe sent an email to the Claimant in the following terms,

“Thank you for absorbing the “no notice” ideas of an appraisal meeting message yesterday morning and PLEASE do not read anything into it. I simply thought yesterday after the SLT meeting that I had not given you any focused and minuted appraisal attention and, as a new senior member of staff, you deserved it. I have been on countless occasions extremely pleased that you are here - it has been fascinating seeing how you have built strength and met challenges. So I did want to try to commit the start of the process to paper before the term ended. And, - also before the term ends - garnering staff POVs was essential for a DH role. Thus the impromptu message. If you would like to ignore the paper trail you are invited to complete prior to a meeting that is fine and if you would like to stick to the timetable (two weeks before the meeting) then of course we will have to delay the meeting until after Easter which constitutes no problem.

One thing which I think is, on reflection, is the idea that you should be gone early on Friday morning. I did not really take in the details of the family event (christening?); for example, is it on the Friday or the Saturday? Is it really essential or desirable? Though I am disinclined as I think you can see to be awkward where possible I think that it would be extremely bad news and send the wrong message to staff and parents for you to be absent. I am particularly sorry since you have been supreme this term and the comments coming back from staff have said the same\*. The issue about visibility is one thing but the current state of play regarding staff is another more important one. I am sorry to backtrack and would willingly talk through things in advance I've done - indeed alternatives / mitigate re measures which might help.

(\* the issue of no objectives has not impeded this but I am sorry to have rushed things and I suspect this is something we should talk through)”

20 On 18 March 2018 a member of staff, whose name had been redacted, emailed Mr de Falbe to provide some “bullet points” in response to a request he had received. They read as follows,

‘Matt Hughes

1. A well judged blend of authority and approachability
2. The children and staff respond well to his calm unflappable style
3. He has realistic expectations with a clear sense of priorities
4. He has a clear vision of how pastoral and welfare in the school should be working together and I look forward to its implementation
5. I value his support and guidance.”

21 I thought it unfortunate that the writer of this email remained concealed despite the concern I raised about the extent of the redaction of identities in the documents. Whilst I take the view I am entitled to infer that the author was likely to be someone whose judgment Mr de Falbe respected, and therefore more likely to be long-serving and/or senior in rank, there was no direct evidence to that effect. However, it also prevented full cross-examination of the Respondent’s witnesses on that staff member’s views.

- 22 On 9 May 2018 a Safeguarding issue arose that potentially involved Social Services. It appears the Claimant and Mr de Falbe were involved in this early in the day but that Mr de Falbe then told the Claimant that he had made contact with the authorities and passed on a telephone number to the Claimant. The Claimant was clearly unhappy that the matter had not been referred to him as Designated Safeguarding Lead and felt, in my view not inappropriately, that he had been undermined.
- 23 Later in May a parent emailed the school to raise concerns about the manner in which their child had been treated by other children at the school. This chain of emails was so heavily redacted that it was extremely difficult to make any sense of the exchanges at all. However, it did appear that the issue had first been raised by the parent communicating her concerns to Mr de Falbe who had forwarded the issue to the Claimant, placing his trust in the Claimant to deal with the matter appropriately. The Claimant was then in correspondence with the parent for several days.
- 24 The Claimant took part in another appraisal on 24 May 2018. Some of this, at least, was recorded in a document of that date. It started with some bullet points,
- “Have stopped games for the moment - underestimated the issues of the school. Created more time. FDF acknowledged that insufficient hours in the day for this and released MGH from games until further notice.
  - Very long hours being done - FDF noted emails after midnight and very early in the morning.
  - Not front of house - parents have mentioned this a number of times FDF response is that when they need to see him they will discover - and ideal alternative to FDF front man factor - much more accessible (too much so)
  - CPD and future: MGH wanting to ensure that INSET training is constructive both for himself as well as the school
  - Wanting more time in staff room
  - Audit of staff meetings
  - Wanting to teach less
  - Wanting to relinquish the DSL role”
- 25 Mr de Falbe thanked the Claimant very much for all of the work he had done over the course of the year and said he was very pleased that the Claimant had taken the appointment. The Claimant expressed the view that the parent body was ‘extraordinary’ and he had not formed a good impression of them. He thought the children to be lovely and the staff ‘great’.
- 26 Some of those matters were discussed further in the body of the document. Mr de Falbe was clear that he required the Claimant to continue in the DSL role. He also noted that whilst parents wished they saw more of the Claimant he was happy about that situation because between them he and his PA, Vivien Parnell, covered ‘front of house’.
- 27 In the interim, on 25 May 2018, another anonymised member of staff wrote to Mr de Falbe to thank him and the Claimant for their support and to express the view that the Claimant, ‘had been a complete star...’
- 28 On 26 May 2018 the Claimant emailed Mr de Falbe at considerable length (albeit very heavily redacted) to set out what had been taking place in the recent past concerning the ‘Z’ family. Mr de Falbe responded,

“As ever this is a very full summary with full grasp. Thank you so much. My only comments are below in red. .... “

- 29 In June 2018 the Claimant was concerned to learn that one of the pupils at the school had been bullied. He spoke to the alleged bullies, who were brothers, who admitted their conduct. Both were given demerits and one of them was given a detention. The Claimant had lengthy correspondence with the parents of the children involved between 1 and 7 June 2018, however, they made a complaint in an email to Mr de Falbe on 8 June 2018. They believed that the alleged confession had been coerced and their children to have been subjected to a gross miscarriage of justice. They felt themselves to have been let down by the school and intended to give formal notice they would be withdrawing their children from the school.
- 30 The Claimant was extremely upset by this complaint and was supported and counselled by Miss Lubbock. On 9 June he emailed Mr de Falbe and others, who were redacted, to apologise for his lack of composure the previous day which arose from what he viewed as the besmirchment of his character, integrity and professional ability.
- 31 In that email he went on to refer to the effect that matter had on his family and the safeguarding cases he had been involved with. He also expressed his concern at the dominant nature of the parent body of the school and what steps he might take concerning what he thought to be defamatory conduct.
- 32 Mr de Falbe, in an email to Miss Lubbock on 14 June, expressed support for the manner in which the Claimant had dealt with a safeguarding issue but, again, due to redactions, the precise case cannot be identified.
- 33 He also emailed Mr de Falbe on 10 June, who forwarded that email and his response to Miss Lubbock. Once again, these emails are improperly redacted so difficult to fully understand.
- 34 It is clear, however, that the Claimant was distressed, and concerned at his future. In his email of 10 June 2018 he set out his wish to develop his role as Deputy Head and wrote,

“Cover is what I need to shed in order to be given the chance to do a proper, strategic job as a deputy head. It would be another nail in the coffin for me, although over the last couple of days that's pretty obvious anyway.

I am sorry to be so abrupt, but things have become clear for me in the last 36 hours. I have more experience than the vast majority of staff here when it comes to pastoral care, safeguarding and boarding (I'm sorry to say that what [redacted] offer is a long way short of the gold standard provided in many OG schools, though [redacted] ego gets in the way of advice along with [redacted] mindset of only doing things if she gets paid for it and for a certain amount of time. It's a shame it feels like I won't be able to show what I can do. For the record I don't think I've been given a fair crack of the whip this year and as I've said previously have been set up to fail. The parents and staff have never fully understand my role - neither have I - nor how it fits in with [redacted] role and [redacted] responsibilities.

With regards to [redacted], I'm still considering what to do next and will be having a chat with my father's solicitor in the next couple of days.”

- 35 On the same day Mr de Falbe sent a covering email to Mrs Lubbock commented on the opportunity to re employ a former teacher but continued,

But MGH very unhappy - see below. Both [redacted] and I spoke to and apologised to [redacted] (who has had a tough time too) and so far no dice... Do we need to consult LatW read this?

LatW are and were Law at Work, the Respondents legal advisers.

- 36 Mr de Falbe wrote an addendum to the Appraisal dated 24 May 2018 on 18 June 2018,

“Obviously since these words in this meeting the rancour from a set of parents has cast an unpleasant tone which only underlines the note above by MGH. FDF wrote to MGH with feedback from staff (previously not shared) and also to said parents in support of MGH.”

The latter documents referred to in this email do not appear to have been disclosed.

- 37 It was also in June 2018 that Mr de Falbe wrote a review of the term. For reasons that remained unexplained I only received a copy of the last page of that document. It contained the following passage,

**Pastoral and welfare committee**

After nearly a year in a post [the Claimant] has gained a very firm grasp of the challenges arising out of Beeston being without a deputy head for several years. He has tackled this with tact and application to a very high degree and earned huge respect from staff, children and parents (with one or two immoderate exceptions).

- 38 On 19 June Mr de Falbe wrote to all staff concerning staffing and organisation for the 2018 school year. He set out the many changes that had sought to be made at the start of the 2017 school year which he described as ambitious. He went on to say,

However, the remarkable work of [the Claimant] and Amanda Faye, along with the teaching teams input, has yielded, in fact, a hugely improved offering, in terms of teaching time with an effective blend of staff, new and old which I can now take great pride in announcing.

- 39 One of the new teachers the subject of that announcement was Miss Dinn who was to be the first Y4 teacher. She had recently completed a Master’s Degree in Behaviour Analysis and data and would be returning to the school with an additional role of assistant head of SEN.

- 40 On 6 July 2018 the parents who had threatened to withdraw their children gave a term’s notice of that intention conditional on how their views developed as the next term progressed.

- 41 On 7 July the Claimant emailed Mr de Falbe to set out his thoughts on how the end of term should be managed. Mr de Falbe responded to thank the Claimant for his thoughts and to comment, “Huge job impressively undertaken.” and, “- many very positive comments about the day’s observations that went down well.”

**2018 – 2019 School Year**

- 42 The boarding induction on 20 September 2018 did not go as well as planned. The Claimant had no experience of conducting one, and a handbook was only in preparation. The Claimant was also on duty at the time.

- 43 The Claimant was ill in early October and met Mr de Falbe on the 8 October 2018. Mr de Falbe emailed the Claimant that afternoon in the following terms,

"I know you were ill last week and have, to some degree, been up against it lately. However I felt disturbed by our meeting earlier today, ostensibly because of your complete reluctance to meet the parents [redacted] despite this being an avowed intention of your 2<sup>nd</sup> year here - to make inroads with parents. (Your success with the Meet the [observed, Tutor?] was indicative of what they need in terms of input from a DH - not too intrusive, really.) But more particularly I felt disturbed because of a sensation that all is not well more fundamentally - I didn't like to pry. Might I suggest we arrange shorter and more regular meetings and/or meet of an evening, out of the office, less encumbered by the immediate pressures of the day? Why not come as an invitee of the Y8 children tomorrow and then stay for another glass of wine?

- 44 The Claimant replied later that day at considerable length,

"I'm sorry that you think that way and bitterly disappointed you and I can only assume [redacted] given the bizarre exchange with her during the meeting, think I'm trying to avoid a meeting with a parent. It may have passed you both by, but I invited [redacted] to have a chat (or a phone call given the distance) because I knew she and [redacted] couldn't attend the meet the tutor session. It was at my instigation - please show me the reluctance! We were in email contact and she made it clear the priority was to meet you first and foremost and if I could be there, great, if not then we will be in touch in due course and certainly when she is more mobile. [Redacted] arranged the meeting for this Friday when I have prep, it wasn't checked, and we don't have a huge number of staff to stand in - Oundle, half days etc. To be frank I was furious to have my knowledge of that situation questioned and therefore integrity challenged.

I've done the same with other parents of the full boarders and have met a few so far. I am not hiding. If you want me to be more upfront then I need the time to do it. I've been regularly working into the early hours for a reason and not because I'm inefficient.

As I said last year, this year would be difficult because of increased contact time and the need to protect the newer and PGCE staff, which means my time is very finite during the day. To give an example, when you popped to mention [redacted] this morning I was trying to look after [redacted] after she started the day in tears, whilst also trying to sort out the NWT who rang to urge me to cancel the field trip 15 minutes before we were due to leave. That's quite stressful.

