



EMPLOYMENT TRIBUNALS

Claimant: Mr Jonathan Hawker
Respondent: Devonport High School for Girls

Heard at: Exeter (by CVP) **On:** 24, 25, 26, 27 and 28 April 2023

Before: Employment Judge Street

Representation

Claimant: Mr M Jackson, counsel
Respondent: Ms S Firth, counsel

Judgment having been given orally and in writing on 28 April 2023 and written reasons having been requested by the Claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided

REASONS

1. Anonymity Order

- 1.1. An Order is in place barring the identification of any child referred to in these proceedings or any identifying matter that would lead to that child being identified. The names of the children involved have been presented here and throughout the hearing, by letters. Their age, tutor group and year group are not given. The groups of children are referred to as the younger or the older pupils, rather than identifying their year group.
- 1.2. To breach the Order is to commit a criminal offence.

2. Background

The Claim is of unfair dismissal. In outline, the Claimant was employed by Respondent from March 2017 to 19 February 2022 as a teacher of maths and computing. He was suspended on 28 June 2021, following allegations of inappropriate conduct from pupils. He was arrested and charged on 1 September 2021. The Teachers Regulation Agency imposed an Interim Prohibition Order on 28 October 2021. Mrs Bell commissioned an internal investigation in November 2021. Mrs Harriet Morgan carried out the investigation. Mr Sargeant authorised a disciplinary process in January 2022. The disciplinary panel was made up of three governors and chaired by Mrs Grimes. Mr Hawker was dismissed for gross misconduct on 19 February 2022. On 3 March 2022, the police decided that the charges against him would not proceed. On 1 April 2022, the Interim Prohibition Order was lifted. Mr Hawker's appeal hearing on 17 and 23 May 2022 was chaired by Ms Adkins with two other school governors. It was unsuccessful. The gross misconduct dismissal was confirmed. On 23 June 2022, after ACAS conciliation between 16 May 2022 and 25 May 2022, Mr Hawker brought his claim.

- 2.1. The central issue was whether the dismissal for gross misconduct was unfair. I am not asked to determine whether or not Mr Hawker committed the misconduct alleged but whether the Respondent formed a genuine belief in that misconduct based on reasonable grounds following a fair and reasonable investigation and whether the Respondent acted reasonably in treating the misconduct as a sufficient reason for dismissal.

3. Evidence

- 3.1. The Tribunal heard evidence from the Claimant and from the following witnesses for the Respondent.

Mrs Ruth Morgan, Assistant Head Teacher and Designated Safeguarding Lead ("DSL")

Mrs Harriet Morgan, Assistant Head Teacher and Investigating Officer

Mrs Beverley Bell – Business Manager, responsible for the leadership of the Finance, Personnel, Catering and Premises and Acting Head Teacher at the time

Mr Lee Sargeant, Head Teacher from 1 January 2022

Mrs Olive Grimes, Chair of the Board of Governors, at the time Vice-Chair and chair of the Disciplinary Panel

Ms Sarah Adkins, former Governor and chair of the Appeal Panel

- 3.2. Those witnesses all gave evidence from written witness statements.
- 3.3. The Tribunal also had witness statements from DC Tucker, Officer in Charge, and Louise King, chartered legal executive in relation to the provision of evidence to the police from the older girls in February 2022.
- 3.4. The parties presented an agreed bundle of documents and a supplementary bundle. The supplementary bundle contained a number of additional documents as well as versions of documents redacted in the original bundle, but now with letters to identify individuals. Largely unredacted documents were provided in a separate version for the Tribunal to which the Claimant was also given access.
- 3.5. I read those pages to which I was directed. Numbers in brackets in these reasons are references to the page numbers in the agreed bundle, identified by "M" for the main file and "S" for the supplementary file.

4. Issues

- 4.1. An agreed list of issues was helpfully provided on the first day of the hearing and it is as follows.
 1. It is agreed the Claimant was dismissed.
 2. The Claimant agrees the principal reason for dismissal was for a reason related to conduct.
 3. Did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant?
 4. In particular, were there reasonable grounds for the Respondent's belief?
 5. At the time the Respondent's belief was formed, had the Respondent carried out a reasonable internal investigation, including in accordance with its Disciplinary Policy, including but not limited to:
 - 5.1. Addressing the evidence of older students;
 - 5.2. Deciding who to interview to obtain evidence;
 - 5.3. Conducting sufficient investigation into accounts other than that of the students who complained about the Claimant's behaviour.
 6. Did the Respondent otherwise act in a procedurally fair manner, including but not limited to the following alleged acts:
 - 6.1. Appointing the Investigating Officer it did?
 - 6.2. If it did so, allowing the input of other more experienced staff into how the Investigating Officer conducted her investigation?
 - 6.3. Taking into account the alleged acts by the Claimant in 2018 and 2019 in the decision to dismiss?
 - 6.4. Failing to arrange for either a representative for the Claimant being present during the June 2021 interviews by the Respondent with student witnesses or providing a transcript of the interviews in accordance with the Respondent's Staff Disciplinary Policy and Procedure at 4.4?
 - 6.5. Commencing an internal investigation and then a disciplinary process while a police investigation was ongoing?

- 6.6. Not acting on submissions from the Claimant on Department for Education Keeping Children Safe in School guidance to delay the internal process ?
- 6.7. Only offering the Claimant an opportunity to ask questions of Mr Alan Thomas via means of written questions and responses?
- 6.8. The Investigating Officer acting outside her terms of reference (to investigate the allegations) by recommending that disciplinary action was warranted?
- 6.9. Failing to give appropriate weight to the conflicting evidence from different witnesses?
- 6.10. Was there an unreasonable delay, caused by either the Claimant or the Respondent, in the disposal of the disciplinary process including the appeal once it started contrary to the ACAS Code and Respondent's policy?
7. Taking into account the above, was dismissal within the range of reasonable responses?
8. If the dismissal is found to be unfair, what remedy should be awarded to the Claimant?
9. If applicable, should there be any reduction in award due to:
 - 9.1. Any uplift or reduction for failure to comply with ACAS Codes on Disciplinary and Grievance Procedures?
 - 9.2. Any contributory conduct on the part of the Claimant?
 - 9.3. The probable chance that the Claimant would have been dismissed had there not be any procedurally unfair process (ie *Polkey*)?
 - 9.4. The Respondent proving that the Claimant has unreasonably failed to mitigate his loss?

5. Findings of Fact

- 5.1. The following are the findings of primary fact made by the Tribunal from the evidence seen and heard. Where inferences are drawn, that is stated. The analysis follows later.

The Respondent's codes

- 5.2. The Respondent is a girls grammar school. It is a company limited by guarantee.
- 5.3. The Respondent's Disciplinary Code provides for an informal process to resolve low level and minor issues of conduct informally (M113, Section 2). Informal action can take the form of a caution or a reprimand, which may be sufficient to correct an employee's behaviour. The process is not prescribed but may take the form of discussions between the line manager and an employee to establish the facts. An employee may wish to bring a companion with them for support for such a discussion. Informal meetings are by their nature unofficial, but notes or diary entries may be made and later used as part of an on-going fact finding exercise.

5.4. Outcomes can include that no further action is necessary, the setting of objectives or the identification of training needs.

5.5. On interviewing children, the Code says,

“Vulnerable individuals should not be interviewed unless absolutely essential and then only in the presence of a representative or companion of their choosing, for example a social worker or parent/carer.”

“If it is necessary to interview pupils formally, their parents/carers must be advised and consent must be obtained.”

“The employee’s representative will have the opportunity to be present at an interview with a pupil to avoid the necessity of interviewing the pupil more than once as long as this is not prejudicial to the disclosures likely to be made by the pupil. If it is thought the presence of another adult maybe intimidatory the employee’s representative will be provided with a transcript of the interview.

Wherever possible, a factual record of the discussion will be agreed to avoid the child being called as a witness at any subsequent disciplinary hearing.” (M119/20, from para 4.4)

“If the investigation is taking place following the completion of a police investigation, it may be possible to obtain copies of police witness statement with the approval of the individual(s) concerned (M120, para 4).”

5.6. On confidentiality, in respect of the Code says, in relation to all investigations not simply those involving vulnerable individuals including children,

“The importance of confidentiality is paramount throughout the investigation and investigating Officers should ensure that everything discussed will be treated in strictest confidence. A request by an investigation Officer for an employee to participate in an investigation is a reasonable management request. However in some situations, a witness statement could be provided as an alternative.” (M120, para 4.6)

5.7. The investigation report “includes a summary of why the report was commissioned; it explains who the Commissioning Officer and the Investigating Officer are, the terms of reference around the investigation and the methodology used to gather information. A conclusion will summarise the findings of the investigation. The Commissioning Officer will give consideration to a range of outcomes in response to the allegations and the investigation findings ... and decide what further action, if any, to take.

“The report shall be factual and specific, focused around the terms of reference. ...Witness statements should be signed and dated and notes taken at all formal meetings.” (M121 para 4.9)

5.8. The formal disciplinary procedure requires an outline of the allegation or allegations and the potential consequences (M122).

- 5.9. The letter confirming the outcome must state the details of the findings, including the reason for any sanction (M123).
- 5.10. Appeals are normally to be heard within four weeks, and the date to be agreed within ten working days (M124).
- 5.11. The appeal is a review process, not a rehearing, on three permitted grounds:
- The procedure – did a procedural fault affect the fairness of the decision?
 - The facts – ie, were the facts not relevant, were they not substantiated or are there new facts arising to be considered?
 - The disciplinary penalty – was everything fully explored and are there new facts to take into account in mitigation?
- 5.12. Notification of the outcome will normally be given verbally to all parties concerned and will always be communicated within five working days from the date of the disciplinary hearing (M124) . The appellant has a right to be present throughout the hearing including on any recall for clarification (M134/5).
- 5.13. If the outcome is a dismissal for gross misconduct, the Governing Body is required to report teachers to the Teachers' Regulation Agency and to the Disclosure and Barring Service and to any relevant statutory or professional body (M127/8).
- 5.14. The list of potential gross misconduct includes "Serious breaches of Professional Codes of Practice."

The Ski Trip Complaint

- 5.15. The Claimant has a partner on the staff. They both took children from the Respondent school on a ski trip that has been referred to as taking place in 2019 but which Mr Hawker says was in 2018. The school must know when it was.
- 5.16. A complaint was made that the couple were seen kissing. Mr Hawker and his partner were spoken to by the Head at the time, whether during or after the trip is not clear. No contemporary record is produced and no staff present or involved at the time were spoken to by the investigating officer other than Mr Hawker. There was no disciplinary action.
- 5.17. There is a note referring to this in the Local Authority Designated Officer ("LADO") meeting of 6 September 2021, when DC Tucker described this as,
- "The incident with his partner three years ago whereby they were both informed that their behaviour towards each other on a school trip was inappropriate and that they should not hug each other in front of students and to keep their relationship separate to the workplace (LADO M403, 6 September 2021).

- 5.18. He was reporting what he had been told, possibly by Mr Thomas.
- 5.19. Mrs Harriet Morgan raised it in interviewing Mr Thomas for the investigation report on 29 November 2021.
- 5.20. He gave an account of the complaint of conduct on the 2019 ski trip, saying that the children had complained that they felt uncomfortable on a coach journey on the ski trip and Mr Hawker and his partner had been kissing and holding hands in front of them (M173). He attributed the information to the Head Teacher at the time.
- 5.21. It was not a trip he had been on and he had not been involved. He was reporting a conversation about it with the then Head Teacher, some years earlier.
- 5.22. On 13 December 2021, Ms Morgan asked Mr Hawker about it in the course of the investigation meeting.
- 5.23. This is noted as being his account,
“Not on the coach – happened on trip. Each member of staff given time off, one day was Valentine’s day. Leader and other staff arranged for same afternoon off as partner. Went skiing and one point we did kiss, wearing full ski outfits. Peck on the lips, just a kiss. Presumed to have been seen, told by headteacher felt that whilst on a trip should act as if in work.” (M312)
- 5.24. Mr Thomas in answering written questions about this reports that while he did not know who made the original complaint, he recalls that it was a member of staff. The concern had been not that students saw them but if students had seen them (M335). That is a different account from his account given earlier.
- 5.25. Mrs Morgan’s report includes reference to it,
“JHR was spoken to by the Head Teacher at the time, for allegedly behaving in a manner that was considered inappropriate whilst on a school ski trip in 2019 showing that he was not being aware of how behaviour in his personal life could impact directly upon work with students.” (M322)
- 5.26. It is relied on in her investigation report as background that points to there being a pattern of behaviour on his part.

2019 Complaint

- 5.27. When Mrs Harriet Morgan interviewed Mr Thomas as part of her investigation, she opened by asking him about a meeting with Mr Hawker on 7 June 2019.
- 5.28. Two young students had reported to sixth formers in a student executive meeting on 5 June 2019 that Mr Hawker “invaded their space” and made them feel uncomfortable (S4, S172, s127). The then Head of Sixth Form

asked the students to write down what it was that made them feel uncomfortable in Mr Hawker's lessons.

- 5.29. Student A and B wrote a short, joint note saying Mr Hawker "Tends to invade our personal space. He sits on the table and gets into our face. He puts his hands on our shoulder. He made explicit gesticulation and laughs while doing it repeatedly." One complained that he said she was good-looking.
- 5.30. They said to the Head of Sixth Form that there was nothing malevolent in Mr Hawker's actions, they just found it uncomfortable (S4).
- 5.31. Another student was mentioned by them. Student C, seen separately, said Mr Hawker came up behind her in computing and put his hands on her shoulders in a sort of "massage" way and rested his hand on her friend's when she was using the mouse. He had said to the class in a maths lesson "Look at my buttocks" and laughed. She adds,
- "He had also said to a student in my set, "I'm going to make you wet" which was slightly disturbing.
- One time he said to me and one of my friends, "you're more than just a pretty face".
- "Generally his humour was personal and disturbing. He invades my personal space." (S126/7)
- 5.32. Mr Thomas, Deputy Head Teacher, met with Mr Hawker to discuss the statements on 7 June 2019 (M107). The allegations of referring to buttocks or the word "wet" were denied as was any misconduct.
- 5.33. Mr Hawker acknowledged tapping students on the shoulder to ask them to move out of their seat so he can sit down, but not resting his hand on their shoulder or hands, massaged their shoulders or sitting on the desk. He had told students that their hair looked nice or, when a student said someone else was pretty, he "may have said but so are you." (M107).
- 5.34. A number of action points were agreed (M108). Those included respecting personal space, refraining from leaning over students or resting or placing a hand or arm on them save in an emergency to keep them from harm; not to sit on a student's desk or stand too close; not to use humour if it might be inadvertently interpreted in a sexual manner or make someone self-conscious or awkward; not to compliment a student on their looks, even to boost confidence or self-esteem and to deal with this professionally, seeing it as a positive for the school that students felt that they could come forward.
- 5.35. Those notes were sent to Mr Hawker on the same day (M106) after a half hour meeting.
- 5.36. Mr Thomas was satisfied that there was no intention on Mr Hawker's part to make the students feel uncomfortable.

- 5.37. Mr Hawker accepts that guidance was given about accessing the students computers or keyboards by asking the students to move away, rather than by leaning in, and says he changed his practice,
- “The only thing I have acknowledged doing wrong was reaching between the students to reach the keyboard and that is the thing I changed, that is the only truth to come out of it.”
- 5.38. The references to buttocks and the word “wet” are capable of use in explicit or implied sexual reference or innuendo. They are immediately shocking in the context of a classroom with young girls and a male teacher. Much depends on the context (“Watch out, if you make me spill this.....”). No context is given. They may not have been used at all – Mr Hawker has throughout denied it.
- 5.39. Mr Thomas did not regard the matter as raising safeguarding concerns or requiring investigation as misconduct. The matter was not dealt with formally. There was no reference to the LADO. The action Mr Thomas took addressed the concerns of Students A and B. It was not appropriate to the allegations of Student C and the inference must be that those allegations were considered to be unreliable and rejected.
- 5.40. Neither the statements nor the note include any reference to winking, nor is Mr Thomas recorded as mentioning winking at that time when interviewed by Ms Morgan on 29 November 2021 (M288).
- 5.41. In her Investigation Report, Ms Morgan linked the 2021 allegations to the 2019 allegations specifically in relation to the reference in 2019 to massaging a student’s shoulders, touching and to winking (M321).
- 5.42. Mrs Harriet Morgan uses this as evidence of a pattern of behaviour that is inappropriate.

Covid 19

- 5.43. Mr Hawker has a diagnosis of ulcerative colitis and was considered by the NHS to be in the category of Clinically Extremely Vulnerable.
- 5.44. From March 2020 to June 2020, he was working remotely. He returned to work in person from June 2020 to July 2020 along with other staff, before the summer holiday and again from September to November
- 5.45. Alongside other staff, he worked from home in November to December 2020.
- 5.46. From January to April, he was working from home because the school insurers would not authorise his return (Claimant witness statement (“WS”) para 5).
- 5.47. The summer term started on 19 April 2021.
- 5.48. The year group that the younger pupils mentioned here are in had been taking computer studies with Mr Hawker since September 2020.

The Allegations– 2021

- 5.49. On 23 June 2021, a pupil, Student N, provided a written statement to her tutor that Student H had said that Mr Hawker had touched her leg. N was uncomfortable about this and thought it best to report it. That statement (which is not in the bundle or appended to the investigation report) was passed to Mrs Ruth Morgan, the Designated Safeguarding Lead.
- 5.50. Mrs Morgan spoke promptly to Student H, but it was at a time when there proved to be other and pressing matters to be discussed. Student H confirmed that she had spoken to Student N about Mr Hawker, and said that during a computer studies lesson a couple of weeks ago, Mr Hawker had knelt down next to her and put his hand on her thigh (M174, S133).
- 5.51. That is all that is recorded – the pupil refused to speak further and there were other concerns for her that day.
- 5.52. Mrs Morgan spoke to her again on 24 June. Mrs Morgan’s note is that Student H said she had felt very uncomfortable about the touching, about how close Mr Hawker got and by a wink once when she was going towards the toilets. She could not remember who was sitting on either side of her when she was touched but thought one was Student W.
- 5.53. She had spoken to Student X in her class when the touching happened.
- 5.54. She reported that her friend Student G in a different tutor group had said she had been touched on the leg by Mr Hawker. She added that she had heard that Mr Hawker had been suspended previously for touching an older student.
- 5.55. Mrs Morgan kept a contemporary but not a verbatim note.
- 5.56. Mrs Morgan spoke to Student N again. She reported that she knew nothing more about the incident and had not witnessed or heard any other concerns.
- 5.57. Mrs Morgan spoke to Student X and Student W..
- 5.58. Student X reported that Student H had told her about the incident at the time but that she had not seen it or anything else that concerned her. She had heard a rumour of Mr Hawker having an affair with a sixth former.
- 5.59. Student W said that Student H had told her after the incident but she had not witnessed it or seen anything that concerned her. She mentioned Student O as having been sitting near Student H at the time and thought Student H had spoken to her about it as well. She said Student G had also said she had been touched by Mr Hawker and Student G had conducted “a survey” to see who else had been. Asked more, she shrugged and said she didn’t know.
- 5.60. Mrs Morgan spoke to Student O. Student O said she had been sitting next to H in the computer room on the lesson when she was allegedly

touched, and was aware of the incident from H. She hadn't seen it happen but did see Mr Hawker kneel down next to her (H) in the lesson. She had no other concerns and had not seen anything else (S133).

