EMPLOYMENT TRIBUNALS

Claimant: **Dr J Lawson**

Respondent: **The Society of St Stephen's House**

Heard at: **Watford Employment Tribunal (in public, by video)**

On: **21, 22, 23 July 2021**

Before: Employment Judge Moor

Representation
Claimant: Miss S Bowen, counsel
Respondent: Mr M Emery, solicitor

I gave judgment with reasons orally on 23 July 2021. The date on the written Judgment states it was sent on 21 September 2021. On 2 November 2021 I was informed that on 19 October 2021 the Claimant requested written reasons, stating the Judgment had been sent on 8 October 2021. On 2 November 2021 I asked the administration to check, but that if the date on the Judgment was correct, then the request should be rejected as being beyond the 14 days allowed. The Claimant then telephoned the Tribunal in December 2021 and February 2022, but his query was not responded to. He emailed again on 3 March 2022 making it clear that the date on the Judgment that it was sent was incorrect and the judgment was only sent on 8 October 2021. This email was only forwarded to me on 8 June 2022, because it had been misfiled. I took urgent steps, with the assistance of the Regional Employment Judge, to find out what date the Judgment was actually sent. It appears were problems with the clerk's Outlook folder at the time, and the administration suspects that the original attempt to send it on 21 September was probably not effective. The Judgment was sent on 8 October in response to a phone call from the parties. I was informed about this on 16 June 2022. I have prepared these written reasons as quickly as possible, based on my full note for the oral judgment. I apologise to the Claimant for the unacceptable administrative delays he has faced.

REASONS

1. The Claimant was employed as a Vice-Principal and Director of Pastoral Studies at the Respondent, a theological college. He brings a complaint of unfair dismissal.

2. The hearing was held remotely by video. I thank the parties and representatives for ensuring the hearing was effective. During the evidence there were odd lapses in connection but none that affected the ability of everyone to participate fully in the evidence: questions were repeated where necessary. During her closing submissions Miss Barlow had to rely on an audio connection.

Anonymisation Order

3. By consent I varied the Anonymisation Order so as to ensure that the identity of the survivor of sexual abuse would not be revealed.

Issues

4. These were initially agreed as

   (i) What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The Respondent asserts that it was a reason relating to the Claimant's conduct, denied by the Claimant.

   (ii) If so, was the dismissal fair or unfair in accordance with ERA section 98(4)? Specifically:

      a. Did the Respondent genuinely believe the Claimant to be guilty of misconduct?
      b. If so, did the Respondent have reasonable grounds for that belief?
      c. Did the Respondent undertake a reasonable investigation and follow a reasonable disciplinary process before dismissing the Claimant and offer him a meaningful right of appeal?
      d. Was dismissal within the band of reasonable responses?

   (iii) If the Claimant was unfairly dismissed and the remedy is compensation:

      a. If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the Claimant would have been dismissed had a reasonable procedure been followed?
      b. Did the Respondent unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures? If so, should the compensation award be adjusted to reflect that failure and, if so, by what percentage amount?
      c. Would it be just and equitable to reduce the amount of the Claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2); and if so to what extent?
      d. Did the Claimant, by blameworthy or culpable conduct, cause or contribute to dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to

reduce the amount of any compensatory award, pursuant to ERA section 123(6)?

5. On the first day of the hearing Mr Emery contended he had an alternative claim that the reason for dismissal was for 'some other substantial reason' namely a loss of trust and confidence. He relied on paragraph 2 of the Grounds of Resistance which reads as far as relevant follows:

> 'The Respondent contends … it had a reasonable belief following investigation that the Claimant had committed acts of gross misconduct ... Given the nature of the misconduct and the significant responsibilities that the Claimant's role entailed the Respondent concluded the only reason it could reasonably take was to dismiss the Claimant for gross misconduct, and/or because it no longer had trust or confidence in him or in his ability to satisfactorily undertake important elements of his role. It decided to dismiss for the latter reason. The Respondent does not accept the Claimant's contention that the acts of misconduct can reasonably be characterized as issues of capability.'

6. Thus, I agreed to add the question whether, on the facts, this was a dismissal for some other substantial reason.

7. The Respondent also contended that the misconduct was so fundamental that it would have been futile to follow any process. It relies on the contention that the Claimant misled it as to action he had taken upon receiving the disclosure from the survivor.

8. I added to those issues that, if the reason was capability, then the question to ask was did the Respondent honestly believe this employee incompetent and unsuitable and whether its grounds were reasonable.

Findings of Fact

9. Having heard the evidence of Canon Robin Ward and the Claimant, and having read the documents referred to in the evidence, I make the following findings of fact. Where there is a dispute of fact, I have decided it by applying the 'balance of probabilities' test: in other words, asking 'what was more likely to have occurred' on the evidence I have heard.

10. I do not normally make general remarks on reliability and credibility of witnesses, preferring to look at each disputed issue in turn to assess the reliability and quality of the evidence on it, which I will also do in this case. But I depart from that practice here to remark upon the stark difference in the way the two witnesses gave their evidence. The Claimant had the hallmarks of a reliable witness: he willingly made concessions against himself; he straightforwardly and directly answered questions put to him, not concerned at what strategic point lay behind them. Unfortunately the same cannot be said for Canon Ward who I found in general to be far less reliable: he rarely made a concession against himself unless forced to do so. For example, he avoided a simple question three times with obfuscations and digressions. The question was whether he had given the Claimant guidance on one occasion, and it was patently clear that, on that occasion, he had not done so, but he could not admit it. He tended to the general rather than the particular

and, I am afraid to say, conveniently hid behind legal advice even when the question demanded he address factual matters beyond it. However, in one important respect he was clear: that he did not characterise the Claimant's conduct (as he saw it at the time) as dishonest. He called it 'negligence'.

11. The Claimant was, before this employment, a parish priest in the Anglican church. He sought a new challenge and obtained work as Vice Principal and Director of Pastoral Studies at the Respondent. It is a theological educational foundation. I will refer to it here, for ease, as the College. His performance as a teacher is not in doubt. The only issue that arose, before the facts leading to dismissal, was his ability to deal with administrative matters. Canon Ward indicated to him (as his manager) that he would provide him with support and guidance on this.