Things aren't straightforward here. I felt last year I was dropped in it with no support and with people keen to see me fail - I asked for help, none came. A good example was when I tried to organise the school GK quiz. The silence was deafening and the standard answer I got from most was "oh, [redacted] did that and he never put anything on the shared docs"

I don't mind mucking in and know it's up to me to shift all the old rubbish from the RS room and try to make it a good space for learning and allow it to be the home of three subjects. But that means other things have to lag. I'm also fully aware that you get a lot of people here telling you they have a full plate, but I know there aren't many DH's out there who have the role of DSL, HOD, cover supervisor, fire safety officer, pastoral care, policy oversight for a range of policies as well as the day to day niggles of which



there are many here. Your HM colleagues in the OG may say different to that when you all compare notes, but I've worked in a few and know I didn't imagine things!

As you know being a form tutor, done properly is time consuming [redacted] my sidekick for a reason as it means she doesn't need to do as much when she simply doesn't have the time. The flipside is that I do more and it means I don't have the time for daily meetings - the school and the Governors can't have it all even though I genuinely believe there under the misguided illusion we can compete with OG schools/[redacted] et al on the fraction of the budget.

Thanks for the kind invitation to attend the Y8 supper. I can't attend as I do boarding duty on Tuesday.

45 It was Mr de Falbe's evidence that at about this time he emailed and consulted a Mr R Badham-Thornhill, who he considered to be a mentor concerning the Claimant. It was Mr de Falbe's evidence that Mr Badham-Thornhill was, in common with another mentor he emailed and consulted in November 2018, "astonished" at the "stubbornness" of the Claimant's response and the "self-evident failings in this crucial working relationship" so Mr de Falbe decided to act.

46 I had some concerns about this evidence arising from:-

46.1 The fact that the Claimant's lengthy email to Mr de Falbe cannot, in my view, be objectively described as showing stubbornness, far less to an "astonishing" extent. He is simply setting out his position in response to Mr de Falbe's email.

46.2 I take the same view of the description of that response as showing or illustrating "self-evident failings". The nature of those failings is not set out.

46.3 No emails to either "mentor" were disclosed.

46.4 There was no evidence at all as to what information was provided to these "mentors", or in what context or when it was provided.

46.5 If either was sent a copy of the exchange of emails it was not evidenced.

46.6 What appears to be a note by Mr de Falbe of a telephone conversation with Mr Badham-Thornhill that is said to have taken place on 12 October 2018, not an email as stated in his witness statement:-

46.6.1 Makes a reference to the Claimant in the context of the anticipated departure of a member of staff in the following terms,

" - she and [the Claimant] getting on better now but he seems to see no need to communicate with me at all. Really frustrating, chasing him round for a conversation.

RBT said do your best to include him and keep him onside - if things precarious now. Keep him involved in the application process - and establish if he is a stayer."

46.6.2 Makes no reference at all to the Claimant's supposed "stubbornness", far less "self-evident failings in the working relationship" or any "astonishment".

- 46.6.3 Was not disclosed until after the first hearing, and there was no evidence of any attempt to secure a witness statement from Mr Badham-Thornhill on this important issue.
- 46.7 The other “mentor”, Mr J Griffith, was not contacted for his view for the purpose of this case until 22 January 2021, and that was not disclosed until about March 2021 when Mr de Falbe sent it to Mrs Lubbock. Mr Griffith’s email:-
- 46.7.1 Refers to a telephone conversation with Mr de Falbe in “early November 2018” which,
- “ included fairly detailed discussion about your Deputy Head at that time. His performance and loyalty were giving you significant cause for concern and you explored with me a possible case for dismissal which you felt was quite strong.
- Let me know if you need further details of the things we talked about. I do not have extensive notes but I recall very clearly the key causes of your concern.”
- 46.7.2 Once again this email makes no reference to “stubbornness”, “self-evident failings in the working relationship” or any “astonishment”.
- 46.7.3 It may be that this conversation took place after the exchange of emails, below, in late October, but Mr de Falbe did not rely on it in that context.
- 46.7.4 The email implies that Mr Griffiths made a note of the conversation, but it has not been disclosed and there was no evidence he had been approached to make a statement.
- 47 In light of all these matters I cannot accept that Mr de Falbe’s characterisation of his mentors’ reaction to the Claimant’s email response or his competence is entirely accurate. It appears to me to be a little exaggerated.
- 48 On 25 October 2018 Mr de Falbe emailed the Claimant,
- “HOPE YOU’RE HAVING SOME DOWN TIME. Thank you thus far for the term’s work. I am about to send through to you the advert and JD for DofS aiming to go into Monday's TES paper/online subject to initial official note from AF. For comment and discussion...
- I'm looking at diary planning and the fact that I'm away on Tuesday and Thursday of week beginning 12<sup>th</sup> November. Could you please ensure that you are present on both days in order to deputise effectively. I realised Thursday afternoon is usually your pm off so - with notice - could I ask that you make alternative arrangements such that you are available on site then.
- Would you be able to walk through staff at SMT on the weekend arrangements 10<sup>th</sup> 11<sup>th</sup> and how you have linked up with Roy and the parish council?”
- 49 The Claimant replied on 30 October,
- “Thanks, hope you're having a good break too.
- I will chat with SMT about the 10/11<sup>th</sup>. I've chatted with [redacted] on the phone and I'm meeting with him this Wednesday at his request, though he's said he's already met with many Beeston staff about this! He just wants to

be sure of the plans and I suspect enjoys a meeting. I'll then circulate a note to all relevant colleagues including the staff he says he's already agreed things with and then hopefully I'll reduce the left hand/right hand issue and give some clarity. On the 10<sup>th</sup> I'm working with [redacted] to organise a Remembrance Service for the children in the sports hall - similar to last year - in the same time we would normally have a church service. That is all straight forward and well planned as [redacted] is onto it.

Thanks for the heads up about your movements. I'll be in school as normal on that Tuesday, though it's quite a full teaching day, activities and then boarding duties so I won't be hugely available.

On the Thursday I'm afraid I will still need to take my half day. I'm working on Sunday 11<sup>th</sup> and then away for the Y7/8 rugby tour on the following Friday night, Saturday and Sunday. If I don't take my half day on Thursday 15<sup>th</sup> it means I'll only have ½ day off in an 18 day stretch from 5 November. Every other member of the SMT is in and around that day and I'm sure they're capable of covering the school for a few hours! I moved my half day from Wednesday to Thursday because nobody else in the school has Thursday afternoon off (though [redacted] now does) and we're short staffed on Wednesday afternoons."

50 On 13 November 2018 the Claimant emailed Mr de Falbe, and others who were redacted, to set out under the subject of "Policies and Governors" his understanding of the safeguarding policy and the limited role the Governors played in that policy. Mr de Falbe responded on the 24th November to thank the Claimant for his very thorough work.

51 On 14 November 2018 Mr de Falbe sent an email to an unknown person with an unknown subject in the following terms,

"I hope all is well with you. [The Claimant] gave me an update about today's misadventures and I listened, thinking how glad I am to have a deputy such as he - so thoughtful, considered and calm. I am sorry about the incident but do know that [the Claimant] really does have [redacted] interests at heart.

Mr de Falbe then received an email, it appears in reply, with the sender and subject again redacted,

I am very sorry to that [redacted] fine balance tipped in the wrong direction yesterday - I had felt it coming and had already raised the flag with [the Claimant]. I am always very grateful for [the Claimants patience] and understanding.

52 In the course of cross examination I learned that these email exchanges were with a parent who was grateful for the Claimants patience and understanding. When it was put to Mr de Falbe that his views of the Claimant as described in the first email conflicted with his evidence as to his dissatisfaction with the Claimant he retorted that his email to a parent was "outward facing" and he would not display his truth feelings to a parent. When it was put to him that the email was a true reflection of his thinking at the time he replied that he could accept that, because that is what he had written.

53 I concluded that Mr de Falbe's email to the parent did express his true view of the Claimant as his Deputy at the time he wrote this email. His words of praise in that email were wholly unnecessary in the context in which he was

writing. If, as he has maintained before me, he really did have reservations about the Claimant he could simply have written,

I hope all is well with you. [The Claimant] gave me an update about today's misadventures. I am sorry about the incident but do know that [the Claimant] really does have [redacted] interests at heart.

54 On 25 November the Claimant emailed Mr de Falbe and other members of the leadership team concerning the interviews for the DofS position.

55 Mr de Falbe responded to the Claimant later that day. I thought the content of that email to also reflected Mr de Falbe's then view of the Claimants capability

"Thanks for the excellent work on the DofS candidates (and also for organising the excellent lecture. All very smooth.) I think this merits a discussion on Monday at 2pm - I would like to ask others possibly to contribute to [redacted] any thoughts of yours? It looks unlikely that [redacted] will be around for interview after all - such a short window Friday we will have to think again. We also need to establish availability of start times for these potential staff, I would say.

I have number your points in paras : 1 You identify the visibility factor [redacted] shows - I think this is important - and was what I was hoping/imagining you would do more of (old chestnut, I know) but you are right that despite her energy, dedication, efficiency and etc there are aspects of classroom practice that need attention (Y5 history and RS) with insufficient marking which is [redacted] with the critical [redacted] within. So much to do...

There is a good deal of what you describe that pertains to you - do you want to be an ISI inspector?! (This is one of the attractions of [redacted], I thought). Anyway some good ideas - to agree on and then contact them... Why were you anti [redacted] - and I would favour meeting [redacted] and seeing her teach -good feedback from Shanghai (less via St N's).

Thanks also for the Governors' report. Do you have a separate safeguarding report or will this come via [redacted] - the reported result of when she met you last week - this would seem the usual? I have included a fair bit of this RULER timetable form tutors already so will amend and join. To be frank the final three paragraphs are not sensible to include: to air your gripes in our difficulties (about timings, workload, priorities, and etc etc) in this way will do neither of us any good and make for a very difficult meeting, potentially. I know - and accept that you work very hard, very well and to a high quality (Rome was not built in a day etc etc) - but making it explicit that you teach 10 of a possible 34 lessons is never going to go down well when most DH's have at least a 50% teaching timetable. Combined with taking games off you and the cover I really think it does not play well but these I have done freely and willingly because I can see the benefits you are bringing.

I appreciate what you said in your email to me [redacted] the other day and the main point about this is the way the dinner party gossip takes place - and the fact that this is beyond our control. When obliged to defend your position (which I have been) against accusations on invisibility etc etc I have always wheeled out my stock series of phrases: '[the Claimant] is brilliant once you get to know him; he is in the backroom man to my front man; he is a thinker, a listener a strategist, a problem solver compared to me, the fliberty gibbet... You wait, you'll see ... Go and ask a parent who has had a problem with a child who has had to deal with [the Claimant] (indeed I say

to the likes of [redacted] - "spread the message" whenever they say - which they do - how terrific you are) and you will find out... but this is too big you up, not set you up to fail as a strategist for the school. The day to day management remains a challenge yes - and stability [tough with the wobbly staff and many departures and one or two key personnel) but not making you scapegoat and my/our job is to get others on board. I know you talked to staff a lot which had a soothing effect in year 1. I am considering whether if I speak to the staff more directly (Friday break), and then one to one, it will ease things for you time wise. I need to meet them more often anyway and I'm on the point of setting up some 10 minute meetings. The breakdown of type tasks – YES !- that is a Saturday afternoon job with [redacted]. Very willing to do that.

The SRE I will put within a development update (because I have not rewritten the SDP) and the phrase "review of the school rewards and sanctions policy the changing nature of the school" will alarm. There are other ways of putting it which I will.

Anyway thanks- and I will get to it."