- 5.61. Student G was not in school that day.
- 5.62. This was not intended to be a full investigation of the allegation. Mrs Ruth Morgan was exploring in the light of safeguarding concerns.
- 5.63. Student N, X, W and O each said reported no other concerns and had not seen anything else, beyond what they reported.
- 5.64. In summary, Student H reported being touched to her peers, and H and W had reported that G had described a similar incident. Each pupil spoken to on 24 June had heard H's report from her, but none had witnessed anything or had concerns.
- 5.65. There were two rumours referred to, by Student H that Mr Hawker had been suspended previously for touching a year 9 student and from Student X that Mr Hawker had had an affair with a sixth former. Those were not investigated further and are acknowledged to be untrue. They are false rumours.
- 5.66. These girls are young. They are all in the same year. They are not all in the same tutor group, but at the time, classes were being taught in bubbles, so tutor groups were not mixed in class.
- 5.67. Student N's note is not included in the bundle. There are no signed statements of these conversations. There is no fuller note of those conversations between Mrs Morgan with Students H, W, X, N or O, and no further information about dates, either of an incident or of any report. There is no detail as to what Student H reported to Student N, W, X or O.
- 5.68. Four pupils refer to "the incident" but it is not clear whether the word "incident" came from Mrs Morgan, whether the students used it or if so what they were referring to. There is no record of anyone identifying the lesson they are talking about, save for O's reference to the computer room.

The initial statements

- 5.69. Ms Ruth Morgan reported the concerns to the Acting Head Mrs Bell.
- 5.70. On Mrs Bell's instructions, Mrs Ruth Morgan took statements. The statements produced are from Students D, E, F and G, all dated 28 June 2021. (175 – 177 and 298), handwritten by the girls themselves.
- 5.71. None of these girls had come forward with allegations. They were approached because of the exploration on 24 June. D, E and F had not been mentioned before. H and N did not mention them. W, X and O do not mention them. G does not mention them. It is not clear how their names came forward. Mrs Morgan could not remember when asked.

5.72. Mrs Ruth Morgan explained in her oral evidence the policy behind her approach in speaking to the girls,

“It is the capture of a disclosure”.

5.73. It is not an interview,

“The voice of the child as they wish to give it. Interview implies two way dialogue, that is not what happened.”

“I am not allowed as a Designated Safeguarding Lead to potentially contaminate evidence. That is a very careful one, to make sure there is no contamination. There was no questioning, it is first hand and direct, from the child. I asked no questions of those disclosures”

5.74. The resulting statements are written by the girls themselves, by hand. They are short. They give no dates. There is no account of how the written statements were invited – what was said to each girl in eliciting the statements. By inference, the subject must have been introduced by Mrs Morgan but it is not clear how she did that.

5.75. Student D, In that first account, reported that Mr Hawker had made her feel very uncomfortable, involving “massaging my shoulders and stroking my arms.” She said she had seen Mr Hawker stroking other girls’ thighs and that student G and Student F have said that happened to them. “This makes me feel strange and very uncomfortable in our computing lessons.” (S129). She added in relation to stroking other girls’ thighs, “It was two or three computing lessons ago and Student G was sat behind us. I saw him wink at her and I have heard that he has stroked Student G and Student F thighs.”

5.76. Student E said that “In computing, Mr Hawker has stroked/massaged my shoulder, I have also witnessed him massaging other girls arms, I have seen him looking inappropriately at girls. Also I have heard from Student G that he has winked at her and stroked/touched her leg or thigh.” She referred to student G setting up a survey about him, and Student F getting involved. She reported seeing him touch/stroke Student D’s shoulder and that others, D, G, F and P were uncomfortable around him. She also gave Qs name and added that she could not remember the others (S130).

5.77. Student F said “he”, understood as a reference to Mr Hawker, touched her arm, her hand and her leg and winked at her. Touching her arm was roughly 3 weeks ago, while watching her work, more than once. Touching her hand happened roughly 4 weeks ago, more than once, while she was using her mouse. Touching her leg happened two weeks to one week ago, and she adds that she was on the outer row on the right side, roughly middle seats, with a spare seat next to her. He sat next to her and touched her leg. Student V was sitting next to her but F didn’t think she saw. The wink was when she walked into a lesson.

- 5.78. She added that it started roughly 12 weeks ago, and that he had touched other people's hands and arms, someone else's thigh and had dropped a pen near someone's desk who wasn't wearing tights and picking it up.
- 5.79. Student G said she had been moved away from her friends to "the isolated desk" She asked for help. He came up to her, crouched down and started telling her what to do, and as he did so he was "touching, stroking my thigh. After about 30 seconds he walked away to help someone else." She didn't think anyone else saw.
- 5.80. Those are serious allegations and imply widespread misconduct by Mr Hawker.
- 5.81. Each pupil, apart from Student G, identifies others she thought to be involved. Student D refers to Student E, F, G, P and Q. Student E to Students D, F, G, P and Q and says she cannot remember the 2 others. Student F refers to Students D, E, G, R, S, T, U and V.
- 5.82. No other statements or records of conversations with those or any girls in that year are produced. The next exploration was at the end of November and was limited to D, E, F and G.
- 5.83. Statements from D, E, F and G, taken between 29 November and 3 December 2021 by Mrs Harriet Morgan, are in the investigation report.

Suspension

- 5.84. On 28 June 2021, Mr Hawker was suspended. He was not told the details of the allegations. He was told that,
- "The suspension is pending a LADO investigation into an allegation of misconduct, namely safeguarding concerns against you. We reserve the right to change or add to the allegations against you, as appropriate in the light of the investigation.
- 5.85. The letter goes on to say that the suspension did not constitute disciplinary action, or imply any assumption of his guilt. It would be kept under review and they would aim to keep it as short as necessary. It would be reviewed once the LADO completed their investigation and then he would be informed whether there would be an internal investigation.

LADO Referral

- 5.86. As is required, the case was referred to the Local Authority Designated Officer ("LADO") on 28 June 2021 . The referral identified five students, D, E, F, G and H.
- 5.87. At some stage there was a meeting between Mrs Bell and Mrs Ruth Morgan to establish whether the parents wished to engage with the police. The cases of F and G were then investigated by the police.

The Report from the Older Girls

- 5.88. On 9 July 2021, two girls from a year above the students who had reported inappropriate behaviour made a report
- 5.89. Mr Thomas spoke to the girls. Student L provided this handwritten note, “In the netball courts at lunch a group of (x years) told us that they tried to get Mr Hawker fired for fun and they told people that he was touching their thighs and sexually assaulting them. I don’t know any of their names or forms but I think the main one who said they tried to get him fired for being a paedophile for fun is called (Student H) and I think they are in (*tutor group*) (S180).
- 5.90. Student M reported “When I was leaving the bottom court with Student L we were talking to some year xs who then said “I think we got Mr Hawker fired” to which I replied “What? Why would you do that” and then one of them said “Because it was fun” and another one added “Yeh we said he touched our thighs trying to get him done for sexual assault” (or something along those lines it was hard to hear properly). I think one of them is called Student H” She gave some additional identifying details and the tutor group.
- 5.91. Mr Thomas reported it to Mrs Bell on 9 July 2021.
- 5.92. The school year ended on 23 July 2021.

LADO discussion

- 5.93. At the LADO meeting of 29 July 2021, DS Shotton reported that the cases of students F and G were under investigation.
- 5.94. What is then noted is, “DS Shotton shared that it was reported to Mrs Bell from astudent that she had overheard a group of (x years) around fabrication of a witch hunt of a teacher and getting them in trouble.” (M395395).
- 5.95. That is not an accurate account of the older girls’ account but it was second or third hand.
- 5.96. Mr Thomas was present at the meeting. Mr Thomas read out the following statements, which he reported having taken from two girls.

Student L

“On the netball courts a year x told us that they were going to get Mr Hawker fired for fun by saying that he touched her thigh. The main one was Student H.”

- 5.97. Whatever was said at the meeting, that note is an inaccurate rendering of Student L’s statement above, omitting that it was a group of girls who were reporting that Mr Hawker was touching their thighs and sexually assaulting them.

Student M

“When leaving the bottom court, she thought she heard the group of girls talking about getting Mr Hawker fired. When asked why, one girl said because it was fun. They said that they had been touched on the thigh/sexual assault. Student H was identified on 9 July”

- 5.98. That suggests an overheard conversation rather than an account of a direct conversation and it omits the information that two of the girls in the group spoke specifically as being parties to the fabrication.

- 5.99. In the discussion of that,

“Mr Thomas wanted to know whether there was any further action required from the girls who had made that report. DS Shotton indicated that it needed to be followed up on and to see whether any of the other girls could be identified. If student F and student G could be, then “it would create massive issues”. DS Shotton asked Mr Thompson to facilitate that conversation and to pass the details on to him.

- 5.100. The LADO note continues, “It was also confirmed that the parents of the girl that said (she) had probably made it up was Student H.” (S158)

- 5.101. At that point Ms Parmenter recorded that the opportunity had to be given for the Achieving Best Evidence (“ABE”) interview of two girls before anything could be concluded and the school could conduct their internal investigation. She recognised that Mr Hawker was still unaware of the allegation so “it was not a nice position for him to be in”.

- 5.102. In the LADO of 6 September (S161), there is a further reference to Students L and M. The proposal had been for Mr Thomas to arrange to speak to them, to see if they could identify the girls they had referred to.

- 5.103. What is recorded is,

“It was heard that after examining the bubbles and tutor groups it was felt that Student H was the only student in one specific tutor group that could have spoken to Students L and M, however, the chance of them seeing Student H during lunchtime was slim. Students L and M were spoken to and were shown photographs of Student H and they did not know who it was. No names were disclosed.

- 5.104. The school appears there to reject the older students' account of speaking to Student H, who is identified by them in their initial report.
- 5.105. There is no record of Mr Thomas' discussion with Students L and M – which presumably took place at the start of the autumn term. Mr Thomas declined to give evidence for the investigation and has not given evidence for the disciplinary process or at this hearing. He has at no stage produced a witness statement.
- 5.106. Mrs Bell said in her oral evidence that he asked L and M about identification and they confirmed their belief that it was Student H who they had spoken to and identified earlier, but that they said they would not be able to identify any others, even if he showed them photographs.
- 5.107. Those accounts differ. Mrs Bell added by way of explanation of the difficulty in identification,
- “I think it was because it was a fleeting walking past type of thing”.

Mr Hawker's arrest

- 5.108. The police had conducted the best evidence interviews with the two girls who had agreed to police involvement, F and G. The school did not have those interview statements.
- 5.109. On 1 September 2021, Mr Hawker was arrested at home. 4 police officers arrived, in 3 vehicles. He was arrested for two offences of sexual activity as an adult in a position of trust. That is an allegation of intentional touching where the touching is sexual. His laptop, phone and other electronic equipment was taken.
- 5.110. It was his first knowledge of the allegations. Until then, he had hoped to be able to return to the school.

Teachers Registration Authority Referral

- 5.111. On 30 September, the school was notified of a referral to the Teachers Registration Authority (the “TRA”).
- 5.112. On 26 October 2021, the TRA proposed an interim prohibition order pending conclusion of the case.
- 5.113. That order was imposed on 10 January 2022. It prohibits a teacher from teaching while a Teachers Registration Authority investigation is undertaken.

The internal investigation

- 5.114. In November, Mrs Bell initiated an internal investigation. Consideration by LADO had not concluded nor had the police investigation closed.
- 5.115. Mrs Bell notified Mr Hawker of the investigation on 24 November (M287).
- 5.116. Mr Hawker's representative objected to that while the police investigation was ongoing. She referred to the potential prejudice to teachers and to the DfE statutory guidance "Keeping Children Safe in Education" 294/5

"Following a criminal investigation or a prosecution

386. The police should inform the LADO and the employer immediately when:

- A criminal investigation and any subsequent trial is complete;
- It is decided to close an investigation without charge;
- It is decided not to continue to prosecute after the person has been charged.

387. In those circumstances, during the joint assessment meeting the LADO should discuss with the case manager whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police and/or children's social care should also inform that decision. The options will depend on the circumstances of the case and the consideration should take into account the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings."

- 5.117. That was on 29 November. Mrs Bell refused to postpone the investigation. She relied on having LADO clearance to go ahead with the internal investigation,.
- 5.118. That clearance, if given, and Mrs Bell is confident it was, would have been given at the LADO meeting of 1 November 2021. Only a redacted copy of those minutes has been produced, redacting the children's names but also parts of the text, including those dealing with police action and the proposal for the school to commence an internal investigation. The action plan is unredacted but does not refer to authority being given to the school to proceed. The school has produced unredacted copies of other LADO minutes, but not these, albeit relying on the content as granting authority to proceed with their investigation. That is contrary to the earlier planned course of action, which postponed the internal investigation to the conclusion of the police investigation and any LADO investigation.

- 5.119. The redacted minutes show some discussion at this point (blotted out), but it is not possible to know how the LADO approached the guidance of the DfE.
- 5.120. Mrs Harriet Morgan was tasked with carrying out the investigation. She had not carried out an investigation before nor had she been trained in it, but she was given guidance by senior staff, in particular Mrs Ruth Morgan and Mrs Bell.
- 5.121. The terms of reference are given in the investigation report as being to, “Investigate allegations of a safeguarding nature against Mr Jonathan Hawker (JHR), Teacher of Mathematics. Year * students alleged he had acted inappropriately towards them.”
- 5.122. The allegations are not more fully identified nor the number of girls making them or any identification of the girls given. Mr Hawker at that stage knew of the allegations of F and G, from the police interviews but nothing more.
- 5.123. Mrs Bell directed Mrs Harriet Morgan not to include Student H in the investigation. Mrs Morgan says that she was told not to involve Student H by Mrs Bell, because she was no longer a pupil in the school and there were particular vulnerabilities. That direction is unrecorded. Nothing in the investigation report or discussions around it discloses that Student H was excluded from the investigation.
- 5.124. Mrs Bell directed Mrs Harriet Morgan that Students D, E, F and G were to be interviewed over their allegations, in the presence of a parent or guardian. Mrs Ruth Morgan would be present, as DSL, to support the students.
- 5.125. Mrs Bell made the decision that the students would be interviewed without the presence of the employee’s representative. Mrs Bell did not want a union representative there on behalf of the claimant on the basis of the vulnerability of the students and the risk of it being intimidating to have an additional, unknown adult in the room. That is consistent with the policy.
- 5.126. Where that step is taken, the policy, referred to above, requires a transcript to be provided. While notes were provided, they are not a transcript. They were written up in the course of the following week and the originals destroyed. Mrs Harriet Morgan explained that in her oral evidence.
- 5.127. Mrs Ruth Morgan discussed the approach Mrs Harriet Morgan was to take in interviewing the pupils. She proposed that the previous statements would be read to them and they would have the chance to say if they wanted to change anything.

The pupil statements in the investigation

- 5.128. Mrs Harriet Morgan interviewed Students D, E, F and G, each with a parent. The original statements were read to them. D made changes, withdrawing some allegations. E, F and G made additions.

Student D

- 5.129. Student D's first handwritten statement of 28 June 2021 was,
"Personally, in our computing lessons with Mr Hawker he has made me feel very uncomfortable, involving massaging my shoulders and stroking my arms. I have heard Mr Hawker stroking other girls' thighs. (Student G and Student F) have said this has happened to them. This makes me feel strange and very uncomfortable in our computing lessons." (133S)
- 5.130. "Heard" is written instead of "witnessed" which is crossed out, so "about" may be implied.
- 5.131. She adds,
"It was two or three computing lessons ago and student G was sat behind us. I saw him wink at her and I have heard that he has stroked Student G and Student F thighs."
- 5.132. On 29 November 2021, D was interviewed by Mrs Harriet Morgan on BT Teams with the camera off.
- 5.133. D asked to remove the words "massaging my shoulders" and "stroking my arms" and changed the words "I saw him wink at her" to "I heard that he had winked".
- 5.134. The remaining allegation from Student D is that Mr Hawker lent his hand on her shoulder for "seconds not minutes."
- 5.135. She was asked to describe what she had heard about Mr Hawker stroking other girls' thighs.
"Student D did not give any details and said she was not told directly but had just heard about it from another student in the class." (S174)
- 5.136. She said she no longer wanted to be involved.

Student E

- 5.137. Her handwritten complaint of 28 June was (M174, S130)
"In computing Mr Hawker has stroked/massaged my shoulder, I have also witnessed him massaging other girls arms I have seen him looking inappropriately at girls, also I have heard from Student G that he has winked at her and stroked/touched her leg or thigh, Student G set up a survey about him and I remember student F getting involved. I have also seen him touch/stroke Student D's shoulder. I have heard from Student

D, Student G, Student F and Student P have said they are now uncomfortable round him”

5.138. That was read to her on 30 November by Mrs Harriet Morgan. Student E confirmed it to be accurate and that she did not want to change anything (M292, S175).

5.139. She was then asked what “massaged my shoulder” looked like.

“Student E demonstrated this by standing up beside her mother’s chair and placing both hands on her mother’s shoulder’s and clenching her hands in and out in a massaging action.”

5.140. She said that had happened to her in one lesson. She did not say when or give any further details.

5.141. She added that she had seen Mr Hawker stroke the shoulders of D. She was asked what “stroked my shoulder” looked like.

“Student E demonstrated on her mother’s arm by standing next to her mother (seated on chair) and slowly moving her hand down from shoulder to wrist whilst squeezing the arm” She said it had happened about once to her.

5.142. Student D had withdrawn the allegation that Mr Hawker had massaged her shoulders or stroked her arms. There is therefore on the face of it some conflict between Student D’s account and Student E’s account.

5.143. Student E said this had happened to her once, but she had witnessed it on at least ten occasions to other students.

5.144. She also Mr Hawker reporting looking at girls inappropriately, hesitating to say out loud what she meant, but agreeing with her mother when she said “boobs and skirt?” She said he winked at them after looking at them, and she had seen that 5 to 8 times during lessons.

5.145. Of the five students she had earlier named, Student E said they had all told her that they felt uncomfortable in Mr Hawker’s lessons but one had not wanted to be involved any further. She had earlier named D, F, G, P and Q, and mentioned two whose names she could not remember.

5.146. Student E’s mother said that they had talked about the meeting at home to ensure that Student E knew what to expect and that she understood the severity of the situation. Her mother added that Student E understood the difference between a quick touch on shoulder to check if she was ok and an inappropriate touch (M175). That statement was not explored further.

Student F

5.147. Student F wrote a handwritten statement on 28 June 2021. She said “he” touched her arm, roughly three weeks ago, but more than once, touched her hand, roughly four weeks ago more than once, while she was using her

mouse, winked at her when she walked into a lesson. She had identified eight other girls as being involved, including D, E, G, R, S, T, U and V.