12. The contract of employment includes disciplinary and capability procedures in accordance with staff regulations. The capability procedure is said to be a framework within which the employer will work with employees to maintain satisfactory performance and encourage improvement. The policy is there to ensure that concerns over performance are dealt with fairly '*and that steps are taken to establish the facts and to give employees the opportunity to respond at a hearing before any formal action is taken'* (33). If formal action was required, then the principal would notify the employee in advance of a capability hearing of the concerns and reasons. The employee is allowed a companion at the hearing or appeal hearing. The capability hearing aims included '*establishing likely causes*' and '*identifying whether further measures such as additional training or supervision'* could bring improvement. The process included staged warnings up to dismissal. Dismissal only takes place first if there is '*gross negligence without the need to warrant a final written warning'*. An appeal is available.

13. The events of this case take place against the background of the Anglican church having had a poor history of dealing with disclosures about abuse, particularly sexual abuse, that had taken place within its institution. 'Safeguarding' is now the accepted term for procedures and practices that try to keep people safe from harm, especially abuse. 'Survivor' is also the accepted term a person who has experienced abuse.

14. The Church has established safeguarding procedures including training. It has had to raise the awareness of the risk of abuse occurring within the Church, because in the past many in the Church had not taken disclosures of abuse sufficiently seriously. These procedures and the training that surrounds them seek to establish that those in the Church and its wider community, including for example the College, follow good practice and understand the importance of dealing appropriately with disclosures of abuse.

15. In late 2017 the Claimant was told that he was to be the Designated Safeguarding Lead within the College once he had done level 3 training. He did not object to taking on this position.

16. On 4 December 2017 the Claimant did a 6-hour training course at level 3 – that designed for priests. It established some basic good practice including that:

    16.1. all disclosures of abuse should be recorded. Including the actual words used and actions taken and date;

    16.2. all concerns involving church officers should be notified to the diocesan safeguarding adviser, 127;

    16.3. information was given within the training as to who the Oxford diocesan safeguarding team were, 137.

17. So far so clear, however the safeguarding policy of the College established at paragraph 8.4 para 3, 'in responding to serious situations the designated officer for safeguarding shares information with any relevant diocesan safeguarding adviser.' Thus, the policy suggests that the need to seek advice was for serious cases (162). The flow chart at 167 suggests that serious cases concern a Church officer.

18. I agree with the Claimant's case (as did Canon Ward in his oral evidence) that there was some uncertainty whether the case that the Claimant came to deal with should be reported. It concerned historic abuse that had been dealt with at the time and did not concern a current cleric.

19. The Claimant's role as Designated Safeguarding officer was publicised in the College.

20. From at least November 2018, the College safeguarding policy required the designated safeguarding officer to have a job description. But the Claimant was not provided with one at that stage (160). I do not consider this to be a technical point given that such a document would have set out clearly the responsibilities of the post.

21. The Claimant did not receive the mandatory training for designated safeguarding leads in educational institutions. This was Level 4 training. He was due to go on this course on 21 May 2019. This may be because there was a backlog in training courses, but nevertheless it is a fact that the Claimant did not receive the mandatory training for the role he had been required to take on.

22. The Claimant had never dealt with a sex abuse allegation. This was something Canon Ward did not know when he made his decision. I find this is undoubtedly something the Claimant would have told the College if a disciplinary or capability procedure had taken place before his dismissal.

23. While all abuse cases are serious, some are more complex and serious than others and the policies I have seen acknowledge that. All witnesses agree it is more serious where the alleged perpetrator is still active in the Church or where the matter has not been previously investigated and dealt with. Here Canon Ward agreed that a matter became more serious and urgent when it became apparent that there may have been a 'live'

element to it by the perpetrator having had recent contact with the survivor.

24. Canon Ward dealt with two serious safeguarding disclosures that came up after the Claimant was appointed designated lead. Even when one of those was during Canon Ward's sabbatical in early 2019 because he was in college. In relation to the disclosure that led to a core group meeting (i.e. full investigation) I accept the Claimant's evidence that, while he attended the core group meeting, Canon Ward led on that matter.

25. Canon Ward went on sabbatical. The Claimant was appointed acting Principal but there was still plenty of informal contact between them. I accept that this additional role put more stress on the Claimant.

26. During that period a survivor, X, disclosed to the Claimant that they had experienced physical abuse by a priest when they were a child. The Claimant understood from what X told him that:

    26.1. it had been investigated by the authorities at the time and dealt with;

    26.2. it was historic: X said very much in the past. (Indeed even later in the chronology the survivor maintained their view to Canon Ward that the matter was 'very much closed');

    26.3. the priest was not in ministry and there was no risk to X or others;

    26.4. at this stage, the disclosure was of physical abuse (as it was as late as 28 March, see Rev Gardner's note referred to below);

    26.5. I accept, from what the Claimant was told, that it was not a disclosure of sexual abuse.

27. This was the only disclosure of cleric abuse that the Claimant had experience of dealing with himself without the input of Canon Ward. The Claimant accepted what the survivor said: it was in the past and closed.

28. The Claimant did not make a note of this disclosure (what was said or the date of it) as he accepts he should have done.

29. The Claimant did not report the disclosure to the diocesan safeguarding adviser or seek advice from them. All accept that the training did not cover this specific type of incident that of a disclosure of abuse that had been dealt with where no current priest was involved.

30. What the Claimant did do was report it very quickly to Canon Ward. The Claimant says within 24 hours. Canon Ward accepts it was sometime from the disclosure to about fortnight from the disclosure. He cannot say when, but asserted not within 24 hours. He could give no reason for that assertion and I prefer therefore the Claimant's very clear account, remembering he reported it straightaway.

31. Canon Ward agreed that at this stage he told him of a disclosure about

historic physical abuse that had been dealt with. I find the Claimant did tell Canon Ward that it had been investigated by authorities at the time and he was not as general in his description as Canon Ward suggests. This is because if he had been Canon Ward is likely, given the seriousness, to have asked further questions.

32. Canon Ward contends the Claimant '*assured him he had acted appropriately'* but by, the end of cross-examination on that point, I am not satisfied on Canon Ward's evidence that the Claimant did give him this assurance, for the following reasons:

    32.1. In order to assure Canon Ward that he had acted appropriately, the Claimant would have had to have said something along the lines 'I have recorded and reported it to the diocese'. I find the Claimant did not say that: Canon Ward does not remember him saying so and I accept that the Claimant did not say so because he had not done those things.

    32.2. What I find on balance the Claimant said is in essence what the survivor had said to him, 'It is all sorted'.

    32.3. Canon Ward did not check what the Claimant had done. Nor did he give the Claimant the benefit of his experience with practical guidance. He did not say anything along the lines: make sure you make a note and tell the diocesan safeguarding lead. This is unfortunate, both given that this was Claimant's first serious matter of safeguarding within the College and given that Canon Ward had concerns about his administrative ability and had promised to give him support and guidance on that.