- 56 On the afternoon of 30 November 2018 a Governors meeting took place. The Claimant was later sent, anonymously, a copy of the minutes of that meeting with a note, "Please see item 6 on the back page and share as you see fit." That was received by the Claimant, in a letter prominently identifying him as the NASUWT repetitive, on 28 March 2019.
- 57 That item related to discussions concerning business opportunities potentially of interest to the Respondent.
- 58 There were further exchanges of emails between the Claimant and Mr de Falbe in early December 2018:

4 December, Claimant to Mr de Falbe

"Thanks. I didn't get that report about year 5/6 parents evening. My experience of the evening wasn't chaotic - steady stream of parents. Also, [redacted] has always arranged parents' evenings and that tends to fall neatly into the DoS role. If that isn't the case and any perceived failings are being laid at my door, it would be good to know if the expectation is that I'll organise it. As I keep on saying though, something has to give and it's clear from emails this evening about the play and organisation of it that the staff involved don't have the capability to organise things - the cycle continues were a couple of people do everything, others become deskilled and eyes taken off the ball on the important things."

4 December, Mr de Falbe to Claimant

"1. As per Year 5/6 parents evening no blame or responsibility laid at your door. Mine. Don't worry, simply a fact of the evening.

2. Thanks for the work on [redacted] excellent. I will dig out reports on him from previous school and send to you.

3. Of course you must go to your grandmother's funeral - I simply did not see your email of 28<sup>th</sup>. It is a shame to miss the planned meeting with [redacted] - do you have the document she sent for input?

4. We will have to talk through candidates on Saturday at some point. I think we should sit down and talk things through in any case as per your sensation of feeling that absence was convenient. Simply not the case but it goes back to the old chestnut invisibility. Break time Saturday?"

5 December, Claimant to Mr de Falbe

"Private and confidential"

...

I'm on break duty on Saturday and will also be busy making sure all children are in the right place and ready to get to West Runton so unfortunately can't meet then.

My point about some staff making comments about my sickness absence being conveniently timed comes second hand and that is the only reason why I haven't submitted a formal, written complaint about those staff to you and/or [redacted]. Those snide comments continued because I'm away for a funeral with the resultant change in the interview times, to attend the DSL course (a superb course, best DSL training I've done by far) and my car breaking down. All beyond my control. but the tutting and the questioning of my integrity is demoralising.

I'm also sorry that you still think visibility is an issue - I am around and about as much as I can be, though that is taking a toll on my health. On Monday morning I had back to back meetings with four members of staff - their request before seeing you just before 2. Within that I did a junior lunch break, but didn't have time to eat. I then spent the afternoon with [redacted]. As ever, I'm not moaning or unhappy about all that, I enjoy it - all of it talking to people, not hiding away like the hermit I'm perceived to be by some and which may be exacerbated by your repeated referrals to my apparent lack of visibility. Perhaps I should flounce a bit more like an actor and simply talk a good game? But to do what I did on Monday and absorb some of the staff hits and anxieties means that something else has to give so I can't be all things to all men.

I'm sorry to be flippant, but I'm very unhappy at the moment and feel exposed. In a near 25 year career I've never been a member of any union, but I've recently joined one and I think that sums up the current situation for me.

- 59 Mr de Falbe contacted the Respondent's legal advisers the next day. Their attendance note, made by Mr Paman Singh is as follows,

"He [the Claimant] has not been able to carry out full functions as expected - ie high visibility and accessibility for parents. He also seems overly-sensitive for a management role. No real misconduct. FdF previously was a staunch supporter. He has many strengths but not suited to the role. He has made it clear he doesn't like his role in the school. Tried to help him by taking him off cover and games responsibilities. A document was sent to FdF from [the Claimant] saying that there were various tasks he wouldn't do and that he has joined a union to protect himself. Director of Studies is also moving on he said he is not leaving yet. FdF delegated responsibility to him, he has not come back and has been part of the recruitment process. PS advised on dismissing. Low risk, no qualifying service."

- 60 On 11, 12 and 13 January 2019 there were the following exchanges between the Claimant and Mr de Falbe:-

11 January 20:07, Mr de Falbe to Claimant

I am sorry about the change of plan after all the thought and work to be resourceful. I am afraid when all was said and done the stark choice of being missing a history teacher was too much, too binary and the arrangement open to misinterpretation. This is useful may have some

history and more personalised learning applicable, with room for you to sneak in some geography too.

Happy birthday! Hope you have a good one.

11 January 22:33, Claimant to Mr de Falbe

Thanks for telling me, though it's been time consuming talking to an anxious Rachel about teaching Y8 and the large amount of paperwork she's left. I will need to double up the tandem Geog/History lesson first thing on Monday morning to prepare for the field trip, but after that I won't use another history lesson for geography.

To be honest, a downcast day. Frustrated that the things I've been saying for the last 16 months are ignored, about boarding or sport, including emails this evening and I don't know why I'm here. Brewing for a while, but my experience picking up ideas and good practise in other prep schools - not me being know it all and cocky about my own creativity, just cherry picking the good stuff - clearly isn't of value. I've done a lot of reflection, now coming to the conclusion that my face doesn't fit and I've got my approach all wrong. As I said, this has been brewing for a few months now and I apologise for the melodrama, but I would value a discussion about where I'm going wrong.

I wasn't the only one to notice that the only member of staff who didn't attend Fitty's SEND presentation was Bob, but clearly he has nothing to learn. It's just a coincidence that the vast majority of behavioural issues stem from sport.

12 January 08:59 Mr de Falbe to Claimant

This is, as you say, dispiriting and difficult to read. There is so much of your approach, experience and talent that I value so yes, a discussion would be beneficial. It would be good if you assembled a list of the times or items where you felt suggestions had been ignored. Obviously the most recent (me reversing the MGH to cover [redacted] decision) but there will be others, no doubt. As I said to [redacted] - do not despair - you have a great deal to offer. I will point out [redacted]'s absence from those HO DS and other meetings.

Let me know how you get on with the field trip staffing [redacted] and I maybe hope to help since it is a theoretical half day - though I have Y6 History now of course. Quite late notice!

13 January 17:13 Claimant to Mr de Falbe

Ok, thanks. It is a feeling that I have no impact or effect - be it because of my style, or my face doesn't fit or because I'm hamstrung.

In addition it's been told - second hand - that [redacted] felt or feels victimised by me, I think because I asked him to attend church, arrange a bulletproof evening register for the boarders and told him once not to use [redacted] as an excuse - never asking him to do anything out of the ordinary for a head of boarding, but he said he therefore understood how games are felt here.

61 Later that day there was a further exchange of emails between Mr de Falbe and the Claimant in which the former expressed his mystification why five of his most experienced teachers were taking 25 Y8s on what he saw as a task involving independent work. This resulted in the following further exchanges:-

13 January 5:00 pm Claimant to Mr de Falbe

Actually, just had a rethink and will cancel the trip on Tuesday. I was only just happy about doing it, they are a very different group and some of them are much more immature compared to last year (or any other year group which I've done this with in other schools) and these emails have spooked me slightly and I don't want to take the risk. I would certainly not do the trip with the current Y7 when they move up, so don't want to start a precedent anyway.

We will do on site and local experiments during normal lesson time in the next few weeks.

13 January 17:08 Mr de Falbe to Claimant

I simply cannot believe that with the staff you have it is not a secure trip. It is in the diary, has been planned and the children are expecting to go. Please go with the planned cover as per the first application and offer of cover.

13 January 17:38 Ms Faye, Head of Studies to Mr de Falbe

[The Claimant] has told me he plans to cancel the year 8 trip stop. Such a shame - so much better than a site project.

This will mean that we do need [redacted] in on Wednesday. Can you confirm he is in?

13 February 18:15 Mr de Falbe to Claimant

I am confused now - I thought you were going to go ahead as planned with the staff as per original cover arrangements?

14 January 12:31 Claimant to Mr de Falbe

I am undeniably anxious about the trip, as said before some are immature and I don't completely trust them, some are unworldly, though that latter point is a positive impact of the trip as it goes beyond geography and gives them a bit more independence/confidence.

I used the combined lesson this morning as a test run and will go ahead as planned, but five staff are needed to spread out across the town centre.

The outline plan is attached. I'll circulate this to the staff kindly accompanying.

62 On 15 January 2019 Mrs Lubbock wrote to the Respondent's legal advisors to identify who had been dealing with the inquiry made by Mr de Falbe in late 2018.

63 That email was followed up by a further telephone discussion between Mr de Falbe, Mrs Lubbock and Mr Singh. The latter's attendance note, for a 30 minute discussion, is in the following terms,

"Call with Bursar and Head. Problems have worsened with [the Claimant] now. He has said that his face doesn't fit in emails and that he feels he cannot do the work. [Mr de Falbe] has given guidance and support. He doesn't take criticism/feedback well. Also confirmed that his licence to occupy will also expire and he will have no possession rights."

64 I can only infer from the last sentence in that attendance note that the question of the Claimant being dismissed had also been the subject of



discussion in the course of that call. There is no other explanation for the phrase, "his licence to occupy will **also**<sup>1</sup> expire" in that context.

65 On 30 January 2019 Lord Leicester wrote to the Respondent's staff under the title, "Proposed change to the Teachers Pension Scheme Arrangements". The letter went on to explain that because of a 43% increase in employer contributions to that scheme the Respondent was considering alternatives. The letter proposed an election for a total of three employee representatives, invited queries, and set out a timetable for:-

65.1 A staff meeting on 5 February;

65.2 Nominations for staff representatives on 8 February;

65.3 Election of staff representatives on 11 February;

65.4 Consultation process to start on 12 February

65.5 Consultation to end on 13 March;

65.6 Staff to be informed of the outcome of the consultation exercise on 18 March 2018.

66 On 31 January 2019 Lord Leicester wrote to the Claimant. He apologised for being unable to talk to the Claimant when he had been in school the previous day because the Claimant had been engrossed in an in depth discussion with [redacted]. He thanked the Claimant for all his hard work, "on these lads".

67 On the same day the Claimant wrote to the NASUWT keep them "in the loop" on the staff meeting and his understanding that the Respondent had ruled out remaining in the TPS. Thereafter NASUWT officials corresponded with the Claimant to advise him of their views on the appropriateness of the consultation and the legal requirements that applied.

68 On 5 February 2019 Mr de Falbe had a further consultation with his lawyer, Mr Singh. The subject of this discussion, like all the attendance notes, was "Performance Management". The attendance note read as follows,

Further discussion about when to issue notice - one term's notice is required. PS advises that we can either pay in lieu or we can provide notification in line with his contract (which [Mr de Falbe] believes is last day of current term, so that employment ends on last day of summer term).

69 I concluded that the decision to dismiss the Claimant had been made by this date. The discussions thereafter are not about whether to dismiss, but the process to follow and its timing.

70 Later the same day a staff meeting took place as contemplated. Mr de Falbe, Mr Pallister, a Governor, and Mrs Lubbock were present as were the Claimant and a number of members of staff. Following that meeting the staff met privately.

71 On 6 February 2019 the Claimant emailed Mr de Falbe and Mrs Lubbock, with copies to all the teaching staff, two thank the Respondent for arranging the briefing the previous day. He continued,

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<sup>1</sup> My emphasis

I am sending this email on behalf of the staff present at the meeting as agreed by all of us yesterday.

We have a clear position in that we all want to remain in the Teachers' Pension Scheme. However, we also understand the changing landscape and the need to engage with that, so the names of three nominated employee representatives will be given to you by 1600 on Friday 8 February. Thank you for giving us that opportunity.

To help staff have a clearer understanding of the situation and therefore make an informed choice we would be grateful if the school could provide details of any alternative pension schemes. We would also appreciate if the information about any alternative pension schemes could be provided to colleagues in writing before the start of the consultation. That should include relevant background information indicating the time scale for introducing the proposed changes and be presented in a way that enables colleagues to reflect on the proposals, compare with the existing provision and give their views to the nominated employee representatives.

