



EMPLOYMENT TRIBUNALS

Claimant: Mrs V Baker

Respondent: The Governing Body of St Charles RC Primary School

Heard at: Manchester via Cloud Video Platform

On: 5 & 6 December 2022 and 14 & 15 February 2023

Before: Employment Judge Dennehy

REPRESENTATION:

Claimant: Mr H Wilshire (Counsel)

Respondent: Mr D Tinkler (Counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim of unfair dismissal fails and is dismissed.
2. The claimant's claim of wrongful dismissal fails and is dismissed.

REASONS

Introduction

1. The claimant was employed by the respondent as a Headteacher from 01 September 2010 until dismissal on 25 May 2021. Early conciliation started on 02 August 2021 and ended on 10 September 2021. The ET1 was presented on 16 September 2021 and the ET3 on 20 October 2021.

2. The claimant is making complaints of unfair dismissal and wrongful dismissal.

3. The claimant has submitted a schedule of loss in the total sum of £67,741 award for unfair dismissal and £92,741 for wrongful dismissal (p1683).

4. The respondent contests the claim and says the claimant was fairly dismissed.

Preliminary Matters

5. There were some connection/technical problems on each day of the hearing which were eventually resolved, and all the relevant parties were able to participate.

6. No reasonable adjustments were requested other than the claimant did request frequent breaks throughout the hearing, and these were granted.

Witnesses and Evidence

7. The Tribunal heard from the claimant herself; and Mrs Andrea Bradbury, Foundation Governor and invited to meeting on 17 December 2018 (“**AB**”); and read a witness statement from Ms Cate Brazendale, teacher 01.09.2018-21.03.2019 (“**CB**”).

8. For the respondent the Tribunal heard from:

- Mrs Nicola McGonagle, Governor until July 2022, Vice Chair until 31 August 2021, Chair of Governors until 25 July 2022 and second investigating officer (“**NMG**”),
- Mr Tony Matthews, Disciplinary and Dismissal Panel Chair (“**TM**”),
- Mrs Helen Parkinson Area South Team Manager and minute taker (“**HP**”) and
- Mrs Lorimer Russell-Hayes Disciplinary and Dismissal Appeal Panel Chair (“**LRH**”).

9. The claimant was represented by Mr H Wiltshire (Counsel) and the respondent by Mr D Tinkler (Counsel).

10. The claimant had her husband sat in the same room whilst the hearing was ongoing. During the claimant’s evidence he sat beside the claimant in full view of the Tribunal.

11. There was an agreed bundle of 2,040 pages and 64 pages of witness statement from the claimant and the respondent. Each witness, apart from CB was cross examined and answered the Tribunal’s questions.

Issues for the Tribunal to decide

12. A list of issues had been agreed at a Case Management Hearing held on 13 January 2022 (which was prior to the appeal hearing) so at the start of the hearing the issues were amended to include the appeal process.

13. The full list of issues that the Tribunal are to decide are as follows:

1. Unfair Dismissal

- 1.1 What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
- 1.2 If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as sufficient reason to dismiss the claimant? The Tribunal will decide in particular whether:
 - 1.2.1 there were reasonable grounds for that belief;
 - 1.2.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
 - 1.2.3 the respondent had followed a fair process including the appeal process;
 - 1.2.4 dismissal was within the range of reasonable responses.
- 1.3 Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

2. Remedy for Unfair Dismissal

- 2.1 Does the claimant wish to be reinstated to their previous employment?
- 2.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?
- 2.3 Should the Tribunal order re-instatement? The Tribunal will consider whether reinstatement is practicable and if the claimant causes or contributed to dismissal, whether it would be just.
- 2.4 Should the Tribunal order re-engagement? The Tribunal will consider whether re-engagement is practicable and if the claimant causes or contributed to dismissal, whether it would be just.
- 2.5 What should the terms of the re-engagement order be?
- 2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 2.6.1 What financial losses has the dismissal caused the claimant?

- 2.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- 2.6.3 If not, for what period of loss should the claimant be compensated?
- 2.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 2.6.5 If so, should the claimant's compensation be reduced? By how much?
- 2.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 2.6.7 Did the respondent or the claimant unreasonably fail to comply with it?
- 2.6.8 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%
- 2.6.9 If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?
- 2.6.10 If so, would it be just and equitable to reduce the claimants compensatory award? By what proportion?
- 2.6.11 Does the statutory cap of fifty two weeks or £89,493 apply?
- 2.7 What basic award is payable to the claimant, if any?
- 2.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

3. Wrongful dismissal/ Notice pay

- 3.1 What was the claimant's notice pay?
- 3.2 Was the claimant paid for that notice period?
- 3.3 If not, was the claimant guilty of gross misconduct?

Findings of Fact

The Tribunal's finding of fact are as follows:

14. The claimant commenced working for the respondent, on 01 September 2010 as a Head Teacher.

15. The terms of employment are set out in a contract of employment (p247). One of those terms refers to confidentiality and states “..you may not during or after the termination of your employment disclose to anyone other than in the proper course of your employment any information of a confidential nature relating to the School. Breach of this clause during your employment may be treated as gross misconduct.”

16. The respondent operates a Catholic voluntary controlled junior school and has 120 pupils and 26 teachers. The school is under the direction of the Board of Governors.

17. The Board of Governors is supported by the Lancashire County Council Governor Services Team who offer professional, advisory, support and training to governors.

18. The respondent has adopted the following policies:

(i) **Whistleblowing Policy** (p125);

The opening paragraph of the policy states:

“Employees are often the first to realise that there may be something seriously wrong within the school/Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues, the school or to the Council. They may also fear harassment or victimisation.”

19. The policy is intended to cover major concerns that fall outside the scope of other procedures and some examples given are:

“health and safety risks, including risks to the public/pupils as well as other employees;

other unethical conduct; and

actions which are unprofessional or inappropriate”.

20. The policy goes further to state at 2.3 (p126)

“Thus, any serious concerns that you have about any aspect of service provision or the conduct of school staff, governors, officers/members of the Council or others acting on behalf of the school and the Council can be reported under the Whistleblowing Policy. This may be about something that makes you feel uncomfortable in terms of known standards, your experience or the standards you believe the governors and the Council subscribe to; is against the Council's Standing Orders and policies; falls below established standards of practice; or amounts to improper conduct.”

21. All concerns raised will be treated in confidence, but staff are encouraged to put their name to any allegation raised. The consequence of raising a matter that is untrue are set out at point 6.

“If however, you make an allegation frivolously, maliciously or for personal gain, disciplinary action may be taken against you”

22. The policy states that *“You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter as a collective concern if there are two (or more) if you who have had the same experience or concerns.”*

(ii) Lancashire County Council model disciplinary and dismissal procedure for teachers for schools with delegated budgets (p180);

The scope of the procedure is it *“applies to the Headteacher and to all teachers employed at the school”* and it *“sets out the formal disciplinary procedure to deal with allegations of misconduct”* and goes on to state that this procedure notes that is *“is concerned primarily with conduct issues, although, in practice, misconduct and capability may be inter-related.”*

23. Misconduct is defined as *“an act or omission by a teacher, which is considered to be unacceptable professional behaviour”* (p180).

24. Regarding the different levels of misconduct, the policy states:

“It is not the purpose of this procedure to classify all levels of misconduct. Each incident which may give rise to the consideration of disciplinary action will be judged independently according to the circumstances of the case including the previous conduct of the teacher. However, a general guide is attached as Annex 1. Attention is drawn specifically to the fact that any act of gross misconduct could result in dismissal with or without notice”. (p181)

25. Annex 1 gives examples of gross misconduct (p195):

26. The procedure states that (pg181)

“No disciplinary action will be taken against a teacher without the teacher first being given an opportunity to answer any allegation made” and *“In certain exceptional circumstances, in the best interests of the school, pupils and the teacher concerned, a teacher may be suspended without an opportunity to answer allegations”*.

27. The procedure allows for employees to be accompanied by either a fellow worker or trade union representative at any meeting that is called under this procedure and *“Anyone with a depressive illness, anxiety state or “stress-related” illness will be offered at least one postponement of the hearing where appropriate and where this can be accommodated within a reasonable timescale”*.

28. The procedure advises that *“Any reports presented to the Governing Body under this procedure will not be dealt with by the full Governing Body, but by the Disciplinary and Dismissal Committee set up for that purpose comprising no fewer than three governors”* (p183).

29. In relation to appeals it states:

“Any appeal against a decision of the Disciplinary and Dismissal Committee will be considered by an Appeals Committee of the Governing Body comprising no fewer than three governors. The Appeals Committee will include no fewer members than the Disciplinary and Dismissal Committee. No member of the Disciplinary and Dismissal Committee will be a member of the Appeals Committee of the Governing Body”.

30. The initial steps to be taken in the disciplinary procedure are:

A meeting is convened at which the teacher will be given the opportunity to explain their conduct;

At least 10 working days’ notice will be given of the meeting;

A copy of the disciplinary procedure document will be sent to the teacher;

Details of the misconduct to be discussed will be sent to the teacher;

The teacher will be reminded of their right to representation at the meeting;

Either party can request an adjournment;

If at the meeting the explanation of the teachers conduct is accepted no further action is taken;

If the explanation is not accepted then Disciplinary and Dismissal Committee will decide on what further action is to be taken which could be:

“(i) issue a written instruction (having regard to the terms of the teacher's contract and the normal duties/expectations of all teachers in the school)

(ii) issue a disciplinary sanction.

(iii) refer the matter to the Disciplinary and Dismissal Committee and inform the teacher accordingly (see Section 8)”.(p185)

31. In circumstances where the teacher involved is the Head teacher 5.5. states *“The initial procedures will be conducted in accordance with the above, except that the Chair of Governors will act in the capacity ascribed to the Headteacher. The*

Chair of Governors can issue a written instruction. However, only the Disciplinary and Dismissal Committee can issue a disciplinary warning”.

32. When deciding which disciplinary sanction is appropriate the procedure provides *“The sanction issued is dependent upon the seriousness of the allegation/level of misconduct (See Annex 1)”.*

33. The procedure provides for an appeal process which is:

“(a) The Headteacher or other appropriate person (the presenter of the report) should present the report to the Appeals Committee and will be entitled to call and recall witnesses as necessary. Exceptionally, the Governing Body may appoint an alternative person to present the report (e.g. an Authority officer).

(b) The teacher and/or his/her representative will be entitled to question the presenter of the report and any witnesses called.

(c) Witnesses should only normally be present when they are required to give evidence directly to the hearing.

(d) The appellant and/or their representative will be entitled to make an opening statement in support of the appeal against the warning/dismissal and will be entitled to call witnesses to support their case.

(e) The person referred to in (a) will be entitled to question the appellant and any witnesses who have been called by him/her.

(f) The presenter of the report will be entitled to make a closing statement and thereafter the appellant and/or his/her representative will have a like right.

(g) At any stage during the appeal members of the Appeals Committee will be entitled to question both parties and their respective witnesses.

(h) On conclusion of the foregoing, both parties will withdraw from the meeting and the members of the Appeals Committee will reach a decision in private, which will be conveyed orally to both sides and subsequently confirmed in writing within 5 working days.” (p187)

Suspension

34. The respondent’s guidelines for suspension are set out in Annex 2 (p196) and it states: *“A teacher may be suspended from duty in the following circumstances: (a) where the allegations are so serious that dismissal for gross misconduct is possible; (b) where a child or children are at risk; (c) where a suspension is necessary to allow the conduct of an investigation to proceed unimpeded”.*

“Whilst having serious implications for all concerned, suspension does not constitute disciplinary action. However, where suspension occurs the teacher will be informed of the reasons for the suspension”.