    32.4. Canon Ward may have assumed that what the Claimant was telling him was that *he* had sorted out the disclosure rather than that the allegation had been sorted out in the past but, if so, that would have been a misunderstanding and an unreasonable one to reach on basis of what Claimant said. I am very clear that the Claimant did not say anything specific to Canon Ward that could have led him to understand clearly that he had recorded or reported it.

33. It is accepted by Canon Ward that he understood the training received by the Claimant did not deal expressly with what to do in this this kind of situation: where the abuse was historic but had been dealt with at the time. In his evidence Canon Ward was not even clear himself that, if it was historic and had no live element, then advice should have been taken from the diocesan lead. This is understandable, given the guidance I have referred to above. Canon Ward was clear in his evidence that a failure to report/record at this stage was not a dismissable offence, because it was not a live issue

34. What the Claimant also did was arrange effective pastoral support for the survivor in the form of counselling paid partly by their diocese with Rev. Gardner. It took him some time to secure this funding. The survivor thanked him for these efforts in an email later saying, '*Many thanks for*

this and indeed for your fantastic support'. The Claimant's pastoral support to X is not in question and was plainly a great help.

35. The Claimant says, and I accept, that he told colleagues about the disclosure in staff briefing. He is very clear that he did not report that he had referred matter to diocesan lead.

36. The Claimant spoke to Rev Gardner and to Mark Philpott.

    36.1. Rev Gardner became involved with X because of other needs and her area of lead.

    36.2. She wrote a note to the relevant diocesan officer of her call on 27 March 2019 to the effect that X had disclosed physical abuse. She did not say in this note that it had become live.

    36.3. She wrote again to the same officer the next day again referring to physical abuse. She made no mention that it was live. But said '*X has given [their] consent for core tutors at college and the diocese to be made aware of this in order to provide support'*. She does not say in this note the Diocese had been made aware, rather that X had given their consent.

37. At some point, it is not clear, in one of X's conversations with Rev Gardner (not noted at the time), X had told her that the alleged perpetrator had been in contact and had offered money.

38. I accept the Claimant's clear and consistent evidence to me that Rev Gardner did not share with him or at staff meeting that she had established there was now a live element to the abuse. He was shocked to hear of this and I accept he knew only after dismissal. I accept too that the Claimant did not know about the sexual element and that this was not what X told him but others.

39. I will deal below with what Rev Gardner later told Canon Ward about her conversations with X. What is clear is that she did not make a file note of any of them in detail, as the procedure required.

40. When Canon Ward returned from sabbatical on 1 April 2019, at some point ,he discovered from Rev Gardner that in her discussions with X she had found out that there was a live element to the abuse in that the perpetrator was in touch with X and had offered money. In oral evidence he said it was this that led him to ask for a 'paper trail'. The only note of any disclosure that Canon Ward could find was the brief note from Rev Gardner to the diocese about physical abuse on 27 March. He asked the Claimant for his note of the disclosure on 3 May. The Claimant could not provide one. I do not know whether Canon Ward asked her, but plainly he will have also discovered at that stage that Rev Gardner had not made a contemporary note of the piece of information that made the abuse potentially live and the detail of it. All agree it is this feature of the case that turned it into a more serious case.

41. Canon Ward spoke to the Claimant. I find on balance, contrary to Canon Ward's assertion, that the Claimant gave him a clear account of what X

had told him the few months previously. He offered to make a note of it, but that offer was not taken up. (In oral evidence Canon Ward at first accepted Claimant had offered to make a note and then denied it. I do not find his evidence on this matter therefore reliable.) Canon Ward took over handling the matter. He did not ask the Claimant to write down an account of what had happened since the disclosure.

42. On 9 May Canon Ward spoke to X and obtained an account from them. Although all agree the disclosure was now serious and live, Canon Ward did not make a record of this interview. He telephoned the diocesan safeguarding lead the same day and the matter was then dealt with by them. The emails show it was confirmed the priest had not in active ministry and X did not want the police involved.

43. Thus, there is still no formal college record, dated and signed, of what X said to either the Claimant, Rev Gardner or Canon Ward. None of them made such records.

44. Canon Ward interviewed Rev Gardner about what had happened in his absence and asked her to write a note of what had occurred. She did this on 13 May. He did not show this note to the Claimant. He did not give the Claimant an opportunity to respond to the points she made in it before he dismissed him.

The Gardner Note 229

45. Rev Gardner provided a note 13 May. I deal with this in two ways: what Canon Ward understood from the note at the time and then I will find as fact what on balance did occur for purposes mainly of contribution but also Polkey.

Did the Claimant tell staff that he had told the diocesan safeguarding lead?

46. I find Canon Ward is likely to have understood from Rev Gardner’s first statement in her note that that she recalled the Claimant had told staff briefing that he had informed the safeguarding lead at the diocese.

47. Prior to his decision to dismiss, Canon Ward did not ask Claimant about that.

Did Rev Gardner tell the Claimant about the new disclosure?

48. Rev Gardner says she reported her conversation with X to Claimant and that he outlined the abuse, including that it was sexual, at the next staff briefing. The note does not say expressly that Rev Gardner told the Claimant about the new information. But I find Canon Ward is likely to have understood from her note that Rev Gardner told the Claimant what she had found out and that therefore the Claimant knew it was a live issue.

49. Prior to his decision to dismiss, Canon Ward did not ask Claimant about that.

Did Rev Gardner tell the Claimant it was important to tell the safeguarding lead?

50. From her statement, Canon Ward also understood this to be the case.

51. Prior to his decision to dismiss, Canon Ward did not ask Claimant about that.

What do I decide on the facts I have heard?

52. It is suggested to me that the only course is that, because of the differences between Rev Gardner's note and the Claimant's evidence under oath, one of them must be lying. But that is not the only conclusion to draw and, in the circumstances, not the one that I draw for the following general and then particular reasons:

    52.1. In his evidence, Canon Ward positively rejected the idea that the Claimant had lied to the staff group on the basis of Rev Gardner's account. He suggested the Claimant was negligent towards them. The Claimant was also reluctant to speculate on a motive by Rev Gardner for lying when it was put to him (and only did so when pushed into the idea that this could be the only conclusion).

    52.2. In my view, the conclusion I reach on balance between this note and the Claimant's clear evidence is that the poor communication and a lack of any sensible investigation by Canon Ward led to misunderstanding leading to assumptions and wrong impressions.