72 On 7 February Mr de Falbe emailed the Claimant, with copies to Mrs Lubbock and Ms Parnell, to suggest that insofar as he had suggested that he was an elected representative in sending the previous days email that was incorrect. He sought advice from Mrs Lubbock as to the content of that email and she responded, "Great, just the right tone!!".

73 The Claimant responded the same day to inform Mr de Falbe, as he had in his original email, that he had been asked to send it on behalf of the colleagues *present*<sup>2</sup> at that meeting. He copied that reply to all staff.

74 Later that day the Claimant emailed Mr de Falbe to confirm that he wished to stand for election as an employee representative for the purposes of the TPS consultation.

75 On 9 February (a Saturday) at 18:34 Mr de Falbe emailed the Claimant with a list of 14 points he wished to raise with him or have dealt with. Many of those points were partly redacted. The final point was in the following terms,

14 The situation of not having met since last Monday at 2pm (for your appraisal - notes to follow) is simply not satisfactory and is helping neither of us function well, with a list such as above not ideal either.

Undoubtedly, I have sought to give you the benefit of the doubt with regard to being very busy, but the effect of lack of communication is noted by staff and is not a good look for senior management of the school. I am afraid your "reply all" to mine sent to you, with regard to the procedure of assembling candidates for the pension consultation, was a perfect example of senior management not functioning as it should. Could you ensure that we manage a meeting more than once a week? Look forward to chatting on Monday at 2:00 PM anyway.

76 I took the view that Mr de Falbe's criticism of the Claimant for copying his reply to Mr de Falbe on 7 February to all other members of staff to be unjustified. The Claimant's original email of that date had made it absolutely clear that he was sending it on behalf of the staff present at the meeting, and not on behalf of all staff. It was also clear from the content of that email that he was not saying he had been elected as a staff representative. I thought it entirely appropriate for the Claimant to correct that fundamental

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<sup>2</sup> Original emphasis

misunderstanding on Mr de Falbe's part and to ensure that other staff members did not think he had been acting inappropriately.

- 77 On 9 February the Claimant replied to Mr de Falbe to indicate that he would provide a full answer when he had a chance, but wished to confirm that Mr de Falbe's queries concerning his intended absence on Tuesday were unjustified because he was having an operation in hospital, had twice emailed Mr de Falbe to inform him of that without a reply, and had only received permission after he queried the position with Mr de Falbe's PA. He went on to say that he had since cancelled the operation and concluded,

I also wish to withdraw my application to be part of the Beeston Hall School occupational pension consultation. I will not now take part in any discussion about the proposals at school and will place my faith in colleagues and through my membership of a union.

- 78 On 10 February Mr de Falbe emailed Mrs Lubbock to inform her of the Claimants position. He also emailed the Claimant to say that he did not need a point by point response to his email, it was simply an agenda for discussion.

- 79 On 14 February the Claimant emailed Mr de Falbe. He attached his draft appraisal objectives for consideration, following a meeting that had taken place the previous Monday, and continued,

Also, just to confirm that I have submitted an application for another job and they *may*<sup>3</sup> get in touch with you, although I'm not particularly confident that it will get that far.

- 80 On 4 March 2019 Mrs Lubbock emailed Mr Singh, as follows:-

You may recall we had previously emailed about a proposed dismissal of a member of staff and agreed we would give the required notice by the end of March in order to comply with contractual notice periods. Not only is that timescale coming closer, but we are also considering giving notice within the next 10 days in order to allow the staff member to seek employment for September. We do not want this information to become known amongst either the staff or parent body until a time of our choosing, and wondered if it might be possible to add a confidentiality clause to the notice, stating that such a breach would constitute gross misconduct and lead to instant dismissal. Is this something that could be possible, I would add that other than the Chair, Vice Chair the Head and myself nobody else is aware of the planned dismissal.

I look forward to hearing from you.

- 81 Mr Singh replied later that day,

Thank you for your email and sorry I've not been able to get back to you sooner.

I do recall this matter and it's good to know that a decision has now been made as to how we proceed. You can add in a confidentiality caveat and you can also inform him that divulging any details could construe potential gross misconduct but I would be couching this in fairly generic language. My advice would be to shy away from "summary dismissal" and similar nomenclature at this juncture, at least in writing. We can spell out the

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<sup>3</sup> Original emphasis

ramifications of disclosure in a face to face meeting if you feel that it would be required though.

Ordinarily it would not be possible to do this, however, we are making this a suspensive condition on the premise that he lacks the qualifying service to be able to challenge this in an Employment Tribunal for potential unfair dismissal.

82 On 5 March 2019 there was correspondence between Mr de Falbe and redacted persons which appears to relate to the recruitment of a member of staff who may have been an intended replacement for the Claimant. However, the emails, including addressee and senders, have been so heavily redacted I cannot make a finding to that effect.

83 Only 11 March Mr de Falbe emailed the Claimant to thank him for all his many inputs that week and to apologise for not catching up, in particular in respect of the Claimant's appraisal objectives. It appears that events then overtook the completion of the appraisal process.

84 The Claimant replied to express his surprise that he had not received any minutes of Governors meetings, even if any information regarding the TPS had been redacted, and to express the view that the Respondent's intention to leave the TPS was having an adverse effect on staff morale. He was also bemused at the tactics being adopted by the Respondent.

85 On 11 March the Claimant emailed all staff, which would have included Mr de Falbe, to inform them of the NASUWT's intention to hold a meeting to discuss the TPS issue later that week.

86 Following this the Claimant had the following exchanges with Mr de Falbe:-

11 March 15: 38 Claimant to Mr de Falbe

The NASUWT have asked if they can come to school and meet NASUWT members to offer advice about pensions. They will do so after 1745 and suggested Thursday. Are you happy for the meeting to be held on site or would you prefer it to be held elsewhere.

11 March 18:48 Mr de Falbe to Claimant

Quite happy for this to happen then. In the drawing room or where? For NASUWT members only? Or for all union members? Just to be sure we could organise cover for staff wanting to come but involved in duties. Someone from Courtland Schools Consultancy Limited is coming to advise on TPS and on alternatives on Wednesday 20 March as well. This information will be given out asap.

12 March 17:27 Claimant to Mr de Falbe

Many thanks, much appreciated.

It is for NASUWT members only and will be at the end of the day – 1745 - so not to impact on anything which requires cover. I think it will be held in my house or the back of Dets, depends on numbers.

87 On 13 March there were the following email exchanges between the Respondent and Mr Singh:-

Mr de Falbe to Mr Singh, untimed

I discussed a member of staff (Deputy Head MGHughes) with you some time ago with respect of the possibility of not renewing his contract after the

two years. This is becoming critical, in my view so I would like to get some focused advice. You have a copy of his contract, I know, so he started 1st September 2017.

No long ago he asked me if I trusted him to which I answered yes. We are due to meet shortly but notice, if I were to give it, I would delay giving him until after the end of term. Since I last spoke to you he has indicated that he has applied for jobs which might start in April 2020 or September 2020. I know, separately, that his children (Year 4, Year 1 and Nursery) are not really benefiting from moving around - this may yet have a bearing on a decision not to go in 2020 - assuming he were offered.

As I understand it I am completely within my rights to say (before notice date 30th April): I am sorry we are not proceeding with your employment here on account of the fact that it is not working out well. You have expressed on many occasions deep unhappiness with the role and the school. I have made concessions to your work load (removal of Games coaching and the duty of sorting cover each day) but the principle requirements: a) for you to be more visible and b) for you to meet with me regularly, remain the most serious defects and undermine the operation of the school. ... Or words to that effect.

The issue is - or may be - his dispute of this on the grounds that

i) he feels unsupported and exposed - he said something similar in November, adding that he joined a union then

ii) that he and I had a dispute (not a row - I will forward the correspondence if you like) over the procedure over the election of reps for the TPS consultation. Basically, I said 'you may think you are writing as a representative of the TPS body but you are not since myself and at least 3 other were not present at the meeting where you 'agreed' a plan of action nor had the reps been chosen.'

He, to my considerable irritation, 'replied all' to this which was not in my view good manners nor an appropriate move from a member of the senior team. He then withdrew from the volunteering as a rep for the consultation. My reply was 'there is no need for this'. Has he a case to suggest that this was what led me not to continue with his employment?

Look forward to discussing either later (before 5pm) or on Friday?

Mrs Lubbock to Mr Singh at 11:51

Further to our recent conversation, please find attached a copy of the termination clause in MGH's contract.

My specific query is if we ask him to leave at the end of term, yes we pay salary in lieu of notice, but no pension contributions and no accommodation. Therefore we could pay him up salary up to 31 August, of which we would need to deduct paye and nic, but no pension contributions from him, and pay no pension contributions ourselves and ask him to vacate the house that he live in onsite?

If you could please come back to me asap on that, as if we plan to do this I need to include this in this months payroll which needs to be run by Wednesday of this week at the latest.

Mr Singh to Mrs Lubbock, untimed

Good to speak to you this morning.

As there is a PILON clause you can choose to immediately end his contract of employment when you speak with him. He would then be entitled to his basic pay for the notice period but nothing else. If however, you wish to provide him with notice but require him to work it then he will still accrue employee benefits in the normal manner until the termination date (including his licence to occupy accommodation tied to his employment).

- 88 This exchange of emails was evidenced by them appearing in the Respondent solicitors case management system. Although there appear to have been at least two conversations in the course of this exchange there was no attendance note by Mr Singh of those conversations disclosed. Similarly the originals of the emails have not been disclosed by the solicitors or the Respondent. The same is true of the later emails. There are no attendance notes as such, and the documents that were exchanged do not appear to have been disclosed.
- 89 On 14 March the Claimant sent an email 2 Ms Farnell and a redacted person, most likely in my view, Mr de Falbe,
- A late request – [redacted] from the NASUWT are visiting the school for a meeting with some staff this evening. They'll be arriving around 1730 and I'll meet them in the Link. If they arrive early please keep them in the link.
- 90 That email was in accordance with the Respondent's policies on visitors to the school.
- 91 At that meeting the Claimant was asked to be the staffs' NASUWT representative and agreed to be so. He circulated his note of the meeting to members who had not been present (it has not been disclosed), and put a notice on the Union Notice Board in the Staff Room seeking to recruit further members identifying himself as the point of contact.
- 92 I accepted the Respondent's case that that notice did not refer to the Claimant as the NASUWT school representative. However, I accepted the Claimant's evidence that during this period he received post from the NASUWT at the School, which was handled by Ms Parnell, that clearly identified him as that representative.
- 93 On 15 March 2019 Ms C Keates, General Secretary of the NASUWT, wrote to Lord Leicester and Mr de Falbe to inform them of the Union's intention to hold a ballot and to set out the relevant statutory information.
- 94 On the same date she also wrote to the Claimant to inform him of the process to be followed by the union in holding its ballot and asking him to ensure that the list of members was complete. She confirmed that she had informed the Headmaster and Chair of Governors of the Unions intention.
- 95 On 18 March Lord Leicester wrote to each member of staff to inform them that the Governors had decided that the school withdraw from TPS on 31 August 2019 and enrol its staff thereafter in a defined contribution scheme paying an employer's contribution equivalent to the then TPS rate of 16.48%. It informed each member of staff of their right to appeal and the process to be followed.
- 96 On the same date Mr Singh emailed Mr de Falbe,

I've called on a few occasions after having reviewed all of the ancillary documentation but appreciate that you're a busy chap and have not had time to discuss this matter with me. Given I have advised fairly extensively on this matter, I feel it is worthwhile I continue to assist you, rather than parachuting poor Kirstie in at the 11th hour. I've therefore decided to jot down my thoughts in an e-mail.

Whilst I am aware that Matt has taken steps to try and protect himself, merely joining a union and taking part in union activities does not prevent one from being dismissed from one's employment. What we must however do, is make it clear that the reasons for dismissal are rooted in our ongoing concerns about his performance. This is why it is crucial to evidence the various conversations you have had with him to show that the dismissal is in no way linked to his trade union activities. This would result in an automatic unfair dismissal.