- 5.148. She had said it started roughly 12 weeks ago, and made allegations of Mr Hawker having touched other people's hands and arms, and someone else's thigh.
- 5.149. In her fuller statement she explained "touch my arm" to have been her upper arm and for about 20 seconds. "Touched my hand" would be on the computer mouse while moving it, each happening about every three lessons (S176 – 7).
- 5.150. In relation to her earlier report of being touched on the leg, F reported that Mr Hawker had moved G away from where F and G had been sitting together. When F asked for help she said he had sat next to her and he put his full hand on her upper thigh, on her bare skin, for about 20 seconds.
- 5.151. She said she had seen Mr Hawker touch the arms, hands or wink at other students weekly over twelve weeks.

Student G

- 5.152. Student G said in her initial handwritten statement that she had been moved away from her friends to an isolated desk. Mr Hawker came to help her, and crouched down. While telling her what to do, "he was touching/stroking my thigh" He walked away after about 30 seconds.
- 5.153. Student G confirmed that statement to be accurate.
- 5.154. In her fuller statement (M299, S178), Student G described Mr Hawker's hand, flat on her thigh, moving over and under the hem of her skirt.
- 5.155. She adds that Mr Hawker had put his hand over her hand on the mouse three times, put his hands on her shoulders for as long as he was there (helping her) quite a lot, whenever she asked for help.
- 5.156. She reported seeing his hands on the shoulders of other students.
- 5.157. G was tearful and distressed and went home later in the day (M299).
- 5.158. Each of E, F and G give additional information in their interviews, beyond what was said in their first disclosure. They were not asked about those additions.
- 5.159. Student F gives additional detail in November than she gave in June, changing "touching my leg" to putting his hand on her bare upper thigh for 20 seconds.
- 5.160. Student G gave additional detail in November, adding that Mr Hawker's hand was moving over and under the hem of her skirt, and reported him touching her hand and resting his hands on her shoulders. She was not asked when the incident took place when her thigh was touched but F and G, speaking about when Mr Hawker touched their thighs both appear to refer

to the lesson in which they were separated and G was moved to a desk against the wall in a different row.

- 5.161. Student D was not asked why she had changed her statement.
- 5.162. The difference between her statement and D's statement was not discussed with Student E.
- 5.163. That older girls had reported a scheme to get Mr Hawker dismissed with allegations that he had touched their thighs and sexually assaulting them was not mentioned.
- 5.164. The two students who made allegations that Mr Hawker touched their thigh were the two students who were disciplined by being separated in the lesson when they described it happening.

The evidence of L and M in the investigation

- 5.165. To Mrs Morgan, during her investigation interview with him on 29 November 2021, Mr Thomas said this,
 - “AT (Mr Thomas) stated that in 2021, 2 (older) students had “walked past” Student H and overheard a conversation about her “setting up” JHR (Mr Hawker). AT disclosed this information to LADO. The 2 (older) students were not able to identify any students that Student H had been speaking to, the incident went no further.” (M289)
- 5.166. The first part of that account is not accurate. L and M had not reported that they “walked past” or that they “overheard a conversation about Student H setting up Mr Hawker”. They both reported being engaged in a conversation with a group of pupils who were setting up Mr Hawker and identified Student H as one of them.
- 5.167. It is not clear what if any attempt at identification took place, notwithstanding the instruction given at the LADO meeting of 29 July. The account does not disclose whether or not Mr Thomas spoke to the students again after that meeting.
- 5.168. Ms Morgan did not interview Students L and M (M320).
- 5.169. In the summary to her report she writes, under the heading, “Facts that could not be established”,
 - “Written statements from (the older) students 2021 that they had overheard Student H making comments about setting up JHR. Deputy Head Teacher had spoken with (older) students and they were not able to identify any students with Student H. This was reported to the LADO but as Student H has not been interviewed, it has not been included in this investigation.” (M323)
- 5.170. She excluded the older girls' reports from the investigation.

- 5.171. The reference to the statements from the older pupils is inaccurate. The students had reported conversations with the younger pupils, not just overhearing something. They had heard from a group talking about the scheme and being part of it, not just Student H. Two of the younger pupils are specifically stated to be making false allegations.
- 5.172. Mrs Morgan exhibited the statements of L and M to her report: she has repeated Mr Thomas' inaccuracy, without checking.
- 5.173. Mrs Morgan confirmed in her evidence that she did not see the relevance of those older student's statements since she was not investigating Student H's allegation.

The wider investigation

- 5.174. I am not told that Mrs Harriet Morgan interviewed any other students.
- 5.175. During his interview with her, Mr Hawker asked about her having contacted other students about his general conduct in the classroom – his working practices, asking them to move their seats out of the way, wearing a mask when approaching students, standing behind them avoiding touching. She replied,
- “Not able to involve students who have not directly involved themselves in this investigation” (M315)
- 5.176. She confirmed during the Tribunal hearing,
- “I did not involve students who had not put themselves in a situation of this nature unless they had chosen to put themselves in that situation themselves.”
- 5.177. What she meant is that if students did not volunteer information, she did not consider it appropriate to ask them questions. They would only be involved “if they made disclosures.” Asked whether they would know that an enquiry was going on, she was clear that they would not. It was not in the students interest that the investigation be any more public.
- 5.178. Asked,
- “So you would only speak to a student who had become aware?”
- Mrs Morgan replied,
- “The terms were of the students making allegations of a safeguarding nature”
- 5.179. She did not consider that that limited her access to relevant evidence.
- 5.180. All the disclosures here had been elicited by Mrs Ruth Morgan on the basis of her preliminary investigation of Student N's report with regard to Student H. None of those interviewed had come forward of their own accord. Mrs Harriet Morgan had not thought about that: she said she was not aware

that none of the students whose allegations she was investigating had volunteered their allegations.

5.181. She was asked why the statements made by the older students had not been discussed with the pupils she had interviewed,

“When students are giving a disclosure on a difficult and complicated topic of alleged inappropriate behaviour the experience should be positive. A negative experience of disclosure has a lifelong impact that cannot be undone so I did not feel it necessary to push them on that”

Mr Jackson,

“So the need for a positive experience outweighs the need to investigate?”

Mrs Morgan,

“There was no link. They did not reference student H”

5.182. It was put to her that the older students could have been shown photos of students in the same year as Student H, to see if the other students with H could be identified. Her answer was,

“We have photos on the system. It was not deemed appropriate to use them.”

5.183. She did not obtain the names of the other students that D, E, F and G referred to.

5.184. G, for example, said that two other students might have seen something,

Mr Jackson

“Can you tell us what steps you took to find out who they were?”

Mrs Morgan

“I did not consider it to be a necessary step to take.”

5.185. Mr Jackson established that Student G probably knew the names of those two people.

Mr Jackson

“So you could say to student G which two people do you think it was?”

Mrs Morgan

“She has chosen not to disclose that information.”

Mr Jackson

“Did she choose not to disclose or you not to ask?”

Mrs Morgan

“I would not be asking leading questions.”

Mr Jackson

“Who are the two students is not a leading question.”

Mrs Morgan

“She has chosen not to disclose it.”

“I was not involving any named students who had not previously been involved in the investigation.”

5.186. Mrs Morgan ended up saying that speaking to those students might not prove anything and that G was distressed:

“I did not press her on factors that may not have taken things further, was not a reasonable response.”

The investigatory Interview

5.187. On 30 November, Mrs Harriet Morgan invited Mr Hawker to an investigatory interview. He still had no information as to the allegations, save what he had heard from the police (291). They are not given in the letter of invitation, beyond “an allegation from pupils that you acted inappropriately towards them”.

5.188. The interview took place on 13 December 2021 (M309 onwards). Mr Hawker had his union representative with him.

5.189. There was again a request for delay and a refusal to delay until after the police investigation had concluded. The delay since the suspension started was noted at the request of the union representative.

5.190. Mrs Morgan started with the 2019 allegations,

“What do you recall of the outcome of the allegations made by 3 students in 2019?”

“Outcome? – no outcome conversation with AT, explained what had happened. Took notice of allegation, they were uncomfortable with me helping use computers and have changed working practice. If children required assistance, I asked them to remove themselves, instead of reaching between them. Acknowledged it and when henceforth get them to move seat out of the way. Teaching in ML3 when not always practical. Have used remote computer management, remotely control computers. Avoid need to come through students. Allegations of comments made in class, conversation instigated by students, deliberately used out of context. Couldn't remember incident during conversation with AT, was either a cup of water or his umbrella. An innocent remark reported out of context made to sound sexually inappropriate. Thought that was the end of it, didn't realise remained on record when brought up by police. Thought it was a case of misunderstanding and was resolved. Horrified it's being brought up again. Was dealt with and changes made to working practices.”

5.191. He did not remember the five action points from the email of 7 June 2019.

5.192. When read to him he said it rang a bell, they made sense, and “As far as I am aware I have followed these guidelines.”

5.193. Mrs Morgan moved on to the ski trip. Mr Hawker gave this account, part of which is quoted above, when asked about his behaviour on the ski trip, following Mr Thomas’ reference to the coach.

“Not on the coach – happened on trip. Each member of staff given time off, one day was Valentine’s day. Leader and other staff arranged for same afternoon off as partner. Went skiing and one point we did kiss, wearing full ski outfits. Peck on the lips, just a kiss. Presumed to have been seen, told by headteacher felt that whilst on a trip should still act as if in work. Agreed, that it would not happen again. Understood why guidance was given. But felt it was headteacher’s opinion, not broken any rules. Didn’t feel like it was a formal investigation.”

5.194. The same points had been covered in the police investigation.

5.195. Mrs Morgan moved to the recent allegations. Mr Hawker had not been given the pupils statements but extracts were read. He had not been aware that there were allegations from four girls not just two. He did not know that the girls had been interviewed by Mrs Morgan recently. She told him that they had had the opportunity to retract their statements.

5.196. He denied the allegations. He was clear he did not lean on students, had not massaged shoulders, stroked shoulders, lent hands on shoulders or winked – “I would know if I had”.

“Would never put my hand on student’s hand in any circumstance. Certainly not in computer suites. Not touched her arm. Would only touch a student to tap on shoulder if talking and can’t hear me. I’ve been stood behind them tapped as two of these girls were talking. Have done this for two of the students and they were talking and moved them away from each other.”

5.197. F and G in their statements had referred to having been separated by Mr Hawker. He could see their work using remote access, “lack of quality, lack of output, making no progress.” One had been moved to a desk by the wall that was in line with others but a metre from the next, with no-one sitting at a desk next to it.

5.198. Asked later, he added,

“They are the only two students (in those two years) had to tell off for not working. All students in all eight different classes enjoy my lessons and the computing work. These two were doing nothing, they were moved and have a grievance being separated. Used their time to come up with these stories.”

“I wouldn’t be winking at students. Entirely fabricated. This is something they have sat down and concocted.”

- 5.199. He was clear too that he had not put his hand on a student's bare thigh or stroking another students thigh while crouched beside her. He did agree he sometimes crouched by students to come down to their level but did not remember doing so on this occasion. He regretted that CCTV had not been working.
- 5.200. In relation to tapping students on the shoulder to get their attention, he explained that he had not known these students from any earlier year, and that much of this year he had worked from home. He did not know their names and faces, when teaching, he could only see the back of their hair.
- 5.201. Putting a hand on the pupil's hand on a mouse was impractical as a way of teaching, and he would never do it.
- 5.202. He was appalled at the links being made with the 2019 allegations,
"Was an incident with teaching practice at the time, I was new to teaching computing. If needed to type into keyboard I would reach one arm between students to access."
- 5.203. He went on to say that those girls were difficult and untrustworthy and had caused trouble in the school with deceit.

Other enquiries

- 5.204. The report refers to the notes of the meeting between Mrs Ruth Morgan and Mrs Harriet Morgan, when Mrs Ruth Morgan guided Mrs Harriet Morgan as to how to conduct the interviews with the pupils, on 23 November 2021, and the meeting On 29 November 2021, when Mr Thomas was interviewed by Mrs Harriet Morgan. It included the notes of the meetings with D,E, F and G and explained that there was no statement from Student H, as she had left the school. No other enquiries are reported.
- 5.205. There is no reference to a discussion with the class tutors – an allegation might well have been the subject of gossip even without the evidence of other rumours going around.
- 5.206. In Mrs Morgan's investigation interview with Mr Hawker, on 13 December, he asked if a colleague, Nick could be interviewed,
"Nick... was mentored and spent 7 months in CR1 with JHR teaching. Would like him spoken to about teaching practice in classroom, was there for a considerable amount of time. Only person has seen him teaching in CR1. Other than members of staff for character, nobody else to defend him." (M318)
- 5.207. Mrs Morgan's did not contact or interview Nick. She says,
"In the precise allegations of D to G, the reference to this former colleague did not have a relevance to being pursued."
- 5.208. There were no other enquiries.

The investigation report

- 5.209. Mrs Morgan finalised her report the day after seeing Mr Thomas. She exhibited to it all the documents relating to the disclosures or allegations, the minutes of meetings with Mr Thomas, Mrs Morgan and Mr Hawker, the school policies and annual declarations of compliance with them.
- 5.210. The terms of reference are set out, as in the letter of invitation to the investigation: “students alleged he had behaved inappropriately towards them”. They do not identify the pupils or the number of pupils whose allegations are being investigated and the nature of the allegations or when the incidents are said to have taken place are not stated.
- 5.211. The evidence appended to the report includes the complaints made in 2019 by A,B and C, those made in 2021 by D, E, F, G and the record made by Mrs Ruth Morgan of her speaking to H on 24 and 25 June 2021. Those reports of course refer to others.
- 5.212. The report does not explain that it was concerned only with Students D, E, F and G.
- 5.213. Student H was considered to be unreliable, including by her father. The school was aware of that. It was discussed in the LADO meetings.
- 5.214. The report does not say that she was thought to be unreliable, or that she was vulnerable at the time of the discussion with her. It does not say that her allegations were not amongst those being considered, because she was considered to be both unreliable and vulnerable.
- 5.215. The investigation report is required by the policy to set out the findings, to be factual and specific.
- 5.216. Here, the text, under the heading “Summary of written and physical evidence” does not set out the facts or refer to the exhibits. It gives Mrs Morgan’s opinion on Mr Hawker’s conduct. In her opening paragraph she recites her conclusion that Mr Hawker had overstepped the boundaries and failed to consider the welfare of the students, in massaging a student’s shoulders, stroking a student’s arm, touching the thighs of a student and winking at students in a manner that made students feel uncomfortable. She does not point to the evidence for or against that conclusion or mention that Mr Thomas denied that he had acted as reported. Essentially the same list with variations as to order and as to whether it is one student or more occurs in the following paragraphs.
- 5.217. When she records the actions reported, as she does repeatedly, she inserts the word “allegedly”. However she repeatedly recites her opinion that he was guilty of each allegation ,
- “In my opinion, JHR has not considered the welfare of students on occasions where he has overstepped the boundaries, e.g. allegedly...”

"I believe JHR has acted in a way that requires challenge, e.g. allegedly..."

"I believe JHR has breached professional guidelines."

"I believe that JHR has shown poor judgement by allegedly"

"In my opinion, JHR has not adhered to the guidance given to him after the ..student allegations in 2019."

5.218. Her conclusion is that Mr Hawker had failed to adhere to the core principles of the schools Code of Conduct. Those relate to: -

- The welfare of students, by overstepping the boundaries and making physical contact
- Acting in a way to cause motive and intention to be questioned – by making physical contact
- Breaching professional guidelines, by breaching the 2019 guidance and making physical contact
- The duty of care, that is, jeopardising the development of respectful, caring and professional relationships between staff and students, failing to display good judgment by making physical contact with students
- Lack of professionalism, under the heading "Power and Positions of Trust", failing to follow the 2019 guidance and making physical contact in a way that might be misinterpreted
- Propriety and Behaviour, regarding compromising his position on the school trip in 2019 and
- Physical Contact, that is avoiding physical contact save in a medical emergency.

5.219. In summary, in spite of the use of the word "allegedly", no interpretation is put forward other than that all the allegations were wholly upheld and those are in effect the factual findings.

5.220. The change in the statement of Student D, the conflict with that of Student E when interviewed in December, the evidence of the older girls and Mr Thomas's denials are not referred to in the summary. Mrs Morgan's view of the changes made by D was that the account was still of inappropriate touching. Mrs Morgan includes reference to the school ski trip as evidence of Mr Thomas needing advice from the Head Teacher for, allegedly, behaving in a manner that was considered inappropriate. She does not explain that neither on that occasion nor when the 2019 guidance was given was there any safeguarding concern or disciplinary action. She does not point out that the allegations of Student C differed from those of A and B and were not accepted at the time as raising safeguarding concerns.

- 5.221. While the documents were exhibited, the documents were redacted. Those presented for this hearing were eventually labelled so that it was possible to know which statements came from which student, but the documents originally presented were presented with black deletions over any identifying material. Mr Hawker's representatives were told they could not know even which staff members had been at the LADO meetings, until the Respondent was ordered to disclose that information and the unredacted minutes from March 2022. Until this hearing, Mr Hawker did not have access to documents that gave any identification, even letters.
- 5.222. On seeing the report, he could not have known for example, from page S133, which students were referred to. Six girls were spoken to by Mrs Ruth Morgan, H, N, O, G, W and X, some referring to others. The text makes no sense without any identification. He could not have known that the students eventually interviewed were not referred to on that page. He would not have known their tutor groups or had any information as to which lesson or lessons he was accused of misbehaving in – he teaches eight classes.
- 5.223. Those deletions, apart from concealing the names, concealed two other important points of information, namely that the reports were all from one year group and that H had reported being friends with G. H and G are in different tutor groups. The school represents that because the students were in different bubbles, and taught in tutor groups, it was unlikely that they would be talking to each other. That was a reason for discarding the report of the older girls of a plot to get Mr Hawker dismissed – that they were unlikely to have spoken to girls in different bubbles. Specifically, Mrs Bell concluded that student H's allegations and the report of the older girls was a separate matter from the allegations of D, E, F and G and Mrs Harriet Morgan also saw those as a separate matter. Disclosure of H's account shows that to be ill-founded.
- 5.224. The other student statements were similarly redacted.
- 5.225. In a rare assertion of fact, the report states that the students who made the 2019 allegations did not know the students who made allegations in 2021 (M322). There was no investigation of that or evidence for it.
- 5.226. The investigation officer recommended that formal action be taken, concluding that on balance of probability, Mr Hawker had behaved in a manner that was inappropriate, breaching professional standards and the school's Code of Conduct, with incidents of a safeguarding nature in both 2019 and 2021. Dismissal on the grounds of gross misconduct should be considered (M324).
- 5.227. On 10 January 2022, the Teaching Regulation Agency ("TRA") imposed the Interim Prohibition Order ("IPO") referred to above. Information had been sent, presumably from the police and the school and the "Impending Offence" referred to sexual activity with a child.