    52.3. Plainly there had been poor record keeping by *all* involved in this case not just the Claimant. Rev Gardner will have appreciated that she was in the wrong by not making a contemporaneous note of the disclosure by X; and astonishingly there were no notes of the important discussion about disclosures at the staff meetings.

    52.4. It was a moving situation. Memories are not exact.

    52.5. In my view it is much more likely on balance that what happened here is that Rev Gardner was under the impression that the Claimant knew the information that X had told her, but not spelled it out; she was under the impression that the Claimant had told the diocesan safeguarding lead, but Claimant had not spelled this out.

53. Did the Claimant tell the staff group that he had told the diocesans safeguarding lead? I find on the evidence I have heard that he did not inform the staff group of this is because:

    53.1. There is no oral evidence from Rev Gardner. Her note is less weighty than that of the Claimant tested under cross-examination;

    53.2. Nor is her note contemporaneous but at some weeks remove -

certainly 1.5 months - given the events she is describing are said to have taken place while Canon Ward was on sabbatical.

53.3. In later correspondence (once it became apparent there may be a Tribunal) she acknowledges and states, '*I do not have anything further to add* [to the note of her memory] '*which I do realise may be faulty*'.

53.4. Her note is internally contradictory on this point: on the one hand it states he told the lead. Later her note states she assumes he told the lead. Both cannot be right.

53.5. What he is far likelier to have said is that it was sorted – repeating what X had told him at the outset and that was misunderstood.

54. For the purposes of my findings on contribution: I find on the evidence I have heard that Rev Gardner did not tell the Claimant about the new issue:

54.1. she did not make a contemporary file note about this information from X;

54.2. he denied it under oath;

54.3. she did not give him any written record about this new information, as she ought to have done as he was safeguarding lead;

54.4. her note about this is not completely clear. She does not expressly say she told him about the live matter just that she reported the conversation. Later in her note she explains that because she was '*concerned about that information*', she '*mentioned'* to Claimant that he should report it. A natural reading of this is that she did not tell Claimant this new information at that stage either only that she mentioned it was important he tell diocese safeguarding lead;

54.5. no other staff members were asked their recollections of the staff briefings and even though there was a formal staff meeting minuted, the disclosures were not obviously mentioned at these;

54.6. again, Rev Gardner has not given evidence and the note and her recollection cannot be tested under cross-examination. She acknowledges in later correspondence that her memory may be faulty;

54.7. I am satisfied with the Claimant's clear evidence that he was not told and his description of the shock he discovered when he found it out afterwards.

55. I find, on balance, Rev Gardner did not, for same reasons, tell the Claimant that it was important to tell the diocesan safeguarding lead. I

have his evidence and not hers. His administration was poor, but his intentions were honourable and, if he had been so prompted by Rev Gardner, he would plainly have done so.

56. On the same day Canon Ward sought advice from solicitors on telephone. They advised him erroneously that the Claimant did not have 2 years' service and he did not need to follow a formal procedure before dismissing him. The idea of dismissing the Claimant came from Canon Ward not the lawyers. They advised him as to the legality of that move so far as an unfair dismissal claim was concerned.

57. He confirmed in an email to solicitors that 'the grounds for the dismissal are failure to record and to report appropriately a disclosure of historic child sexual abuse made to you while in the role of acting principal'

58. On 14 May at 11.08, solicitors sent a letter of dismissal to Canon Ward: 'as we discussed if you think that Dr Lawson's actions constituted gross misconduct then you could dismiss him without notice. However … you would need strong evidence of his gross misconduct to defend a claim for breach of contract. Let me know if you would like to discuss this.' He did not take up this advice. The clear inference being that he did not think he had strong enough evidence for a gross misconduct charge. In that letter, the lawyer advises the Claimant had no right of appeal and no right to claim unfair dismissal. This was incorrect.

59. Canon Ward accepts the letter of dismissal was drafted before the meeting he called the Claimant to on 15 May. It is therefore not probative of what was discussed at that meeting, although it misleadingly purports to record what was said.

60. Before Canon Ward met with Claimant I have no doubt whatsoever based on this evidence that had made up his mind to dismiss him. I agree with Miss Bowen that was a knee-jerk reaction in a panic because he now understood the abuse to be sexual with a live element and realised it was more serious than he had first understood from the Claimant. He put the lack of paperwork squarely at Claimant's door. And on the basis of Rev Gardner's note, he assumed the Claimant had given other staff the impression that he had informed the diocese safeguarding lead. It bears repeating he did not put this allegation to the Claimant.

61. The Claimant says the meeting lasted 5 mins. Canon Ward says between 5-10 minutes. It was plainly a short meeting that will have included introductions and the announcement of dismissal and the handing over of the letter and goodbyes. It left Claimant in shock – not been given any warning meeting about a disciplinary or capability hearing or the risk of dismissal. He was not even told he could bring a colleague with him for support.

62. On balance, I find all that happened at the meeting is that the Claimant admitted to not recording the disclosure and not making contact with the diocesan safeguarding officer and he was then he was dismissed.

63. I do not consider there was enough time for either Canon Ward to set out the detail of Rev Gardner's account and his conclusion upon it or for the

Claimant to gather his thoughts and respond. I am as clear as I can be that this did not happen. For this reason I do not find that the purported note of the dismissal meeting is a reliable one. It was definitely not made during the meeting. And I prefer the Claimant's clear evidence that he did not admit to misleading anyone. In evidence Canon Ward recalled the Claimant admitted to misleading him and staff on the 'nature of the disclosure'. Cannon Ward could not explain what this was about in oral evidence. I find the Claimant did not do so. The note says the Claimant admitted to misleading as to the timing of the disclosure. For same reasons, I find he did not do so. Nor could Canon Ward could not explain with any kind of coherence what 'an admission of misleading on ongoing issues' meant. I am afraid I find this note to be unreliable.

64. The Claimant does not recall, but on balance because it is covered in the dismissal letter, which may have prompted Canon Ward to refer to it, he is likely to have referred at this meeting to the impression colleagues had that Claimant had acted appropriately. The Claimant may have accepted that his colleagues had a wrong impression from him as to what he had done. This is because Claimant had said all along to colleagues that it was a disclosure of abuse that had been sorted. But I do not accept that Canon Ward could have understood from that brief discussion an admission of wrongdoing or of deliberately misleading colleagues.

65. The Claimant was not given a chance to explain any mitigation for his failures.

66. The dismissal letter dated 14 May, given to the Claimant at this meeting stated:

'I have serious concerns about your failure to properly record and report a disclosure of historic child sexual abuse made to you… while you were in the role of acting Principal. … I… discovered that you had not recorded the disclosure nor had you reported the disclosure to the authorities.