My tip for doing so is to build a brief chronology of events which can then be input into the letter of dismissal which can evidence the ongoing nature of our concerns and the various times we have spoken with him about these. It is important to build narrative which depicts a clear demarcation of his performance, our ongoing concerns about this and attempts to alleviate any factors contributing towards the performance issues from any union activities he has partaken in. Preparing a chronology of events will also help you structure the final meeting you have with him.

As a point of order, unlike with Charlotte, I would allow a right of appeal in this instance so that we can flush out any concerns at an early stage.

- 97 It appeared to me that Mr Singh's advice on this point was prescient: that demarcation was the point made in the decision in *Sinclair v Trackwork Ltd* (see below). In addition, in my view the 'on-going nature of our concerns' was already well-documented.
- 98 On 22 March the Claimant emailed Mr de Falbe to ask him whether he was entitled to union representation during his appeal meeting concerning the Respondents decision to leave the TPS. Mr de Falbe did not know the answer and referred the question to Mrs Lubbock.
- 99 On the same date Ms Keates wrote to Lord Leicester to tell him and the Respondent that the NASUWT would represent its members in any consultation and to urge the Respondent not to withdraw from the TPS. On the same date the union advised the Claimant of his right to be accompanied and that arrangements had been made for Mr Vollerthun to be present at the appeal hearings.
- 100 Ms Parnell emailed the Claimant on 25 March 2019 to invite him and his union representative to attend his appeal meeting the following day at 12 noon. The Respondent intended to hold meetings for three or four teachers at a time. They were invited to inform the Respondent if they wish to have an individual meeting.
- 101 Those appeal meetings took place as planned. The outcome, given the same day, was that the appeals were dismissed.
- 102 I did not accept that the Claimant's attendance at an appeal meeting with three colleagues should have made the Respondent aware that he was a NASUWT representative: Mr Vollerthun was present at that meeting in that capacity.

103 On 27 March Lord Leicester wrote to all teaching staff to inform them of the consultation that would follow the dismissal of their appeals before they would be required to sign an addendum to their existing contract.

104 On 28 March the Claimant received the anonymous letter, addressed to him prominently as the NASUWT representative, containing copies of the Governors meeting minutes for 30 November 2018.

105 On 29 March Mr de Falbe emailed Mr Singh,

Last day of term! Please can you see the two documents which are building towards the issue I have raised before. the memo is not sufficiently organised but I am out of time now. I am sending these for you to review please with advice so we can chat before the weekend starts! Busy day - my mobile is 07855 252932. Parents Church party speeches then peace!

106 On 30 March Mr de Falbe emailed Mr Singh,

This is the final draft of the dismissal letter and the memo giving reasons for the dismissal - or non renewal. As I reread it I do think that continuing with a situation of MGH being in post is going to be extremely painful\*, and possibly damaging, to the school, especially the Common Room and given the TPS issues now. The simple way round this would be to pay salary in lieu of notice, an expense I can't countenance, let alone Sandra. If the fact that we have to also pay relocation and accommodation costs elsewhere (which would add a third to this bill I suspect) could be got around (could it Paman?) I might be willing to consider the extra cost, but in terms of Governor support, the bottom line &etc it seems impossible - doesn't it Sandra! There is also the possibility we are faced with a long term sickness factor with MGH on site still, in accommodation that we would need for any replacement - which might be necessary earlier than we would imagine.

I am sharing this discussion as well as asking for as speedy a review of the final copy as you can manage. I may have a meeting with MGH at 9am tomorrow.

107 Mr de Falbe composed a letter of dismissal dated 30 March 2019 addressed to the Claimant. I am unaware of whether that was a first or later draft. It is in the following terms,

Confirmation of End of Employment

You will realise that I sought out an SMT meeting after the term had finished, giving a choice of two times - today Saturday 30th and Monday 1st April, in the hope of securing a face to face with you meeting, prior to delivery of this letter. You will understand, no doubt, the importance of doing this so as not to upset the goodbyes to [Ms Payne]. As a result of your unavailability on these dates, I'm writing instead with this news: the decision that I have decided to bring an end to your employment at Beeston Hall. This is not said without regret because there are many aspects of your contribution and performance which I value greatly, but it has become abundantly clear that this is not an employment which suits either you or us. The attached memo gives more detail behind my reason for this decision but, by some margin, the most influential factor has been your decision to apply for teaching posts elsewhere, which seems a clear acknowledgement from you that the 'fit' with you as Deputy Head and Beeston Hall School is not a good one. You will also be well aware that such a situation cannot benefit the school.



Therefore, your last day of work for Beeston Hall, will, in effect be Friday 12th July. I appreciate this will leave little time for vacating [your house], so your last day of employment will be 31st July 2019 and you will be paid in lieu of notice which is to 31st August 2019. This will be paid into your bank account by this date and we will forward on your pay slip and P-45. I will ask that you please organise the return of the school materials and vacate the house no later than 31st July 2019.

You have the right of appeal against your dismissal. If you wish to exercise this right, you should write to Tom Leicester the Chair of Governors of Beeston Hall School by 10th April 2019 stating your reasons for the appeal.

108 As it happened, the Claimant was in fact available on 1 April 2019 and he was asked to attend a meeting with Mr de Falbe that morning. Mr de Falbe handed the Claimant a signed copy of the letter set out above and explained its contents and the memo that accompanied it, which set out a summary of the reasons for Mr de Falbe's decision under headings:-

- Visibility
- Deputising
- Appraisal
- Meetings and minutes
- Report writing and dress code
- Boarding
- Communication
- Teamwork

109 The memo concluded with the following comment,

This summary makes it perfectly clear that this is not a capability issue. Our Michaelmas meetings and appraisal focused on the need for you to address the visibility issue and to re-prioritise tasks so that you had the possibility of greater success with them. You have many strengths, for example

- caring, thoughtful correspondence- clearly stated opinions, well-argued
- calming, trustworthy influence on those around and beside you
- excellent teaching and relationships with children
- outstanding intervention on individual pupil pastoral cases EB AJ GG JP JLB well followed up and soothing, confidence-giving

However, the remit of the deputy head is much wider than this and the summary articulates the manifold reasons, why the fit is not a good one and simply underlines your own opinion that this is the case, too. The combination of factors required change at the earliest opportunity. I'm sorry to just come to this, but I am perfectly sure you understand why. Our task is now to manage the exit with as much mutual benefit as possible.

110 The Claimant made a note of what took place in the course of the meeting on 1 April 2019 very shortly after it finished. It is, as one might expect, poorly hand written, but mostly legible. Helpfully, he provided a typescript.

111 The Respondent's note of what took place, produced by Mrs Lubbock, appeared almost as if it were a transcript. However, it was headed,

These notes are put together from my brief notes, and recollections of the meeting and are not meant to be a comprehensive record of all matters discussed, but do give a flavour of the important items.

112 Unfortunately Mrs Lubbock had destroyed her original brief notes and had not produced the meta data to establish the date on which her note was created.

113 On balance I preferred the Claimant's evidence on what took place in that meeting. It was brief. Mr de Falbe told the Claimant that he was able to dismiss him in the way he was because the Claimant lacked 2 years continuous service. The Claimant alleged it was because of his being a TU representative, which was denied. The Claimant left the meeting and returned shortly afterwards to ask the decision be rescinded and he would change his ways. He was told the only avenue open to him was to appeal.

114 On 1 April 2019 Mr de Falbe emailed Mr Singh,

[Mrs Lubbock] and I just had a very uncomfortable meeting with [the Claimant] during which I gave him the news that we would not be continuing with his employment. His first response was complete shock. He said 'you cannot be serious, you are ruining my life by doing this' and then, after some discussion about the shock and lack of warning 'what has changed since 5 weeks ago when you assured me that 'my face did fit''. He then made it clear that he rejected several of the points that he glanced at on the Memo and it would be something he would appeal. He would be seeking his solicitor's advice. He then explained how he worked and how he had staff seeing him and speaking of them all being demoralised and tearful, but did not want to bother me with this information. It was his job to absorb this. I asked him about this and he said he would provide a list of the unhappy staff. He again said this would destroy his life and asked if there was anything I could do to review the decision. I said that he should put his points in an appeal - then go away on holiday. He said he would no longer be able to go on holiday. I agreed that 5 weeks previously I had answered 'yes I do trust you' when he asked me this, but that I had not said 'yes you are good fit'. I agreed that I had not been as explicit about the criticisms set down on the memo as they were on the page, but that I had, in each encounter, sought to encourage him, while asking for more visibility and prioritising. He left, angrily.

10 minutes later [the Claimant] came back to see us again to say that his wife would resign her job and he would never take his half day off again. He then began to argue each point in the Memo. I conceded that the diary point (re the visitor from IAPS) was not his fault but otherwise, more or less, just listened. There was rejection of almost all of the points (as per below - noted by SL) which came with his assertion that there were no signals from me that I was unhappy with his performance. I replied that this was not a capability issue at all, simply that I was sure that he was not the right fit in the school. He asked *[sic]* that the memo could and should be part of an appraisal process not a dismissal - I had not given him enough advice and help to improve. When asked 'what had I done to help him' I replied that I had removed the Games commitment and the cover commitments.

He made the point that he had ignored advice from wife and parents that he should not be part of the TPS appeal process, but that since he 'had nothing to fall back on' he had to do this. He wished he hadn't now. I said this was not connected to the letter or memo. He raised the annotated Governors' minute extract that he been posted anonymously from Norwich

and wished it were not the case he has been focused upon. We referred briefly to his leadership course and he said that by taking the MEd on again he was committing to the school for 2 years (I had agreed to this and that he should have 2 days out in May for this). He asked whether it was a fait accompli and whether I already had a replacement line up.

I did not repl [sic]

He asked whether there was anything that I could do now in response to his concessions, looking for me to rescind the letter, but I did not oblige. I said that he really needed to put his points into an appeal and we would reflect on that. He left, again saying this was going to 'destroy his life'. At various points in the meetings he was very tearful and upset.

1. lunchtime - always held up by other people catching him
2. assembly - there when he can be
3. never had an appraisal - even my appraisal of him incomplete and other staff had not done appraisals last year - why was he singled out?
4. accepts he is poor at minutes and meetings - FLP to take over minutes
5. report writing - others are late as well - why him called out?
6. dress code - is acceptable - can't wear a suit each day what is wrong with his appearance
7. boarding - does more than he is supposed to do (often present after 9.30pm) but no feedback from DLP nor would DLP listen to MGH advice
8. absent himself from recruitment process - not his fault - broken down Volvo
9. Geog field trip - needed all staff - no change from previous year staffing - this was a necessary safety arrangement - referred to difficult boys JA and GG
10. Said he felt alone and unloved - needing to be told he is doing well - which has been the case since June 11. only applied for the other job because he knew his son would not be able to rejoin the grammar school sector, so it was for his children not his career
12. not his fault there is no time to meet - simply how busy the day is
13. other staff get away with more than he does regarding how time is spent and duties undertaken. He supports me while others such as BH brief against me (HM) more than I can imagine
14. he has worked well and achieved a lot

I listened to all these points and acknowledged the last one 14 and said again it was not capability but a decision which is best for the school's future, nothing else. I am quite sure he will appeal against it with every tooth and nail, so to speak. I will assemble as much email and documentation evidence to support the defence of the appeal, for the Governors.

Paman, just a thought (not a choice of Sandra's!) which we discussed: if I was to say that if he accepts these points above and we let the contract run to 31/08/19 then we re-employed him on a new fixed term/ temporary contract in another role (such as Director of Studies) for a different salary then he could/he can continue at Beeston for one more year, with a guarantee that he goes in July 2020. This concession is better for his family and him ' Fred, give me one more year' was a plea during the meeting and may make for a more harmonious term next term, but muddies the water for our incoming DofS (who is an Assistant Head in the maintained sector at present and starts with us in three weeks). Look forward to a brief discussion when you had a moment.