- 5.228. On 18 January 2022, Mr Hawker was sent an invitation to a disciplinary hearing by Mr Sargeant together with the Investigation Report (M328). It is not established when he was sent the Investigation Pack. The Pack was redacted both for him and the panel.
- 5.229. The allegations were,
“Breach of Teachers Standards through your inappropriate behaviour towards four year * students;
Breach of the DHSG Code of Conduct through your inappropriate behaviour towards four year * students”
- 5.230. There is no fuller identification of the allegations.
- 5.231. On 1 February, DC Tucker, the Officer in Charge, told the Claimant’s defence solicitor that he had not seen the older girls’ statements or that one of the students had made a partial retraction. The solicitor sent the statements to him, those of L, M and D.
- 5.232. Mr Thomas was not to attend the disciplinary hearing. Questions were allowed to be put to him on paper instead. He declined to answer any questions in relation to the allegations made in 2021 because of the ongoing police investigation. That included the question asked about the report by these two students that Mr Hawker was being set up. He was the only one who had spoken to those girls.
- 5.233. The hearing took place on 14 February 2022. It was chaired by Mrs Grimes, a school Governor, with two other Governors. Present were Mrs Harriet Morgan, Mr Hawker’s representative from the NEU, Rachel Jennings, and Mr Hawker, with a notetaker.
- 5.234. Mr Hawker had had the investigation report and exhibits (M328) but the redactions caused difficulty during the hearing (M338). They could read which statements came from D, E, F and G, but Mr Hawker was not sure who D and E were: he had guessed who F and G were.
- 5.235. Mrs Harriet Morgan is recorded as saying
“They are all in different tutor groups.”
“HM confirms no connections or friendships between students D, E, F, G and H.” (M341)
- 5.236. Those statements are not true.
- 5.237. The school’s case is that D, E, F and G were in a different tutor group from H, not that they were all five in different tutor groups.
- 5.238. The initial report of Mrs Ruth Morgan’s investigation, unredacted, showed that H considered G a friend. It was presented only in a redacted form: that information was not available to the panel or Mr Hawker.
- 5.239. There was scope for both the disciplinary panel and Mr Hawker to be misled.

- 5.240. The note taken appears to confuse the 2019 and 2021 students, saying they had all been interviewed. Given redacted documents, it is hard to know whether the panel understood that only four 2021 students had been interviewed.
- 5.241. Mrs Morgan introduced her report, referring to seven breaches of the Code of Conduct. The facts of the allegations were not spelled out – the allegations are again at the general level of “Welfare of students”, “Physical contact” “Relating to proprietary (sic) of behaviour”. She reported the LADO involvement. She referred to the “very strong pattern between 2019 and 2021 allegations”. She does not mention that the 2019 allegations led to no safeguarding concerns or disciplinary action or distinguish between what Students A and B said as against what Student C said.
- 5.242. Mrs Morgan repeated her conclusion that Mr Hawker’s behaviour had been inappropriate and breached professional standards. She volunteered no contrary evidence.
- 5.243. The ski trip was discussed. Mrs Morgan acknowledged that there was no record of the complaint about the ski trip, that Mr Thomas had no involvement or direct knowledge, and that it had not been seen as a safeguarding or disciplinary issue. It was included as evidence of poor judgment and a pattern of behaviour, despite it being some four years ago with no evidence of further inappropriate displays of affection (339).
- 5.244. Mrs Morgan did not regard the change to Student D’s statement to be significant . She said that was supported by Student E” (340).
- 5.245. In the course of the union representative’s careful questioning around the evidence, Mrs Morgan explained that Student H had not been re-interviewed because she had left the school and was deemed unreliable.
- 5.246. She stated that the two older students were not interviewed because they were not related – “if there had been a connection, it would have been highlighted”.
- 5.247. Mr Hawker answered questions, reiterating that he had tapped children on the shoulder, but nothing more, that he had separated two of the children because of poor behaviour, but denying the allegations. He explained his periods of working from home.
- 5.248. His union representative presented a summary highlighting the weaknesses in the evidence, including errors and the failure to explore or address contrary evidence.
- 5.249. By a letter dated 18 February 2022, Mr Hawker was dismissed for gross misconduct. The finding is stated to be on the basis of the 2021 allegations only. The panel recommended that the school report the outcome to the Teaching Regulation Agency and the Disclosure and Barring Service.
- 5.250. There is a reiteration of the charges framed around breaches of the Teachers’ Standard (Part Two: Personal and Professional Conduct) and the

Core principles of the school's Code of Conduct. There is no separate statement of the facts found but the students, E, G, G and H were found to be truthful in their recollections and credible.

5.251. Mr Hawker's account was not accepted. The panel did not find him credible. The reasons given were that he had said he was clinically vulnerable and would not touch students, but had acknowledged tapping them on the shoulder; and that he said he did not know their names. His defence was not plausible.

5.252. The specific findings against him are not given.

5.253. The date of termination is given as 19 February (M346).

5.254. The outcome of the disciplinary hearing was discussed during the hearing.

5.255. Asked what the finding was that Mr Hawker had actually done, Mrs Grimes said they felt they had done enough to identify that he had breached professional standards. She could not readily identify what they concluded he had actually done.

"We believed the allegations were true".

"So what is the inappropriate behaviour?"

"We felt it was sufficient to outline where he had breached professional standards. It is in the list of gross misconduct."

"He would have known it was about inappropriate touching".

5.256. As to the inconsistency between D and E, whatever the specific allegation, it was all inappropriate touching. She did say that the panel had found that Mr Hawker had not stroked D's arm but had lent his arm on her shoulder.

5.257. She dismissed Mr Hawker's evidence. They had found him overwhelmingly inconsistent. By contrast, the students "gave their statements in the investigation honestly and truthfully." They gave their accounts "independently and in good faith"

5.258. They did not find that L and M's evidence suggested collusion. Eventually she acknowledged that that was because,

"There was no further evidence around these statements, they were unsubstantiated so we could not include them as clear evidence that there was collusion. We considered them very seriously at the beginning but they did not provide any evidence of collusion.

"We did not have the full evidence to show that there was a group" (of younger children speaking to L and M). "It comes back to the point that these statements were very unclear and unsubstantiated because there was no further evidence around that. We did not come to the view that there had been a collusion."

5.259. They thought that the older girls had identified Student H as the person who had alleged that they were going to get Mr Hawker fired, and she had left the school. So, just as the school did, they saw H's allegations and the report of L and M as irrelevant to the allegations of D, E, F and G.

LADO and Police

5.260. Mr Hawker's solicitor had forwarded the older girls statements about getting Mr Hawker sacked to DC Tucker on 1 February. On 3 March, DC Tucker confirmed that a decision had been made not to proceed with the case.

5.261. On 8 March, Mr Hawker appealed the outcome of the disciplinary hearing. It was a very full appeal, raising failures to comply with the disciplinary policy or the ACAS Code of Practice, an inadequate, inaccurate and misleading investigation with the investigating officer acting outside her terms of reference, and a denial of evidence (351).

5.262. There was a LADO meeting on 16 March 2022 (S206). DS Shotton confirmed that the CPS advice was not to proceed, given the older girls statements; there was no likelihood of conviction.

5.263. Mrs Bell confirmed that the governors had dismissed Mr Hawker and is noted as saying,

"The investigation did not include the allegations from Student H as HR knew that they would need to disprove what the Year 8 girls had reported." (S206)

5.264. Mrs Bell says that this minute is not right. "It is poor quality minutes. Things that you say are put in the wrong order".

5.265. She is also noted in the minutes as saying that,

"The governors dismissed Mr Hawker on his conduct on the basis that there were previous allegations in 2019 where he was given clear advice around what he should and should not do."

5.266. She denies saying that, but it formed part of the LADO's summary,

"Mrs Parmenter summarised.... Mr Hawker has been dismissed by the Governors in light of this allegation and the previous allegations."

5.267. Following her summary, Mrs Parmenter asked those present to consider whether this matter was substantiated, on balance of probability. Mr Sargeant agreed. So did Mrs Bell:

"Mrs B Bell agreed and she said that after speaking to the students and observing Mr Hawker's behaviour over this period she would not be happy for him to return to teach in the school

5.268. She denies saying that or that she ever interviewed the students.

Teachers Registration Authority

- 5.269. On 21 March 2022, Mr Hawker provided the Teachers Registration Authority with the statements of the older girls and the changes made by Student D to her statement. In his letter, he attributed the older girls account of younger girls making up allegations to F and G (354). It reflected his belief but that direct attribution goes beyond what is established, given the absence of investigation at the time.
- 5.270. On 1 April, the Authority lifted the Interim Prohibition Order. From then on there was no bar to Mr Hawker teaching in school.

The Appeal Hearing

- 5.271. The disciplinary policy provides for an appeal by review, not a full rehearing.
- 5.272. The hearing took part in two parts, on 17 April and 23 May. The delay related to the difficulty of getting three governors together who had not been previously involved. It was chaired by Ms Adkins.
- 5.273. Those attending were the panel of three, Mrs Grimes, having chaired the disciplinary hearing, Mrs Morgan and Ms Jennings, Mr Hawker's NEU representative, with a notetaker.
- 5.274. Mr Hawker attended only on 17 May. The hearing was being conducted remotely. He could not log in on 23 May. The minutes do not show that either he or his representative was asked to agree to the hearing proceeding in his absence. The panel had no further questions for Mr Hawker at that stage and proceeded.
- 5.275. Throughout the two hearings, the panel had a redacted pack of documents, with neither names nor letters to identify the pupils.
- 5.276. Ms Jennings acknowledged the difficulty of the case for the school. She presented a detailed analysis of the evidence, raising flaws in the investigation including the failure to investigate the older children's report of a plot, the lack of contemporary records from staff around the taking of evidence from the children, inaccuracies and inconsistencies, the reliance on hearsay evidence from the ski trip, the refusal of Mr Thomas to give evidence, the limited exploration of relationships within the younger girls' year group. She pointed out the loss of Mr Thomas' teaching career. Mr Thomas' DBS record now included reference to the ski trip kiss and the 2019 allegations. She ended that Mr Hawker had been denied a fair and objective process, as required by internal policy, ACAS codes of conduct and by the law.
- 5.277. Mrs Morgan spoke to her report, saying
- "At heart of investigation are statements from (the younger) students of allegations of touching. Not mentioned so far, and should not be

disregarded. Should be no impact on the words of (*) year olds and should be trusted.Experiences of year (*) should be heard.”

5.278. In the course of the hearing of 23 May, Mrs Morgan gave an account in fuller detail than before or elsewhere as to why the school considered that the pupils mixed only in tutor groups. That was new evidence. It still was not clear whether D, E, F and G were in the same tutor group but she clarified that H was in a different group.

“All year groups were also separated at recreational time, and entering and leaving school. The conversation was in segregated netball courts. Friendship groups not across tutor groups or year groups. Identifying a student outside of tutor or year group would have been highly unlikely. Able to identify student H due to a club outside of school. After discussing with Deputy Headteacher to try to identify students could lead to further unreliability as students didn’t mix.Because of comments used by Student H on netball courts, their statement not been used in investigation. On grounds of probability no connection has been established.”

5.279. Ms Jennings pointed out that this had not been before the disciplinary panel, reminded the appeal panel of the actual reports made by the older girls which did not speak of only one girl, and referred to a WhatsApp group between pupils. The evidence of the older girls had not been put to the younger girls. The discussion with the Deputy Head had also not been before the original panel, nor was it recorded.

5.280. Mrs Morgan responded that the “Deputy Headteacher took statements and girls were unable to identify.” That is the statement she had made in her report.

5.281. There are no statements to that effect from the girls or of discussion with the girls about identification. Mr Thomas had refused to give evidence. The only reports of exploring this comes from the minutes of the LADO meeting and from Mrs Bell and they differ; one has the girls unable to identify Student H and the other has them saying they would not be able identify any other pupils in the group even from photographs.

5.282. The decision was reserved. When they retired to consider, the panel asked that the student’s letters be applied to the redactions so they could understand the relationships between the students. That was provided to them but not to Mr Hawker. Whatever was provided was probably later shredded.

5.283. The outcome was issued on 8 June. The decision to uphold the finding of gross misconduct was upheld. The letter sets out that they had disregarded any evidence relating to allegations in 2019 and in respect of a ski trip in 2018.

“We considered information in relation to the 2021 allegations only, and we found, based on the balance of probabilities, these allegations to be true.”

- 5.284. In questioning during this hearing, Ms Adkins was asked whether she stood by the decision of the disciplinary panel, having heard the evidence at this hearing

“I am a solicitor.....Had I been conducting the investigation, I would have wanted to see more work undertaken.

The bottom line was whether we found that the evidence of the students was more likely to be the case than that of Mr Hawker and we did so find.”

- 5.285. She would however have liked to see more detail about the older girls’ report and to have seen more from Mr Thomas. The question they were deliberating on was whether there had been a breach of the school’s policies and code of conduct, and while they would have liked more evidence, they did not think that “knocked out the statements that had been made.”

“At the end of the day, it was whether the students whose statements were in our pack believed in what they were writing and that was the conclusion we reached, looking at the pack we had.”

- 5.286. They did not consider asking for more investigation or understand that to be an option. She saw no unfairness in hearing from both the investigating officer and the chair of the disciplinary panel in effect presenting the case against Mr Hawker.

- 5.287. As to Mr Hawker’s evidence, she felt he was a bit casual, quite dismissive of the students, generally, and he hadn’t remembered the five point guidance issued in 2019. They were surprised at that. They had noted that he had admitted tapping students to get their attention which he should not have done.

- 5.288. She acknowledged that there are times when a school’s approach is not that of legal professionals. This question was put,

“Realistically, you must have been aware if you upheld the dismissal this would be the end of the claimant’s career?”

“I was not sure of that. His career is in teaching. This was a breach of the code of conduct at our school.”

“You were working on the basis that he had been found guilty of sexual assault, putting his hand on the thigh of schoolgirl. while working as a teacher, and you cannot have thought he could go back to teaching?”

“We had been dealing with inappropriate contacts and we did not discuss it as a sexual offence..... We did not discuss it as the end of his career.”

.....

“So if this is the end of his career, all the more important that the procedure had to be as fair as possible.”

“I agree with you on that.”

6. Law

6.1. By section 98(1) of the Employment Rights Act 1996 (“the ERA”), it is for the employer to show -

- “a) the reason (or, if more than one, the principal reason) for the dismissal, and
- b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.”

6.2. Misconduct is a potentially fair reason for dismissal within subsection (2).

6.3. Section 98(4) sets out the principle of fairness,

“Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

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

6.4. Section 98(4) focuses on the need for an employer to act reasonably in all the circumstances.

6.5. First therefore the employer must establish the reason or principal reason for the dismissal and that it is a potentially fair reason.

6.6. Then the Tribunal must be satisfied that the employer has acted reasonably in treating the ground as a sufficient reason for dismissal.

6.7. The burden of proof at this stage is neutral (*Boys and Girls Welfare Society v McDonald* [1996] IRLR 129).

6.8. The application of the principles in section 98(4) to a misconduct case was described in *British Home Stores Ltd v Burchell* ([1978] IRLR 379), in a passage cited with approval by the Court of Appeal in *Sainsbury’s Supermarkets Ltd v Hitt* ([2003] IRLR 23):

“What the Tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in questionentertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at the time. ...

First of all there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly we think, that the employer, ...at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.”

6.9. The employer’s belief must be true in fact or believed to be true on reasonable grounds (*W Devis & Sons Ltd v Atkins [1977] AC 931, [1977] 3 All ER 40 HL*). If there are no reasonable grounds for a belief relied on as an important part of the reason for dismissal, the employer may be held not to have acted reasonably in all the circumstances in relying on it (*Smith v City of Glasgow District Council [1987] IRLR 326, [1989] ICR 796, HL*)

6.10. In *A v B ([2003] IRLR 405)* the EAT (Elias J) presiding) held that the relevant circumstances include gravity of the charge and the potential effect upon the employee. So it is particularly important that employers take seriously their responsibilities to conduct a fair investigation where, as on the facts of that case, the employee’s reputation or ability to work in his or her chosen field of employment is potentially apposite:

“60. Serious allegations of criminal misbehaviour, at least, where disputed, must always be the subject of the most careful investigation, always bearing in mind that the investigation is usually being conducted by laymen and not lawyers. Of course, even in the most serious of cases, it is unrealistic and quite inappropriate to require the safeguards of a criminal trial, but a careful and conscientious investigation of the facts is necessary and the investigator charged with carrying out the inquiries should focus no less on any potential evidence that may exculpate or at least point towards the innocence of the employee as he should on the evidence directed towards proving the charges against him

61. This is particularly the case where, as is frequently the situation..., the employee himself is suspended and has been denied the opportunity of being able to contact potentially relevant witnesses. Employees found to have committed a serious offence of a criminal nature may lose their reputation, their job and even the prospect of securing future employment in their chosen field, as in this case. In such circumstances anything less than an even-handed approach to the process of investigation would not be reasonable in all the circumstances.”

6.11. In *Z v A ([2014] IRLR 244)*, the EAT said this,

“Standing back from the detail of the appeal, unsubstantiated allegations of sex abuse, which are given no additional force by the endorsement of police, CAIC (*re child abuse*) or other authoritative body, give rise to one of the most difficult issues of balance which an Employment Tribunal has to perform. The employer is always likely to be a cleft stick, unless it already has some reason of its own to suspect the employee, or some good reason to think that the allegations are out of character to an extent that diminishes their reliability. The duty of such an employer concerned with serving children is first and foremost to those children, but that does not remove its responsibility to its employees. Every case will turn upon its own facts.”

- 6.12. The question for the Tribunal is whether the employer has acted reasonably. The Tribunal is not entitled to substitute its own view for that of the employer, only to consider whether the employer’s actions fall within the band of reasonable responses; that is, whether the employer acted reasonably and fairly in accepting the facts and beliefs that he did (*Tayeh v Barchester Healthcare Ltd [2013] EWCA Civ 29, [2013] IRLR 387, CA*)
- 6.13. The same test applies in relation to procedural matters. In “Polkey”, from *Polkey v AE Dayton Services Ltd ([1987] IRLR 50 (HL))* the House of Lords confirmed that the question for the tribunal was whether the employer acted reasonably in the procedure adopted at the time.
- 6.14. An employer need only adopt such procedural safeguards as a reasonable employer would adopt. When it comes to the credibility of witnesses, what matters is the employer’s assessment of credibility and whether it is fair and reasonable, rather than that of the Tribunal.
- 6.15. The Tribunal is not bound to hold that any procedural failure by the employer renders the dismissal unfair: it was one of the factors to be weighed up in deciding whether or not the dismissal is reasonable within s 98(4). The weight to be attached to such procedural failure should depend upon the circumstances known to the employer at the time of dismissal, not on the actual consequence of such failure.

Unfair Dismissal Remedy

- 6.16. The first consideration for a Tribunal in unfair dismissal is of reinstatement or reengagement.
- 6.17. Where that is not sought by the Claimant, a financial award can be made, comprising the basic and compensatory elements.
- 6.18. By s123(1) of the Employment Rights Act 1996, the amount of the compensatory award shall be, “such amount as Tribunal considers just and equitable in all the circumstances, having regard to the loss in consequence of the dismissal in so far as attributable to action taken by the employer.”