I am concerned you do not appear to appreciate the seriousness of your failures and the damage you could have caused to the college and others.' Reference was made to extensive training… 'but yet still failed to properly record and report the disclosure that was made to you. More worryingly, you did not seek any help and wrongly gave others, including me, the impression that you had dealt with matters adequately when you should have known that this was not the case.' '…your behaviour and actions have caused me to lose trust and confidence in you and your ability to work for St Stephens going forwards'.

67. The Claimant was given notice to end on 30 Sept 2019.

68. On the same day Canon Ward wrote to the Bishop of Chichester, chair of the House Council (the equivalent of a governing body), to inform him of the dismissal. He stated '*The grounds for the dismissal were negligence in dealing with a safeguarding disclosure made to him…. The issue is one of capability not disciplinary'.* On 20 May, he wrote to the Bishop of Oxford about the dismissal. '*The issue here has been one of incapability not discipline' … in this case he was simply unable to apply the training*

he had received to deal with a disclosure of historic child sexual abuse made while acting Principal here last term'. He attached the note purportedly made at the meeting. He concluded … '*he is a likeable and engaging man and his teaching has been beneficial to the students here but he does not have the capacity to carry out the responsibilities of his role'*.

69. Canon Ward asserted he played down the misleading of staff as a reason for dismissal. He did not refer to this because he did not want the Claimant to have to get into a disciplinary matter with the Church or to lose his license. This rings true: Canon Ward wanted the Claimant out of College but did not want to be involved in a lengthy Church disciplinary procedure about his fitness to practice as a priest. But it remains my clear finding that, at the time, Canon Ward saw this misleading matter as negligence not a deliberate lie.

70. In neither the purported note of the meeting, the explanations for the dismissal to the two Bishops does Canon Ward express his view that he has experienced a fundamental loss of trust in the Claimant.

71. In the light of those findings what as a matter of fact was the reason for dismissal? What was in the mind at the time Canon Ward reached decision to dismiss? Certainly nothing that was said by Claimant at the meeting because he had reached decision beforehand.

72. In my judgment the primary reasons were:

    72.1. The main reason was Canon Ward's view that the Claimant had failed to report and record the abuse once (as he thought) the Claimant knew it to be a live issue. It was clear in evidence that Canon Ward did not think the failing to report and record the first disclosure was dismissible. He saw this as an issue of capability as he described in his letters to Bishop: failing to put into practice training in his role.

    72.2. The secondary reason was communicating with colleagues in a way that gave the impression the Claimant had dealt with the matter adequately, when he should have known this was not the case. I am clear from evidence that Canon Ward did not think the Claimant had lied to colleagues or deliberately misled them. This was not the wording of the dismissal letter, as hard as Mr Emery tried to put that gloss on it. The dismissal letter uses 'impression' 'should have known to be the case' not 'misled' or 'knew it to be the case'. This was negligently misleading not deliberate as far as Canon Ward thought at time. I am supported in my view of his thinking because he had not taken up the lawyer's suggestion of going down the gross misconduct route, as he likely would have done if he thought there had been a deliberate misleading of colleagues over a safeguarding matter.

73. While a different emphasis has been put on those reasons now, I am clear at the time they were in that order of importance.

74. Did Canon Ward have a fundamental loss of trust in the Claimant. He incants that he lost trust and confidence in his ability to do job – no confidence that it would not happen again. But Canon Ward agreed with me before reaching a decision on trust, he would consider what the individual's response to the problem was: were they able to reflect and learn from it? Canon Ward had not gone through this exercise with the Claimant. He had not found out from him whether he was remorseful, what learning he had taken from the whole experience, and so on. He did not think he was a liar that much is clear. So no, on balance I do not accept Canon Ward's statement that he had lost fundamental trust: he had not obtained the information on which he would have based such a view.

75. What is clear procedurally is that the Claimant had:

75.1. no opportunity to be accompanied at that meeting;

75.2. no information beforehand about what the meeting was about;

75.3. no notice of the allegations that he faced;

75.4. no prior warning he might face dismissal at this meeting;

75.5. no opportunity to respond to the information gathered by Canon Ward before dismissal;

75.6. no knowledge that a decision had already been taken that he would be dismissed.

Absolutely no courtesy was shown to him.

76. The house Council would have dealt with any appeal. Thus, on 21 June the Claimant wrote to the Bishop of Chichester, its Chair. This long letter sets out a great deal of reflection and mitigating features of the failures he admitted:

'I have reread the material on safeguarding in the diocese and section 7.4 of the parish safeguarding handbook on non-recent abuse. Of course, I also saw the clear instruction to speak to an official as soon as possible even if one does not think there is risk of immediate harm… On reflection I should have contacted the diocesan safeguarding adviser to discuss what was disclosed to me and taken his advice about how to proceed. I also should have made a separate record of the conversation for the file in addition to the record that was sent within a letter to the DDO. [He then explained how the offending cleric had been removed from ministry; how he had organised counselling with a therapist who specialised in treatment of survivors of clerical abuse. And how this showed how seriously he took the matter pastorally. He went on 'again on reflection I acknowledge that I misjudged my response by focusing on the disclosure as a pastoral issue rather than prioritising it as a safeguarding issue that needed to be treated as seriously as recent allegations. Looking back there was a degree of confusion in my mind because, although I was nominally safeguarding lead, the Principal had always dealt with serious safeguarding concerns personally, even when

on sabbatical. I am deeply upset to have made such an error on an issue such as this.'

77. The Claimant referred to this as an isolated failing, rather than general incompetence. He suggested there was therefore no evidence of any likely further risk. He referred in hindsight to his stressful employment in hindsight and talked about the extra responsibilities he had at time of disclosure, reflecting on what he now recognised as workplace stress.

78. He referred to all procedural failings and the fact he had no idea before the meeting that his job, accommodation and reputation were all at risk. He did not wish to return, but did ask to have his case reviewed in terms of process and decision. He asserted it was unjustified: dismissal was the harshest possible response to an isolated error. He sought a resolution whereby he would be reinstated but would then resign.

79. On the same day he sent a further email stating that he wished to exercise his right of appeal as he understood he had one. This was rejected in a letter drafted by lawyers but in Canon Ward's name 'that the college does not feel that it is appropriate' to hold an appeal hearing with you.