- 115 On 7 April 2019 the Claimant emailed Mrs Lubbock to confirm his oral indication that he intended and wished to appeal the decision to terminate his employment. He asked to be advised of who would hear the appeal.

116 Two days later Mrs Lubbock confirmed receipt of that email and told the Claimant that she would inform him of the details of the appeal hearing as soon as she could.

117 On 18 April the Claimant informed Mrs Bullock that Mr. Anderson would be accompanying him to the appeal as his NASUWT representative.

118 On 24 April 2019 the Claimant accompanied a number of his colleagues, MW CG IT, to a consultation meeting concerning the intended addendum to his colleagues' contracts. Mrs Lubbock records in her Minutes of that meeting that she asked him why he was there and he replied as a colleague and NASUWT Rep. Thereafter the meeting continued as intended.

119 On 25 April 2019, shortly after a meeting of a similar nature involving another of his colleagues, [redacted], had started, the Claimant knocked on the door and asked if he could come in. Mrs Lubbock, who also minuted this meeting, again asked him in what capacity. The Claimant replied, as before, that he was the NASUWT staff representative. Mrs Lubbock stated that she had not been made aware of that and the Claimant contradicted her and told her that he had informed of that and had been elected in February. Both Mr de Falbe and Mrs Lubbock stated that they had understood he was just supporting his colleagues yesterday and both were unaware that he was an official union representative.

120 I thought those protestations to be disingenuous, Mr Anderson thought them to be wholly artificial. Mrs Lubbock had not only heard the Claimant tell her he was the NASUWT Rep just the previous day: she had minuted that fact.

121 On 2 May the Claimant's NASUWT representative wrote to Mr de Falbe in the following terms,

We have Mr Hughes dismissal appeal scheduled for Friday 10 May at 3.00pm. I would be grateful if you could provide us with the following information/arrangements:

1. The policy which the hearing is being conducted.
2. A copy of the documentation that will be referred to in the hearing (bundle).
3. A private room where Mr Hughes and I can meet prior to the hearing, and where we can adjourn to during the hearing.
4. A list of Governors who will be in the panel.

I look forward to hearing from you.

122 Mr de Falbe sought legal advice on this from Mr Singh, who replied the following day,

Thank you for your e-mail. On the points raised:

1. Agreed – we can simply explain that with employees with less than two years' service, the School is not legally obliged to follow a process. This is a culmination of months of concerns around performance and fitness for the role.
2. Fine – happy to send any relevant evidence – we should do this anyway as a matter of best practice.

3. Again, your response here is spot-on, we can offer a room but I would point out that Matt has accommodation on the School grounds which can be utilised.

4. You can provide this – if this was an employee with more than two years' service then they would have the right to know about who was making the decision. Nothing lost in providing this information though Fred, it makes us look reasonable.

- 123 On 5 May 2019 the Claimant sent a detailed letter setting out his grounds of appeal against the decision that his contract be terminated under like headings to those set out in Mr de Falbe's memo. Those grounds extended over 7 closely typed pages. He also made a statement for the purposes of the hearing which largely covered the same ground.
- 124 The Claimant also obtained a number of statements from colleagues that were supportive of his case, abilities and character.
- 125 The Claimant's appeal hearing started at 3:00 PM on 10 May 2019. Mr. David Brown was the Chairman, Mrs Lindsell and Dr Ripley, Governors, were the other members of the panel. The Claimant was present with his representative, Mr. Anderson. Mr de Falbe and Mrs Lubbock were also present. Ms Parnell was the note taker.
- 126 At the start of the hearing Mr. Anderson complained that he had not been given the information he had requested in his email of 2 May 2019 and suggested that the Respondent should present their case as to why they had dismissed the Claimant and the employee should then put forward their case and that there should be cross examination.
- 127 Following debate on these issues Mr. Brown asked the school to present its case. Mr. Anderson objected: he had not seen any written case or evidence. Mr de Falbe informed the hearing that he had prepared his own statement. The Claimant asked him if it was different from the letter given to him on 1st April and Mr de Falbe confirmed it was.
- 128 Mr de Falbe then read his statement and Mr. Anderson again objected to that document because neither he nor the Claimant had sight of it before. He suggested the hearing should adjourn and that disclosure of relevant documents should be given.
- 129 Following debate on that issue the panel adjourned. When it reconvened it ruled that it would adjourn the hearing and seek legal advice in the interim.
- 130 Mr de Falbe and Mr Singh spoke again on 10 May 2019, and on 11 May "David", who I assume was Mr D Brown, emailed Mr Singh,

Thanks for your time on the phone yesterday. I wanted to set out below my understanding of your advice and then thought I would rehearse what I will say to the participants when we recommence the appeal hearing to check it is sound. I have one or two questions at the end.

#### Advice

Matt has not reached two years employment so the ACAS procedures are not legally required. As a result there is no requirement for exchange of documentary evidence or for any form of 'cross examination'. The school is entitled to run an abbreviated process and we are entitled as a panel to take evidence verbally if we see fit.

Even where ACAS procedure applies, the union rep (or colleague) is not entitled to take a lead role. The rep may advise his member, may sum up what he has heard but may not otherwise cross examine the employer or be generally disputatious.

Finally, that, in the view of the school, Matt's failure to perform his duties to the standard required by the Head is sufficient grounds to support his being given notice.

#### Recommencement

The plan I have formed is as follows:

1. We will arrange a new date and time via Viv as clerk to the Governing Body. We will say that we wish to recommence and plan to proceed from where we adjourned.
2. We will open with a statement to the effect that we have taken legal advice, have satisfied ourselves that (owing to Matt's length of service) the school is entitled to run an abbreviated appeal process and in particular that it is not required to be under ACAS procedures.
3. We therefore do not require formal exchange of documentary evidence. We will also not permit cross examination. We as a panel may ask questions of either side.
4. The appellant has had the benefit of hearing the school's arguments and we consider more than adequate time to prepare a response.
5. If anyone wishes, we will have the school repeat its statement, otherwise we are ready to hear the appellant's response.
6. We will make it clear that the appellant's union rep can advise his member during the meeting and may offer a summary of his member's case but may not otherwise seek to lead proceedings.

#### Questions

1. We all as a panel felt that the school should have shared with us the letter the Head gave to Matt in 1 April summarising the reasons for his being given notice.

Is it appropriate for us to see this before we recommence?

2. Fred made mention of an amount of email traffic between him and Matt but Beeston servers have apparently lost them all. I think we are content to take evidence of this verbally. Is that acceptable?
3. Fred also mentioned the dissatisfaction of various parents with Matt's performance of his role. We were happy to take this as representing a reason why Fred reached his view on Matt's performance without needing to confirm with parents etc. Does that give you a concern?
4. Matt does not appear to have been given a formal warning as to performance. Is that not required owing to short length of service?

I will share this with my fellow panelists who may have additional questions or may also prefer to have the benefit of a call with you (which we may seek to do next week as a conference call). I will let you know.

131 Mr Singh replied on 13 May,

It was a pleasure to chat with you on Friday evening. Your summation of our conversation accurately depicts the advice I provided and I agree with your suggested plan of action in respect of the recommencement of proceedings.

In response to your specific questions:

1. There is no issue with you having sight of the dismissal letter beforehand.
2. Again, as we are not bound to the stricter parameters of unfair dismissal law, verbal evidence is perfectly acceptable.
3. As above, no concerns - we wouldn't need to have you speak to parents, it's enough that we have confirmation from Fred on this matter (unless you deem Fred to not be credible of course, in which case you could speak to them).
4. Correct, there was no need to put Matt on a formal performance improvement plan (PIP) in respect of his poor performance due to his short service.

132 Once again, I thought it unfortunate that Mr Singh made no attendance note of what was discussed with Mr. Brown before or after their exchange of emails.

133 On 22 May 2019:-

- 133.1 the Claimant prepared a further letter setting out the basis of his appeal, addressed to Mr de Falbe, but now extending to 9 closely typed pages;
- 133.2 he wrote to Mr de Falbe to complain of a data protection breach;
- 133.3 Mr. Anderson wrote to Lord Leicester on the Claimant's behalf to raise a grievance concerning the conduct of Mr de Falbe.

134 On 22 May Mr de Falbe emailed Mr Singh,

Please see the most recent intimidatory tactic from the NASUWT. Seeking these witnesses with 24 hours notice is disingenuous in the extreme. I imagine this is entirely in order to help 'prove' the point that he is being dismissed because of union involvement not any other reason. They may well agree that he was appointed NASUWT re on the 9th March - which is the point - but this has nothing to do with the nature of the short service dismissal. It is also not an appeal regarding a disciplinary hearing.

So we are going to refuse this - quite legitimately - can you confirm this is okay? MGH and union going for broke. Can you reassure the Governors' appeal panel?

135 Mr Singh responded the following day,

Thank you for sending these over. I've reviewed all of them and these appear to be character references, which he is entitled to provide us and for us to consider. I have been away from my desk for most of the day, however, I have looped in my colleague Kirstie who has picked up on some queries that were sent to me and Fred as well as I feel some joined up thinking would be beneficial. It is important that we not be marooned upon the rocks of dubiety in this instance and I think internal transparency is desirable. As both Kirstie and I have been advising different key contacts at different points, one e-mail is useful to lay out the position.

I do not believe this will compromise the integrity of the appeal process either because I have not attached the character references he has provided, nor do I intend to discuss the outcome with you in this correspondence. I am merely wanting to confirm process with you, that is to say that we ought to inform Matt tomorrow that:

- no decision will be made on the day;

- that we have received the ancillary evidence he provided; and
- that we will take this into account when considering his appeal.

As I understand it, Matt had also requested that various witnesses be made available for cross examination, however, there is no obligation to provide these witnesses, even if we were obliged to follow the full process (which we are not) then this would be unnecessarily disproportionate. I would urge a note of caution in this respect and remind you that there is little legal risk here, we do not want to be stymied by notions of strict adherence to a set of self-imposed confines in the Appeal Hearing.

136 Later on 23 May Mr. Brown emailed Mr Singh,

Things move on. I expect as a panel we need to consider these although we will not have them read in the meeting having received in advance.

Please could you confirm.

To which Mr Singh responded,

I would suggest that you stick with the turn of phrase that I have set out below as the appeal is intended to review the rationale of the dismissal but also should adjudicate on whether the dismissal is upheld or not. I advise in such a way because this is the purpose of an appeal hearing. The point you have made is valid, and I would be encouraging you to scope this out further in the outcome letter as this is the only real point of his appeal which carries any legal risk.

The form of words being:-

*Dear Matt*

*Thank you for attending the reconvened appeal hearing on 24th may. Given we are now in midterm, the panel felt it appropriate to provide you with an update as to our decision.*

*Upon review of the evidence and taking into consideration your further points made yesterday, I can confirm that we have unanimously decided to uphold the decision to bring your employment to an end. I appreciate this will be disappointing for you, please be assured this decision was taken after a great deal of deliberation and was not made lightly.*

*I will now compile the rationale for decision and provide you with a formal outcome letter within the next seven days.*

137 The Claimants appeal hearing reconvened at 9:00am on 24 May 2019. The panel made an opening statement outlining the advice they had received to the effect that they were entitled to use an abbreviated process and were not strictly bound by the ACAS Code they indicated that they would hear oral evidence but would not permit cross examination. They set out the procedure they would follow and the manner in which the hearing would be conducted.

138 The detailed note of that meeting extends over 10 typed pages. It was unfortunate that that document had been redacted so that some parts were almost senseless. At the conclusion of the hearing those present were informed that the decision would be sent to everyone at the same time.