35. The circumstances where suspension is considered appropriate are set out at p196.

36. Where the suspension of a headteacher is considered then *“Suspension will be effected by the Governing Body. In accordance with the Education (School Government) (England) Regulations 1999, (Regulation 43), in cases of urgency, the Chair of Governors...”* (p184).

37. Prior to any suspension a meeting should be arranged with the member of staff although it does state: *“NOTE: There may be circumstances where it is considered appropriate to convene a meeting”*

38. During any period of suspension, the following apply:
“The investigation of the circumstances leading to suspension will be considered with as much urgency as possible. Where the reasons for suspension are found to be without substance, reinstatement should take place immediately. (See Annex 2 Paragraph 9)

The teacher will not return to the school premises without invitation or permission of the Headteacher during a period of suspension.

Suspension will be without prejudice, on full pay and will be the subject of a monthly review by the Headteacher.

Arrangements to support a teacher during a period of suspension are set out in Annex 3.”

39. The respondent’s procedure does not prevent the employee at any time from raising an issue with the Employment Tribunal which the claimant did twice on 29 April 2020 and 16 September 2021. The 29 April 2020 ET1 was dismissed upon withdrawal.

Allegations of Misconduct

40. On 29 December 2018 an anonymous cause for concern document (“**CFC**”) 23 pages in length was filed against the claimant citing a range of allegations between 2017 – 2018 (p358-382). The author of the report was later disclosed as a Teaching Assistant at the respondent school Pauline Hodgson.

41. This was followed by a serious staff concern document (“**SSC**”) which was two pages in length signed by 14 members of staff and is undated and was filed against the claimant citing a range of allegations between 2017 – 2018 (p2022). This was brought to the attention of the respondent under the Whistleblowing Policy.

42. The members of staff who signed the document all gave written statements were:

- Deputy Headteacher (**PK**) (p535)
- Julie Topham (**JT1**) (p547)
- M English (p473) (**MT**)
- S Parkinson (**SP**) (p544)
- M T Hale (490) (**MH**)
- P Hodgson (**PH**) (p494)
- M Fenton (p476) (**MF**)
- E R Tindell (**ET1**)
- L Byrom (p470) (**LB**)
- R Gavin (p479) (**RG**)
- E Greaves (**EG**) (p488)
- E Horsfall (**EH**) (p529)
- L Hurst (p533) (**LH**)
- E Tricket (p551) (**ET2**)

43. These allegations are set out in the Adverse Report dated (41 pages) at p394 and are summarised as:

Allegation 1 – the claimant regularly attended work smelling of alcohol.

Allegation 2 – the claimant insisted that the Deputy Headteacher PK leave the Junior playground in order to have a photograph taken, leaving the Junior Playground without adult supervision which had approximately 120 children in it for ten minutes.

Allegation 3 – the claimant publicly berated the Deputy Headteacher when he challenged her about the decision to leave the playground unsupervised.

Allegation 4 – the claimant is often disorganised and regularly conducts herself in an irrational/erratic/unprofessional manner.

Allegation 5 – the claimant made comments to members of staff that two other members of staff were in a relationship and made comments suggesting this directly to the two members of staff.

Allegation 6 – added on 6th March 2020, the claimant visited the current school of a former member of staff and disclosed confidential information in respect of the allegations subject to investigation, which were in breach of the term of the claimant's suspension.

44. Following completion of the investigation the respondent compiled an Adverse Report which was sent to the claimant on 23 March 2020.

45. Prior to these allegations being raised the respondent had not formally raised any concerns re the claimant's performance or disciplinary record. The claimants' appraisals are to be found at page 277 through to 326.

46. Informally the respondent was aware of a complaint of smelling of alcohol previously in 2016 but as it was informal no action was taken by the respondent.

Suspension January 2019

47. The claimant was telephoned on Saturday 05 January 2019 by NY, a school governor and first investigating officer and he advised the claimant that he had received the CFC which required investigation and was so serious that it warranted suspension. The transcript of the conversation is at p349.

48. NY advises the claimant not to contact any staff members other than PK and himself (p349 and 1769).

49. On the 06 January 2019 NY emails the claimant again asking her to stay off sick, rather than formally suspend her (p1771).

50. On the 07 January NY attends the respondent school. NY states that he attended so that he could listen to concerns as he was the wellbeing Governor (p837)

51. On the 08 and 09 January 2019 the claimant sought advice from the National Union of Head Teachers (p1771).

52. On the 10 January 2019 the claimant went for a routine health check and advised the respondent that she was unfit for work (p1771). GP's notes are submitted stating the claimant is unfit for work from 10 January – 03 July 2019 (p336).

53. The claimant was telephoned by NY on 11 January 2019 and NY advises that following a preliminary investigation he has now received the SCC under the Whistleblowing Policy signed by 15 members of staff which raised concerns about the claimant's leadership including erratic and forgetful behaviour. This was the first time that the claimant became aware of the nature of the allegations (p1771).

54. A letter then followed to the claimant from the respondent dated 14 January 2019 (p 351). The respondent policy on suspension states that the reasons for suspensions should be done within three working days (p183).

55. In the letter NY states that the allegations "*...are potentially serious in nature and potential gross misconduct*". It goes on to say: "*The documents I have received outline a number of concerns regarding the safeguarding of children including the serious allegation that you regularly attend work smelling of alcohol and behave in an erratic and forgetful manner. You will receive a copy of these documents as part of my investigation.*"

56. The claimant is advised that she will be sent all relevant documents, she will be invited to a formal investigatory meeting, has the right to be accompanied, suggests she seek advice from Trade Union and that he will consider referral to Occupational Health upon receipt of fit note to ascertain fitness to participate his investigation and to establish what support can be offered (p351).

57. From Monday 14 January 2019 the claimant cannot access her work email or IT systems (p351 and 1771).

58. During 25 January 2019 and 21 February 2019 NY commences a formal investigation and interviews with the persons who had signed the SSC (p470-556).

Grievance

59. On the 06 March 2019 the claimant submits a bullying and harassment grievance against NY and NMG, the investigating officers. A meeting is held on 15 April 2019, outcome issued on 18 June 2019, grievance not upheld. The claimant disagreed with the outcome and appealed the decision. The appeal was heard on 08 October 2019, outcome issued on 14 October 2019 appeal not upheld. NY subsequently resigned from the board of governors. The investigation process which he had started was concluded by NMG.

60. The investigatory meeting into the misconduct allegations was stayed pending the outcome of the grievance at the claimant's request (p468 letter from NY to Claimant dated 26 June 2019).

Claimant's Health

61. The claimant visited an emergency doctor on 10 January 2019 and submitted sick notes to cover the period from 10 January 2019-03 July 2019.

62. On 24 January 2019 the claimant receives a text from NY asking her to give suitable dates for Occupational Health appointment to be made (p1771).

63. On the 07 March 2019 the claimant attends the respondent's referral to Occupational Health.

64. A report dated 24 April 2019 by Dr Haseldine, a Consultant Occupational Physician stating that he has no concerns with her ability to attend any meetings re the allegations, does not prescribe any medication but does say that "*the solution to the Mrs Baker recovering her wellbeing is not medical but the resolution of ongoing investigations*" (pg 700-701).

65. At the first disciplinary meeting the claimant provides a letter from her GP dated 08 November 2019 which mentions blood test results from 16 January 2019 to support her defence that she does not have a drink problem (p636) and the claimant advised she had a medical condition rosacea which makes her skin blotchy.

66. The claimant requests mental health support from the respondent Contact Officer on 12 February 2020.

Suspension June 2019

67. On 26 June 2019 the claimant emailed the respondent to advise that she would be returning to work on 01 July 2019 (p467). In response to this NY wrote on the same day to the claimant advising that she was being formally suspended on full pay with effect from 01 July 2019 as *“a precautionary measure for the following reasons: a) for the protection of children and colleagues; b) to enable me to carry out an unimpeded disciplinary investigation into the allegations; and c) because I consider the allegations to be so serious that if proven, it may constitute misconduct”*.

68. The number of staff who signed the SSC was amended from 15 to 14, and the email (p468) stated:

- (i) that alternatives to suspension were considered *“...including: (i) an amendment to your normal duties; (ii) undertaking an alternative role in school; (iii) working from home.”*
- (ii) a copy of the school’s disciplinary policy was enclosed;
- (iii) it was advised that an invitation to an investigatory meeting will follow;
- (iv) documents will be disclosed to the claimant;
- (v) the claimant must not make contact with staff, pupils, parents, stakeholders or governors in relation to the allegations without prior permission from NY;
- (vi) she should seek advice from the Trade Union;
- (vii) the claimant had a right to be attended by a trade union rep or work colleague;
- (viii) details of the claimant’s assigned Contact Officer.

69. The letter also stated that the investigatory meeting was stayed at the request of the claimant pending conclusion of the claimant’s grievance of bullying and harassment.

70. NY in his letter to the claimant states that he has considered alternatives to suspension, but because of her role as Head Teacher and the nature of the allegations suspension is appropriate (p468).

71. The respondent stated, *“I would like to point out that the suspension is not disciplinary action. Nor does it indicate that I believe you to be guilty of any misconduct.”*

72. The respondent 's disciplinary policy on suspension states that there may be circumstances where it is considered inappropriate to have a first meeting (p198).

First Disciplinary Investigation Meeting

73. NY as the chair of the board of governors started the investigations, but resigned before they were completed.

74. NMG took over and invited the claimant to a disciplinary investigatory meeting which took place in person on 13 November 2019 (pg 581-592). The claimant was accompanied by her trade union representative.

75. In attendance at this meeting were:

- The claimant,
- Mrs C Bennett NAHT (“**CB2**”),
- NMG, and
- Mrs C Neville – Principal HR Manager (“**CN**”)

76. The claimants' concerns are the handling of the suspension and that: she was being harassed to leave her job because of her age and gender, NMG was tainted as an investigating officer (along with NY) and the claimant challenged MNG ability to be objective and conduct a fair meeting.

77. The claimant's overall position was that all the staff were deliberately colluding and lying because they wanted her removed because they would find PK easier to work with and the other staff had a grudge to bear against the claimant.

78. In response to each of the allegations the claimant's position is re:

Allegation 1 smelling of alcohol – this allegation was made by 13 of the 14 complainants and is denied and the claimant and the staff are lying.

79. In response to the respondent asking why 13 staff would have lied, the claimant avers that previous capability issues with certain staff members were the motivation for them now trying to have her removed.

80. **Allegation 2 children left unsupervised** – the claimant stated that she was taking the photograph to improve the marketing of the school, she had left two responsible children in charge and disputes the time it took to take the photograph and the location.

81. **Allegation 3 the claimant publicly berated the Deputy Headteacher when he challenged her about the decision to leave the playground unsupervised** – the claimant denies this allegation. She denies the location and what was said. The claimant believes that PK was motivated to say the things he did because he wanted her job.

82. **Allegation 4 erratic disorganised/unprofessional manner** – allegation denied by claimant who asserts that the staff are motivated by their own personal grudges and because they would find PK easier to work for.

83. **Allegation 5 - the claimant made comments to members of staff that two other members of staff were in a relationship and made comments suggesting this directly to the two members of staff-** allegation denied by the claimant who stated that this allegation is based on hearsay evidence, is full of lies and was also motivated because the claimant had not given PH a pay rise.(p624) and NY had created a moaning culture.

