



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs R Lane

**Respondents:** (1) Gloucestershire County Council  
(2) The Governors of CHFC Federation

**Heard at:** Bristol                      **On:** 15,16,17 May and 27,28,29 September 2023

**Before:** Employment Judge Beaver

## **Appearances**

For the Claimants: Mr Currie, counsel  
For the Respondent: Ms Robertson, counsel

## RESERVED JUDGMENT

1. The claim for unfair dismissal fails and is dismissed
2. The claim for wrongful dismissal succeeds. The First Respondent breached the Claimant's contract by dismissing her without notice.

## REASONS

### Introduction

1. By a claim form dated 21 December 2021, the Claimant brings claims of unfair dismissal and wrongful dismissal arising out of the termination of her employment on 18 December 2021 on grounds of conduct. The Claimant was employed by the First Respondent (GCC) as a teacher and latterly Headteacher for over 26 years.
2. The Final Hearing of this matter commenced on 15 May 2023. Regrettably due to the unexpected ill-health of counsel, the matter had to be adjourned on 17 May 2023. The

Hearing reconvened at the earliest available date on 27 September 2023. Evidence and submissions were then heard over the course of three further days. There was insufficient time to be able to give an oral judgment on 29 September 2023 and as a result judgment was reserved.

## **Issues**

3. The issues to be determined by the Tribunal are set out in the order of EJ Bax dated 8 November 2022 [57]. Those issues were confirmed with the parties' representatives at the outset of the hearing, and are as follows:

### **1 Unfair Dismissal**

- 1.1 Was the Claimant dismissed?
- 1.2 What was the reason for dismissal? The Second Respondent asserts that it was a reason related to conduct, which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.
- 1.3 Did the Second 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? The burden of proof is neutral here but it helps to know the Claimant's challenges to the fairness of the dismissal in advance and they are identified as follows
  - 1.3.1 it was impossible to conclude that the Claimant knew she had an interest she was required to declare (see paragraph 1 Additional Particulars)
  - 1.3.2 The objective evidence showed that the Council was responsible for managing building projects (see paragraph 2 Additional Particulars)
  - 1.3.3 Brian Storer and Stephen Bradley were in breach of Council Standing Orders and gave false evidence to the hearing (see paragraph 2 Additional Particulars)
  - 1.3.4 The panel failed to properly consider the evidence provided by the Claimant (see paragraph 3 Additional Particulars)
  - 1.3.5 The decision to dismiss was inconsistent with the treatment of Tracey Satherley (see paragraph 5 Additional Particulars)
  - 1.3.6 The decision to dismiss was not reasonable given that the Claimant had returned to her duties (see paragraph 6 Additional Particulars)
  - 1.3.7 The process was predetermined, hence why there were 2 investigations and 2 appeal panels.
- 1.4 Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?
- 1.5 Did the Respondent adopt a fair procedure? The Claimant challenges the fairness of the procedure in the following respects:
  - 1.5.1 The Claimant was never told who made the original complaint about her
  - 1.5.2 The delay of 4 years resulted in the absence of evidence (see paragraph 4a Additional Particulars)
  - 1.5.3 The report to the police before putting questions to the Claimant was uncalled for given the delay of 2 years (see para 4b Additional Particulars)
  - 1.5.4 The first investigation concluded it was not a matter of gross misconduct and the Council should bear some responsibility. The report was rejected by the Council and a second investigation was demanded. There was not a

provision in the policy for a second investigation (see paragraph 4c Additional Particulars)

- 1.5.5 The Council insisted they were to appoint the second investigator, for which there was no provision in the policy (see para 4c Additional Particulars)
  - 1.5.6 The Council wanted to commission investigations until they got the result they wanted (see para 4c Additional Particulars)
  - 1.5.7 The bias tainted the disciplinary panel (see para 4c Additional Particulars)
  - 1.5.8 The first appeal panel was unable to make a decision and because it was not able to say it was reasonable to dismiss, the benefit should have been given to the Claimant and she should not have been dismissed
  - 1.5.9 A second appeal panel was constituted in order to obtain the First Respondent's desired result, namely dismissal of the Claimant.
- 1.6 If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?
- 1.7 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.