- 6.19. The award is to fully compensate the claimant, as if they had not been dismissed, but not to award a bonus or to punish an employer.
- 6.20. The loss from stigma can be taken into account in assessing future loss, given that bringing a tribunal claim can make a claimant unattractive to future employers. (*Abbey National plc v Chagger [2010] IRLR 47*)
- 6.21. A reduction can be made to reflect the chance that the individual would have been dismissed fairly in any event or for contributory conduct. Ability to pay is not a consideration.
- 6.22. Guidance is given in *Software 2000 Ltd v Andrews and others (UKEAT/0533/06/DM)* as to the application of the principles to be considered in considering a Polkey reduction to compensation, based on review of the authorities. The task is to construct from evidence not speculation, a framework which is a working hypothesis about what would have occurred had the employer behaved differently. It is not to “launch upon a sea of speculation”, but
- “any assessment of a future loss, including one that the employment will continue indefinitely, is by way of prediction and inevitably involves a speculative element...the Tribunal’s statutory duty may involve making such predictions and tribunals cannot be expected, or even allowed, to opt out of that duty because their task is a difficult one and may involve speculation.”
- 6.23. The guidance given is that “the task is for the Tribunal to identify and consider any evidence which it can with some confidence deploy to predict what would have happened had there been no unfair dismissal.
- “The question is not whether the Tribunal can predict with confidence all that would have occurred; rather it is whether it can make any assessment with sufficient confidence about what is likely to have happened, using its common sense, experience and sense of justice. It may not be able to complete the jigsaw but may have sufficient pieces for some conclusions to be drawn as to how the picture would have developed. For example, there may be insufficient evidence, or it may be too unreliable, to enable a Tribunal to say with any precision whether an employee would, on the balance of probabilities, have been dismissed, and yet sufficient evidence for the Tribunal to conclude that on any view there must have been some realistic chance that he would have been. Some assessment must be made of that risk when calculating the compensation even though it will be a difficult and to some extent speculative exercise.”
- 6.24. The Tribunal must assess the loss flowing from the dismissal, using its common sense, experience and sense of justice. The Tribunal must have regard to all the evidence, including that from the employee himself.
- 6.25. Nonetheless,

“There will, however, be circumstances where the nature of the evidence which the employer wishes to adduce or on which he seeks to rely, is so unreliable that the Tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction.... can properly be made (para 54(3)).

- 6.26. I am referred to *Gover and others v Propertycare Ltd* ([2006] EWCA Civ 286), in which it was indicated that a Polkey deduction should not be ruled out if the dismissal is found to be substantively, as opposed to merely procedurally unfair. It may be more helpful to formulate the question as, "Was there an unfair departure from what would have happened?".
- 6.27. By section 124 of the ERA 1996, compensation is capped, including at the level of one year's gross salary, if lower than the current statutory cap. The cap does not apply to an automatically unfair dismissal under sections s100, 103A, 105(3) 105(6A). Those are protected disclosure and health and safety cases.
- 6.28. There can be no award for the manner of the dismissal. The award does not attract interest. No award can be made for injury to feelings or personal injury.

Rule 50

- 6.29. Rule 50(1) provides the tribunal with the power to make an order ‘with a view to preventing or restricting the public disclosure of any aspect of [the] proceedings’:
- (1) A Tribunal may at any stage of the proceedings, on its own motion or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A of the Employment Tribunals Act.
 - (2) In considering whether to make an order under this rule, the Tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.
 - (3) Such orders may include –
 - (a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;
 - (b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;
 - (c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;

- (d) a restricted reporting order within the terms of section 11 or 12 of the Employment Tribunals Act.
- (4) Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under this rule is made may apply to the Tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.
- (5) Where an order is made under paragraph 3 (d) above –
 - (a) it shall specify the person whose identity is protected; and may specify particular matters of which publication is prohibited is likely to lead to that person's identification;
 - (b) it shall specify the duration of the order;
 - (c) the Tribunal shall ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the noticeboard of the Tribunal with any list of the proceedings taking place before the Tribunal, and on the door of the room in which the proceedings affected by the order are taking place; and
 - (d) the Tribunal may order that it applies also to any other proceedings being heard as part of the same hearing.
- (6) 'Convention rights' has the meaning given to it in section 1 of the Human Rights Act 1998."

6.30. Section 11 of the Employment Tribunals Act 1996, provides for the restriction of publicity in cases involving sexual misconduct. Subsection (1)(a) provides for documents or decisions to be effected so as to prevent the identification of any person affected by or making the allegation. The publication of identifying matter is a criminal offence and any person found guilty of that is liable on summary conviction to a fine not exceeding level 5 on the standard scale. Identifying matter, in relation to a person, means any matter likely to lead members of the public to identify him as a person affected by, or as the person making, the allegation.

6.31. Open justice is a fundamental principle and the general rule is that hearings and judgments are public. 'Open justice' requires the public to be able to attend hearings and enables the press to report contemporaneously, including the identities of the parties and witnesses.

6.32. Derogations from the general principle can only be justified in exceptional circumstances, when they are strictly necessary as measures to secure the proper administration of justice, including the protection of Convention Rights.

6.33. The grant of derogations is not a question of discretion. It is a matter of obligation and the court is under a duty to either grant the derogation or refuse it when it has applied the relevant test. It is not a matter that can be dealt with by agreement between the parties.

- 6.34. The burden of establishing any derogation from the general principle lies on the person seeking it. It must be established by clear and cogent evidence that harm will be done by reporting to the privacy rights of the person seeking the restrictionso as to make it necessary to derogate from the principle of open justice' (*Fallows and others v News Group Newspapers Ltd [2016] ICR 801 at para 48(i)*).
- 6.35. It is not sufficient to hear submissions: to depart from the principle of open justice requires evidence of the harms that may ensue on publication.
- 6.36. Where full reporting of proceedings is unlikely to indicate whether a damaging allegation is true or false, courts and tribunals should credit the public with the ability to understand that unproven allegations are no more than that. Were such a case proceeds to judgment, courts and tribunals can mitigate the risk of misunderstanding by making clear that they have not adjudicated on the truth or otherwise of the damaging allegation.
- 6.37. Applications to restrain publication (whether by a RRO or holding a hearing in private) always engage Article 10 and s12 of the Human Rights Act and often Article 8.
- 6.38. There will always be competing interests and Convention rights as well as the general public interest in open justice and in the public reporting of court proceedings.
- 6.39. Lord Steyn described the exercise to be conducted in *In re S (A child)* at paragraph 17. Where Convention rights are in conflict: (a) there must be an intense focus on the comparative importance of the rights being claimed in the individual case, (b) the justification for any interference must be taken into account; and (c) the proportionality test must be applied . I will call this the ultimate balancing test." (*Re S (A Child) [2005] 1 AC 593 (HL) at para 17.*)
- 6.40. There will nonetheless be circumstances in the Tribunal where a restriction on reporting may be appropriate despite the principle of open justice and that will include where the exact identity of a person is irrelevant to the decision or to understanding the decision. Evidence of a real and immediate risk of harm is needed but it does not require a risk to life or security (*Clifford v Millicom Services UK Ltd, [2023] IRLR 295*)

7. Submissions

- 7.1. Mr Jackson and Ms Firth both made and spoke to written submissions which I have considered carefully and with equal care in making my findings of fact and in determining the issues. I am grateful to both for their clear and helpful exposition.

8. The hearing: preliminary matters

Preliminary matters

- 8.1. The first day of the hearing was taken up with preliminary matters. The hearing had started at 10.00 am, for preliminary matters to be addressed and Tribunal reading. The timetable proposed that evidence would commence at 2.00 pm.
- 8.2. Directions had been given on 14 September 2022 (54), including for the exchange of witness statements by 27 March 2023 and an agreed list of issues by 17 April 2023. The case was listed for a telephone prehearing review for the 29 March 2023.
- 8.3. On 22 March 2023, the claimant applied for further disclosure in particular of the names of staff members attending the LADO meetings, who were minuted as making various contributions. The Respondent resisted, including on the grounds that LADO only permitted disclosure of documents in the redacted form in which they were provided. The claimant pursued that application and a wider application for disclosure of the unredacted minutes of the LADO meeting of 16 March 2022 at the hearing of 29 March 2023.
- 8.4. Employment Judge Midgley granted the order for disclosure, pointing out that,

“The GDPR contained a derogation for legal proceedings, therefore the only basis to redact was on the grounds of legal advice privilege or litigation privilege, neither of which was relied upon. ...

The question of whether the documents should be redacted to prevent the names and confidential data of pupils forming part of the Tribunal bundle, and therefore being put in the public domain, was a separate issue to disclosure and not a bar to it. The appropriate mechanism for raising such concerns was either by consent with the claimant, or if such consent was refused, by making a rule 50 application to the Tribunal.

I had concerns that the respondent may not have approached its disclosure obligations in the appropriate way, given the nature of the objections to disclose the unredacted minutes and/or provide the information contained in the minutes. I therefore invited the respondent to review its disclosure to ensure it had complied with its duties.”
- 8.5. Following that, by a letter of 6 April, reissued on 11 April, the Respondent requested confirmation that it had complied with the Order of 29 March or varying that order, making an application under Rule 50, and requesting permission to rely on two additional witness statements served late, by the Respondent.
- 8.6. The witness statement of DC Tucker was admitted in evidence without objection.
- 8.7. The second witness statement was from the chair of the appeal hearing. The Claimant objected. It was said that the witness statement was late because

personal matters of a very distressing nature left it unclear that the witness would be available.

- 8.8. At the point where the witness statements were due to be exchanged, on 27 March, there had been no indication from the respondent that a further witness might be called. It had been known that the witness would be available at the latest by 6 April, the witness statement was signed on 17 April but it was only served on 21 April, the last working day before the hearing. The Claimant had been given no indication as to its probable content before that. Detailed reasons for the delay were lacking.
- 8.9. The Respondent was given permission to rely on the witness statement. That was not because any sufficient explanation had been given for providing it so late; but in the interests of justice, given that that witness had had a key role in the dismissal process. It was confirmed that the statement did not contain any unexpected content.
- 8.10. I asked for a List of Issues as ordered on 14 September 2022. The parties had understood it was not considered necessary, but there had been no variation to the Order. I requested it in order to be clear that I was aware of the key points relied on by the Claimant in particular in his challenge to the fairness of the dismissal and the fairness of the procedure and an agreed list was provided at 2.04 pm.
- 8.11. There was discussion of the order of evidence, the previous Order having included a timetable that reversed the usual approach that the Respondent's evidence in an unfair dismissal case was taken first. Mr Jackson had prepared on the basis of the timetable in the Case Management Order and having only seen the most recent witness statements on 21 April, was disadvantaged if that order was changed at short notice. The direction given was that the timetable outlined on 29 March was adhered to save that oral evidence was to commence on Tuesday, the second day of the hearing, instead of Monday afternoon. Given witness availability, Ms Adkins' evidence was heard on Wednesday, Mrs Grimes on Thursday.
- 8.12. It was not initially clear that the Respondent were proceeding with their application that the Claimant should not have access to unredacted documents.
- 8.13. There had throughout been denials of disclosure on the part of the Respondent.
- 8.14. The Respondent had not given the Claimant the names of any children interviewed save D, E, F and G, those whose complaints had been considered. More than twenty children had been referred to and some had been interviewed. The investigation pack had been redacted. While the Claimant had the statements of D, E, F and G, in other documents the children's names were obliterated without any annotation, so it was not possible to identify who had said what about or to whom.

- 8.15. The Respondent's approach had been that the Claimant should not be given any more information than was absolutely necessary. There was considered to be no need to disclose any other names, even of children who had been interviewed. The Claimant's position was that redaction of names in documents disclosed was never appropriate and had not been agreed.
- 8.16. The point had already been made in the Order of EJ Midgeley that disclosure and restricted reporting are separate issues. In that Order the Judge had invited the Respondent to review their disclosure and had granted the Order for disclosure applied for.
- 8.17. The Respondent had complied with the order for disclosure of unredacted minutes of the LADO meeting on 16 March 2022 but the documents in the Tribunal File included a number of pages with substantial redactions, including for example page 174 (S133) – the evidence of Mrs Ruth Morgan's discussion with Student H, Student N and several pupils whose names had been given. That made it difficult to understand the evidence or the investigation carried out and concealed relevant evidence in conflict with the Respondent's position. The minutes of the LADO meeting of 1 November 2021, on which the Respondent relied as containing the authority for the school to commence disciplinary proceedings, were never disclosed in an unredacted form.
- 8.18. At the hearing, it was conceded on behalf of the Respondent that the Claimant should have the unredacted documents if so ordered. The Respondent had unredacted copies of the LADO minutes save that it was said that one set of the LADO minutes was in their possession only in a redacted form.
- 8.19. It was Ordered that the Respondent disclose to the Claimant the unredacted LADO minutes in their possession and the unredacted LADO referral (document 380 onwards) forthwith.
- 8.20. The concession and Order made meant that the Claimant would know all the names of the children. This being the first time that the Claimant or his representatives would have full sight of the evidence, there was still a risk of losing hearing time or of prejudicing the fairness of the hearing. It is to their credit that they managed so that the hearing proceeded to a conclusion within the time allocated. It was however the case that important evidence had been concealed until after the start of the hearing.
- 8.21. Unredacted copies of documents, including of LADO minutes – save for the LADO minutes of 1 November 2021 – were provided. The Respondent did not provide the unredacted LADO minutes of 1 November 2021, saying it was not in their possession. The redactions are not simply as to the identity of the children but, perhaps surprisingly, as to the discussion of the decision of the school to proceed with an internal investigation. It was for the Respondent to adduce that evidence given the school's reliance on authority for that being given at this meeting.

8.22. The duty to disclose is to disclose all documents of any relevance to the matters at issue. There was never justification for the Respondent's decision to provide Mr Hawker, the disciplinary and the appeal panel only redacted copies.

Rule 50 Application and Order

8.23. The Respondent made an application for a Rule 50 Order in the email of 6/11 April and at the hearing. Evidence was taken. The application was not contested.

8.24. Victims or alleged victims of sexual offences are entitled to lifelong anonymity under section 1 of the Sexual Offences (Amendment) Act 1992. Mr Hawker had been charged with abuse of trust: sexual activity with a child, contrary to section 16 of the Sexual Offences Act 2003. That is where a person intentionally touches a child, the touching is sexual and he is in a position of trust in relation to that person. Protection applies to any person affected by the allegation and that includes the children mentioned in these proceedings.

8.25. The application in respect of the protecting the anonymity of the all children involved or mentioned was granted. Aside from the protection conferred by section 1 of the Sexual Offences (Amendment) Act 1992, I accepted on evidence that there was a risk of psychological harm to the children if their identities were made public and made the subject of public comment. It would jeopardise the trust of children who needed to make disclosures about the adults in their lives and could interfere directly with the school's ability to protect and support these children and others. The age of these children was relevant and their innate vulnerability and dependence on trust in adults. There is no public interest in the children being identified.

8.26. I balanced the Article 8 rights of the children and the evidence of potential harm to them against the strong public interest in public hearings and full and unrestricted reporting, leading to public scrutiny of the justice system. Notwithstanding that, the particular vulnerabilities and risk of harm to the children in this case, in my judgment, justified a restriction that protected them without restricting public awareness of the parties or the issues. Permitting their identification would be a disproportionate interference in Article 8 rights of the children.

8.27. The Order was to bar the disclosure of the children's and their parents' or guardians' names and addresses and identifying material. To protect them against identification it was agreed that their ages, tutor group and year group would not be mentioned. The public bundle / file was to be redacted, with additional redactions to those already made. All children identified would be identified by letter. The Claimant had a list of names and the letters by which those children were to be referred. The Tribunal and the Claimant would have an unredacted File, not available to the public.

- 8.28. Consideration was given to whether the Order required to cover all children mentioned. While those centrally involved clearly merited protection there was similar to risk to those named or interviewed and the risk of identifying the key participants if others were not included. They were all within the definition of “persons affected by” the allegation of sexual misconduct.
- 8.29. The application included that there should be no reporting of the allegations to prevent jigsaw identification. It was suggested that by identifying the allegations, it might be possible to identify the students who had pursued complaints. It was not clear how or why that should be the case. Ms Ruth Morgan, who gave evidence, could not say the allegations were the subject of discussion within the school such that identification of individuals might follow.
- 8.30. I found no basis in the evidence for establishing that a link could be realistically be drawn from discussing the allegations and identifying the children making them. I am entitled to take into account that safeguards exist in the orders made to reduce or remove the risk of identification. There are several hundred children in the lower year groups in the school. There was not a sufficient objective basis for the concerns expressed in relation to the identification of the children involved or mentioned here. The allegations made are central to the consideration of the fairness of the dismissal. The Tribunal had to consider the quality of the investigation, the respondent’s genuine and reasonable belief in the outcome and the fairness of the procedure. That could not be fairly and publicly reported without reporting the allegations. The order sought severely compromised the open justice principle. The balancing act I am required to carry out is against restricting reporting of the allegations.
- 8.31. I declined to make an order conferring anonymity on the school. There was concern about the school’s reputation but that would not be a basis for such an order. The purpose of anonymising the school would be to prevent piecemeal or jigsaw identification of the children. Given the steps taken, including in the phrasing of these Reasons, I was not satisfied that the further step of anonymising the school was necessary or justified.

9. Analysis

- 9.1. We are dealing with serious allegations impacting on the safeguarding and welfare of children.
- 9.2. The paragraph above from *Z v A* expresses the difficulty better than I can.

“Standing back from the detail of the appeal, unsubstantiated allegations of sex abuse, which are given no additional force by the endorsement of police, CAIC (*re child abuse*) or other authoritative body, give rise to one of the most difficult issues of balance which an Employment Tribunal has to perform. The employer is always likely to be a cleft stick, unless it

already has some reason of its own to suspect the employee, or some good reason to think that the allegations are out of character to an extent that diminishes their reliability. The duty of such an employer concerned with serving children is first and foremost to those children, but that does not remove its responsibility to its employees. Every case will turn upon its own facts." (para 36)

9.3. The school has to focus on the welfare of children. It is also an employer and employers have responsibilities to their staff. The focus here is on Mr Hawker as a member of staff.

9.4. The Tribunal does not have the task of deciding guilt or innocence. The questions relate to the fairness of the Respondent's decision-making and procedure: briefly,

- Did the Respondent hold a genuine belief in the Claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances?
- If so was the dismissal fair, within the range of reasonable responses of a reasonable employer
- Was the procedure fair?

9.5. I am not looking at what Mr Hawker did or didn't do. I am looking at what the Respondent did, and at those questions of genuine belief, reasonable grounds, reasonable investigation, reasonable sanction, fair process.

9.6. The investigation started with the delivery of a note by Student N to her tutor. That note has not been produced. What is known is that it said that Student H had said that Mr Hawker had touched her leg. N was uncomfortable about this and thought it best to report it.