80. The Claimant received gross pay of £2,447 per month, which was agreed in the ET3 and is confirmed by the specimen payslip in the bundle. This amounts to £29,364 per year i.e. £564.69 gross per week. He claims a net weekly loss of pay of £1,966 per month ie £453.71, which has not been challenged.

81. He received free accommodation in the form of a house in central Oxford which was worth to him in comparable rental costs £20,400. (I agree with this estimate of its value from the material shown to me on the cost of comparable rental properties close to his former home in Oxford of about £1,700 per month.) His salary was low relative to his seniority and position because he received the benefit of this house. The agreed employer pension contribution was to the value of £9,353 per year.

82. The loss of his job and accommodation put him to storage costs and removal costs, while he searched for another job of £5,335 + £9,337 = £14,697, which was not challenged. While this is high, I factor into it that had he had to rent a home to avoid these costs, he would have been able to claim the amount of that rent instead. The work of a vicar often comes with accommodation and it was reasonable while he searched for new work (and by definition a new home) he stored his furniture and insured it. I do not include, as a loss attributable to the dismissal, the insurance costs of doing so: while he lived in his house in Oxford he will have had to insure his belongings and that was not paid for by the Respondent and therefore is not a loss attributable to the dismissal. The Claimant did not have to pay for any new accommodation after his dismissal until he found his new work, but had to store his furniture.

83. After dismissal there is no dispute but that the Claimant made reasonable efforts to mitigate his loss. He replaced his loss of earnings from 31 May 2021, when he gained new employment.

84. He was without pay for 86 weeks and 6 days. He claims for 86 weeks and I shall use that figure in my calculation.

Submissions

85. I have been greatly helped by submissions from both representatives.

86. Without doing justice to them, I summarise as follows.

87. For the Respondent, Mr Emery, impressed upon me the seriousness of the failure of record keeping. C3 training was sufficient to know to record and advise the safeguarding lead. The risks of not doing so were great: reputational, cost and the chance that others could be found: taking the survivor's word for it was not enough.

88. Mr Emergy argued Rev Gardner's note was clear evidence that the Claimant had misled colleagues and did know of the way in which the disclosure had moved on and that made his initial failure worse. They cannot both be right. And even if not lying, it revealed gross negligence by Claimant in the way he communicated with others.

89. This was an 'SOSR' case because of the fundamental trust required of the position that was lost by the conduct and failings. Mr Emery referred to the cases of Ezsias and Phoenix. In such a case the ACAS Code on Discipline does not apply and it would, in his submission have been futile to follow any procedure.

90. For the Claimant Miss Bowen argued this was a primarily a capability dismissal.

91. She argued there were no reasonable grounds for deciding he was incapable because there had been no reasonable investigation. The dismissal was therefore unfair.

92. She argued, in any event, this was not a sufficient reason for dismissal but a one-off mistake by an inexperienced staff member. There was a wealth of mitigating features: she referred me to the appeal letter for them. The key to the case was that the Claimant's initial failure was not dismissable, after which he had no knowledge. He did not mislead whether negligently or otherwise.

93. Even if the reason was that he had deliberately deceived colleagues. It was unfair because there were no reasonable grounds without a reasonable investigation of the Claimant's response to this allegation.

94. Otherwise this was a wholly unfair procedure for the reasons set out in the Particulars of Claim.

95. Any Polkey reduction should be zero. There was no chance here of a fair process leading to dismissal. Canon Ward did not consider the Claimant was lying. At worst this was negligence. Rev Gardner acknowledged her note of what happened some weeks before could be faulty. We have not heard from her, whereas the Claimant's evidence was clear.

96. Miss Bowen argued for an ACAS uplift. This was a knee-jerk response and wholly unfair.

97. Nor was this a SOSR dismissal because it was obviously about capability and/or conduct.

98. She argued the statutory cap should include not only basic pay but the value of the Claimant's home.

Law

99. The legal principles for me to apply are largely agreed.

100. Under section 98(1)(a) of the Employment Rights Act 1996 (ERA), I must first ask whether the reason or 'if more than one, the principal reason for') the dismissal is potentially fair. It is if it falls under section 98(2): for capability, or conduct. Or if it is 'some other substantial reason of a kind such as to justify dismissal of an employee holding the position which the employee held' (SOSR). The 'other' there being other than the reasons set out in 98(2).

101. Mr Emery referred to Ezsias v N Glamorgan NHS Trust – in which Mr Ezsias had been dismissed because of a breakdown in relationships. One issue was whether it was open to the Tribunal to find SOSR for the dismissal when the reason for the breakdown could have been described as Mr Ezsias' conduct. Para 50 provides:

We return, then, to the Tribunal's finding … about the reason for Mr Ezsias' dismissal. There could, at first blush, be said to be an element of ambiguity in what the Tribunal said. The Tribunal could have been saying that Mr Ezsias' behaviour, i.e. the behaviour which had caused the breakdown of working relationships with his colleagues in the Department, had been the reason for his dismissal. If that is what the Tribunal had been saying, it is possible that the action which the Trust took against Mr Ezsias should have been classified as action taken against him because of his conduct. But it does not necessarily follow that it should have been classified in that way. After all, in Perkin the Court of Appeal classified the reason for Mr Perkin's dismissal as coming within the category of "some other substantial reason", even though it was his manner and management style which had led to the breakdown of relationships. On the other hand, the Tribunal could have been saying that Mr Ezsias had not been dismissed for the things he had done which caused his relationship with his colleagues to break down, but rather for the fact that working relationships had broken down. In other words, the fact that Mr Ezsias had been in the main to blame for that might have been part of the history, but it was immaterial to why the Trust chose to take action against him. If that is what the Tribunal had been saying, then the Tribunal's finding that Mr Ezsias had been dismissed, not for a reason relating to his conduct, but for some other substantial reason of such a kind as to justify his dismissal, becomes understandable.

102. I must then, under s98(4) ERA, consider whether the dismissal was '*fair or unfair having regard to the reason shown by the employer*.' This depends on '*whether in the circumstances, including size and*

administrative resources of employer, it acted reasonably or unreasonably in treating it as a sufficient reason for dismissal.'

103. Part of this question involves me applying what has become known as 'the range of responses test'. I do not substitute my own view of what I would have decided. I consider whether dismissal falls within a range of sanction that a reasonable employer could have chosen in response to the reason.

104. As part of looking at '*equity'* under section 98(4) ERA I consider the procedure.

105. If the reason for dismissal was conduct, then generally I will ask whether there was a genuine belief in misconduct, based on reasonable grounds, after a reasonable investigation. Plus, I have regard to the ACAS Code on Discipline.