## **2 Wrongful dismissal; notice pay**

- 2.1 What was the Claimant's notice period?
- 2.2 Was the Claimant paid for that notice period?
- 2.3 If not, was the Claimant guilty of gross misconduct or did she do something so serious that the Respondent was entitled to dismiss without notice?

## **Evidence**

4. The Tribunal had a bundle of 686 pages including additional documents put forward by both sides at the outset of the Hearing without objection. The Respondents provided written and oral closing submissions and a bundle of relevant case authorities. The Claimant relied on oral closing submissions.
5. All witnesses attending were cross examined. At the Final Hearing on 15-17 May 2023, the Tribunal heard evidence from Mr Dangerfield and Mr Hill (the chair of the disciplinary panel). It also heard evidence from Mr Tyndall (the chair of the appeal panel). Mr Tyndall's evidence did not conclude and he was required to complete his evidence when the Tribunal reconvened on 27 September 2023.
6. The Tribunal also heard evidence from Miss Grandfield and Mr Bird for the Respondents. Mr Gillingham was not available to attend the adjourned hearing in September and the tribunal accepted his statement with the caveat that he was not available for cross examination. For the Claimant, evidence was given by the Claimant herself and also from Mr Sherborne, her representative during the disciplinary proceedings, and from Mrs Smith, former Chair of Governors.
7. Additionally, the Tribunal also heard evidence from Reverend Scott who attended under the terms of a witness order that had been made by the Tribunal during the intervening period before the resumed Hearing. Some concern had been intimated in correspondence that Reverend Scott would be required to divulge legal advice which

might be privileged information. In the event Reverend Scott gave evidence without infringing on issues of privilege and neither party asked the Tribunal to hear, or to view, any allegedly privileged evidence.

8. On 27 September 2023, the Claimant made an application to adduce the evidence of Mr Langbridge. No witness statement had been exchanged in respect of Mr Langbridge at the appropriate time for exchange and no explanation was forthcoming for that default. The Tribunal took the view that if his evidence was considered by the Claimant to be material then it would most likely have been exchanged. Mr Langbridge's statement essentially sought to explain the circumstances of his being required by GCC to step down as Chair of Governor. The Tribunal considered that there was no obvious material relevance to the issues that the Tribunal was required to decide in this case. Having regard to the overriding objective and the desirability of focussing on the relevant issues and of delivering a prompt determination, the application to adduce the evidence of Mr Langbridge was refused.
9. Having heard the evidence, the Tribunal was in a position to make findings of fact on those matters that were necessary for the purposes of determining the Issues. The Tribunal has done so on a balance of probabilities.

### **Findings of Fact**

10. The Claimant began work as a teacher at Coney Hill Primary School in Gloucester in 1999 and progressed from there to become Deputy Headteacher in 2003 and thereafter Headteacher in 2004. In 2011, the Claimant entered into a relationship with Mr Keith Lane, whom she subsequently married in March 2013. As will become apparent, Mr Lane was a professional who over the course of his career had become an expert in school funding bids and building projects at educational establishments.
11. In 2015, the Claimant took on the role of Executive Headteacher for both Coney Hill Primary School and also Finlay Primary School. The Schools became the CHF Community Federation on 7 May 2020, which is the Second Respondent ("the Federation"). Although at times, the facts relate to one or other of the Schools, for convenience, the Tribunal will refer in its findings of fact to "the Schools" collectively or, after May 2020 to "the Federation", unless the context specifically requires reference to either School separately.

### **The Whistleblowing email**

12. On 7 September 2018 [61], an anonymous email was written to GCC, which has been a trigger for the events that have been the subject of these proceedings. The email has been characterised by the parties as a whistleblowing email. The email refers to the Claimant and disclosed an allegation that the Claimant, as Headteacher, had been employing a building company called Snape Contracting Services Limited ("Snape") to undertake building works at the Federation. The email alleged that Snape appeared to be the "sole recommendation for all works carried out, yet they are recommended each time by Keith Lane of Keith Lane Consulting Ltd, who also happens to be [the Claimant's] husband". The email alleged that there was an overcharging by Snape to the financial benefit of the Claimant and Mr Lane.