9.7. As a result of seeing that note, Mrs Ruth Morgan, the DSL, spoke to H, and to N and to the girls that they each mentioned, except G who was not in school that day. The girls spoken to on that day were H, N, X, O and W.

9.8. No statements were taken, but emerging from the discussion with the students and of concern was

- H's allegation of being touched on the thigh by Mr Hawker, the wink, his being too close
- a report from G that she had been touched by Mr Hawker on the leg,
- H had mentioned the touching she alleged to N, X, O and W,
- H referred to G as her friend
- H and W knew of G's allegation and
- H and X reported rumours about Mr Hawker which were wrong, including that he had been having an affair with a sixth former and that he had been suspended for touching a year 9 student

9.9. Also emerging from them is that N, W, X and O reported no other concerns and that they had not witnessed anything.

- 9.10. Following from that, Mrs Morgan took statements from D, E, F and G.
- 9.11. The resulting statements from D, E, F and G are written by the girls themselves, by hand. They are short. They give no dates. Each, apart from Student G, identifies the others thought to be involved. Student D refers to Student E, F, G, P and Q. Student E to Students D, F, G, P and Q and says she cannot remember the two others. Student F refers to Students D, E, G, R, S, T and U.
- 9.12. The statements were short because of the safeguarding approach to disclosures: there was no questioning or exploration.
- 9.13. There is no record from Mrs Morgan as to how those individual pupils as against others came to be interviewed, whether any others were spoken to, how those short statements came into being, what was said to or discussed with the pupils before they wrote them. It is not dealt with in her witness statement.
- 9.14. It would have been helpful to have that background. None of the girls came forward with allegations of their own initiative. How were these girls identified – out of D, E, F and G, only G, was in the original group of girls named. G is not noted as naming anyone else. Why were those girls invited to make statements and not P, Q, R, S, T and U? Or were those girls in fact spoken to and had no complaint to make and no evidence to give against Mr Hawker?
- 9.15. The school does not have to meet such a high standard as is required for evidence in a criminal process. This is not a police investigation. At the same time, these are career-ending allegations and the investigation must be thorough. The full context in which the allegations were made is relevant. Evidence that is potentially supportive of Mr Hawker is as relevant as evidence against him – if those six students - P, Q, R, S, T and U - were spoken to and saw nothing of concern, that is still relevant evidence for the investigation. If, having been mentioned, along with two unnamed others, they were not spoken to, it is puzzling as to why not.
- 9.16. By the end of the hearing, twenty three pupils were to be protected in the Rule 50 Order. According to the Respondent school, there was no need to interview the majority of those girls, even though they were mentioned as having some involvement, whether as witnesses or victims, nor to make enquiries as to whether concerns arose in parallel classes or those of girls in different year groups. I appreciate the sensitivity of this enterprise, but I have a concern as to whether there has been a failure to disclose the enquiries actually made and equally at the failure to pursue reasonable enquiries that might have a bearing on the outcome of the investigation. From the outset, the investigation had a very narrow focus and it is not clear why.
- 9.17. From the girls making allegations about their own treatment, D, E, F, G and H, the picture in June was, from their reports,
- D – massaging her shoulders and stroking her arms

E – stroking or massaging her shoulder

F – touching her arm, touching her hand, winking and touching her leg a week or so ago

G – touching or stroking her thigh

H – touching her thigh, a couple of weeks ago

9.18. That was in late June, the initial information gathering on 23 and 24 June, the fuller statements on 28 June.

9.19. Mr Hawker was suspended on 28 June. His experience was difficult. He was given no explanation of the allegations, only that it was a safeguarding issue. He had limited contact with the school, waiting all through the summer then the brutal experience of an arrest at home, the arrival of three police cars, his electronic equipment taken, a police cell.

9.20. He did have a contact at the school but one who could not tell him about the allegations or the timeline. From his point of view, there was little useful support from someone who did not know the allegations or could not share them and did not know or could not share the progress of the investigation. There may be reasons for it, but this is a harsher experience than that of most employees facing an investigation.

9.21. From the police interviews, he did at least know what the allegations were from F and G but it was not until November that he learned that there were other pupils making allegations and which year they were in; only after the invitation to the disciplinary on 18 January 2022 did he see the evidence, albeit redacted. That was also his first knowledge of the evidence of the older girls. That is a long time not to know what incidents are said to have taken place, and in what lessons. Even then, he did not know who said what, given the redactions. That is more than six months later.

9.22. He was given the names of the girls in his investigatory interview, but, without the documents, and he chose not to write them down. That was reasonable and proper. What he needed was to see the evidence presented in a way that he could make sense of it at least with letters to identify the students whose names were blacked out. The claimant did not have a ciphered version of the documents until the hearing. The documents he had were the redacted documents as in the original hearing bundle. He could not reach a full understanding of the evidence.

The older girls' evidence

9.23. On 9 July, the two older girls made their report. The evidence does not disclose to whom the report was given initially, but Mr Thomas spoke to the girls. Student L reported, in her handwritten statement,

“In the netball courts at lunch a group of (x years) told us that they tried to get Mr Hawker fired for fun and they told people that he

was touching their thighs and sexually assaulting them. I don't know any of their names or forms but I think the main one who said they tried to get him fired for being a paedophile for fun is called Student H and I think they are in *** (M180).

9.24. Student M reported

*"When I was leaving the bottom court with Student L we were talking to **some year xs** who then said **"I think we got Mr Hawker fired"** to which I replied "What? Why would you do that" and then one of them said "Because it was fun" and another one added "Yeh we said **he touched our thighs trying to get him done for sexual assault"** (or something along those lines it was hard to hear properly). I think one of them is called Student H"*

She gave some additional identifying details.

9.25. Elements are highlighted in bold. That is because they are an important part of the account given.

9.26. Those reports show that the two girls agree they spoke to a group of girls, or some girls. That implies at least three, perhaps more. They agree that they recognised Student H. They agree that the girls were talking about fabricating a plot to get Mr Hawker dismissed. The allegations they claimed to be fabricating involved touching their thighs and sexually assaulting them. At least two claimed to be active participants.

9.27. I note the following:

- Content: there is a similarity between the allegations made and the stories the younger girls said they made up. Each younger girl's account is consistent with sexual assault, two mention their thigh, one her leg;
- Numbers: the older girls are talking to several girls;
- More than one girl says they are making up allegations – it is a joint enterprise, the words are "their" thighs, "our" thighs, "we";
- Timing: this account is given within a fortnight of the allegations emerging;
- Year group: the older girls report the conversation as being with girls in the same year as D, E, F, G and H;
- Alleged perpetrator: D, E, F, G and H make allegations against Mr Hawker. The older girls report the plan as directed against Mr Hawker;
- One reported a girl as saying "I think we got Mr Hawker fired". Mr Hawker was last in school on 28 June.

9.28. It is hard to see a motive for the older girls in coming forward, save that they were concerned about what they had heard and wanted to see fair play. There is no discernible benefit to them.

- 9.29. They were not spoken to again save possibly at some stage by Mr Thomas, as directed by the LADO. What he did is not clear. He has not made a statement or put himself forward as a witness and the school have not called him. Mrs Bell's version of what he did differs from the one put before the LADO meeting.
- 9.30. The report from the older girls was put aside at an early stage. Two reasons have been put forward.
- 9.31. The school relies on the fact that the girls, while identifying Student H, did not present any link with students D, E, F or G.
- 9.32. They say,
- H is in a different tutor group;
 - Tutor groups were kept separate. The girls were in bubbles and worked in tutor groups;
 - they had no opportunity to mix;
 - they were not in the same friendship groups;
 - None of the girls interviewed – D, E, F and G - mentioned H;
 - H was not present when the matters alleged by D, E, F and G occurred – because in a different tutor group.
- 9.33. That is their case. The case is not helped by the absence of evidence as to what tutor group the girls here were in. No unredacted copy of the older girls statements has been produced, so it is not possible to see what tutor group is referred to in one of the initial statements.
- 9.34. Nonetheless it is the Respondent's case that as between D, E, F and G on the one hand and H on the other, they were kept separate and there was little likelihood of communication between them.
- 9.35. Against that,
- In the opening interview, H describes G as her friend;
 - H and G are acknowledged to be in different tutor groups;
 - H said she and G had discussed Mr Hawker and their report of being touched;
 - G had spoken to W making the same allegation;
 - H had spoken quite widely about hers;
 - The older girls making the report of a plot against Mr Hawker were talking to the younger girls in the netball courts; not keeping within their bubbles or tutor or year groups;
 - X and H reported rumours about Mr Hawker that appear to have come from older girls.
- 9.36. Those facts do not support the contention that girls from different tutor groups or years did not talk to each other.

- 9.37. Mrs Bell was unpersuaded by H's statement that G was her friend. She said that
- "Student H was very vulnerable and would adopt children as friends and they necessarily weren't so we looked at who would sit with whom and we looked at bubbles etc and we believed that they would not have been in the same bubble together."
- 9.38. I am not considering the strength of friendships. I am considering whether girls in different bubbles spoke to each other, and the evidence is that they did.
- 9.39. Mrs Bell's version also discounts what the older students themselves said. They were not in a bubble with Student H but they report speaking to Student H.
- 9.40. The question of bubbles was not discussed with Mr Hawker at any point although it is a key part of the school's case. That is because the view taken was that H's allegations and the reports of the older girls were irrelevant to the investigation of what D, E, F and G had said.
- 9.41. When asked in the hearing about the students being kept apart in tutor group bubbles, Mr Hawker was presented a different picture:
- "Tutor groups, they were taught in separate groups but in between they certainly spent time in each others' tutor group rooms in spite of the guidance issued by the school."
- "One of my duties was to monitor corridors and areas, and a lot of time was spent ushering students back to the correct area. They did not adhere to the correct policy area. Some did, some didn't."
- 9.42. Mrs Harriet Morgan set aside the evidence from the older girls on the basis that it related only to H, who was not being investigated, and had no connection or relevance to the younger girls. That is a misreading of what they said.
- 9.43. The evidence is of pupils talking to each other beyond their tutor group bubbles. The older girls account cannot be sidelined or dismissed on the basis that it can only relate to the allegations of Student H.
- 9.44. This is also common sense. Pupils have activities and friendships outside school. All these pupils came from primary schools, many will have built lasting friendships there. They build relationships in their neighbourhoods. There are out of school clubs and activities – that is said to be how H knew G. There will be siblings, some in the same school; brothers and sisters bring friends home. Above all, most will be meeting on social media, sharing in WhatsApp groups or chatting on other apps.
- 9.45. In discussing the bubbles and the school's view that contact between bubbles was unlikely, no mention was made of contact through social media. That is another clear gap in the way the evidence was approached. The union representative at the disciplinary hearing mentioned Whatsapp

groups, but there is nothing to point to the school addressing the role of social media. In reaching its conclusion that tutor groups and bubbles were effectively isolated from communicating with each other, the probability of pupils using social media was not addressed.

- 9.46. Two rumours are reported about Mr Hawker, both known not to be true, one having foundation only in relation to a different individual.
- 9.47. That they were not true, but reported frankly to staff as if they were, at the least shows an interest in sexual matters, and a willingness to share gossip, true or false.
- 9.48. There is very little reason to consider that these allegations of impropriety by Mr Hawker would have been kept within a closed circle.
- 9.49. The reports of the older girls were not followed up at the time. It might have then have been possible to see whether the girls making the report could be clearer about who or how many pupils they were speaking to, there might have been clues from which some identification could have been made, or they could have looked at photographs. At best, they were not asked more until September and it is not clear what they were then asked. An opportunity was lost.
- 9.50. The situation was not helped by Mr Thomas. He is quoted in the LADO meeting of 29 July 2021 as frankly misreporting what the older girls said. The note suggests that he reported something overheard rather than a direct conversation and it draws attention to Student H rather than the group.
- 9.51. That may be a problem with the minute taking, but misreporting is echoed in the interview with Mrs Harriet Morgan – again, Student H is the speaker who is “overheard” - and found its way into her report, under the heading “Facts that could not be established” as, “They had overheard Student H ...”.
- 9.52. It is echoed by Mrs Bell, referring to the exchange reported by the older girls as “a fleeting, walking past kind of thing.” From being a report of a conversation between the older girls and a group of younger girls, with more than one active participant in a scheme, the report became established as an account of something involving Student H being overheard in passing.
- 9.53. Mr Thomas made no contemporary note as to what he did to explore the identity of the pupils the year 8 students had spoken to and refused to answer questions in writing put on behalf of the Claimant. He gave as his reason he could not answer without risking interference with the police investigation. Mrs Bell gave assurances at the hearing that the internal investigation was authorised to proceed. That means that there was no such risk. She was confident of that, so it is not clear why Mr Thomas felt unable to assist by giving a statement or answering the Claimant’s questions. If the intention was, as often stated, a fair and objective enquiry, his evidence was necessary.

- 9.54. The misreporting is such that there are different accounts in the evidence heard, that the older girls could not identify anyone, that they identified H but no-one else, that they could not identify H, that they could not identify anyone if shown photographs, that they were shown photographs and could not identify anyone.
- 9.55. The effect of the misreporting was to shift the focus of the older students' account towards Student H and away from the group of girls, two in particular, laughing at the plot they were engaged in to get Mr Hawker dismissed.
- 9.56. That reliance on the report by the older girls being about student H and a separate matter from the allegations made by D, E, G and G is unfounded and unrealistic.
- 9.57. The chair of the disciplinary committee said that the reports of the older girls were unclear. She relied on Student M's report saying "or something along those lines, it was hard to hear properly" as undermining their reliability. In my judgment, that is an insufficient basis to put the evidence aside: the reports the two girls make are closely similar in content and echo the allegations made. The reference to not being able to hear suggests a paraphrase, rather than any different or weaker account. I do not find that the comment about it being hard to hear undermines the facts presented in those reports. I go back again to the question of why would the older girls make such a report, and risk being involved in further enquiry if they were not confident of their report and concerned at its implication. There is no obvious basis on which to treat the report as other than public spirited and made in the interests of fairness. If that was doubted, it could have been explored.
- 9.58. Mrs Grimes too, in her oral evidence to the Tribunal, related the report of the older girls to Student H and not to the allegations of D, E, F and G.
- "We believed that the two (older) students had identified H as the person who had alleged that they were going to get Mr Hawker fired.
.....
And the pack said H was no longer in the school so it was not further investigated."
- 9.59. She accepted the way the school presented it. The disciplinary committee only had the redacted version of the documents. They did not have the full picture, although they did have the original account of the older girls to refer to. That being the case, that was not a fair and reasonable assessment of the evidence.
- 9.60. The chair of the appeal committee expressed concern,
- "I would have liked to have closed out the (older pupils') matter in a little bit more detail and we would have liked to have seen more from Mr Thomas"

“We were provided with reasons why the (older) students were not spoken with and we would have liked to have seen that pursued but at the heart of it was whether the students that had given evidence were to be believed.”

- 9.61. Both panels were disadvantaged by the way the evidence was presented. Both had the redacted version of the documents. It has to be said that the account of who was interviewed and who was referred to, in relation to the 2019 and 2021 allegations given by Mrs Harriet Morgan at the disciplinary hearing was, according to the minutes, inaccurate (M338).
- 9.62. For their deliberations, the appeal panel called for a version that identified girls by letters. That was provided, but not to the Claimant or his representative.
- 9.63. The appeal panel had access to a version of the documents that was not available to the Claimant and which was important to understand the evidence. They had also taken fuller evidence that had not been before the disciplinary panel, at a hearing that the Claimant had been unable to join. The evidence was relevant to who the older girls might have been talking to.
- 9.64. The ciphered version of the document given to the appeal panel no longer exists. It is not possible to check its accuracy.
- 9.65. Both panels put their concerns about the older girls' evidence on one side. That was because the evidence had not been fully investigated or properly considered. It was presented as irrelevant and they accepted that. Again, that was not a fair and reasonable assessment of the evidence before them.
- 9.66. The police knew of the older girls' statements in July, but it is not clear that they were provided with the originals. Mr Hawker had the Investigation Report on 18 January 2022, but that misrepresents the older girls' evidence. It is not clear when he saw the Investigation Pack, which was delivered digitally and separately. On 1 February, his representative sent the statements of L and M to the officer in charge. On 3 March, DC Tucker confirmed that the decision had been made not to proceed with the case against Mr Hawker.
- 9.67. Mr Hawker himself sent to the Teachers Registration Authority the statements of the older girls and the revisions made to her statement by Student D on 21 March 2022. It is right that he claims there that the two girls F and G were the ones that the older girls were speaking to, which is not established. I accept it is his belief. On 1 April, the Authority lifted the Interim Prohibition Order. They did that without further investigation.
- 9.68. The inference must be that the report of the older girls was seen as weakening the reliance that could be placed on the allegations and that is what the LADO minutes show in relation to the charges that were dropped. Neither the police nor the TRA saw the older girls' evidence as limited in its consequence to Student H and it plus the change to D's statement

undermined the case against Mr Hawker so significantly that both charge and prohibition order were dropped, and quickly, after those documents were sent.

- 9.69. The older girls' statements were relevant in considering the evidence of the younger girls. Their account was not properly investigated and the content was misrepresented including when reported to the disciplinary and appeal panels. The panels accepted the inaccurate version and the assertion that this evidence had no relevance to the accounts of D, E, F and G. That assertion was ill-founded. This was not a fair and reasonable approach to the evidence of the older girls.

Student H

- 9.70. The report identifies the terms of reference as to "Investigate allegations of a safeguarding nature against Mr Jonathan Hawker (JHR), Teacher of Mathematics. (...) students alleged he had acted inappropriately towards them."
- 9.71. The report contains the allegations made by H and the initial enquiries around N's disclosure of those as well as those of D, E, G and G.
- 9.72. It came as a surprise in the hearing when it was said by Mrs Harriet Morgan that the investigation did not include Student H. That was on the direction of Mrs Bell.
- 9.73. Mrs Bell confirms she gave the Mrs Morgan the direction that her investigation would not include H - she was no longer in the school and there were particular vulnerabilities. There is no record of that direction. It was not mentioned when Mrs Morgan was asked during the disciplinary hearing about her terms of reference.
- 9.74. Neither the terms of reference nor the report identifies the specific students or allegations under investigation. The notes about Student H's allegations are included. There is no statement from her, but she had left the school. Nothing showed that Student H's allegations were not part of the investigation. They were discussed at each stage.
- 9.75. The school considered that Student H was unreliable. (So did her father.) Mrs Morgan confirmed that to Mr Hawker's representative during the disciplinary under questioning, but it was not volunteered nor was it explained or recorded in the investigation report. It was not given as the reason for her not being interviewed or included in the summary of the investigation report.
- 9.76. There may be no relevance to the fact that Student H was considered unreliable in making allegation of sexual abuse similar to those other contemporary allegations; but if one student is considered to be unreliable, it at least opens the possibility that others might be; the more so given the similarity of the allegations and their timing. The disciplinary and appeal

panel were not helped in their evaluation of the evidence by that failure to explain the view that the school took of H's account in the report.