84. The claimant submitted her previous appraisals all of which did not highlight any concerns with the claimant (p269). The most recent appraisal was 16 October 2018 (p326).

85. Notes of this meeting were sent to the claimant for approval on 22 November 2019 and she submitted her comments on these notes to the respondent on 02 December 2019 with a further thirty-two documents (p593-781).

86. NMG then undertook further investigations with the witness on points that had been raised by the claimant during the first investigatory meeting and their statement are at (p794-836). The witnesses that were interviewed again were PK, SP, JT, EH, PH, EG, RG, LB, MF, MH and JT on 16 and 19 December 2019.

87. The respondent the invited the claimant to a second disciplinary investigatory meeting to be held on 14 February 2020 via letter dated 28 January 2020 (p914).

88. The claimant was advised:

- (i) Her professional association representative was available;
- (ii) A separate room would be available that she could use any time she wished to adjourn;
- (iii) The purpose of the meeting was to discuss the further statements that had been obtained on 16 and 19 December 2019 following on from her comments in the 13 November 2019.

89. However, this meeting was cancelled and was eventually held on 10 March 2020.

90. On the 06 March 2020 NMG is made aware that the claimant had been to visit another school and had contacted another head teacher (p840).

Second Investigatory meeting

91. The second investigatory meeting was held on 10 March 2020.

92. The attendees were:

- The claimant supported by CB2 – NAHT
- NMG
- CN – HR advisor and note taker

93. The purpose of the meeting was to put the responses to NMG further questioning of the witnesses to the claimant and to advise the claimant of the new allegation (allegation no 6) is introduced namely that the claimant:

“It is alleged that you have acted in an unprofessional manner and allegedly breached data protection and confidentiality through your actions on Friday 6th March 2020. Further specifics being that you visited the school of a former member of staff of St Charles’ Catholic Primary School and disclosed confidential information to the Headteacher of that school regarding the on-going investigation into your conduct. The headteacher in question had no knowledge of the manner or would have any involvement in the investigation. In addition, you disclosed confidential witness statements to this headteacher which had the potential to breach data protection. This has the potential to being into question the trust and confidence that the school places in you as headteacher and bring the school into disrepute.”

94. The notes of this meeting were sent to the claimant on the 12 March 2020.

95. On the 12 March 2020 the respondent sends a letter to the claimant advising that the matter is to be referred to the Schools Staff Disciplinary and Dismissal Committee and that dismissal is a possible outcome. The letter also advises that the new allegation 6 has been added to the other 05 allegations. A copy of the minutes is enclosed, and the claimant is asked to approve. The claimant is advised that she is still on suspension and support is available (p 841).

96. National lockdown due to the covid pandemic commenced on 23 March 2020.

97. On the 01 April 202 the claimant returned the meeting notes with her annotations and further evidence (p 858- 913).

98. Prior to the disciplinary meeting the claimant raised concerns re the impartiality of the governors who were to sit on the Disciplinary and Dismissal Committee meeting and NMG sought to appoint new impartial governors.

99. The Adverse Report drafted by NMG was sent to the claimant on 23 October 2020 (p 390-869). The report was drafted by NMG and set out the allegations, the claimant’s responses to the allegations, investigations, and conclusions.

100. 01 November 2020 the claimant raised a whistleblowing complaint to Lancashire County Council re (p 916) and this is responded to on 23 January 2020 (p925).

The Staff Disciplinary and Dismissal Committee meeting

101. A face to face disciplinary meeting commenced on 15 March 2021 and was held over 07 days, namely 15,17, 18 & 19 March, 29, & 30 April and 14 May 2021. The attendees were:

- The claimant accompanied by Jason Ferraby of National Association of Head Teachers (“**JF**”)
- NMG
- CN

- Three governors: TM, Jennifer Turner, and Neil Scanlan

Six witnesses for the respondent:

- PK
- SP
- PH
- RG
- EG
- EH

Five witnesses for the claimant:

- CB
- Les Turner
- Elizabeth Ramsey (“**ER**”)
- AB
- Natalia Atkinson

- Steve Lewis provided advice to the committee
- HP was clerk and took notes

102. The disciplinary hearing took seven days and heard from eleven witnesses. The panel was made up of three co-opted governors from another school. TM stated in his evidence that he did not know the claimant prior to the meeting.

103. The Adverse Report was presented by NMG.

104. The claimant was represented by a trade union representative, was able to call her own witnesses and put questions to the witnesses and cross examine them.

105. The claimant submitted her response to the Adverse Report to the respondent on 15 March (p 948).

106. TM gave evidence that all the panel members had carefully considered the evidence and had considered the effect and consequences of a finding of gross dismissal for the claimant. I found TM to be a reliable and genuine witness.

107. TM also confirmed that they had taken the claimant's unblemished record and length of service into account.

108. There was a note taker, and the claimant was sent the notes of the meeting on 02 December 2021. The notes of the meeting are at page 1158. HP in her witness statement states that due to the shortage of staff and the volume of notes that had to be typed up this was delayed.

109. The respondent wrote to the claimant advising of the outcome of the meeting on 24 May 2021 (p1337).

110. The disciplinary and dismissal committee found that five of the allegations were fully substantiated and allegation 5 was only partially substantiated on the evidence presented to them at the meeting.

111. In the dismissal letter it states:

"The committee is concerned that throughout the disciplinary process you have maintained that these allegations are the result of collusions between a substantial number of staff, governors and local authority. There is no credible evidence to support your beliefs and we are concerned that you have made unfounded allegations and unprofessional comments about the witnesses and investigating officers."

112. It states that as a consequence of the claimant's behaviour:

"It was the committee's considered judgment that on the balance of probabilities your behaviour in relation to these allegations fell significantly short of the reasonable expectations placed on you as headteacher of a Catholic school. The headteacher is the spiritual leader of the school and as such, the governing board are entitled to demand the highest standards of behaviour. The committee has grave concerns about the safeguarding of children and the welfare of staff under your leadership and it is apparent that staff had a genuine fear of raising concerns."

113. The conclusion of the committee is that:

"The committee believes that your actions constitute gross misconduct. The committee also believes that this has brought about a fundamental breach of the trust and confidence that the governing board is entitled to place in you and therefore, the decisions of the committee is that your contract of employment will be terminated with immediate effect without notice or payment in lieu of notice."

114. The claimant was also advised in the dismissal letter of her right to appeal and the claimant submitted her request for an appeal on 04 June 2021.

115. The claimant lodged her claim with the Employment Tribunal on 16 September 2021.

116. A case management conference was held on 13 January 2022 with EJ Butler.

The Appeal Meeting

117. The original dates for the appeal hearing coincided with the case management conference for the claimant's claim to this Tribunal. The next date had to be postponed due to sickness of one of the panel members and had to be rearranged.

118. The appeal hearing was held on 09 and 10 May 2022. The invited attendees were:

- The claimant supported by JF
- Vic Welsh - HR advisor
- Elizabeth Ramsey - presenting officer
- CN – HR Manager
- HP - Clerk

Three governors: LRH (Chair), Eleanor Hicks, Christine Entwistle

Five witnesses for the respondent:

- PK
- SP
- PH
- EG
- NMG

No witnesses for the claimant were invited.

119. The claimant raised some concerns via email to the respondent prior to the hearing and these were dealt with at the beginning of the day. The concerns raised were:

- (i) delay- to which LRH replied was due to a variety of reasons including availability of all parties for a full week and appointment of governors.
- (ii) the fact that the appeal was to be a rehearing, to which LRH replied that this was in line with the policy;
- (iii) minutes from the disciplinary hearing not being available, to which LRH replied that this was due to resource issues due to the volume of notes that needed to be typed up and the appeal panel would not want to taint themselves by seeing the minutes.

120. The claimant then raised some further concerns prior to the meeting starting and the respondent considered them and confirmed that: the governors had been correctly appointed; no DBS check were required for the governors to hear the appeal; a wet signature on the governors minutes was not necessary as the meeting had been a virtual one and process had been adapted during the Covid pandemic;

the minutes had been ratified at a later board meeting; it was correct for the vice chair to present the Adverse Report, the clerk's appointment was correct and the claimant's removal from the board was not a matter for the appeal hearing (p1430-1431).

121. The claimant by this stage says she felt that all the governors at the meeting were tainted and that she would not receive a fair hearing. The claimant and JF left the meeting. The claimant left her written responses to the allegations with the committee (p1148).

122. The chair (LHR) tried to persuade the claimant to stay for the appeal hearing. The claimant was advised the hearing would be heard in her absence. This is in line with the respondent's disciplinary policy.

123. The appeal committee commenced the appeal hearing in the claimant's absence and considered all the evidence submitted, including the claimant's ninety-page written submissions and the claimants summing up (p1134).

124. The appeal hearing wasn't postponed as there had already been one postponement, and the panel felt they had sufficient witnesses and evidence to continue in the claimant's absence.

125. The appeal hearing was treated as a rehearing because of the passage of time that had past. The panel had five witnesses before them and the same bundle of evidence, which included all the claimants' annotations and further documents. The only item that was missing were the minutes of the disciplinary meeting.

126. The appeal panel considered the fairness of the investigation conducted by NMG and the panel were of the view that that the claimant was given opportunity to ask questions and that NMG had sought clarity on points that the claimant raised with the witnesses. NMG had then gone back to the claimant to advise of the responses and give her the right of reply.

127. All five witnesses that gave evidence at the appeal hearing stood by their original witness statements. The panel considered each allegation and found that each allegation had been appropriately investigated and that the allegations had been substantiated on the evidence before them.

128. The appeal hearing gave consideration to the claimant's previously unblemished record and length of service and took into account the role of the claimant as head teacher and were concerned that the allegations revealed safeguarding issues for the children and staff.

129. The respondent wrote to the claimant on 19 May 2022 with the outcome of the appeal hearing advising that it was not successful and the decision to dismiss for gross misconduct stood (p1429).

Relevant Law

130. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of this right is by way of complaint to the Tribunal under section 11. The employee must show that she was dismissed by the respondent under section 95, but in this case the respondent admits that it dismissed the claimant (within section 95(1)(a) of the 1996 Act) on 25 May 2021.

131. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First the employer must show it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without their being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

132. Section 98(4) deals with fairness generally and provides that:

“The determination of the question whether the dismissal is fair or unfair having regard to the reason shown by the employer:

(a) ...depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee; and

(b) Shall be determined in accordance with equity and the substantial merits of the case.”

133. In misconduct dismissals, there is well established guidance for Tribunals on fairness within section 98(4) in the decisions in **Burchell 1978 IRLR 379** and **Post Office v Foley 2000 IRLR 827**. The Tribunal must decide whether the employer had a genuine belief in the employee’s guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation.

134. In all aspects of the case including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, in deciding whether the employer acted reasonably or unreasonably within section 98(4), the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances.

135. In respect of deciding whether it was reasonable to dismiss **Iceland Frozen Foods Limited v Jones 1982 EAT** states that the function of the Tribunal:

“is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted”.

136. In deciding on the fairness or unfairness of a dismissal, it is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its own view for that of the employer. The

Tribunal can only interfere if the employer's decision, or its procedure, was so unreasonable that no reasonable employer could have acted that way.

137. In respect of procedure, the procedure must also be fair and the ACAS Code of Practice in relation to dismissal is the starting point as well as the respondent's own procedure. In **Sainsbury's Supermarkets Limited v Hitt 2003** the court established that:

"The band of reasonable responses test also applies equally to whether the employer's standard on investigation into the suspected misconduct was reasonable".