Police Investigations and The Audit Report

13. At some point thereafter, GCC started an internal investigation. A more detailed picture is provided by Mr Dangerfield. He had started a role with GCC on 18 July 2019 as a principal auditor in counter-fraud. Although titled auditor, Mr Dangerfield did not in fact have audit qualifications; but he had a fraud investigation background gained over several years, including in periods of employment with the police and with the Land Registry.
14. In July 2019, Mr Dangerfield took over a GCC investigation into the allegations that had already been started by another investigator. The previous investigator had encountered a conflict of interest - being identified as a friend of one of the witnesses in the investigation- and so had handed it to another auditor who themselves made further enquiry but had subsequently resigned and left the employment of GCC. Mr Dangerfield was thus the third investigator who picked up the matter in July 2019. As will be seen, all of this was as yet unknown to the Claimant.
15. By that point, a significant number of documents had already been collated (the Tribunal was told, something like 600 documents or more). There were no witness statements but there were minutes of meetings with witnesses having taken place. There had been a previous desktop audit done of other schools' processes, examining building projects and the involvement of Snape or Mr Lane.
16. Mr Dangerfield recounted in evidence to the Tribunal that his investigation looked at the Schools' Governing Body minutes in order to discover whether the Claimant had made any declarations, including in the annual declarations of interest, regarding Mr Lane and that she had not done so. Mr Dangerfield's view was that the failure to disclose was potentially significant given that it had affected both Schools and over a significant period of time. The purpose of a declaration of interest was, in his view, to enable a Governing Body to make informed decisions about its ongoing involvement in relevant projects.
17. Having reviewed matters for a month, Mr Dangerfield produced a report which was submitted to the Statutory Officers Group of GCC on 12 August 2019. Mr Dangerfield was sufficiently concerned and suspicious of potential wrongdoing that he recommended that it was appropriate to refer the matter to the police. Contact was thus made with the police and, in October 2019, a lead police officer was appointed as part of a criminal investigation and Mr Dangerfield was requested to support the police with their criminal investigation.
18. It was in those circumstances that the Claimant's first involvement was when she was arrested on 10 January 2020 and interviewed.
19. On the same day, auditors arrived at both Schools to obtain relevant evidence. The Claimant's interview on 10 January 2020 was led by Mr Dangerfield as (i) he had been asked to do so by the police officer in the case and (ii) given his knowledge and prior relevant investigative experience, he felt that it was appropriate to do so. The Claimant was released pending further criminal investigation and consideration of charges.
20. It was at that point that that GCC became involved from an employment-related aspect. Acting with advice from Mr James Bird, who was an Employee Relations Lead at GCC

since 2014, a decision was taken by the Chair of Governors at the Schools to suspend the Claimant as a precautionary measure pending ongoing police and prospective employer investigations.