106. If the reason was capability, then I agree with the principle in Alidair v Taylor at page 451G that I should ask did the employer honestly believe on reasonable grounds that the Claimant was incapable or incompetent.

107. In general a fair procedure either for discipline or capability requires the employee to be given an opportunity knowing the allegations or problem; to state his case and explain; to be given time to prepare knowing those allegations or concerns; to have the opportunity to bring a colleague with him to the meeting; and the opportunity to appeal any decision. I apply the standard of a reasonable employer (not my own) and I look at the procedure as a whole.

108. Section 123(1) ERA requires me to make an award that is 'just and equitable in all the circumstances having regard to the loss sustained by the Claimant in consequence of the dismissal in so far as that is attributable to the action taken by the Employer'.

109. If the ACAS Code on Discipline applies, then I can consider whether to make an uplift of any award if there has been an unreasonable failure to follow the Code and it is just and equitable to do so. The ACAS Code of Discipline only applies to misconduct cases.

110. I must consider whether to make what is called a 'Polkey reduction'. In other words, I must consider what were the chances of a fair dismissal following a fair procedure by this employer. This is a hypothetical question taking into account what information is likely to have been available; who the decision-maker is likely to have been and so on.

111. On the question of whether an award should be reduced for what is called 'contribution' I refer to the list of issues:

    111.1. For the basic award: I can reduce if any conduct before dismissal makes it just and equitable to do so.

    111.2. For the compensatory award: I can reduce if conduct caused or contributed to dismissal, if it is just and equitable to do so.

112. On the question of the statutory cap. Section 124(1ZA) ERA applies a cap to the compensatory award of 52 x week's pay of the person concerned. Sections 220 and following of the ERA establishes how to calculate a 'week's pay' for these purposes. For this case, it means the amount payable under the contract because 'remuneration' did not vary with the amount of work done, section 221. Remuneration now usually means money, although its definition in the OED includes reward for work. Reading 'pay' and 'remuneration' together, I conclude the statutory cap relates to money payments and not benefits in kind received by an employee even if those benefits are substantial, like accommodation. This might be regarded as unjust, but it seems to me the meaning of the words in the Act of Parliament are clear.

113. Where the compensatory award is reduced because it exceeds the statutory limit the prescribed element must be reduced for recoupment purposes only by the formula P x statutory cap/total compensatory award i.e. before applying the cap, where P is all past loss not including loss of statutory rights prior to the calculation date, see the Reg 4(2) Employment Protection (Recoupment of JSA etc) Regulations 1996.

Application of facts and law to issues

What was the principal reason for dismissal?

114. My findings of fact establish the employer had reasons both of capability and conduct. But the principal reason in Canon Ward's mind at the time in my judgment was one of capability, namely the failure to report and record. This was a matter of capability– as he put it, of not translating training into practice. Further the communication with colleagues Canon Ward called negligence. He did not think it was a deliberate lie. Carelessness is about capability not conduct. Canon Ward did not think this was gross misconduct. He communicated his reasons as capability to the Bishops. Even if I am wrong about this, communication was secondary to the first reason of failing to report. Therefore the principal reason for dismissal related to capability.

115. I am not persuaded that the reason was some 'other' substantial reason.

 115.1. I have found that Canon Ward was not in a position to determine if he had lost trust because he had not established from the Claimant his thoughts about the failures and could not have concluded, therefore, that he could never trust him again.

 115.2. Even if there was a loss of trust, that was based on a reason to do with capability. The reason for the dismissal was the failure in capability that led to such a loss of trust. The 'other' in 'SOSR' is important. The reason for dismissal was capability as Canon Ward clearly put in his later letters.

 115.3. I do not read Ezias as requiring me, where there is a loss of trust, to decide that is an SOSR anyway.

Did the Respondent have an honestly held belief that the Claimant was incapable/incompetent on reasonable grounds?

116. Plainly there were reasonable grounds to believe the Claimant had not recorded the initial disclosure nor sought advice on it. That much was admitted. But the key here is Canon Ward's admission that this was not a dismissible matter. His concern was that he thought the Claimant had not reported or recorded the issue when it included a live element and that he had negligently led colleagues to believe he had done so. It is that believe that I find not to have been held on reasonable grounds because:

    116.1. No r employer would have reached that conclusion without establishing the facts by putting Rev Gardner's note (at the very least) to the Claimant, giving him time to prepare. It would have followed the process set out in its own procedures: establishing the facts, allowing him to ask questions, to present and to respond to evidence and to make representations and to provide an explanation for those failures admitted.

    116.2. This was a knee-jerk response. What Canon Ward did was assume Rev Gardner's memory was correct. He conflated the initial account he heard from the Claimant with the later one from Rev Gardner and assumed that the Claimant knew this was a more complex live disclosure.

    116.3. No reasonable employer would implicitly accept one employee's non-contemporaneous note without asking the other employee about it. What the Claimant had to say could very well have changed Canon Ward's view about what happened, especially that he did not know the matter concerned a live element, and it could have led to the conclusion that there had been miscommunication.

    116.4. Further there were no reasonable grounds for concluding that the Claimant was incapable in the future on the failures that were accepted: his appeal letter shows genuine reflection and upset. Plainly this had been a big learning experience for the Claimant. There was a wealth of mitigating features here that any reasonable employer would have had regard to before reaching any conclusion:

    116.5. This was a first failure with no warnings;

    116.6. It was a serious and complex disclosure that moved on.

    116.7. The Claimant understood the matter to have been closed, not involving a current cleric, and investigated at the time

    116.8. His was a wholehearted admission. It showed insight and reflection since and an understanding of why he needed to have recorded and reported even the disclosure he had received. This feature did not suggest he would make this mistake again.

116.9. He was not given guidance by the person in college who had taken the practical lead on these matters up until then and who had promised to give him guidance on administration.

116.10. What the Claimant did do: the support shown to the survivor, the survivor's statement of this; and that he told others straightaway.

117. In my judgment therefore, there were no reasonable grounds for the decision on incapability and the Respondent acted wholly unreasonably in treating this reason as sufficient for dismissal. It was unfair.

118. If I am wrong about this, I would still have found the dismissal to be unfair on procedural grounds. It was procedurally completely defective. I have applied standard of a reasonable employer – what would a reasonable employer have done in a capability matter such as this? At very least followed its own procedure and before reaching a decision:

118.1. Before any meeting, put its concerns to the Claimant in writing, including Rev Gardner's note.

118.2. Warned him that this was being treated as a capability matter.

118.3. Given him an opportunity to explain, respond, and present his own evidence.

118.4. Considered mitigating reasons.

118.5. Allowed him support of a colleague at that meeting

118.6. Allowed him an appeal.

119. The Respondent did none of those things and the dismissal was therefore procedurally unfair.

ACAS Uplift?