138. In addition the decision as to whether the dismissal was fair or unfair must include the appeal (**Taylor v OCS Group Limited [2006] Court of Appeal**). Either the appeal can remedy earlier defects or conversely a poor appeal, can render an otherwise fair dismissal unfair.

139. Mr Tinkler thoughtfully drew my attention to the following:

"To say that each line of defence must be investigated unless it is manifestly false or unarguable is to adopt to narrow an approach and to add an unwarranted gloss to the Burchell test. The investigation should be looked at as a whole when assessing the question of reasonableness. As part of the process of investigation, the employer must of course consider any defences advanced by the employee, but whether and to what extent it is necessary to carry out specific inquiry into them in order to meet the Burchell test will depend on the circumstances as a whole. (**Shrestha v Genesis Housing Association Ltd [2015] EWCA Civ 94**)."

140. Where an employee is unable or unwilling to attend a disciplinary meeting (or appeal) without good cause the employer should make a decision on the evidence available. (See ACAS Code, para 25).

141. With regard to the decision to dismiss, it is not for the tribunal to ask whether a lesser sanction would have been reasonable, but whether or not dismissal was reasonable (**British Leyland v Swift [1981] IRLR 91**).

142. In a suitable case, the employer may rely upon the breakdown in trust and confidence as a substantial reason justifying dismissal. (**Ezsias v North Glamorgan NHS Trust [2011] IRLR 550** where over a period of time staff relations within the department in which the claimant consultant worked deteriorated disastrously.) However, loss of trust must not be resorted to too readily as some form of panacea (**Z v A UKEAT/0380/13**).

143. Mr Wiltshire thoughtfully draws my attention to the following:

"The ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 applies to the procedure. The following are of particular note from the code of practice:

- *Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.*
- *Employers and employees should act consistently.*
- *Employers should carry out any necessary investigations, to establish the facts of the case.*
- *Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.*

144. Also of relevance is the ACAS Guide: Discipline and Grievance at Work (2019), which says “...the nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee’s case as well as evidence against it.”

145. It was held in **Abernethy v Mott, Hay & Anderson [1974] ICR 323** that: “A reason for the dismissal of an employee is a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee.”

146. The test to be applied in determining reasonableness is whether the employer’s decision to dismiss fell within the range of reasonable responses available to it – **(1) Post Office v Foley (2) HSBC Bank plc v Madden [2000] ICR 1283, CA.**

147. A disciplinary procedure should follow the principles of natural justice although a breach of these rules does not automatically make a dismissal unfair **Slater v Leicestershire Health Authority [1989] IRLR 16.**

148. The extent of the investigation required will depend on the circumstances. The gravity of the consequences and the impact on an employee’s career will be relevant, such as where the allegation of misconduct could mean disqualification from a profession, such as with teachers. See for example **Salford Royal NHS Foundation Trust v Roldan [2010] ICR 1457, Court of Appeal**; and **Turner v East Midlands Trains Ltd [2013] ICR 525, Court of Appeal.**

149. **Strouthos v. London Underground [2004] EWCA civ 402** is authority for the proposition that an employee should only be found guilty of the offence with which he has been charged. It is a basic proposition, whether in criminal or disciplinary proceedings, that the charge against the defendant or the employee facing dismissal should be precisely framed, and that evidence should be confined to the particulars given in the charge. Care must be taken with the framing of a disciplinary charge and the circumstances in which it is permissible to go beyond that charge in a decision to take disciplinary action are very limited. Where care has clearly been taken to frame a charge formally and put it formally to an employee, the

normal result must be that it is only matters charged which can form the basis for a dismissal.

150. In **Brito-Babapulle v Ealing Hospital NHS Trust [2013] IRLR 854** it was held that where dismissal is for gross misconduct, the tribunal has to be satisfied that the employer acted reasonably both in characterising the conduct as gross misconduct, and then in deciding that dismissal was the appropriate punishment.

Wrongful Dismissal

151. When it comes to wrongful dismissal the Tribunal is not concerned with the reasonableness of the employer's decision to dismiss, but the factual question, was the employee guilty of conduct so serious as to amount to a repudiatory breach of the contract entitling the employer to summarily terminate the contract (**Enable Care & Home Support Ltd v Mrs j A Pearson UKEAT/0366/09SM**).

152. In **Laws v London Chronicle (Indicator Newspapers) Ltd 1959**, the Court of Appeal said that in order to amount to a repudiatory breach, the employee's behaviour must disclose a deliberate intention to disregard the essential requirements of the contract. The Tribunal must therefore decide whether the claimant was guilty of repudiatory breach. If she was then that would justify the respondent terminating her contract of employment without notice and her claim of wrongful dismissal will fail. Otherwise, the respondent would be in breach of contract and would be required to provide compensation equivalent to the notice pay which the claimant should have received under her contract (less any earnings for which she is required to give credit during the notice period).

Respondent Submissions

153. The respondent says in relation to the issues that the reason for dismissal was conduct, the respondent had reasonable grounds for this belief, it had carried out a fair investigation, and that it had acted in a procedurally manner. The claimant has advanced no credible or material basis to challenge with the investigation or procedure adopted. In light of the seniority of the claimant's position, her failure to engage with the allegations she faced (other than to accuse her staff of lying) and the extremely serious nature of the allegations themselves, dismissal was plainly within the range of reasonable responses.

Claimant Submissions

154. The claimant submits that the claimant's dismissal was both procedurally and substantively unfair and the decision to dismiss was taken at a time when a reasonable investigation had not been carried out, the respondent did not act in a procedurally fair manner, dismissal was not within the range of reasonable responses and in all the circumstances the respondent did not act reasonably in treating the alleged misconduct as sufficient reason to dismiss.

155. The delay in the whole process is unfair and prevented a fair investigation and hearing because by the time of the hearing the chair and vice chair did not want the

claimant to return whatever the conclusion. The respondent was on notice that the claimant was suffering stress and anxiety and need to be dealt with matter quickly.

Conclusions

156. In deciding the issues, the Tribunal has not set out all the evidence heard at the hearing on 5 & 6 December 2022 and 14 & 15 February 2023 but has selected those details which are most important to the decisions. Just because something is not mentioned does not mean that the Tribunal did not consider it.

Unfair Dismissal

What was the reason or principal reason for dismissal?

157. The alleged misconduct of the claimant is contained in the SCC with the additional allegation 6 added in 2020. The respondent cites examples of gross misconduct in its disciplinary policy.

158. The claimant believes that the signatories to the SSC together with the governors may have alternative motives for her dismissal. In her evidence NMG stated that she did ask the claimant during the investigation meetings what she thought the motivation was for the staff making the allegations and the claimant had replied that it was because the staff would be easier to work for than the claimant and/or they had a particular axe to grind with the claimant. NMG confirmed that she did put these points to the staff and it was denied by them.

159. The respondent whistleblowing policy clearly states that if any of the signatories to the SCC were found to have made a false statement then they would be subject to disciplinary action themselves. The signatories were aware that their statement would be shown to the claimant and each statement had the following:

"I understand that the contents of this statement must be kept confidential. I also understand that this statement may, in due course, be provided to Mrs Baker, Headteacher"

160. NMG in her oral evidence confirmed that she did consider the motivation of staff and she questioned them on this point and came to the conclusion that there was *"no feasible explanation"* in respect of collusion.

161. TM in his witness statement confirms that the panel found no evidence of collusion and the panel did not accept that the signatories to the SSC who were witnesses at the hearing were lying. TM went further to state that the panel had found inconsistencies in the claimant's evidence and that she sought to blame others.

162. LHR in her witness statement says that the appeal panel did not find any evidence of collusion. LHR went on to state that all the witnesses in the appeal hearing stood by their original statements.

163. Mr Wiltshire submits that there was bias because all the staff would leave if the claimant was found not guilty of the allegations and the claimant herself stated that it would be easier for the respondent to dismiss her, rather than find that all the signatories were lying.

164. The claimant 's explanation was considered by the respondent but was not accepted as a plausible explanation in the eyes of the both the disciplinary and dismissal panel and the appeal panel.

165. I found there was no convincing evidence to support this theory of bias and/or collusion. I find on the facts that the reason for dismissal by the respondent was that all the six allegations were proven at both the disciplinary and appeal meeting and all related to misconduct by the claimant. I find that the respondent's reason for dismissal was conduct.

Was there genuine belief?

166. I find that the incidents as set out in the SSC in January 2019 regarding the claimant's behaviour caused sufficient concern to the claimant's colleagues to cause them to submit them to the respondent under the Whistleblowing Policy which was signed by 14 members of staff.

167. I find that when TM (as chair of the panel) made the decision to dismiss he did genuinely believe that at that time the claimant was guilty of the allegations. TM in giving his evidence to the Tribunal appeared entirely genuine and sincere in his belief that the claimant was guilty of the misconduct alleged. There is no evidence that he had any other reason in his mind and that his belief was not genuine.

168. LHR (chair of the appeal) in her oral evidence stated that each allegation was looked at individually and collectively. I find that LHR believed the witnesses version of events and had a reasonable basis upon which to believe their version of events over the claimant's version.

169. LRH appeared entirely genuine and sincere in her belief that the claimant was guilty of the alleged misconduct. There was no evidence that she had any other reason in her mind and that her belief was not genuine.

170. The signatories to the allegations would have faced disciplinary action themselves had they been found to be making false allegations. I do not accept on the submissions made that there was evidence of collusion between the signatories to the allegations.

171. I find that the respondent faced with so many witnesses who made the same allegations, and who had to decide on whose evidence was the most truthful had a genuine belief that the claimant was guilty of the misconduct, raised in the allegations.

Were there reasonable grounds for that belief?

172. At the time the decision to dismiss the respondent had a large amount of information at its fingertips. TM in his statement says that the disciplinary panel heard from eleven witnesses who gave oral evidence. It had considered in excess of 1500 pages of written evidence and that *“...it was clear that there was an atmosphere of fear of the claimant within the school and fear that the individuals who challenged the claimant were at risk of being victimised. The committee felt this atmosphere represented a safeguarding issue for both pupils and staff”*.

173. TM goes further to say that the claimant *“...simply made unfounded allegations that all the staff involved had made the allegations up and were lying”* TM says that the panel could not find this view to be credible and could not accept it and that *“...we had no option but to determine her actions constituted gross misconduct”*

174. The disciplinary panel found five of the six allegations to be fully substantiated and the remaining one to be partly upheld.

175. Taking into consideration the points raised by Mr Wiltshire in relation to **Smith v City of Glasgow District Council [1987] IRLR 326** and **Robinson v Combat Stress UKEAT/0310/114** I find that the respondent had reasonable grounds for believing the claimant was guilty of misconduct.

176. On the facts I find that the respondent held the belief on reasonable grounds as they had received a whistleblowing compliant signed by 14 school staff which raised serious concerns regarding the safeguarding of staff and pupils upon which the respondent had acted.

177. Taking each allegation in turn:

Allegation 1

178. In the SSC 14 staff who had signed the document alleged that the claimant had smelt of alcohol.

179. NMG said in her oral evidence that she accepted at face value the accounts of staff that the claimant had smelt of alcohol.

180. TM states the panel could not accept that so many staff could all fabricate the same concern which they accepted raised a very serious safeguarding concern.

181. LRH echoed the same point in her evidence went further to say that because of the blanket denial by the claimant of this allegation the respondent's Drug and Alcohol Policy was not appropriate.