21. On 13 January 2020, the Claimant was suspended from duty [669] by the Chair of Governors of Coney Hill School. GCC was told by the police that there should not be an employment-related investigation while the criminal process was ongoing.
22. The criminal investigation in fact continued until 16 February 2021, some 13 months later when the CPS confirmed its decision that the Claimant would not be prosecuted [145]. That period of time and the resulting delay has plainly meant significant distress and frustration for the Claimant. There was little that the Respondents could do in respect of its prospective investigations in the meantime.
23. Mr Dangerfield produced a report dated 22 July 2020 [70]. In this judgment, his report is referred to as “the Audit Report” in common with the way that both parties have described it during this Hearing. The Audit Report set out the results of Mr Dangerfield’s investigation into allegations of abuse of position by the Claimant as Executive Headteacher. The Report was produced during the existence of the criminal investigation. Mr Dangerfield told the tribunal that he had to obtain the agreement of the police to produce the Report.
24. The key findings of the Audit Report, at paragraph 5 [72] summarise that
  - 24.1. Mr Lane was a former employee of GCC, having worked in the education department. He then set up work as a consultant advising on amongst other things suitability bids for building and construction projects in educational establishments across GCC
  - 24.2. Mr Lane set up a limited company, Keith Lane Consulting Ltd (KLCL), in December 2012. The Claimant was a shareholder and received dividend payments.
  - 24.3. Mr Lane liaised and worked with educational establishment clients. This was Mr Lane’s expertise.
  - 24.4. Snape Contracting Services Limited and TG Escapes Limited were two businesses which had extensive involvement in a number of projects at the Schools, valued in excess of £500,000.
  - 24.5. Mr Dangerfield’s finding was that Snape was financially linked to KLCL, making significant payments to KLCL
  - 24.6. Mr Lane had been involved in a number of projects at the Schools at a time when the Claimant was Executive Headteacher
  - 24.7. Mr Dangerfield concluded that, contrary to school governance and Finance Policy, the Claimant had failed to complete any declaration of interest in respect of her involvement in KLCL and of Mr Lane’s involvement with the Schools and Mr Lane’s relationship with Snape and TG Escapes
  - 24.8. Mr Dangerfield identified that the Claimant had profited as a shareholder of KLCL by payments of dividends of £14,000 (a fact not disputed, but in respect of which the Claimant had maintained that the arrangement had been for tax purposes and that there had been immediate repayment to Mr Lane)
  - 24.9. Mr Dangerfield also specifically referenced a purchase order dated 8 June 2011 whereby the School had made a payment in 2011 to KLCL of £400 at a time when the Claimant may have been in a relationship with Mr Lane. In that respect the Claimant had recognised that Mr Lane was paid because it was his professional

living, and indeed had done so at many other Council schools. However, regarding her relationship with Mr Lane, the Claimant had said that once she was in a relationship with Mr Lane she understood that payments would be inappropriate such that she never facilitated payment to him from the Schools. As far as the Claimant was concerned, Mr Lane's (undisputed) help and assistance at the Schools from 2011 was "for free" in other words, voluntary and without payment.

### The Smith Report

25. In September 2020, the Federation was permitted by the police to undertake an employment-related investigation. Mr Bird therefore approached Mrs Lynette Smith, then the (sole) Chair of Governors of the Federation, in order that she carry out that investigation and to produce a report to the governors. This was a request under the school's Conduct Policy. Mrs Smith was acting as de facto line manager for the purpose of an investigation.
26. Mrs Smith produced a report by November 2020 [62]. There is no document outlining her formal terms of reference. The introduction to her report [63] indicates her fact-finding investigation was based on a number of concerns. Those concerns are a copy and paste from the conclusions of the Audit Report, as suggested by Mr Bird. Those concerns were that (i) the claimant has ever declared an interest in Mr Lane's company or the relationship between Mr Lane and the building contractors to the Federation (ii) the failure of the Claimant to disclose those connections may have misdirected Schools' governance in the decision-making, (iii) that the Claimant had personally benefited financially, and (iv) that the Claimant had not demonstrated the "Nolan" Principles of public behaviour.
27. Mrs Smith had met with governors and council staff. She was provided with the Audit Report. She sent numerous questions to the Claimant. The Claimant did not answer the questions due to legal advice that she should not do so given, at that time, the ongoing criminal investigation. However, Mrs Smith was able to extract some information about the Claimant's position from the information in the Audit Report. For example, at para 114-120 [99] of the Audit Report, there is a summary of the Claimant's statement given in interview under caution to the police. In it, the Claimant had agreed (para 114) that Snape had carried out several projects at Finlay school, including the kitchen refurbishment, a building acquisition and a playground resurfacing and that Mr Lane had in connection with those and other projects helped the Claimant because "it was the obvious thing to do" since the Claimant otherwise "would not know where to start" and that Mr Lane had the knowledge and expertise in the field. In her evidence to the Tribunal, the Claimant agreed that this was the position. At [153], the Claimant is recorded as saying. "he is an expert, not me".
28. Thus, it can be noted at this point that the role that Mr Lane adopted at the Schools was therefore not substantially in dispute in that he provided significant assistance to the Claimant in Schools' projects over a substantial period of time. The Claimant, it must be said, was at pains to emphasise that at no time (save for the 2011 payment) did Mr Lane receive payment from the School; and, in short, that he appeared to do so voluntarily and without payment. It is also not disputed that Mr Lane did in fact receive financial payments from Snape and as a result did benefit. The Claimant steadfastly asserts that she was not aware of such payments and was not privy to Mr Lane's business finances.