120. The ACAS Code does not apply because I have found the reason one of capability.

Polkey?

121. I then ask the Polkey question: what were the chances of a dismissal if a fair procedure had followed by this employer? This is a difficult and hypothetical question but one I must answer.

122. What would have happened if this employer had applied its capability procedure:

122.1. First: there is a chance that after all reasonable investigation including hearing from the Claimant and Rev Gardner, that the Claimant's account would not have been accepted as I have accepted it. This would have involved not believing him – his denial that Rev Gardner had told him about the later disclosure making it more serious and live and that still did not record or

report the matter.

122.2. This would have been a far more serious failing and this employer, against the background of the historic failures in the Church, and the risks to X and others of not recording and reporting, is likely to have regarded it as very weighty and grossly negligent.

122.3. If not believed, the despite the wealth of mitigation, the Claimant is likely to have been dismissed as grossly negligent in not recording and reporting a live abuse matter, bearing in mind the history and importance impressed upon all in the Church to do so, his C3 training being adequate to get that message home.

122.4. But in my view, it is far more likely that, having heard matters set out in a measured way, the decision maker would have concluded for reasons along the same lines as I myself have found on the facts that I have heard, that the Claimant and Rev Gardner held different information at different times and Rev Gardner made wrong assumptions about what the Claimant knew and had not remembered correctly what she had told him. They would have found that he genuinely did not know that the disclosure had become one of current potential abuse. In those circumstances there was no chance of dismissal because his initial failures were not dismissable offences, on Canon Ward's evidence.

122.5. Given Canon Ward did not think the Claimant was lying about misleading staff as to reporting, I do not consider the chance of the Respondent finding he had deliberately misled the staff as high at all. But the Respondent could have found that he had been inept or careless in his approach and staff therefore were left with a wrong impression of what he had done.

122.6. Of course, the decision maker would have noted Rev Gardner's failures to record all of her conversations with X in a careful record. And would have noted Canon Ward's failure to do so. too.

122.7. In considering sanction: the decision maker would also have weighed in the balance the mitigating features I have set out above: genuine remorse and reflection and insight; a first incident; against the background of no guidance from the person who in practice had previously taken the lead. They would have been aware of the mandatory training in May 2019 the Claimant had not yet done about (or depending on the date of the hypothetical hearing) had just been on. If they accepted his account as honest, applying this mitigation they would not have dismissed.

123. Looking at the matter overall, acknowledging that the Rev Gardner note does provide evidence that could have led the Respondent not to believe

the Claimant, I consider there was a 20% chance of him being dismissed if a fair procedure had been followed. I assess it at 20% because I have seen the Claimant and how clear he has been to me. I find this employer, acting reasonably, would far more likely, having heard him, have accepted that he was honest and that Rev Gardner's recollections were faulty, mistaken or born of mistaken impressions. They would have accepted he did not know the matter was more serious. And they would have accepted that he had very much learned from his mistakes. For all the mitigation reasons I have set out above they would have been satisfied no threat of this happening again and it had been very much a learning process.

124. Therefore I will make a 20% reduction to the compensatory award.

Contribution?

125. On the Basic Award I make no reduction for contribution. On the evidence I have heard, the only conduct was about capability: the Claimant's admissions of a failure to record and report the initial (less serious) disclosure. These do not warrant a reduction to basic award for these reasons:

125.1. I accept those failures could be regarded as blameworthy.

125.2. I must then ask whether it is just and equitable to reduce the award. I take into account here that the conduct was not regarded by Canon Ward to be a dismissable offence.

125.3. It would have been dealt with under the capability procedure by likely a warning and the Claimant would have retained his employment.

125.4. I have take into account the very real reasons for recording and reporting even in situations he understood at the time had been investigated and closed and were not risky. There is a danger in taking any matter at face value. But, in the light of all the mitigating features set out above, and especially that the Claimant has shown real insight and upset over his failings, it is not therefore just and equitable in my judgment to reduce the award.

126. On the compensatory award I make no reduction for contribution.

126.1. I have found the Claimant not guilty of the conduct that caused his dismissal. The conduct he admits did not lead Canon Ward to dismiss.

126.2. In any event, even if it could be said the Claimant contributed in some way, it is not just and equitable to reduce the award. I have considered carefully the historic background, the very real reasons why all disclosures in the Church should be recorded, the acknowledgement that he should have recorded, but also weigh those factors against Canon Ward's plain acceptance that this was not a dismissable offence, the mitigation referred

to and the Claimant's obvious insight and remorse. Nor have I considered his communication to be so blameworthy as to justify contribution: he was working on one set of information and his colleagues on another.

127. Basic Award

127.1. The basic award will be paid at 1.5 x 2 complete years because all years worked were over 41.

127.2. It is limited by statute to £525 week's pay rather than actual gross weekly pay of £564 as in his schedule.

128. Compensation. I award for the 86 weeks claimed. I agree loss of statutory rights (as this case shows a valuable right) at £500.

129. I have thought carefully about awarding loss of the value of the home. This is because of Miss Bowen's interesting argument to that effect. She argues that remuneration is deliberately low because of the valuable benefit of the free 4 bedroomed house in central Oxford. She says to properly compensate I must award the notional value of the house. Section 123 requires me to make an award that is just and equitable in all the circs having regard to the loss sustained by the Claimant in consequence of the dismissal in so far as that is attributable to the action taken by the Employer. Here I agree with Mr Emery: if he had had housing costs I would have awarded them. In fact he has not. To award the notional value would grant Claimant more than in fact he has lost. In fact here the loss of the benefit of the free house meant that the Claimant had to remove and store furniture until he could find another home. He avoided having to rent but could not avoid those other expenses. I therefore award those costs. I do not award insurance because would have been a cost in any event.

130. Finally the statutory cap – for the reasons set out above it is only for pay, which means this decision by no means compensates Claimant for all of his losses.

131. Litigation is a stressful and unpleasant experience for all and not the best way from which to learn. I hope the College can take from this experience a basic rule of thumb in its dealings with employees in future: for its mangers to treat their subordinates as they would wish to be treated themselves.

Employment Judge **Moor**

Date: 19 June 2022

WRITTEN REASONS SENT TO THE PARTIES ON

21 June 2022

FOR THE TRIBUNAL OFFICE