139 At 13:25 that afternoon Mr. Brown emailed Mr Singh,

Can I check on the wording. I think we have decided that we should dismiss the appeal as we do not believe that the appellant's role in the trade union



and TPS consultation is in fact the reason for his dismissal. That those are the grounds for appeal are as stated in his appeal letter to us which you will see.

This may be the same as a decision to uphold his dismissal but we are more comfortable with the former wording.

Please could you advise

140 Mr Singh replied promptly to reiterate that the form of words he had provided before were appropriate.

141 I should add that in the course of preparing this Judgment I was able to copy and paste from the attendance notes. I was surprised to find the following email in what appeared to be a blank piece of paper on page 384 of the bundle,

24-May-19 Fred de Falbe Kirstie

Beattie

Matt Hughes Performance

Management

Hi Kirstie

Well it just keeps in getting better here in Norfolk.....

Last night we received a subject access request from Matt Hughes, requesting all documentation from Fred, myself and the governing body. We will deal with that within the 30 day period but am I right in thinking that any email correspondence etc between the school and Law at Work does not have to be disclosed as it is privileged information?

I trust that there were no other 'hidden' communications in that disclosure.

142 On 24 May 2019 Mrs Lubbock emailed Mr Brown.

Please find attached:

- MGH's Appeal Letter
- FdeF Statement read on 10th & 24th May
- Letter and Memo delivered to MGH on 1st April
- NASUWT Letters
- Minutes from 10th and today's meeting

143 On 25 May 2019 at 10:11 Mr Brown emailed the Claimant in precisely the terms recommended by Mr Singh to confirm the panel's decision to uphold the dismissal.

144 On 26 May 2019 Mr Brown emailed Mr Singh,

We communicated with Matt Hughes and the School yesterday morning our decision to uphold the dismissal. Please find attached the bundle of documents as we discussed on Friday. The minutes are in draft and there are one or two wording changes to make (e.g. improve for approval at top of p 7) but I don't have the right software to amend over the weekend.

Our initial draft statement, based on our discussions following the hearing, is as follows:

"The Independent panel thanks all participants for attendance at the appeal held this morning. We have listened carefully to the school's representatives and the appellant and his union representative .

The appeal has been made on the grounds that it is the appellant's role as a member of a trade union, in the TPS consultation and as union representative that has given rise to his dismissal.

On the evidence we have heard from both sides, we conclude that the Head and the Deputy Head failed to form the working relationship required for the proper functioning of a country boarding prep school. This failure has been apparent to both sides since summer 2018 and we have heard evidence to support this fact, as well as the fact that it has worsened rather than improved. This failure may reflect fault on both sides but is, we believe, the principal reason for the Head's reaching a decision to dismiss the appellant on April 1st 2019.

This reason predates the appellant's union membership as well as the TPS consultation. We were not able to establish the date at which the school became aware of the appellant's position as union representative but, given we do not believe this is the reason for the dismissal, this is not relevant to decision.

As a result, we have to dismiss the appeal."

Subsequently, the panel reconfirmed their views yesterday morning and I excerpt below the reasons we each gave:

- I remain convinced that the core reason for Fred's decision to dismiss Matt was the failure to have secured a successful and supportive working relationship between them and that this has been evident to him since last summer. The failure of Matt to step up to the plate after Amanda Faye's departure seems to have sealed it but, in true Fred fashion, he let the issue linger until the end of last term

- I have come to the following conclusion that I agree to uphold the tentative conclusion we made yesterday. This is based on my further conviction that in the knowledge he is not a 'fit' with Fred he does not have a strong skills set for the role as a deputy head. He is not outgoing enough confident enough or reliable enough. He is simply not comfortable or visible enough around parents and in a leadership position. I think he probably knows this himself deep down. Hence his comments that he was 'applying for jobs he never had a hope of getting'. This came out in different ways yesterday over and over again. His popularity and ability as a teacher is not to be questioned nor his one to one relationships with members of staff as a colleague and friend

- I agree that our conclusions yesterday were correct and the union activity is irrelevant. Matt's performance as DH was never satisfactory and, despite Fred's encouragement, he was unable to develop the role as needed.

I have copied my fellow panelists and we look forward to receiving from you a draft letter of decision once you had a chance to review the information provided.

145 On 30 May 2019 Mr. Brown emailed the Claimant to attach a letter setting out the panel's reasons for their decision to uphold the Claimant's termination. the letter read as follows,

I refer to the hearing which took place on Friday 10th May 2019, and the reconvened hearing held on Friday 24th May 2019, to discuss your appeal against your employment being terminated on Monday 1st April 2019. As

chair of the independent panel, I would like to thank all participants for their attendance throughout proceedings at.

The purpose of the appeal hearing was to consider whether the decision to terminate your employment on Monday 1st April 2019 was fair and reasonable in the circumstances.

I understand that the basis of your appeal is that your employment was terminated as a result of your Trade Union activities.

Following the reconvened appeal hearing, I communicated to you that your appeal was rejected and dismissal would be upheld. I will set out the reasons for rejecting your appeal below.

### **Overview**

The evidence we have been presented depicts that you joined the NASUWT Trade Union in November 2018. The fissures in the working relationship were known to both parties and can be traced back to summer 2018, prior to your becoming a member of the trade union.

### **Relationship with Headmaster**

As Deputy Head the panel would expect that the working relationship between the Headmaster and Deputy is one of mutual trust and confidence. That is not what was portrayed throughout the appeal hearings and the evidence that we were presented. Furthermore, you admitted during the appeal hearing that it was difficult to quantify why your relationship with the headmaster was not working but accepted that it was not good.

The Headmaster has stated that there were no regular meetings held between you, outside the timetable weekly meetings. The weekly meetings themselves were often replaced by other events. This could provide a potential explanation into why the relationship was not working. There was also no ongoing dialogue between you. While there is a dispute as to who was at fault for the breakdown of the relationship, the crux of the issue is that the relationship had indeed broken down and that this was the reason your employment was ended.

Upon further review into why the relationship may have broken down, we noted there were difficulties in dealing with three families which resulted in the Headmaster having to become involved. It is clear that you were an effective communicator with pupils and colleagues, as is evident from the character statements which you provided, however we believe you were struggling with the management of School business. The Headmaster has provided evidence to suggest he had longstanding concerns about your performance in this aspect of the role.

You also stated in July 2018 that you were unhappy in your role at the School and had been applying for jobs outwith the School. Whilst this does not mean your employment has been terminated on account of your unhappiness, it led to the conclusion that you may not have been fully engaged in your duties nor likely to remain at the School long enough to make any meaningful improvement in your relationship with the headmaster.

### **Conclusion**

As detailed above, the decision to terminate your employment at the School was not borne out of your Trade Union activities but centrally down to the breakdown of your relationship with the Headmaster due to issues he perceived in your performance in the role of Deputy. The delay in dealing

with the breakdown in relationship is regrettable; however, I believe the correct decision was taken and I reject your appeal. Please be assured that we have conducted a full and thorough review into your appeal and whilst we understand this has been a difficult situation for you, we do not find that the decision to dismiss you was reached unreasonably.

In accordance with the schools disciplinary procedure this decision is final and you have no further right of appeal.

146 On 14 June 2019 Lord Leicester wrote to Mr. Anderson to apologise for the delay in acknowledging the grievance raised against Mr de Falbe on the Claimant's behalf. It had arrived while Lord Leicester was travelling and other people had thought that other Governors were dealing with the matter.

147 On 29 January 2020 Mr Pallister wrote to Mr. Anderson to inform him that following his investigation of the grievance raised on the Claimants behalf he had concluded that the Claimants dismissal was not because of his union activities.

### **The Parties' Submissions**

148 I received extensive submissions from each party, and slightly less extensive submission from each in Reply to the other. It is neither necessary nor proportionate to set them out here.

### **The Law**

149 At the hearing on 27 January 2021 I refused the claimant's application to amend his claim to add claims pursuant to section 146 TULRCA 1992. My reasons for that decision were set out in my reasons for refusing that application, but I remind myself that one of the reasons that he wished to make that amendment was so as to place the burden of proof under that section on the respondent.

### **Statutory Provision**

150 I am therefore solely concerned with the provisions of section 152 of that Act,

**152.**— Dismissal of employee on grounds related to union membership or activities.

(1) For purposes of Part X of the Employment Rights Act 1996 (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

(a) was, or proposed to become, a member of an independent trade union,

(b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time...

and the provisions of Part X Employment Rights Act 1996, unfair dismissal.

### **Time for determination**

151 Both parties accepted that an employer's reason for a dismissal might change between the date of giving notice and the actual termination, and even up to the disposal of any appeal.

### **Burden of Proof**

- 152 The principal issue of law between the parties in this case relates to the burden of proof in respect of a claim under section 146 where the Claimant does not have sufficient service to claim ordinary unfair dismissal contrary to section 93 employment rights act 1996.
- 153 In the course of their submissions to me I was referred to some passages from Harvey and to the following reported and unreported cases:-

Claimant

Ezias v North Glamorgan NHS Trust [2011] IRLR 550,  
Sinclair v Trackwork Ltd [2020] UKEAT/0129/20/OO (V)  
King v Great Britain China Centre [1991] IRLR 513  
Igen v Wong [2005] IRLR 258  
West Kent College v Richardson [1999 ] ICR 511 EAT  
Kuzel v Roche [2008] IRLR 530 CA  
Ross v Eddie Stobart UKEAT/0068/13/RN

Respondent

Smith v Hayle Town Council [1978] I.C.R. 996  
Marley Tile Co v Shaw [1980] I.C.R. 72  
Driver v Cleveland Structural Engineering Co Ltd [1994] IRLR 636  
Speciality Care plc v Pachela [1996] IRLR 248  
Ross v Eddie Stobart UKEAT/0068/13/RN  
Maund v Penwith DC [1984] ICR 143  
Kuzel v Roche Products [2008] ICR 799 CA  
Kuzel v Roche Products [2007] IRLR 309 EAT  
Jackson v ICS Group (EAT/0499/97, 22 January 1998, unreported)  
Tedeschi v Hosiden Bessan Ltd (EAT/0959/95)  
CGB Publishing v Killey [1993] IRLR 520  
H Goodwin Ltd v Fitzmaurice & Ors [1977] IRLR 393  
Driver v Cleveland Structural Engineering Co Ltd [1994] IRLR 636

- 154 I must apologise if I, having set this hare running, do not do full justice to the parties' submission on this issue.
- 155 I have concluded that there is an unbroken chain of authority extending over 35 years, from Smith v Hayle Town Council [1978] I.C.R. 99 to Ross v Eddie Stobart UKEAT/0068/13/RN, that in a case such as this the onus lies on the Claimant to establish that the Tribunal has jurisdiction to hear his claim by proving, on the balance of probabilities, that his dismissal was for an inadmissible reason.
- 156 I thought the passage in the Judgment of HHJ Peter Clark in *Ross* from paragraph 12 to be particularly in point:-

12. However, there is a class of dismissal reasons which are automatically unfair. They are listed in s.108(3). Moreover, the qualifying period of service for ordinary unfair dismissal in s.108(1), 1 year in this case, now 2 years,

does not apply to dismissals for the inadmissible reasons listed in s.108(3). Included among those inadmissible reasons (s.108(3)(ff)) are dismissals where the reason or principal reason is 'whistleblowing' under s.103A. That protection was introduced into Part X ERA by the PIDA 1998 from 2 July 1999.

13. In addition to the automatically unfair reasons contained in s.108(3) ERA, s.152 TULR(C)A 1992 provides for dismissal on grounds related to union membership or activities (a trade union reason).

14. Section 152 begins:

“For purposes of Part X ERA...

The dismissal of an employee shall be regarded as unfair if” (it is for a trade union reason).

15. Thus trade union reason dismissals are treated in the same way as s.108(3) dismissals. In particular, no qualifying period of service is required (TULR(C)A, s.154).