182. In his evidence TM stated that the disciplinary panel noted that 13 of the signatories confirmed that they had smelt alcohol on the claimant, and this was repeated by witness oral testimony in the disciplinary meeting. Two of the witnesses that had been called by the claimant at the disciplinary hearing also confirmed that they were aware of previous similar complaints against the claimant.

183. At the appeal hearing, which was a rehearing, the same 05 signatories who had been oral witnesses at the disciplinary hearing also gave oral evidence to the appeal hearing.

184. The claimant suggested that it was easier for the respondent to dismiss her rather than find that all the staff were lying.

185. I find on the facts that the respondent faced with numerous witnesses who made the same allegation, did have reasonable grounds for forming their belief that the claimant was guilty of the misconduct alleged in allegation 1.

Allegation 2

186. The fact that the children were left unsupervised is not disputed by the claimant.

187. TM states that the panel were concerned that the claimant did not dispute the substance of the allegation rather she focused on the time that the photograph took and that no harm had occurred to the children during the time they had been left unsupervised because she had placed two trusted pupils in charge.

188. LRH stated that they considered this a serious safeguard risk to young people which as Head Teacher with experience the claimant should have known was a serious risk.

189. Evidence from the witness statements where they mention the time it would have taken for the photograph to be taken all say it took longer than the two minutes the claimant had stated. TM states in the dismissal letter that the panel accepts that the time it took to take the photograph was longer than two minutes. I find the claimant's evidence on the time it took to take the photograph not credible.

190. Considering that the claimant admitted the fact that the children had no adult supervision on the playground, I find that the respondent had reasonable grounds for believing the claimant was guilty of the misconduct raised in allegation 2.

Allegation 3

191. PK and EG gave oral evidence to the disciplinary and appeal hearing and the panel found them to be compelling witness. TM went on to state in the dismissal letter that "*...there was no sign of collaboration, and the committee found no reason for them to fabricate what was clearly a distressing situation*".

192. When giving evidence TM said that the panel did consider there was an inaccuracy re location in that the event did not take place in the playground but had in fact happened in the classroom. He says that both witnesses found the situation distressing and found no reason for them to fabricate the allegation. It was accepted by the respondent that an error had been made regarding the location.

193. The claimant said that the motive behind this allegation was because the other staff thought that PK would be an easier headteacher to work for. NMG went back to the signatories and put this to them. They all denied that they thought this. TM states in the dismissal letter that the panel did not find this to be credible.

194. I find that based on the evidence that the respondent read and heard the respondent had reasonable grounds for believing the claimant was guilty of the misconduct raised in allegation 3.

Allegation 4

195. All 14 signatories of the SSC cited examples of the claimant's behaviour.

196. TM in his statement states that the panel had great difficulty in understanding the claimant's position on this allegation which was a blanket denial of the behaviours but at the same time she said that had had she been made aware of them informally then she would have been able to resolve any concerns.

197. One of the claimant's own witnesses ER stated that the claimant did not accept challenge and that she micro managed staff to which the claimant responded afterwards "*...that she was a drama teacher who was acting*".

198. LRH that the appeal panel considered all of the evidence presented and the testimony of the witnesses they heard, and they believed it supported the allegation of irrational and unprofessional behaviour.

199. I find that based on the facts that the respondent had reasonable grounds for believing the claimant was guilty of the misconduct raised in allegation 4.

Allegation 5

200. The respondent had statements from 03 of the signatories mentioning this allegation.

201. The claimant was employed as Head Teacher. A senior role with responsibility and leadership. The Head Teacher is responsible for the safety and wellbeing of all those in the school, which includes the staff.

202. EG gave oral evidence to the disciplinary panel and TM stated in his witness statement that he found her to be "*...a credible witness and we could see no reason why she have any reason to be untruthful.*"

203. The respondent states in the Adverse Report that "*...it was totally inappropriate and unprofessional from Mrs Baker to make comments of this nature which could have serious personal consequences for the members of staff concerned. Instigating rumours and speculations of this nature is not conducive to the role of Headteacher, indeed it should be the Head teacher's responsibility to put a stop to comments of this nature*".

204. LRH found that *“the witnesses to this incident were clear as to what was said even though the actual words used differ, and to what you were implying by making the comment”* LRH could find no reason as to why the witness would fabricate such a story. LRH stated that *“..you are expected to maintain the highest professional standards when managing and communicating with staff”*.

205. Taking into account the facts I find that the respondent had reasonable grounds for believing the claimant was guilty of the misconduct raised in allegation 5.

Allegation 6

206. The respondent was made aware of the circumstances of this allegation not under the SSC but from a teacher at another school who was aware that the claimant had contacted the school on 06 March 2020 which was during the investigatory process.

207. TM in his statement notes that the claimant had been advised by NY in the suspension letter of 28 June 2019 not to contact any stakeholders. TM says the panel decided that the claimant going to another primary school speaking to another teacher who had no connection with the matter and shared confidential information was “wholly inappropriate, unprofessional and unjustified and the real reason for going to the other school was to intimidate that teacher”.

208. LRH also refers to the letter and says that as this other teacher was a former member of staff the panel believe that the claimant had breached that instruction. The sharing of confidential information with the other headteacher regarding the allegation and details of the signatories was a clear breach of confidentiality the panel found.

209. The claimant does not accept that she breached the signatories’ personal data by disclosing to a third party some of their details and statements without their consent, because the signatories have not complained about it.

210. The claimant says this term stakeholder is not defined so the other teacher was not a stakeholder. The claimant did not accept that as a former member of staff, such a person would have been a stakeholder. The Adverse Report stated that an ex teacher clearly fell within the criteria of being a stakeholder. I find this is another example of the claimant’s tendency to focus and find fault with one fact rather than considering the potential harm of her actions.

211. The respondent had a statement from the head teacher from the other school outlining the details of the claimants visit to her school and copy text messages from the teacher that the claimant had been trying to contact which had been reported to PK who in turn forwarded them on to NGM.

212. The substance of the allegation is not denied by the claimant. The claimant also gave oral evidence that she had tried to contact the other teacher because she was frustrated at the delay of the appeal hearing.

213. Considering the facts, I find that the respondent had reasonable grounds for believing the claimant was guilty of the misconduct raised in allegation 6.

At the time the belief was formed the respondent had carried out a reasonable investigation?

214. When considering this issue, I need to bear in mind the nature of the allegations, the position of the claimant and the size and resources of the respondent.

215. The respondent is a Catholic primary school with approximately 30 teachers. It has access to the resources of Lancashire County Council to support the governors and trustees and promote high quality governance. The school is serviced by the East Team. However, HP states in her witness statement that she was not the normal clerk to the committees and had to step in because there was a lack of capacity in the East Team. HP states that she struggled due to resource issue to type up the minutes for the disciplinary and dismissal committee, as they were taken over seven days.

216. NMG stated in her witness statement that there would have been considerable financial implications on the respondent if it had appointed external consultants to conduct the investigations.

217. The claimant was employed as Head Teacher. A senior role with responsibility and leadership. The Head Teacher is responsible for the safety and wellbeing of all those in the school.

218. LRH stated in the appeal outcome letter *“As the Head Teacher it is your responsibility to ensure openness and transparency relating to matters of safeguarding in the school. The establishing of rigorous safeguarding policies and practices is a pivotal role of a Head Teacher”*.

219. LRH also states *“In your capacity as Head Teacher, you are expected to maintain and demonstrate the highest professional standards when managing and communicating with staff”*.

220. The allegations made were extremely serious in nature all concerning the claimant’s behaviour which created a safeguarding risk for both pupils and staff. The respondent received the SSC about the claimant’s behaviour under the Whistleblowing Policy because the staff say there were fearful of raising any of the claimant’s behaviour issues directly with the claimant.

221. The claimant herself accepted that she was responsible for running the school and stated at p 919 *“ I am the person with the ultimate responsibility for the running of the school and quite rightly make my own decisions”*

222. Fourteen staff signed the SSC, all gave witness statement, were questioned by the respondent, and five of them attended the disciplinary hearing and appeal hearing to give evidence.

223. TM stated in his witness statement that:

“..the members of the committee approached it with the utmost seriousness, and in line with the school’s adopted Disciplinary Policy. As well as oral evidence from witnesses, we received and considered in excess of 1500 pages of written evidence, some of it introduced during the hearing. The committee gave ample time and consideration for the claimant to bring forward and discuss her evidence, and to interrogate all witnesses.”

224. Both TM and LRH confirmed that that this was an extremely serious case which they gave consideration to, and they were mindful of the consequences of their decision on the claimant.

225. TM in his witness statement stated that *“..the claimants behaviour in relation to these allegations fell significantly short of the reasonable expectations we could expect of a headteacher of the school”* and he went on further to say *“.. we had severe concerns about the claimants safeguarding of children and the welfare of staff under her leadership and from the testimony we had seen it was apparent that staff has a genuine fear of raising concerns”*.

226. I find that the respondent was deeply concerned by the safeguarding concerns the claimant’s behaviour which fell short of the standards of expected behaviour of a head teacher which a significant degree of trust is required, and the respondent was acting reasonably when it concluded that the bond of trust had been irretrievably broken.

227. Even in the most serious of cases, it is unrealistic and inappropriate to require the standards and safeguards of a criminal trial but the more grave the charges and the potential impact of dismissal the more rigorous the process is required.

228. The investigation is not a mechanical process what is needed is for enough of the claimant case to be put to the witnesses to enable a reasonable view to be reached about the credibility of the complaint. The test to be applied in suspected misconduct is not whether further investigation should have been carried out or whether more could have been done but whether the investigation that has been carried out by the respondent could be regarded by an adequate employer as adequate.

229. I find on the facts that the respondent had carried out a reasonable investigation.

230. Dealing firstly with some general points raised by the claimant.

No investigation plan or timeframe

231. The claimant submits that there should have been an investigation plan and timeframe. The respondent's policy does not state that any investigation needs to be completed within a specific timeframe.

232. The ACAS guide on conducting workplace investigations states that "If no timescale is specified in the employers they should provide a provisional timeframe within which the investigations should be completed...but an investigation should not be restricted by a set completion date. While an investigation should be completed as quickly as practical, it also needs to be sufficiently thorough to be fair and reasonable" It is not a mandatory requirement to have an investigation plan or timeframe. I find the respondent has acted reasonably.

Changing statements

233. NMG confirmed in her evidence that the first draft of the witnesses' statement had been sent to the claimant's representative in error. The claimant has suggested that whenever there are differences between the first and second statement this must be evidence of collusion. NMG gave oral evidence that everyone was given the opportunity to amend the first version of their statement, and this is normal practice.

234. During the disciplinary hearing and the appeal hearing both chairs noted that the witnesses who gave oral evidence stood by their written statements. I find the respondent to have acted reasonably.

235. I find that there was no material line of enquiry that was not pursued with a materially relevant witness. No evidence of inconsistent treatment was put before the Tribunal.

236. Considering the disciplinary process as a whole and having regard to the reason for dismissal, I find that the procedure adopted fell within the range of reasonable responses open to an employer acting reasonably in all the circumstances.

Inconsistent number of witnesses and signatures to the SSC

237. The claimant raised the issue of the inconsistent number of witnesses and signatures to the SCC and TM in his witness statement confirmed that:

"Whilst we noted that the claimant raised an issue regarding the number of signatories to the initial compliant, having heard from the witnesses themselves we determined that nay inconsistency with the number of signatories was inconsequential to the authenticity of the compliant itself. This was particularly so as the witnesses we saw gave in-person testimony to the issues raised in the initial cause for concern document, and confirmed that they later signed it in January 2019."