9.77. The only formal record of the fact that the investigation did not include the allegations from student H is in the minutes of the LADO of March 2022:

“The investigation did not include the allegations from Student H as HR knew that they would need to disprove what the (older) girls had reported.” (S206)

9.78. That is a different reason for not including Student H from the one given earlier or to the Tribunal in the hearing. Mrs Bell distances herself from that. But even given repeated inaccuracies in the minutes, it did not come from nowhere. I accept things are more complex, there can be multiple considerations, but I can be confident that the school did have a clear view of the impact of the older girls' evidence at least in relation to H; and their reasons for not seeing its impact in relation to the other pupils do not withstand scrutiny; they might even be seen as contrived.

9.79. While the disciplinary panel and the appeal panel could have reached the view that Student H was unreliable on their own assessment or taking in Mrs Harriet Morgan's statement that that was the school's view, they did not in their findings say so. They make no distinction between the allegations: they do not dismiss Student H's evidence or say that her allegations were not accepted. It is impossible to know whether H's allegations were included as part of the inappropriate touching found.

9.80. It is essential to a fair process that the findings made are clear; here, with regard to Student H, they are not.

2018 ski trip and 2019 allegations

9.81. The disciplinary panel and the appeal panel both write, and both in bold, that they considered information in relation to the 2021 allegations only (M346 and M369). They say, therefore, that they disregarded any evidence relating to the ski trip or the 2019 allegations.

9.82. I linger on what it means to disregard something, if the allegations are reported and discussed at all stages.

9.83. The ski trip kiss (or hug) is explored in the investigation report and in the hearings. The 2019 allegations are explored in the same way.

9.84. In the disciplinary hearing, Mrs Harriet Morgan is recorded as saying “Very strong pattern between 2019 and 2021 allegations.”

9.85. Neither were seen as raising safeguarding concerns at the time, the incident on the ski trip not even meriting a record.

9.86. It could be established that the panels did not take them into account, but it requires more than an assertion, given the way that they appear in the

discussion at all stages and the way the case was presented to them. The only analysis of the evidence that was made was as between Mr Hawker's credibility on the one hand and the allegations on the other.

9.87. In explaining that they were not considered, it could have been added, for example, that neither were seen as raising safe-guarding concerns, or that it was accepted that neither justified disciplinary action, or that reliance on the blanket summary of the 2019 allegations failed to recognise that there were differences between what A and B complained of and what C asserted and that C's assertions were dismissed at the time. There is no such discussion.

9.88. There is however the record in the LADO minutes of 16 March 2022. Mrs Bell is recorded as advising that ,

“The Governors dismissed Mr Hawker on his conduct on the basis there were previous allegations in 2019 where he was given clear advice around what he should and should not do.”

9.89. It is not possible to be clear whether or how far the panels were influenced by the inclusion of the material from 2018 and 2019. The content of Mrs Morgan's report, her evidence and the recorded comment of Mrs Bell point to them being taken into account and influencing the decision in spite of the terms of the letters issued.

The investigation

9.90. Mrs Morgan interviewed Students D, E, F and G in December. She did not interview any other students. That was a positive decision on her part.

9.91. Some twenty or more girls had been named. Mrs Morgan explained that she was,

“Not able to involve students who have not directly involved themselves in this investigation (M315)

9.92. What she meant is that if students did not volunteer information, she did not consider it appropriate to ask them questions. They would only be involved “if they made disclosures.” Asked whether they would know that an enquiry was going on, she was clear that they would not. It was not in the students' interest that the investigation be any more public.

9.93. In their approach to safeguarding, the school's approach – and I do not question their expertise - is that the reception of the first disclosure must be positive and affirming.

9.94. With adults, normal practice would be at some stage to explore the information given, to test inconsistencies or changes to the account, to discuss conflicting evidence, to look at contemporary records, all of which help to develop an understanding of the credibility of the account. Inconsistency and failures of memory are part and parcel of human life,

perhaps particularly when associated with trauma, but taken with other evidence may contribute to an overall picture.

- 9.95. Mrs Ruth Morgan, the DSL, reports that questioning is wholly inappropriate when a disclosure is made by a child and that was Mrs Harriet Morgan's approach. She did however identify the difference between that and a investigation, when a child's evidence could be more closely examined in questioning.
- 9.96. Mrs Harriet Morgan was wholly unable to distinguish between the approach necessary in relation to safeguarding disclosures and the approach appropriate for a investigation that might be preliminary to disciplinary proceedings. She was unaware of the need for a full and balanced investigation.
- 9.97. The investigation statements are therefore simply as the pupils made them.
- 9.98. It is the credibility of the accounts that is essentially at issue. The girls made allegations that Mr Hawker denies, beyond his admission of tapping them on the shoulder to attract their attention. Some of those allegations were serious; taking them all together as a pattern of behaviour creates a worrying picture. If Mr Hawker was telling the truth, the girls were not. If they were telling the truth, he was not.
- 9.99. In relation to the most serious allegations, of Mr Hawker having his hand on the skin of the thigh or moving his hand on the thigh including under the hem of the skirt, those allegations had not been originally made in that way, with that detail. The detail comes from the later interview. That may be that the pupils were more confident, having been trusted on their first disclosure. It may be that the pupils were more confident, having got away with the first allegation. Mrs Harriet Morgan is confident that G's distress at her interview arose from going back over what had happened. It might in the alternative arise from feeling trapped by earlier dishonesty and all the complications of changing her account, including perhaps unhappiness at letting her parents know she had exaggerated. All that is speculation in the absence of evidence. To explore further was more than Mrs Morgan was prepared to do.
- 9.100. Four girls were interviewed in December. At that point, all save Student D confirmed their earlier statements. E, F and G added material to their earlier allegations, F and G in terms of what happened to them and E in terms of what she saw done to others.
- 9.101. The investigating officer did not ask why the statements had changed, did not put contrary evidence forward for discussion and did not ask for names of the girls who were reported as other victims.
- 9.102. If there is to be no probing of the accounts, no consideration with the pupils of contrary evidence, no consideration of conflicts or changes to the accounts and no seeking information from others who might be witnesses or at least present, the usual tools for evaluating credibility have gone.

- 9.103. Mr Hawker could not prove his innocence. It is not possible to prove a negative. It was incumbent on the school explore ways to weigh the evidence that was fair to him.
- 9.104. He put forward one possible witness, who could at least have spoken as to his teaching style and whether any inappropriate or dubious or ill-advised conduct had been witnessed. This was a teacher who had observed his lessons over a number of months. He was not contacted. That was Mrs Harriet Morgan's decision. She saw no relevance,
- “In the precise allegations of D to G, the reference to this former colleague did not have a relevance to being pursued.”
- 9.105. The evidence might have confirmed behaviour that prompted questions about Mr Hawker's conduct; it might have evidenced no improper conduct. Either way, it was relevant. It was important because there was no unchallenged direct evidence. It was important because Mr Hawker had no means to adduce any evidence in his own defence, other than his denial.
- 9.106. Mrs Morgan chose not to ask the girls for the names of any students who they said had also been victims. This is a sensitive area, and the school would not want to spread alarm or prompt further gossip. However, failing to explore what those mentioned might say leaves unanswered questions. If more evidence emerges to echo or support the allegations, that may be helpful in establishing them to be true. If not, for example, if no concerns are reported, that is evidence in support of Mr Hawker.
- 9.107. It was very reasonable that the investigating officer did not consider it appropriate for the fact of an investigation to be made known. That being the case, there was no reason for anyone to come forward voluntarily to give evidence. She took the view that it was not appropriate to speak to pupils who had not voluntarily engaged with the process. They could not voluntarily engage with a process they did not know about. It bears remembering that none of those making allegations – D, E, F, G, or H – had come forward voluntarily. Mrs Harriet Morgan said she had not known that.
- 9.108. The DSL had spoken to several girls who were named by Student H on 24 June 2021. N, W X and O reported seeing nothing and having no concerns. It was clearly open to the school to make wider enquiries and staff had the ability to do so in a safe and balanced way.
- 9.109. No other girl could come forward to give evidence because they had no reason to know it was needed. There was a decision not to seek further evidence, in spite of obvious relevance.
- 9.110. Term started on 19 April. Over a period of nine to ten weeks, E reports Mr Hawker stroking/ massaging her shoulder, stroking D's shoulder, massaging or stroking other girls' arms at least ten times, seeing Mr Hawker looking girls up and down and then winking, 5 to 8 times. She mentioned seven girls affected. F reported Mr Hawker's hand lingering on her upper arm about every three lessons, and equally often holding his hand on the hers on

the mouse. She mentioned eight girls, reporting touching of other people's hands, arms and someone's thigh. G reported seeing his hands on shoulders amongst other girls and that it happened to her quite a lot. The accounts of F and G are of intimate touching of the thigh apparently twice within one lesson, one after the other.

- 9.111. That is quite a list.
- 9.112. If there were that much inappropriate activity by Mr Hawker, it seems reasonable to think that other girls in the class might have been aware of it. If they were not, that might raise a question as to the accuracy of the evidence.
- 9.113. It might have been happening in other classes. The handful of girls asked by Mrs Ruth Morgan, interviewed on the basis of what N and H said, did not see anything to report. The value of a wider picture is clear.
- 9.114. The investigating officer not think it appropriate to make enquiries of other girls and did not identify any other approach.
- 9.115. Teachers are thought to be pretty good at keeping an ear to the ground. I believe that there is an expectation that they do that. If a child is bullied and in distress, if a child is a bully and causing others distress maliciously, I believe the parental expectation would be that the staff would be alive to it, whether or not a complaint was made. If a teacher is seen by the pupils as having wandering hands, there might be jokes about it. It might be expected that staff would know if there were ribald jokes about a staff member going around. It appears to have been thought that neither tutors or other teachers had anything to offer, even by way of background.
- 9.116. Mr Hawker suggested there might be enquiries of the children's previous schools, but he was told by Mrs Harriet Morgan that the enquiry was to be limited to the Respondent school. He suggested contacting other students about his general conduct in the classroom, his working practices, asking them to move their seats out of the way, wearing a mask when approaching students, standing behind them, avoiding touching, while accepting that it was important not to advertise the allegations or prejudice the children's anonymity. The answer was that Mrs Morgan would not ask students who had not put themselves forward.
- 9.117. I have some sympathy with Mr Hawker's point that reading the disclosures to the students and asking them if they can confirm or want to change them does add a difficulty. To retract means they would have to own up to lying about something serious in front of their parent and teachers. That might be hard, leaving aside that the parent concerned might be emotionally involved in securing justice for their child. One girl changed her statement, and that took courage – just as making a disclosure itself takes courage. She did so in a remote interview, with her camera off.

- 9.118. In the interviews in the investigation, there was no open-ended invitation to explain what happened. I am not expert in handling child disclosures; but this looks like an opportunity for a fuller account lost.
- 9.119. The police had statements from F and G, taken with professional care. The Disciplinary Code indicates that they might be made available after the closure of the police investigation. The school chose not to wait for that, and did not ask for them.
- 9.120. So in the end, it was Mr Hawker's denials against the allegations made.
- 9.121. Standing back, it may be that there are circumstances in which that is all that can be done. These are serious allegations. There may be times when there is simply no way to conclude safely either way, and a teacher is dismissed to ensure the children are protected. That may not be a gross misconduct dismissal but it might ultimately be fair because necessary.
- 9.122. That is not this case. This is a gross misconduct dismissal, based on the unquestioned evidence of the pupils, having excluded contrary evidence, in preference to Mr Hawker's evidence.

Mr Hawker's evidence

- 9.123. The disciplinary panel preferred the pupils' evidence to Mr Hawker's, as did the appeal panel.
- 9.124. I am reminded that this is their assessment. Their consideration of the evidence is key. Provided it is reasonable, I must not interfere.
- 9.125. The disciplinary panel decided that Mr Hawker was not credible. They relied on his actual presentation in the hearing. I have not seen that.
- 9.126. But his presentation might well be his "demeanour" and we all know that judging credibility on the basis of demeanour is not a proper approach.
- 9.127. I have to look at why they did not find his evidence credible.
- 9.128. This is not a case that depends on his version of events, beyond that he denies the allegations. It is agreed that he separated F and G during a lesson when they were not working, being disruptive. We know where he moved them to. They acknowledge that – there is no disagreement.
- 9.129. He is consistent in his denial of misconduct, while acknowledging that he tapped pupils on the shoulder to gain their attention, not knowing their names. He admits too crouching by them to come down to their level while teaching. That is not an admission of touching. He does not admit holding his hand on theirs while using the mouse because, he says, that is not an effective way of teaching.
- 9.130. The chair of the disciplinary panel referred to many, many contradictions in his evidence.
- 9.131. She did not give examples, except that he said he did not know pupils' names, but remembered that he had disciplined F and G. Those girls mention being separated from each other in their statements, and he had had months since the police interview to reflect on what he was accused of. Is that a serious inconsistency in his evidence?
- 9.132. He had not been in school for much of the academic year, because of the pandemic, being off for longer than his colleagues. On his return, he was teaching eight classes – more than 200 pupils. He says he taught remotely or from behind, with the girls facing away from him at their computers.
- 9.133. Many teachers pride themselves on knowing all the names of their students very quickly. There will be others who don't. Some people have more difficulty with names than others. Some people have more difficulty with maths or reading maps than others.
- 9.134. Does his account of not knowing names undermine his credibility?
- 9.135. Mrs Grimes was unhappy that he did not remember immediately the content of the letter from Mr Thomas in 2019. In the investigation interview, Mr Hawker had remembered the meeting, volunteered that he made changes to his working practices, and was then asked for the action points

from the note of 7 June 2019. This was on 13 December 2021. Does his failure to recall the bullet points more than two years later undermine his credibility?

- 9.136. I look at the wider picture – what are the other inconsistencies. They were not pointed out by Mrs Grimes. Her witness statement discloses nothing helpful. No inconsistencies in Mr Hawker's evidence are pointed out by any witnesses.
- 9.137. Reading the notes again, of both the investigation interview and the disciplinary hearing, it is hard to identify inconsistencies. I do not know what Mrs Grimes is referring to.
- 9.138. The record of his evidence in the disciplinary hearing about the 2021 events (337 – 343) is short: takes up less than half a page, some 120 words. It echoes what he said to Mrs Morgan in the investigation interview – he denies the allegations, bar tapping on shoulders to attract attention.
- 9.139. Mrs Grimes objected to the way he spoke about the pupils in the investigation interview. He spoke about the effect of the pandemic, children becoming deregulated, saying teachers – not just him – described them as feral. I believe it is commonly understood that many children excluded from school during lockdown have suffered a setback in their conduct as well as their learning.
- 9.140. If his words are strong, do they undermine his credibility? He is facing career-ending allegations. If he is guilty, he is trying to distract. If he is innocent, facing such allegations, it is an attempt, and perhaps an angry one, to set the context; the wholly exceptional circumstances of the pandemic and the loss of time in school with its disciplines are part of the context.
- 9.141. I have to respect the reasoning of the disciplinary panel unless it falls outside the range of reasonable responses of a reasonable employer. In my judgment, the reasons for dismissing Mr Hawker's evidence do fall outside that range.
- 9.142. I do not consider that the reasons given by the chair of the disciplinary panel in evidence for finding him to lack credibility amounts to a fair evaluation to set against the unquestioned evidence of the pupils. I have given her the credit of going back through the evidence to see what she might have been – but didn't - refer to. She did not identify the many contradictions and I do not find them.
- 9.143. I recognise that the panel were struggling because the investigation was so very limited. They assessed on what they had. There were no inconsistencies that stand out. The concerns that have been expressed are too flimsy a basis on which to dismiss what Mr Hawker said in denying the allegations. It is not clear to me that the facts that Mrs Grimes and the panel used to determine his credibility and weigh against the pupils' evidence were fair or legitimate.

- 9.144. Mr Hawker of course might have been more persuasive if he had known what the allegations were and when those things were supposed to have happened and to whom closer in time to the alleged events.
- 9.145. The appeal panel went over the same ground. Ms Adkins too referred to the disrespectful way Mr Hawker had referred to the students. She said he appeared casual about the advice he had been given in 2019.
- 9.146. Neither panel asked for further evidence, for example, from Mr Thomas, or as to the absence of evidence from other girls referred to. If their reasoning is slim, it is at least partly because the evidence was slim.

The approach to the pupils' evidence

- 9.147. Raised in cross-examination was the question of how the investigating officer and the two panels approached the evidence of the children.
- 9.148. Mrs Harriet Morgan explained her approach,
“If you are listening to a disclosure, it is a reasonable response to consider that they are telling the truth unless shown to be otherwise.”
“It is not starting from any assumption it is listening to the child and not entering into that conversation with a lack of trust in the child.”
- 9.149. The echoes the approach that Mrs Ruth Morgan described in respect of disclosures. Mrs Harriet Morgan clarified that,
“So when listening to disclosures from children particularly on safeguarding, I would listen in a trusting manner, neutral position, no assumption that they are not telling the truth unless part of the investigation proves otherwise.”
- 9.150. Mrs Harriet Morgan’s approach was that she would have confidence in the child’s account unless there was conflicting evidence. In her investigation, she accepted the accounts given by the pupils without question or exploration. She had excluded or ignored evidence that might conflict.
- 9.151. Mrs Ruth Morgan understood the difference between hearing a disclosure in a safeguarding context and an investigation.
“When it is not a disclosure situation, it is an investigation, it is a very different thing.”
- 9.152. When the LADO authorises the conduct of internal investigation, she said, that is, “enabling the investigating officer to interrogate and question students”.
- 9.153. Mrs Harriet Morgan’s approach meant that the pupils were never questioned.
- 9.154. The disciplinary and appeal panels accepted that the pupils had spoken in good faith, making allegations that the pupils believed to be true and that were true.

- 9.155. That conclusion was reached
- Having dismissed as irrelevant the evidence of the older girls
 - Without any questioning of or exploring the younger girls' evidence
 - Having excluded conflicting evidence
 - Without any wider investigation amongst teachers, a former colleague, other pupils
 - Attaching no weight to the fact that some evidence was known to be unreliable – that from Student H, the false rumours referred to
- 9.156. There was an assumption that what the pupils said was true – save that the school knew that did not apply to Student H and they did not then apply it with regard to L and M. That is not a rational assessment of the evidence – it might be the end result of a critical examination of the evidence but it is not a proper starting point in an investigation or disciplinary process.
- 9.157. The disciplinary and appeal panel accepted that the reports of D, E, F and G were made truthfully and in good faith. That is to accept the evidence without question. At the same time, they rejected the actual evidence from L and M – accepting the school's presentation of that with its inaccuracies. That is not a reasonable assessment. It is unclear how the panels dealt with H's evidence, known by the school and the police to be unreliable.