29. Turning back to the Smith Report, Mrs Smith commented [64] that the Claimant was unable to respond due to advice received from her solicitor, and was mindful of the achievement and dedication of the Claimant shown to the Schools over many years and that her achievement has been exemplary. Mrs Smith was critical of the audit function of GCC. At [65], she highlighted in bold that Audit could have “acted sooner” (given the whistleblowing email was from September 2018) if they had felt that there was serious misconduct. Mrs Smith also questioned whether in fact GCC, “thought it fine to continue to trust the Claimant to let her continue in her role” for an extended period (from September 2018) until her eventual suspension in January 2020. There follows a strong critique of the Audit Report [65-66], including comments by Mrs Smith that the Report contains “opinions” and “vague recollections” which might “sway the governors with unreliable information”; and statements made out of context; picking and choosing what is selected for the Report thus not offering a fair representation of the true picture.
30. A summary of Mrs Smith’s conclusion is at [67]. She suggested that the Claimant be reinstated as it was “unlikely the Claimant purposely withheld connections to her husband’s business” and that the Audit Report did not sufficiently demonstrate “that the Claimant knowingly received direct cash incentives as alleged by the whistleblower”. Mrs Smith continued that she is not convinced that “any purposeful wrongdoing” on the Claimant’s part had occurred. Her report concluded, at [68], with the advice to governors that governors should disassociate Mr Lane’s business from the Claimant as it was “unlikely that the Claimant was fully aware of Mr Lane’s business details”; that the Claimant’s failure to declare an interest in KLCL was “overlooked” and was “not withheld on purpose”. The headline conclusion was that the Claimant should be reinstated because it was unlikely that the Claimant had committed any purposeful wrongdoing.
31. The Smith report was submitted to GCC in November 2020. Mr Bird reviewed the report. He considered that it was not objective or balanced. In Tribunal, Mr Bird described the Report as “irregular”: in other words, that it felt “disproportionate, when set against the Audit Report and the fact of the police investigation into potential criminal activity”, that Mrs Smith should critique the Audit Report and state simply that the Claimant should be reinstated, i.e., that in her view there was no case to answer. Mr Bird’s concern was that the Report had, “not looked objectively at the facts and thereby failed to come to a balanced recommendation”. He was challenged in cross-examination by Mr Currie, suggesting that this was riding “roughshod” over a report that was advantageous to the Claimant simply because Mr Bird considered that the Report was wrong. Mr Bird held to the view that, “the report was not wrong per se, but the Audit Report had said something starkly different and as a result Mrs Smith’s summary was unexpected”.
32. Mr Bird did not act himself, but instead sought a second opinion from his experienced head of HR, Mr Parkin, who was strongly of the same opinion that the Smith Report was not robust or balanced. He felt that it expressed personal views such as Mrs Smith’s conclusion that it was unlikely that the claimant had purposely withheld a declaration. Mr Parkin took the decision to seek a further report. Mr Bird denied any motive against the Claimant who was, in his view, a strong Headteacher. The reason for the further report was because of legitimate concerns about the Smith Report.
33. In those circumstances, the Federation instructed South West Councils which is an external HR resource provider for local authorities to act as an independent investigator. Miss Rachel Grandfield was an experienced Regional HR advisor, able to carry out



complex disciplinary and grievance investigations. She was provided with the Audit Report and with Mrs Smith's Report and a grievance raised by the Claimant.