238. On the facts I find that the respondent has acted reasonably.

No mention of claimant's previous record

239. The adverse report did not mention claimant's unblemished record. When giving evidence both TM and LHR confirmed in their oral evidence to the Tribunal that they had given careful consideration to the claimant's unblemished record, length of service and that they had also considered alternatives to dismissal. The blanket denial of the allegations, whilst at the same time saying that the claimant would have dealt with matters informally had they been brought to her attention, says the respondent was not credible. I find that the respondent has acted reasonably.

240. Taking each of the allegations in turn.

Allegation 1

241. The respondent interviewed all 14 signatories to the SSC regarding this allegation, NMG stated that of the 14 signatories interviewed, 12 of them had direct experience of smelling of alcohol and 2 indirect.

242. Mr Wiltshire submits that due to a previous complaint having been made about the claimant smelling of alcohol and because this was not being investigated a rumour was allowed to fester and grow. NY in his statement stated that no formal complaint had been made, but he did have an informal word with the claimant, and she denied it, so it did not go further. NMG also confirmed this in her oral evidence.

243. Mr Wiltshire submits that the claimant's medical history was not contained within the Adverse Report. The claimant suffers from rosacea which affects her appearance accepted that it was not in the report but confirmed that it had been mentioned in the meetings. The claimant produced a letter medical evidence that she did not have liver damage to support her defence.

244. Mr Wiltshire submits that the investigation was a self-fulfilling prophecy and that the respondent should have widened the investigation to include others who may have been able to provide an alternative view.

245. In response to this NMG gave oral evidence to the Tribunal that the claimant did not want her to contact anyone else who had not signed the SCC to gather evidence from them. The claimant contests this. I found NMG to be a consistent and truthful in giving her evidence to the Tribunal whereas the claimant blanket denials, focus on minor factual inconsistencies and failure to engage with the substance of the allegation did not assist her case.

246. The claimant was able to raise her concerns and NMG stated in her evidence that she took note of these and raised the claimant's concerns with the signatories of the SCC. One of the main concerns of the claimant was the motive behind the SSC and that the allegations were malicious. NMG stated in her oral evidence that she did consider the possibility of collusion and when she asked the claimant if she could explain this the claimant said that many of the staff bore a grudge and/or felt that PK would be easier to work for. NMG went back and re interviewed the signatories. NMG mentioned that all the staff were fearful of the claimant but none of their answers suggested collusion.

247. NMG stated that some concerns raised by the claimant were never pursued further e.g. drunken phone calls late at night. The claimant had advised that she had telephone records that would prove this alleged behaviour was untrue, but these records were never submitted to the respondent.

248. The respondent has to prove guilt to a reasonable standard but it does not have to adopt a procedure akin to that of a criminal investigation and I find of the facts that the respondent had carried out a reasonable investigation.

Allegation 2

249. TM says the panel also took into consideration that this incident had taken so long for it to be reported. It raised this issue with each of the signatories, and the panel found from the witnesses that this was due to fear of the consequences of reporting it, which it concluded was a safeguarding risk, if staff cannot raise their concerns.

250. The panel accepted after challenge by the claimant and further questioning of the witnesses that the claimant had not asked PK to leave the playground. TM in the dismissal letter states that the panel confined their consideration to the issue of whether the children had been left unsupervised.

251. The claimant raised various assertions as to why this was not a serious matter e.g. there was no formal procedure requiring the playground to be supervised at all times, it only took two minutes, that fact that a door was open and two trusted pupils were put on alert to come and fetch the claimant if anything had gone wrong.

252. TM when giving oral evidence stated that the panel concluded that the time it took for the photograph took longer than the two minutes suggested by the claimant. TM stated the panel "*formed a consensus that it was towards ten minutes*" and acknowledged that this was not in the report.

253. I found that the claimant when giving evidence does now appear to have acknowledged that this was not the correct course of action to take and that she would do things differently now. I find that at the time the panel took the decision to dismiss it had conducted a reasonable investigation.

Allegation 3

254. The SCC which was signed by 14 colleagues states this incident took place in the playground. The claimant said this did not happen. The respondent went back to the signatories who when questioned PK and EG said that this was an error and that it had taken place in the classroom.

255. The claimant would not accept that this was an error in the drafting of the allegation although it was accepted by the disciplinary panel.

256. The claimant said that the motive behind this allegation was because the other staff thought that PK would be an easier headteacher to work for. NMG went back to the signatories and put this to them. They all denied that they thought this.

257. LRH states that PK and EG had both given oral evidence at both hearings and that the appeal panel believed their evidence over the claimant's blanket denial of the event.

258. I find that the respondent had carried out a reasonable investigation especially when faced with blanket denials by the claimant.

Allegation 4

259. The respondent found that the statements taken from all the signatories all contained examples of the claimant being disorganised and/or conducting herself in an irrational/erratic/unprofessional manner.

260. The claimant did not agree with this allegation. The written statement of CB stated that this was not her experience of the claimant.

261. The claimant submitted evidence in support of the one of the behaviours that she was late and although not mentioned in the adverse report. However, TM stated that the disciplinary panel did not make a finding that the claimant was late.

262. NMG went back to the witness and put the claimants' points to them and found that all those interviewed confirmed their previous account.

263. When giving her oral evidence the claimant confirmed that the incidents were accurately recorded in the adverse report, but she had no evidence to support her position that the respondent was on a "*witch hunt*" and there hadn't been a balanced investigation.

264. The respondent is a small junior school and although it has the resource support of Lancashire County Council it has not conducted a thorough investigation of every example given.

265. In the adverse report it states that "*The allegations that have been investigated are only the more serious aspects of the whole whistleblowing complaint*".

266. Taking the above into account I find that the respondent had carried out a reasonable investigation.

Allegation 5

267. This issue was not covered explicitly in the initial SCC but was raised during the initial investigatory interviews with EH who was the subject matter of the alleged rumour.

268. The claimant had in error received the draft witness statements as well as the final witness statements and this caused the claimant to believe that there was collusion and changing of stories. The respondent explained that the particular member of staff did not want to be involved and re the statements, this was because CN had mistakenly sent the first drafts of the witness statement to the claimants union representative before they had been seen by the witnesses themselves (para 36 TM). TM in his statement explained *“following discussions with the witnesses, she had typed them up and sent them to the witnesses to correct mistakes and add anything that was missed”* and *“the final versions of the statements were not a second statement but were a correction of the content of the early initial draft”*.

269. Mr Wilshire raised in cross examination of NMG why the other person who was the subject matter of the rumour wasn't interviewed. NMG said that the claimant had requested that no other staff outside the signatories to the SSC were to be contacted as part of her investigations. The claimant herself didn't call this person as a witness which I find supports NMG version of events.

270. TM stated in his evidence that the panel did find that there was insufficient evidence to determine whether the claimant had made the comments to PK or PH or whether it was their subsequent comments that later started the rumour and so the panel only partially upheld this allegation.

271. Taking all the above into consideration I find that the respondent carried out a reasonable investigation.

Allegation 6

272. The respondent took a statement from the head teacher at the other school who reported to them that the claimant had been in touch. The teacher that the claimant had been trying to contact had received text message from the claimant.

273. The respondent put forward the allegations to the claimant at the second investigatory meeting on 10 March 2020. Although this allegation is made some 14 months after the SSC at the time that the allegation is put to the claimant it is only a matter of days since the event occurred.

274. Mr Wiltshire submits that a proper investigation was not conducted because the teacher concerned was never interviewed by the respondent. NMG stated in her evidence that the teacher concerned did not want to be involved.

275. The claimant said she had wanted to visit the other teacher because CN had refused to investigate allegations made against that teacher. NMG said in her oral evidence that it was not within the remit of the claimant to contact witnesses and the claimant did not have her unions support to take such action. The respondent does not accept that the claimant's actions were appropriate.

276. I find that the respondent had carried out a reasonable investigation.

Had the respondent followed a fair procedure including the appeal process?

277. The respondents Model Disciplinary and Dismissal Procedure for teachers in schools with delegated budgets set out the procedure to be followed (p180).

278. ACAS Code of Practice states that: “*employers and employees should raise and deal with issues promptly and should not unreasonably delay meeting, decisions or confirmation of those decisions*” and this has to be balanced with “*...employers carrying out all necessary investigations...*” and “*...informing employees of the basis of the problem and give them an opportunity to put their case in response before any decision is made*”.

279. Mr Wiltshire submits that the correct policy was not followed in that an initial meeting to discuss the suspension and timeframe did not take place.

280. The respondents Model Disciplinary and Dismissal Procedure for teachers in schools with delegated budgets set out the procedure to be followed and states “At least 10 working days’ notice of the meeting will be given to the teacher, in writing, together with details of the misconduct to be discussed” (p184).

281. A meeting should be arranged where suspension is considered. The respondent disciplinary policy on suspension states that there may be circumstances where it is considered inappropriate to have a first meeting (p198).

282. The claimant was made aware of the broad nature of the allegations by NY and he had advised her of the seriousness of them and the need to commence investigations. NY in his letter to the claimant states that he has considered alternatives to suspension, but because of her role as Head Teacher and the nature of the allegations suspension is appropriate (p468). I find that the suspension did not affect the fairness of the dismissal.

283. NY initially conducted interviews with all the signatories of the SSC with the support of CN. The respondent interviewed the 14 signatories, put the evidence to the claimant, who had the right of reply and submitted her own evidence.

284. Some of the allegations were already a year old when it came to the attention of the respondent. As soon as it did come to the attention of the respondent investigations commenced and witness statements were drafted shortly after. Both the respondent and the claimant will have been prejudiced by the passage of time and memories fading.

285. The claimant was invited to two investigation meetings, the claimant’s version of events was sought, and any points raised by the claimant were raised by NMG when she reinterviewed the signatories. The claimant was accompanied by a trade union representative.

286. The respondent did not investigate every example of behaviour that was cited in allegation 4. The Adverse Report stated that there was a pattern of behaviour that is a serious cause for concern and those interviewed provided many examples of behaviour which is simply not conducive to that of a Headteacher.

287. Regarding allegation 6 Mr Wiltshire submits that the claimant was ambushed with this allegation. Looking at the time scales and the fact that the alleged breach took place just four days before the second investigatory meeting I find that that the respondent acted reasonably. The claimant was already aware of what she done.

288. The claimant was made aware of the allegations against her prior to the disciplinary meeting and was able to present her own evidence and witnesses and cross exam the respondent witnesses. The claimant was able to call her own witness and it is unfortunate for the claimant that she was not aware that her own witness did not support her case.

289. The claimant was advised of the outcome in writing and was advised of the right of appeal which she exercised. The claimant did not stay for the appeal meeting but did leave written submissions for the appeal panel to consider.

290. One of the main thrusts of the claimant's case is that the procedure was unfair due to delay. The claimant says that delay has tainted the entire process and was unreasonable and unfair and prevented a fair investigation and hearing. The respondent says there was a lot going on and the investigation was not straightforward.

291. I have carefully considered each part of the process and the reasons given for the delay, what the claimant has said about the delay, the impact on her and her ability to conduct her case fairly.

292. From the first telephone call to the claimant to the appeal meeting outcome was a period of three years, four months and eighteen days (05 January 2019-19 May 2022).