The allegations

- 9.158. The disciplinary panel and the appeal panel were not helped by the vagueness of the allegations. It is nowhere set out what Mr Hawker is accused of doing. The school rely on the effect of what he did as representing a breach of the school's code, but what he actually did is not set out.
- 9.159. The approach of the disciplinary panel and the appeal panel is that the detail of the allegations is not relevant, it is all inappropriate touching. Mr Sargeant, Mrs Grimes and Ms Adkins are all wholly clear that he knew what he was accused of, so there was no unfairness in the failure to spell it out.
- 9.160. There is clear evidence of the effect of that. The allegations include references to Mr Hawker having his hand on the upper thigh of a girl on the bare skin and him stroking over and also under the hem of a girl's skirt.
- 9.161. The effect of accepting the girls' evidence is to find fondling or unwanted sexual touching, amounting to sexual assault of a child or children.
- 9.162. The chair of the appeal body thought they were dismissing for a breach of professional standards, not terminating Mr Hawker's career or any career with children.
- 9.163. Mr Jackson put this to Ms Adkins,

“You had been working on the basis he has been found guilty of sexual assault by putting his hand on the thigh of a schoolgirl while working as a teacher?”

Ms Adkins

“We had been dealing with inappropriate contacts and we did not discuss it as a sexual offence. It was only when we looked at the police matters that that line of questioning was there. I understood that he was in another role when we undertook the panel (ie back at work). We did not discuss it as the end of his career.”

- 9.164. It is not clear that either panel understood the serious nature of their findings having dealt with all the allegations together as inappropriate touching. It does not appear to reflect a careful consideration of the facts they were accepting.
- 9.165. There were a significant number of allegations, over a ten week period. That might have prompted reflection on whether other pupils had noticed anything – they knew that four who were asked had not. Did they realise that student H’s allegation was dismissed as unreliable? If so, did they then reflect that the remaining two allegations of the thigh being touched or caressed came from one lesson, after Mr Hawker had disciplined the two girls concerned. The possibility of him being so unguarded as to separate the pupils and then covertly to caress each in turn within what remained of the lesson deserves careful evaluation.
- 9.166. The allegations were not adequately identified. They could not be fairly assessed by regarding them all as inappropriate touching and at least the appeal panel was misled as to the seriousness of the findings they made.

Failure of disclosure and evidence withheld

- 9.167. A key difficulty with the procedure was the failure of disclosure. Mr Hawker was given the investigation pack but only in redacted form. The Tribunal initially had the same evidence. It was not possible to make sense of key parts of the evidence. The names of the students were redacted without the use of letters or alternative identification. In particular, in looking at Mrs Ruth Morgan’s first interviews in June 2021, it was impossible to know who was interviewed or what they reported – a simple but important fact, such as that H said G was her friend, was masked.
- 9.168. Mr Hawker was deprived of any insights he might have had from his knowledge of the pupils, or into the relationships between the pupils, even as to who sat with whom, as well as those that emerge from analysis of the paperwork.
- 9.169. The disciplinary panel had the same redacted bundle. They could not fully consider the evidence.

9.170. The appeal body had the same bundle until they requested a list with names. Whether that was sufficient for them to really understand and analyse the evidence is not possible to know.

9.171. Mr Jackson explored this with Ms Adkins, on the third day of the hearing, 23 April 2023,

“You have seen the documents which form the investigation pack?”

What help if any when you were deciding the appeal did you have with identifying what was underneath the redactions?”

Answer

“When we retired to consider what we had heard, we requested copies, we requested that the student’s letters be applied to the redactions. So we could understand the relationships between the students.”

Mr Jackson

“What did you mean by some help?”

Answer

“We did not know what was under the blanks . Only in the investigation bundle – we never find out the identity of the students, but we needed to understand the letters.

So we could see who was referring to who.”

Mr Jackson

“How?”

Answer

“A member of staff went to the office and came back with statements with letters on them.”

I had a bicycle accident just after this so I can’t remember who it was who brought the statements in to us. I just remember we realised, the three of us, we needed to have that information provided.”

Mr Jackson

“That is new information to me and I suspect to Mr Hawker.

I am assuming since it was done on 17 May....that that wasn’t then sent to the claimant?”

Answer

“I have seen no letter showing it was

I don’t know.”

Mr Jackson

“I am not aware that the claimant ever had a ciphered version of the documents until the last three days. The documents were the redacted documents as in the original hearing bundle.”

“I don’t know.”

- 9.172. The appeal panel had, but missed the evidence that the girls chatted beyond their immediate tutor group; that evidence was not available to the disciplinary panel or Mr Hawker.
- 9.173. My introduction to the evidence was through the redacted bundle. I am clear about the difficulty in understanding the evidence as it was first presented.
- 9.174. The late provision of a ciphered and an unredacted copy at the hearing does not make the proceedings fair.
- 9.175. The minutes of the LADO meeting of 1 November, when the school says it was authorised to conduct an internal investigation, are contained in the original bundle, heavily redacted, and never presented in an unredacted form. There is no adequate explanation. Even to know which staff members had attended the LADO meetings had to be the subject of an application on behalf of the claimant in March 2023 to the Tribunal to order disclosure.
- 9.176. The Respondent has throughout operated on the basis of a very limited understanding of how to conduct a fair and open process or of the duty of disclosure. That has breached the fundamental principles on which a fair process can take place.
- 9.177. The process was unfair because of the failures of disclosure, evidence going to the heart of the issues being withheld.

The evidence-taking with pupils

- 9.178. The school elected to proceed with an internal investigation while the police investigation was ongoing. The School’s Disciplinary Code provides that the employee’s representative will have the opportunity to be present at an interview with a pupil. That is not necessary where the presence of another adult may be intimidatory but then the representative is to be provided with a transcript of the interview.
- 9.179. A transcript is an exact written copy, made by transcribing word for word from the original. I do not understand the contention that a complete word for word transcript is only required if the word “verbatim” is also used. The school did not provide a transcript of the interviews with the pupils D, E, F and G and it should have. That is a requirement of the Code.
- 9.180. Mrs Harriet Morgan made notes while interviewing D, E, F and G. She eventually acknowledged that they were written up during the following week. That is not, as she first contended, immediately. She did not keep the originals.

- 9.181. It is not clear why she thought she should make the only notes. It is a skill to make complete notes while also conducting an interview and these were particularly sensitive and delicate interviews.
- 9.182. A recording could have been made, even a video. At the least, the policy requires a note-taker.
- 9.183. The reliability of the pupils' accounts was a central consideration. This was an all-important piece of evidence-gathering. The policy requires a transcript. It was important to know the wording of the questions and the words used by each pupil.
- 9.184. The policy goes on to propose that the employee agree a factual record of the interviews. That cannot be done if there is no transcript.
- 9.185. The requirement that an employee representative observe the interview, or in default receives a transcript is a safeguard for the employee. It says little for the care taken in this investigation that those safeguards were simply dispensed with.

Conclusions

- 9.186. Without setting them out again, I have had regard to the list of issues presented. My key conclusions are as follows.
- 9.187. The school's dismissal of the evidence of the older girls as unrelated to the allegations investigated was not rational or reasonable.
- 9.188. The school misrepresented the evidence of the older girls, misleading the disciplinary and appeal panels as to its possible relevance.
- 9.189. The failure to instigate a fuller investigation was unfair – not only failing to make the enquiries Mr Hawker suggested but the failure to carry out any wider enquiry including through other teachers or tutors and directed at establishing how far other pupils or classes were affected or had concerns. It was unreasonable to narrow the investigation down in effect to the unquestioned statements of the four younger girls who made allegations. The failure to explore evidence potentially supportive of Mr Hawker was unfair.
- 9.190. The failure to identify the directions on the basis of which the investigation was carried out was unfair. The investigation report should have disclosed that Student H was not part of the investigation and why not, including that she was known to be unreliable; and acknowledging that the comments of the older girls matched the view taken of her account of abuse. The investigation proceeded on the unstated basis that Student H's allegations were unrelated to the allegations of D, E, F and G. Mr Hawker had no opportunity to address that and the panels were potentially misled.
- 9.191. The failure to identify the factual basis for the allegations was unfair and misleading, including to the disciplinary and appeal panels. A finding of

inappropriate touching without being clear whether or not it included a finding of inappropriate intimate touching of the upper thigh, naked or with the hand moving above and below the hem of a skirt, is not a fair outcome. The panels did not recognise that the seriousness of the allegations demanded clarity in their findings, or the implication of lack of clarity to Mr Hawker.

- 9.192. The failure to provide a transcript of the evidence-gathering interviews with the younger pupils was unfair and contrary to the school's disciplinary code.
- 9.193. The approach to the evidence of the younger girls was unquestioning, inappropriate where credibility is a key determinant of the outcome in a disciplinary process. There was a failure to recognise the difference between safeguarding procedures and an investigation for disciplinary purposes by the investigating officer, that was not corrected, notwithstanding that, for example, Mrs Ruth Morgan was aware of the difference in approach required.
- 9.194. The investigating officer appointed was untrained in carrying out investigations and ill-equipped to understand her role, including as to the duty to carry out a full and fair investigation and to report the facts.
- 9.195. The investigation report relied on earlier matters which had not been regarded as misconduct or raising safe-guarding concerns, reinterpreting them.
- 9.196. The investigating officer failed to explore with Mr Thomas what he had done in relation to establishing the relevance of the older girls' evidence to her investigation and repeated his inaccurate presentation of their report.
- 9.197. The failure by the respondent to obtain witness evidence from Mr Thomas was unfair: he is recorded as giving conflicting accounts of the ski trip concerns and the evidence is wholly unclear as to what if anything he did to establish the relevance of the 2021 reports of the older girls.
- 9.198. The failure to provide unredacted evidence to the panels undermined their ability to make a fair decision. The Respondent has never understood the difference between their duty to disclose and their desire to protect the identity of the children.
- 9.199. The disciplinary and the appeal panels recognised the limitations of the investigation in relation to the older girls' evidence. It was unfair then to put that evidence on one side regardless of its potential weight.
- 9.200. The disciplinary and appeal panel failed in their evaluation of the evidence. In my judgment, no reasonable employer would have determined the issue of gross misconduct on the basis of the reasons given for doubting Mr Hawker's evidence. No reasonable employer would conclude that the younger girls were giving truthful evidence in good faith without question; that is, without exploring the contrary evidence including the contemporary evidence from the older girls of a plot against Mr Hawker based on closely similar allegations, the unreliability of Student H, that Student D withdrew

serious allegations; that there was then a conflict between what Student D said and what Student E said she saw; that there was a context in which false rumours were being reported amongst the pupils about Mr Hawker, that several pupils who might have been expected to see something had no concerns to report.

- 9.201. While the appeal panel say there was no objection to the appeal proceeding in Mr Hawker's absence, it was unfair to do so without consent and also then to hear fresh evidence; that evidence related to the bubbles the younger girls were in and why that led to the view that the older girls evidence was not relevant (M371).
- 9.202. The appeal panel had fresh evidence for their deliberations in the use of lettering for the girls' names which was not disclosed to Mr Hawker or his representative. Its absence undermined the ability of the Claimant to understand the evidence and concealed that H considered G to be a friend, that there was chatting going on between tutor groups.
- 9.203. As to conducting an internal investigation while the police investigation was ongoing, that is clearly within the Department of Education guidance, normal practice for the LADO and part of the school's disciplinary code. What is odd is the decision to proceed without waiting for the outcome of the police investigation. The school re-interviewed F and G without the skills of those used to conducting best evidence interviews and without asking if they might see the existing statements.
- 9.204. The school had serious grounds for taking action. If there had been no other evidence available, they might have dismissed fairly simply to protect their students – but not for gross misconduct. Here, there was contrary evidence and there was a lack of investigation and evaluation, compounded by misrepresentation and concealment.
- 9.205. In a career-ending case, the investigation has to be as full as possible. This fell well short of that. The school accepted the evidence of the younger pupils without challenge or exploration and discounted, ignored or avoided finding contrary evidence.
- 9.206. The disciplinary panel and the appeal panel decided they had to make a decision on what they had before them. What they had before them was wholly inadequate to the decision they had to reach, through failure of investigation and the failure to present the evidence properly. They recognised the difficulty but put their doubts and important evidence on one side. It is not clear that either panel understood the findings they were making or that these were career-ending allegations.
- 9.207. The one finding that the Respondent was wholly entitled to make is based on Mr Hawker's admission of tapping pupils on the shoulder to alert them that he was there. If that is all there was, and if Mr Thomas or Mrs Bell or Ofsted had observed his lessons, I am not satisfied that such tapping would have led to a gross misconduct dismissal.

- 9.208. The investigation failed to afford Mr Hawker any of the protections intended to safeguard against a wrongful outcome: clear allegations, focus on the facts, full disclosure of allegations and evidence, pursuit of a wider investigation, including as to his potential witness as to his teaching practice and conduct and other evidence supportive of Mr Hawker or contrary to the case put forward for the students, adherence to the school's disciplinary code.
- 9.209. In my judgment this was not a fair and reasonable investigation. There was no basis on which to form a proper view that Mr Hawker had committed gross misconduct. The Respondent excluded all contrary evidence and held back from any critical analysis or exploration of the students' evidence against Mr Hawker. No reasonable employer would have relied on this investigation to found a belief in his misconduct.
- 9.210. Much of the above was raised in the disciplinary and appeal hearings by Mr Hawker's union representative. The Respondent had the opportunity to address the weaknesses of the approach taken.
- 9.211. This was an unfair dismissal.
- 9.212. I make no finding on whether Mr Hawker committed the misconduct alleged. What I can say is that if he is innocent, and a playground plot can end a career and destroy a reputation, the school is not providing a safe working environment for its staff, in particular for its male staff.

10. Remedy

Polkey

- 10.1. The questions is whether the Claimant would or might have been fairly dismissed in any event and/or to what extent and when? The Respondents says he would have been dismissed immediately.
- 10.2. There was no reason for Mr Hawker to be dismissed, save these allegations. While not relevant to the question, he was clinically vulnerable but had come back to school at the earliest opportunity.
- 10.3. This requires that I reflect on what might have happened had proper investigation been carried out.
- 10.4. That requires investigation from very early on – exploring the (...) girls' evidence while it was fresh in their minds.
- 10.5. Now it is suggested that that evidence cannot even be taken as being an unequivocal assertion of a plot against Mr Hawkins of sexual misconduct to get him fired. I do not understand that. The words are clear. The allegation of a plot and the sexual misconduct are joined.
- 10.6. My speculation has to be, on the one hand, might the older girls' evidence on proper exploration have shown that F and G at least are likely to have been in that group of younger girls and asserting that they were

making a false allegation to get him fired or might the older girls' evidence be established to be genuinely unrelated to the recent allegations or on enquiry, not to show that there was any plot at all.

- 10.7. If the former, dismissal would have been less likely.
- 10.8. If there was no plot at all, then the allegations can be taken more at face value. I bear in mind however, that the older girls have no interest here other than being public spirited. They were putting themselves into a delicate situation, from which they might expect some degree of questioning and hassle. Unless they withdrew the allegation, in my judgment it deserves to be treated seriously.
- 10.9. It is not irrelevant to the Polkey deliberations that I also have to consider how far the investigation was undermined by the misrepresentations about what the older pupils reported. That invites a new level of speculation. The misrepresentations weakened the evidence that challenged the accounts of the students D, E, F and G. The older girls' evidence on the face of it is supportive of Mr Hawker.
- 10.10. There could have been a proper consideration of the evidence, avoiding the misrepresentations fallen into.
- 10.11. I think it inescapable that on proper enquiry that the younger girls would have been recognised as potentially within the scope of the older girls' reports.
- 10.12. I think it likely that the possibility of a malicious allegation would have remained.
- 10.13. The investigating officer chose not to interview the girls named other than D, E, F and G. When necessary, the school did not consider it inappropriate to ask students questions. Given the frequency of the incidents alleged, taken together, some corroboration might be expected from others, if the allegations are true. In the alternative, the allegations might have been undermined.
- 10.14. The investigating officer might have decided at least to speak to those said to be victims. That might have produced evidence of misconduct. It might not. If the former, dismissal would be more likely. If the latter, it would not.
- 10.15. The investigating officer had other channels open to her – Mr Hawker's former colleague, who worked with him and under his supervision for one. He might have seen tapping of the shoulder's and seen it as Mr Hawker describes it – ill-advised but not raising a question about his conduct or blameworthy or suggestive. He might have added to the weight of the evidence against Mr Hawker. We don't know
- 10.16. Was there no way, discretely, and within the staff team, to explore the reported rumours referred to (6th form and year 9) or even whether anyone was aware of comments or information that cast light on these allegations

one way or another? I think I can safely assume that such allegations are not made day to day. Tutors might be aware of a buzz of excitement or of some distress or sympathetic support being given within a group of students. Teachers in the classes following the computer class when F and G were separated might have remembered something similar.

- 10.17. In other proceedings, children's evidence would be videoed and they would be asked questions. It is not the case that what they say must be taken as probative without exploration. A fair investigation would at the least have included a transcript of the interviews with them.
- 10.18. It is hard to speculate on how far what they said would be seen as compelling and credible if exposed to questions. That might add to the weight of the evidence against Mr Hawker. Questioning might have equally have created doubt. It may be that no such questioning would have been carried out, because it was seen as inappropriate for pupils of this young age. It does not follow that because it could not be explored, the evidence must be taken at face value
- 10.19. Would if there had been a fair investigation, the claimant have been fairly dismissed anyway? Is there a realistic chance that that would have happened.
- 10.20. In my judgment, the possibilities are too many and conflicting. This is the "sea of speculation". The evidence is too unreliable and unpredictable to allow a Polkey reduction to be made.

Contribution

- 10.21. If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct? This requires the Respondent to prove, on the balance of probabilities, that the claimant actually committed the misconduct alleged.
- 10.22. The Respondent has failed to prove that.
- 10.23. The Respondent does have his evidence of tapping the students to attract their attention.
- 10.24. I have seen the pictures of the classroom and it is clear that the teacher will often be looking at the computer screens from behind unless teaching remotely— in practice, teaching will often not be from the front of the class.
- 10.25. His is a limited admission, of tapping at times if he did not have the student's name and if the student had not noticed him being there.
- 10.26. Tapping would have been ill advised, contrary to the guidance given two years ago. There must have been other ways to attract the students' attention.
- 10.27. Mr Hawker had a clean disciplinary record.
- 10.28. If Mr Thomas or Mrs Bell or Ofsted had observed his lesson, and seen him tap on a students shoulder before giving guidance, in my judgment, that tapping would not have led to a gross misconduct dismissal. That tapping in

the course of teaching is not of itself evidence of conduct that would raise a question about his intentions or was blameworthy and inappropriate.

10.29. It might have led to guidance being given. I do not rule out that it might have led to a warning. I cannot see it as likely to lead to a gross misconduct dismissal.

10.30. There is no relevance here to the 2019 allegations. They were not seen as a raising disciplinary or safeguarding issue. I have to accept the judgment made on that at that time. And the governors assert that the 2019 allegations were in no sense relied on in this dismissal. There is no contribution there.

10.31. I find no contribution in reduction of the compensation due.

Compensation

10.32. Compensation was agreed at the level of the claimant's basic award and his annual salary, given the effect of the statutory cap.

Employment Judge Street

Date 17 May 2023

Corrected 4 September 2023

Reasons sent to the Parties on 22 September 2023

For the Tribunal Office