16. The question which arose before the CA in *Smith v Hayle Town Council* [1978] ICR 996, on the provisions of TULRA 1974, was on whom did the burden of proving the reason for dismissal fall in circumstances where the claimant did not have sufficient qualifying service for an ordinary unfair dismissal claim and asserted that he was dismissed for an inadmissible trade union reason.

17. On this question the court was divided. In the minority, Lord Denning MR opined that the burden lay on the employer; the majority, Eveleigh LJ and Sir David Cairns, held that it lay on the employee to show that the tribunal had jurisdiction in view of the qualifying period hurdle.

18. That majority ruling has held sway ever since. It was endorsed by the CA in *Marley Tile Co Ltd v Shaw* [1980] ICR 72 and again in *Maund v Penwith DC* [1984] ICR 143 and followed by the EAT in a number of cases cited in *Harvey*, volume 3 NI/424.

And at paragraph 23

23. In these circumstances we have concluded that it is simply not open to this appeal tribunal to depart from the majority opinion of the CA in *Smith v Hayle*, since consistently followed and applied at both CA and EAT level. We can see no material distinction between the trade union protection afforded by TULRCA and that afforded to dismissed claimants in health and safety, working time and whistleblowing cases. It follows that we reject Ms Mulcahy's submission that the burden of proof lay on the Respondent to show a non-whistleblowing reason for dismissal in this case. The ET was correct in its self-direction at para. 34.

157 I therefore consider that I, too, am bound by the decision in *Smith v Hayle Town Council* [1978] I.C.R. 996 and that in *Ross v Eddie Stobart KEAT/0068/13/RN*.

### **Inferences**

158 The Claimant placed great reliance on my right, in appropriate circumstances, to draw inference. He relied on a passage from *Ezsias v North Glamorgan NHS Trust* [2011] IRLR 550, in which Mr Justice Keith said, at para 58

We have no reason to think that employment tribunals will not be on the lookout, in cases of this kind, to see whether an employer is using the rubric of “some other substantial reason” as a pretext to conceal the real reason for the employee's dismissal.'

159 He also drew my attention to:-

159.1 the EAT decision in *Sinclair v Trackwork Ltd* [2020] UKEAT/0129/20/OO (V) the importance in a case where a Claimant is carrying out protected activities (in that case H and S duties) of ensuring that any reliance by the Respondent on relationship difficulties to which the protected activities gives rise is properly separable from the activities themselves; and

159.2 the well-known principles set out in *King v Great Britain China Centre* [1991] IRLR 513 at 518 and *Igen v Wong* [2005] IRLR 258;

159.3 the repeated use of the ‘did not fit’ phrase by the Respondent.

160 I accepted those as valid principles that I should have regard to and apply if appropriate.

### **Witness Credibility**

161 I was entirely satisfied that all the witnesses I heard were very largely truthful in the accounts they gave of the events they were involved in. There were, inevitably, differences of opinion on what happened at a particular time, but these were nothing remarkable or unusual. Recollections vary widely as between witnesses to an event.

162 I did not accept that Mr de Falbe’s evidence lacked credibility. In particular, and cross referencing some of the Claimant’s submissions at paragraph 23, by way of example:-

162.1 Although Mr de Falbe did not make a note himself, both his mentors confirmed in writing that such conversations took place. I do not consider that the fact I thought Mr de Falbe to have exaggerated their reaction to undermine the oral and written evidence of the conversations that was before me. The evidence that Mr de Fable had concerns regarding the Claimant at this time is clear.

162.2 The Claimant, in his email to Mr de Falbe of 13 January 2019, alleged the [redacted] person had been reported to him as feeling victimised by him. The Claimant drew this evidence out in cross-examination and in my view cannot complain, let alone rely on it as lacking credibility, because the Respondent did not rely on it as part of its case.

162.3 I repeat the latter point in respect of each of the following points concerning Mr de Falbe.

163 I was not impressed by the points taken on the Claimant’s behalf on the credibility of the other witnesses for the Respondent. They seemed to me to be minor and inconsequential. Their credibility on the issues in the case was unaffected.

### **Further Findings and Conclusions**

164 I rely on all my above findings of fact.

165 I deal with each the issues identified on 27 January 2021, in the context of the above legal framework.

**1 When did the Respondent become aware that the Claimant was a member of the NASUWT trade union?**

166 This was on 5 December 2018.

**2 When did the Respondent become aware that the Claimant was the NASUWT school representative?**

167 This is so bound up with the events relied on by the Claimant to establish that his dismissal was for trade union activities that I deal with those issues first.

**i On 6 March 2019, the Claimant became the NASUWT contact at the Respondent**

168 I have no reason to doubt the Claimant's evidence of this. However, it is wholly undocumented. There was no evidence that the Respondent was aware of this on that date..

**ii The Claimant arranged a NASUWT meeting at the Respondent to discuss pensions**

169 The Claimant did this by an email of 11 March 2019. I repeat my above findings for convenience,

“84 On 11 March the Claimant emailed all staff, which would have included Mr de Falbe, to inform them of the NASUWT's intention to hold a meeting to discuss the TPS issue later that week.

85 Following this the Claimant had the following exchanges with Mr de Falbe:-

11 March 15: 38 Claimant to Mr de Falbe

The NASUWT have asked if they can come to school and meet NASUWT members to offer advice about pensions. They will do so after 1745 and suggested Thursday. Are you happy for the meeting to be held on site or would you prefer it to be held elsewhere.

11 March 18:48 Mr de Falbe to Claimant

Quite happy for this to happen then. In the drawing room or where? For NASUWT members only? Or for all union members? Just to be sure we could organise cover for staff wanting to come but involved in duties. Someone from Courtland Schools Consultancy Limited is coming to advise on TPS and on alternatives on Wednesday 20 March as well. This information will be given out asap.

12 March 17:27 Claimant to Mr de Falbe

Many thanks, much appreciated.

It is for NASUWT members only and will be at the end of the day – 1745 - so not to impact on anything which requires cover. I think it will be held in my house or the back of Dets, depends on numbers.”

170 I have concluded that Mr de Falbe must have realised from these exchanges that the Claimant was the NASUWT representative:-

170.1 The Claimant was informing the Respondent of the NASUWT's wish to meet its Members within the school, on a date, at a time and with an agenda.



- 170.2 Mr de Falbe clearly thought the Claimant was in a position to answer queries on behalf of the NASUWT.
- 170.3 The Claimant again imparted information from the NASUWT to the Respondent.
- 170.4 Mr de Falbe, as Union Member himself, and with a long teaching career, must have known that the NASUWT would have a contact person within the school for the benefit of its Members.

Conclusion on knowledge

171 I have therefore concluded that the Respondent was aware that the Claimant was the NASUWT representative in the School no later than 12 March 2019.

172 I consider this to be corroborated by the content of Mr Singh's email of 14 March 2019, in which he makes specific reference to the Claimant's trade union activities.

**iii At the meeting on 14 March 2019 the Claimant was elected as the NASUWT School Representative**

173 Once again, I have no reason to doubt the Claimant's evidence on this issue, but it is wholly undocumented and there was no evidence that the Respondent knew of a formal election.

**iv At the meeting on 14 March 2019 a ballot of union members confirmed they were willing to take industrial action regarding the pension dispute**

174 I repeat my above finding. However, the NASUWT wrote to the Respondent on 15 March to inform it of the intention to hold a formal ballot.

**v After the meeting, the Claimant put information on the staff notice board stating he was the NASUWT School Representative**

175 This small poster did not say that the Claimant was the official representative. It was a recruitment promotion offering the first year's membership free and asking any person who applied for membership to cite the Claimant's name and Membership Number.

176 I find, on balance, that Mr de Falbe was likely to have seen the notice. However, in light of his then existing knowledge of the Claimant activities on behalf of the NASUWT he is unlikely to have paid it very much attention.

**vi The Claimant organised an appeal hearing about the Respondent's proposal to dismiss and re-engage staff on new contracts**

177 This is simply incorrect. The meetings were organised by the Governing Body.

**vii On 26 March 2019, the Claimant attended the appeal meeting and spoke on behalf of NASUWT members**

178 The Claimant did so. He also attended an appeal meeting as such representative on 24 March. My above findings on the Respondent's knowledge by this date are set out above.

**Conclusion on the Claimant's Case**

- 179 I accept that the Claimant has established that the Respondent knew he was acting as the NASUWT school representative rather earlier than the Respondent accepts it did.
- 180 In reality that adds little to his case. The Respondent has always know of the Claimant's activities on behalf of the NASUWT. The evidence of that is plain and undisputed.
- 181 I have given careful consideration to the Respondent's actions in seeking legal advice about its and the Claimant's position, and reached the following conclusions:-
- 181.1 I do not think it particularly significant that Mr de Falbe first made contact with his solicitor the day after the Claimant told him, among other things, that he had joined a union, although he did make reference to that. The other matters Mr de Falbe raised with Mr Singh during that contact, such as visibility, accessibility and sensitivity, are well documented as concerns in the Autumn Term.
- 181.2 The Claimant's email of 5 December also raised a number of other matters that were and would have been of concern to Mr de Falbe, in particular that he was, "very unhappy at the moment and feel exposed".
- 181.3 The next contact with the solicitors is 16 January, after the Claimant has said his "face doesn't fit" and that he felt he could not do the work.
- 181.4 On 5 February there is further discussion about when to give notice. As I have already found, the decision to dismiss had been made by this date.
- 181.5 A similar discussion takes place on 4 March.
- 181.6 Shortly after the email exchanges on 11 and 12 March 2019 Mr de Falbe again made contact with his solicitor. He says that the matter is "becoming critical". He mentions that the Claimant has joined a Union, and also sets out his knowledge concerning the Claimant's applications for other posts and reiterates his earlier concerns regarding visibility, workload etc.
- 181.7 I accepted the Respondent's evidence that the matter was becoming critical because of the requirement that it give one term's notice, and the possibility that the Claimant himself might give such notice.
- 182 Having considered all the evidence in the case I am quite unable to infer that the Claimant's membership of the NASUWT or actual or intended union activities were the primary or principal reason that the Respondent consulted its lawyers to seek advice on dismissing him. It had sought that advice in early December 2018, and there were a plethora of other matters that were, in my view quite reasonably, of concern to the Respondent then and later. They are documented, often arise from what the Claimant himself has said and were in some cases admitted by him.

**3 What was the reason, or if more than one the principal reason, for the Claimant's dismissal? Was it that he:**

- a Was a member of an independent trade union, pursuant to s152(1)(a) TULR(C)A 1992? and/or**

- b Had taken part, or proposed to take part, in the activities of an independent trade union pursuant to s152(1)(b) TULR(C)A 1992?**

183 I have concluded, in light of all the evidence and my above findings, that the Claimant has failed to establish that the reason, or if more than one, the principal reason for his dismissal was in breach of S.152 TULCRA 1992.

**Conclusion on the Respondent's Case**

**4 Or was the reason for the dismissal that advanced by the Respondent, namely the Claimant's ability to conduct the role as a Deputy Headteacher. Specifically, concerns included:**

- a. The Claimant's visibility around the school and for parents;**
- b. Not taking on the responsibility as Deputy when the Headteacher was absent;**
- c. Reports not being submitted on time;**
- d. Lack of input with the boarding team;**
- e. Claimant's lack of willingness to work as a team with the Headteacher and other SMT staff.**

184 Having given careful thought to all the evidence and submissions I am satisfied, on the balance of probabilities, that the Respondent has proved that its principal reasons for dismissing the Claimant were those set out above.

185 For the avoidance of doubt I do not find that the Claimant's trade union activities played no part whatsoever in the Respondent's thought processes: it is simply the case that they were not at the forefront of the Respondent's rationale, far less the principal reason for the decision to dismiss.

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Employment Judge Kurrein  
16 July 2021

Sent to the parties and  
entered in the Register on:  
9 September 2021

S. Bhudia  
For the Tribunal

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