Investigation Process 05 January 2019 – 12 March 2020

293. The investigation process took one year, five months and 14 days (05 January 2019 -12 March 2020).

294. The respondents Model Disciplinary and Dismissal Procedure does not allocate a timeframe, but NMG in giving oral evidence accepted that it should have been dealt with in a timely manner. She went on to say it was not in line with expectations, but was due to claimant sickness, covid, availability of witnesses, the large number of witnesses many who were interviewed twice, witnesses having covid, availability of witnesses and the claimant's grievance.

295. The respondent had received the CFC on 29 December 2018 and this was followed by the SSC. The respondent acted on this by telephoning the claimant on 05 January 2019 to advise her. This time frame is reasonable.

296. The claimant is signed off sick from 10 January until 03 July 2019 and the respondent only received confirmation from Optima Health that they have no concerns re the claimant attending meetings on 24 April 2019 (pg700).

297. The respondent's own disciplinary policy states the initial meeting will take place at which the claimant is given at least ten days' notice (p184). However the policy goes on to state that: "*NOTE: There may be circumstances where it is considered inappropriate to convene a meeting*".

298. On 11 January NY informs the claimant of a complaint received under the whistleblowing policy. NY states that he intends to commence the investigation into the complaint on the following Monday 13 January 2019.

299. Between 25 January and 12 February 2019 NY conducts interviews with the 14 signatures of the SSC (p470-556). The investigation meetings and witnesses' statements are taken relatively promptly within the time frame of the SSC and I find this is a reasonable time to do the large number of investigatory interviews required.

300. On 06 March 2019 the claimant raised a grievance against the two investigating officers (NY and NMG). The investigatory meeting into the misconduct allegations is stayed pending the outcome of the grievance at the claimant's request (see p468 letter from NY to C dated 26 June 2019).

301. HP when giving her oral evidence to the Tribunal stated that one of the reasons for the delay in the disciplinary hearing was that she had received an instruction from the claimant's union representative not to commence the disciplinary hearing until the bullying and harassment grievance had been dealt with. I find that the delay in the investigation part of the procedure is reasonable as it has been requested by the claimant's union representative. As the respondent was on notice that the claimant was suffering from stress it would have been unreasonable for the respondent to refuse the claimant's request.

302. The grievance outcome was appealed by the claimant and the appeal regarding the grievance was heard on 08 October 2019 and the outcome sent to the claimant on 14 October 2019. The Claimant's appeal was not upheld (p 355-357). NY subsequently resigned from the Board of Governors and NMG continued the investigation process.

303. On the 22 October 2019 the claimant was invited to the first disciplinary investigation meeting and the allegations against the claimant were set out (p 579). This is one week after the appeal decision of the grievance.

304. The first investigation meeting between the claimant and the respondent took place on 13 November 2019. This is three weeks after the appeal decision of the claimant's grievance, and I find it is reasonable.

305. The notes were sent to the claimant for approval 09 days later and the claimant sent her version of the meeting notes on 02 December 2019 together with a further 32 documents for review.

306. On the 16 and 19 December 2019 NMG conducted further investigation meetings with relevant witness as a consequence of issues raised either during the

13 November meeting or in the claimant's version of the notes. I find that this time scale is reasonable as the respondent has a duty to conduct a thorough and fair investigation by investigation of the points that the claimant raised in the first investigatory meeting.

307. On the 28 January 2020 the claimant is invited to a second investigation meeting, which is cancelled, rearranged, and takes place on 10 March 2020. A new allegation 6 is added to the existing five allegations.

308. The notes from the second investigation meeting are sent to the claimant on 12 March 2020 (p 841). On the 01 April 202 the claimant returned the notes with her own annotations and evidence (858).

309. The claimant had a right to challenge the allegations made against her and to raise questions and provide further documentary evidence, but the volume of challenges says the respondent meant that witnesses had to be re interviewed all of which took time. I find this time this took to be reasonable.

310. NMG stated in her statement and when giving evidence to the Tribunal that she is a volunteer governor and works full time. NMG was working full time and was conscious that the school budget would suffer if it appointed a third party.

311. A national lockdown was implemented on 23 March 2020.

312. 29 April 2020 proceedings were issued in the Employment Tribunal by the claimant and dismissed on withdrawal.

313. On the 23 October 2020 the claimant was sent a copy of the Adverse Report (p 390) which is 01 year and 09 months after the claimant received the phone call from NY. For the reasons given above I find that taking all the circumstances into account the respondent acted reasonably during the investigatory process.

The Disciplinary Hearing 15 March -14 May 2021

314. The disciplinary hearing was not heard until 02 years, 3 months after the claimant was first made aware of the allegations.

315. The claimant raised concerns re the impartiality of the governors with NMG and as a consequence another set of governors had to be co-opted onto the respondents Discipline and Dismissal committee and this happened on 12 November 2020. The claimant says she requested this because she did not want to be prejudiced by the school's board of governors where she worked.

316. The respondent had decided that seven full days were required to conduct the Discipline and Dismissal Hearing, and this was to be a face-to-face meeting at a covid secure location. HP when giving evidence to the Tribunal stated that the request for a face-to-face meeting came from the claimant's union representative.

317. There were eleven witness that were required to attend the hearing. Six for the respondent and five for the claimant.

318. The Disciplinary meeting took place on 15,17,18 and 19 March, 29 and 30 April and 14 May 2021.

319. Ten days later on the 24 May 2021 the claimant was advised of the decision, which was to dismiss by reason of gross misconduct.

320. Due to the need to appoint governors, the request for a face-to-face meeting and the time assessed for the length of the hearing this created a significant delay, but as the claimant had made these requests she was aware of this which together with the illness of one of the panel members, I find that this delay was reasonable in all the circumstances.

321. The claimant was advised in the dismissal letter of her right to appeal in line with the disciplinary policy. The claimant lodged an appeal re her dismissal on 04 June 2021.

322. On the 16 September 2021 the claimant lodges this claim in the Employment Tribunal and case management conference took place on 13 January 2022 with EJ Butler.

323. The claimant did not receive the minutes of this meeting until 02 December 2021. HP in her witness statement states that due to the shortage of staff and the volume of notes that had to be typed up this was delayed. No formal minutes have ever been produced. I find that there is no prejudice on the claimant's case by the lack of formal minutes, as the contemporaneous notes of the meeting were provided.

The Appeal Hearing 09-10 May 2022

324. The respondent's own policy states that appeal should be heard within 20 days.

325. The ACAS code states that where an appeal has been requested "*the employer should invite you to an appeal meeting or 'hearing'...as soon as possible*".

326. The claimant requested her appeal on 04 June 2021 but it was not heard until some 11 months later on 09 May 2022.

327. The appeal panel was made up of three governors from other schools who had to be appointed onto the respondent school's board of governors and who had not been involved in case previously. This was in line with the respondent's policy.

328. HP in her oral evidence stated that delay was caused by the reconstitution of the governing body which was done at the request of the claimant. This took longer than normal as the Salford Diocese had to approve the appointments. HP also advised that one of the appeal panel members was seriously ill.

329. LRH in her witness statement says the pool of suitable governors is not large and she was appointed on 15 December 2022 along with two other governors. The respondent had to find governors as there was an insufficient pool of impartial governors available at the respondent board of governors. This process takes some months as the local diocese also must be involved. LHR states that she explained the claimant of the reasons for the delay.

330. LHR witness statement confirms that the appeal hearing was originally scheduled for 11 January 2022, but due to the unavailability of the claimant due to the case management conference and one of the panel governors being ill, the appeal hearing was rescheduled for 09 May 2022. HP in her witness statement also confirms this.

331. The respondent decided that the fairest way forward was to schedule a hearing of all the evidence. This was permissible under the respondent disciplinary policy. The respondent had to find five days to schedule the appeal as a rehearing and availability of the five witnesses, which also meant each governor had to find time to attend. LHR gave oral evidence to the Tribunal that the reason for the rehearing was due to the passage of time and delay. LHR told the Tribunal that *"..they wanted to make the decision afresh and also check that the procedure was correct"* I found LHR to be truthful, consistent, and compelling witness.

332. NMG in her witness statement states she had a serious health concern during December 2021 which required a lengthy recovery and meant she had to delegate the presentation of the Adverse Report to another governor at the appeal hearing.

333. The claimant left the appeal shortly after it had started. The ACAS code states that *"where an employee is ...unwilling to attend ... without good cause the employer should make a decision on the evidence available"*.

334. The claimant was notified of the outcome of the appeal on 19 May 2022 which was nine days after the hearing, which I find reasonable.

335. Substantial delay may be sufficient to give rise to a presumption of prejudice but taking the delay as a whole in light of all the facts and circumstances, I find that the respondent has acted reasonably. I have also taken into account that in deciding whether the delay was fair to the claimant I have had regard to the size and administrative resources of the respondent.

336. Looking at all the circumstances of the case objectively and impartially and taking into account the burden of proof I find that the respondent acted reasonably in relation to the whole disciplinary procedure. The claimant was told of the seriousness of the allegations, was given the opportunity to challenge, question and present her own witnesses and evidence, she was warned of the potential outcome, she was accompanied by her trade union representative, the respondent re-interviewed witnesses, the claimant had the right of reply, carried out further investigations on point raised by the claimant, she had a right of appeal which was exercised albeit that she chose to leave. I find that the reasons for the delay are reasonable in the

circumstances (including the size and administrative resources of the respondent's undertaking).

Other procedural matters raised

337. Turning to specific points raised by the claimant regarding procedure.

Collaboration and Informal meeting on 17 December 2018

338. The claimant's case is that there was a meeting regarding the governors making an intervention in early December 2018 and the instigating officers NY and NMG arranged a meeting of the governors where the head teacher was excluded. NMG gave oral evidence that the meeting on 17 December she had listened to the governors saying that staff had raised concerns regarding the claimant. NMG gave advice that staff have to raise concerns via the Trade Union or with the claimant directly. NMG confirmed that no formal concerns had been raised by 17 December 2019 but she had wanted to approach the Local Authority for advice on how to support the claimant and other staff.

339. NMG in her witness statement states that this was an informal social gathering and that there was no agenda, and no minutes were taken, I found NMG to be a credible witness. I find that the respondent has acted reasonably.

Impartiality of governors

340. The claimant was initially concerned that the current governors of the school would not be impartial. The respondent then appointed three co-opted governors to sit on the disciplinary and dismissal panel. TM confirmed in his witness statement that he had no prior knowledge of the claimant.

341. NY and NMG were known to the claimant, and she felt that NY was tainted due to a previous disagreement re cricket vouchers. The claimant raised a bullying and harassment grievance against NY and NMG which was not upheld. NY subsequently resigned from the board of governors.

342. Mr Wilshire submits that the claimant was prejudiced because of NY's conduct namely; had meetings in the school on 07 January 2019 and no notes of the meetings were taken, NY was encouraging staff to complain. NY in his statement (p 837) he was concerned about the wellbeing of staff. NY had expressed views on twitter that could be taken to refer negatively to the claimant. I find that by posting comments on twitter NY's behaviour was not professional.

343. NMG in giving her oral evidence at the Tribunal stated that she felt it was appropriate for her to investigate the allegations because she was not involved in the matters that gave rise to the allegations and she was not a decision maker. She felt that she was suitably experienced as a HR professional and knew that the school could not afford to appoint an external consultant to undertake the investigation.

344. The claimant believed that NMG had lost confidence in the claimant and regardless of the allegations had formed the view that the claimant could not return to the school because neither the chair of governors could not work with her and fourteen of the staff had complained about her. Having heard from NMG when giving oral evidence to the Tribunal denying this, I found NMG to be a truthful and consistent witness.

345. NMG gave evidence that she felt she was not tainted because she was not involved in the matters concerning the allegations. I do not accept the submission that NMG keeping in touch with NY was evidence of a sinister motive.

346. In giving her evidence I found NMG to be an experienced professional, thoughtful, balanced and considered when answering questions. In her witness statement NMG denies that she amended or tampered with any evidence, and I found no evidence to suggest otherwise. NMG stated when giving oral evidence that she was not told what the outcome should be by NY.

347. For the appeal hearing three new governors were co-opted on the respondent board so that they could sit on the appeal panel. I find that the respondent has acted reasonably.

Appointment of Governors

348. The claimant raised the issue of the appointment of the governors at the disciplinary meeting and appeal meetings.

349. TM confirmed in his statement that he and two colleagues were co-opted as governors onto the respondent's governing body to act as an impartial governor for the claimants disciplinary and dismissal committee (para 2 pg 47 WS). He stated that on day one of the disciplinary meeting the claimant had challenged the validity of the panel and the appointment of the governors as they were listed as associates. He explained that the reference to associates was a typing error and that the governors had been appointed as co-opted governors. He asked the claimant if she wished to proceed and after discussing with her union representative confirmed she was happy to proceed.

350. LR in her witness statement stated that the appeal panel considered the appointment of the disciplinary panel and found the appointments to be appropriate.

351. LRH in her witness statement confirms that she was appointed at a governors meeting to be on the appeal panel along with two others in 15 December 2021 (p1372).

352. The claimant challenged the appointment of the governors and wanted assurance from the appeal panel that they have been correctly appointed. Specifically, the claimant at the start of the meeting requested evidence of appointment, DBS clearance and that all three governors were practicing Catholics. LHR adjourned the meeting and sought advice from HP and responded to the claimant that the minutes from 15 December 2021 show that the three governors

have been co-opted (p 1370). In cross examination LHR said that she appreciated this and had adjourned specifically so that this assurance could be given to the claimant.

353. LHR advised the claimant that the appointment was correct and that DBS checks were not required because the governors had been co-opted and have DBS checks done at the schools where they were ordinary governors. LHR also advised that the Salford Diocese had approved them being co-opted even though they were not Catholics and that the minutes were not signed as during Covid lockdown wet signatures were not used. I find the respondent has acted reasonably.

Minutes /dismissal letter not signed

354. The claimant stated in giving her evidence that as the dismissal letter was not signed it was not valid and minutes not signed were not ratified.

355. LHR stated in her oral evidence that during the covid lockdown it had become usual practice not to put wet signatures on minutes as the meetings were conducted over zoom.

356. TM confirmed in his oral evidence that the dismissal letter had been approved by the panel of the disciplinary and dismissal committee and the letter would be in the name of the clerk to the committee, which in this case was HP. I find on the facts that the respondent has acted reasonably.

Was dismissal within the reasonable band of responses?

357. The respondent's disciplinary and dismissal policy gives examples of gross misconduct(p447) and states that misconduct can be defined as "*misconduct of such nature that it fundamentally breaches the contractual relationship between the employee and employer*".

358. The respondent's disciplinary policy states that a breach of health and safety will be considered as gross misconduct. The adverse report stated that "*the safeguarding of children are a fundamental part of her role and at the very heart of a Headteachers contract of employment*".

359. LRH stated in the appeal outcome letter "*In your capacity as Head Teacher, you are expected to maintain and demonstrate the highest professional standards when managing and communicating with staff*".

360. The dismissing officer TM confirmed in his oral evidence that the claimant smelling of alcohol would on its own not be a reason for dismissal for gross misconduct, but he did confirm that "*It was a combination of behaviours and evidence from witnesses which were not commensurate with expected behaviour causing safeguarding issues to staff and pupils*". TM went on further to say "*We considered the number of these incidents, the behaviour and the climate that these created in the school, how the school was managed and staff treated. You could discuss it as professional behaviour or conduct*".

361. Mr Wiltshire's submission is that no evidence was presented to the panel that there was a link between smelling of alcohol and a safeguarding risk. However, the claimant in her oral evidence did admit when cross examined that if the allegation of smelling of alcohol were true then it would be a serious issue.

362. The breach of confidentiality and of the staff's personal data is in breach of the respondent's policy and data protection legislation. I find that dismissal for a serious breach of the respondent's confidential information regarding an ongoing investigation and disclosing staff personal data is within the range of reasonable responses.

363. TM confirmed when giving his oral evidence that each allegation was considered individually and in the round. TM states in his witness statement "*We felt that any one of the founded allegations could bring about a fundamental breach of the trust and confidence that the governing board is entitled to place in the claimant ...*".

364. The respondent says it considered the totality of the behaviours, and that the claimant had developed a pattern of behaviour that was wholly uncondusive to the role of headteacher.

365. I found TM to be honest in giving his evidence and admitted when he could not remember something or had not read notes.

366. The respondent says in the dismissal letter that it was deeply concerning that the claimant as Headteacher did not seem to recognise the safeguarding concerns of leaving up to 120 children unsupervised.

367. The band of reasonable responses is not infinitely wide and consideration is not a matter of procedural box ticking and the Tribunal is fully entitled to take into account length of service.

368. The claimant as a long serving employee ought to have been fully aware that their conduct fell short of the behaviour expected and risked disciplinary action including dismissal. Furthermore wilful neglect of health and safety in leaving the pupils unattended in the playground is an express example of gross misconduct within the respondent's disciplinary and online safety policy.

369. Mr Wiltshire submits that the findings of gross misconduct did not match with the examples of gross misconduct in line with the disciplinary policy (p447) and I accept that gross misconduct is a non exhaustive list however the respondent raised many times that the allegations were consider individually and in the round and the respondent felt they raised real safeguarding concerns in relation to the pupils and welfare of the staff.

370. TM when giving his oral evidence to the Tribunal was able to confirm which description of misconduct the panel had considered when making their decisions. TM confirmed in his statement that the panel has considered "*all possible outcomes*".

371. LRH in her statement that the appeal panel considered all the evidence that the D&D have seen, together with the witnesses and the evidence that the claimant had left for the panel. LRH confirmed that the panel *“had determined that each allegation had been appropriately investigated and we found all six allegations to have been substantiated by the evidence we had seen”*.

372. It does seem to me that it would have been within the band of reasonable responses for the respondent to decide that summary dismissal was an appropriate sanction for the misconduct of the claimant as set out in each of the allegations.

373. On the facts I find that the decision to dismiss was within the band of reasonable responses due to the fact that the respondent had established that the alleged misconduct did take place.

374. The penalty of dismissal is a harsh one and some employers acting reasonably would not have taken the decision to dismiss in the circumstances. However, it was not unduly harsh, given the position of Head Teacher and the standards of expected behaviour of Head Teachers and some employers acting reasonably would have taken the decision to dismiss in the circumstances. It cannot therefore be said that no reasonable employer acting reasonably would have taken the decision to dismiss. Accordingly, the penalty of dismissal fell within the range of reasonable responses.

375. Having conducted an objective assessment of the entire dismissal process, including the investigation, without substituting myself for the employer, and having regard to equity and the substantial merits of the case, I find that the dismissal fell within the band of reasonable responses open to the respondent in all the circumstances of the case.

Did the respondent act reasonably in all the circumstances?

376. The respondent operated a Whistleblowing Policy so that staff could raise concerns and had a disciplinary policy that incorporated the ACAS code. The respondent was faced with 14 members of staff making allegations and the claimant's submission that this was a malicious allegation was not credible in the respondents' eyes.

377. There were serious safeguarding issues in leaving children unsupervised in a playground and where staff do not feel they can raise safeguarding concerns.

378. TM says that the disciplinary panel struggled with the claimant's position and denial of the allegation. He said the claimant did not seem to be able to accept that by denying the allegations and saying the staff were colluding and/or lying and stating that if they had raised matters informally, they could have been dealt with, could not be possible if allegations are always denied.

379. LRH stated in the appeal outcome letter *“In your capacity as Head Teacher, you are expected to maintain and demonstrate the highest professional standards when managing and communicating with staff”*.

380. The allegations made against the claimant were serious ones as she was the Head Teacher of a primary school and in a position of trust and leadership.

381. TM in his witness statement states that he was aware that this was a serious matter because the reputation of the claimant was at stake and did consider alternatives to dismissal. TM went on to state that because the claimant’s behaviour fell short of what would be expected of a Head Teacher and the panel serious concerns regarding the claimant’s ability to safeguarding of the pupils and welfare of the staff.

382. When giving his oral evidence TM admitted that although he was not aware of the claimant’s exact age he and the panel did think about the impact of the decision and the outcome it would have on her career as a teacher. The seriousness of the allegations caused the panel to take two days to come to their decision.

383. Mr Wiltshire submits that the Adverse Report failed to address the claimant’s exemplary record and length of service. TM stated in his oral evidence that the panel had given consideration to the claimant record and length of service. LRH in her oral evidence before the Tribunal stated that she did consider the disciplinary record of the claimant and her length of service.

384. This respondent in this case had conflicting version of events (the signatories to the SSC versus the claimant’s) and was required to draw inferences and a conclusion from the surrounding evidence. In the absence of any credible evidence as to why these staff would have collectively colluded to make up the allegations, I find that the respondent has acted reasonably in the circumstances.

385. The claimant was accompanied by her trade union rep, raised questions, was able to challenge the appointment of the governors, brought her own witness, had the right of reply and was able to appeal the decision to dismiss.

386. I found the claimant to be an intelligent woman with a thorough grasp of the rules of procedure within the respondent school and was capable and comfortable challenging the respondent on all aspects of the disciplinary process she did not agree with. She gave oral evidence before the Tribunal for a whole day and gave her answers in a thoughtful and considered way. However, I did find however that there were inconsistencies and the evidence that was presented on the collusion issue wasn’t credible. By way of example the claimant’s stance of a blanket denials has not helped her case by way of example she refused to accept allegation 2 completely, based on incorrect location which the panel had already accepted was incorrect.

387. I did not witness any of the behaviours that both chairs say the claimant presented at the disciplinary and appeal hearing and I accept that the whole process

will have caused anxiety and stress to the claimant and Mr Wiltshire's submission that this may have contributed to her behaviour at the hearings.

388. On the facts I find that the dismissing and appeal officers had genuine grounds upon which to sustain the belief of misconduct as set out in the allegations and that the respondent acted reasonably in both characterising the allegations as gross misconduct and then in deciding that dismissal was the appropriate sanction.

Wrongful dismissal

389. When it comes to wrongful dismissal what I need to form a view on whether the claimant was guilty of gross misconduct as set out in the allegations.

390. Was the claimant's conduct, even if inappropriate, enough to amount to a fundamental breach of contract. The claimant was as the Headteacher, the leader of the school and as such had to conduct herself in a professional manner. Her tendency to blame others and her lack of engagement with the seriousness of the nature of the allegations go to the very root of her contract of employment.

391. I bear in mind **Laws** equates a fundamental breach with conduct which discloses a deliberate intention to disregard the essential requirements of the employment contract. In considering whether it was credible that so many of the claimant's colleagues could be persuaded to collude against the claimant by making false allegations of misconduct I find that the claimant was guilty of the misconduct as set out in the allegations and that these allegations raised serious safeguarding concerns regarding the safety of the children and welfare of the staff and this was sufficient for the respondent to justify dismissal without notice.

Employment Judge Dennehy

Date: 28 February 2023

RESERVED JUDGMENT & REASONS
SENT TO THE PARTIES ON
10 March 2023

FOR THE TRIBUNAL OFFICE

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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