34. That is a reference to a grievance raised on 25 November 2020, through the Claimant's solicitor Mr Darren Sherborne [125]. It complained of failures to explain police involvement and the reasons for and length of the Claimant's suspension. It must be noted that, by this point, the Claimant had been suspended for 11 months and the matter appeared to have seen no progress. Of course, the police investigation was ongoing and (as apparent from the Claimant's inability to respond to Mrs Smith's investigation) plainly resulting in significant restrictions on the parties.

#### The Grandfield Report

35. The Terms of Reference for the Grandfield Report were to investigate an allegation that the Claimant had, "failed to follow School Finance Policies, including relating to declarations of interest and procurement processes. Calling into question whether, in her role as Executive Head teacher, [the Claimant] has conducted herself in accordance with the seven principles of public life ["the Nolan Principles"]".
36. Miss Grandfield first wrote to the Claimant on 15 January 2021, introducing herself as an independent investigator and inviting the Claimant to a fact-finding meeting. The Claimant's solicitor responded on 21 January 2021 and said that Claimant was not able to take part because of the strictures placed on her by the ongoing criminal investigation. His letter also raised concerns about the lack of any outcome from Mrs Smith. Plainly, the Smith Report had not been shared with the Claimant by the Respondents.
37. It was obviously more appropriate that Mr Bird should respond to those concerns, and he did so on 15 February 2021. The Claimant was informed that the Governors had decided that an external independent investigator should conclude the inquiry and Mr Bird declined to share the Smith Report at that time with the Claimant.
38. Miss Grandfield's Report is at [142]. As part of her investigation, she spoke to Mr Dangerfield and to Mrs Smith, and her further sources of information are set out in section 4 of her Report. She had decided to defer the completion of her Report pending a CPS decision about criminal prosecution, so that she could then reiterate her desire to speak with the Claimant prior to completing the Report.
39. In the event, on 16 February 2021, the Claimant was informed that there would not be a criminal prosecution. On 3 March 2021, the Claimant indicated that she would now be able to participate in Mrs Smith's investigation but she declined to participate in Miss Grandfield's investigation.
40. That position did not change and, as a result, Miss Grandfield did not have the benefit of evidence from the Claimant when finalising her report. She did however (as did Mrs Smith) have the police summaries of interviews with the Claimant and Mr Lane, at which (para 5.26 and 5.27), the Claimant stated that Mr Lane had been involved in facilitating the school projects for the Claimant after the Claimant had approached him for his help, as an expert in the field. As above, this state of affairs has never been disputed by the Claimant.

41. The Report recited the obligation on the Claimant to make an annual declaration of interest (para 5.40) and in addition at the start of each Governing Body or committee meeting to make any declaration of interest. The Claimant had never made a declaration of interest regarding Mr Lane or his business. Miss Grandfield records, at para 5.45, that the Claimant had said in her police interview that she had not made any declaration because Mr Lane “was never paid by either of the schools for which she was the Executive Headteacher”. The Tribunal finds that there is a consistency in the explanations by the Claimant, in the documents and in evidence in the Tribunal, it is her case that a declaration was not required in circumstances where the Claimant had believed that Mr Lane did not receive a financial benefit.
42. Section 5 set out the detailed findings of Miss Grandfield’s investigation. The conclusion, at section 6, states that there is evidence that the Claimant had not made appropriate declarations regarding Mr Lane’s business activity. Mr Lane had assisted the Claimant in several procurement processes, and, in Miss Grandfield’s view, the evidence suggested that this was not done openly and transparently, which may have enabled Mr Lane to benefit financially from the arrangement and potentially also the Claimant. As indicated elsewhere in this judgment, there is no dispute that in fact Mr Lane had received a significant amount of money from his business relationship with Snape. Further, the Claimant was a shareholder in Mr Lane’s company and had received dividend payments over a 4-year period.
43. The Grandfield Report was sent to Mr Bird on 22 March 2021. The recommendation, at section 7, was that there was evidence to support the allegation and it should be considered further at a disciplinary hearing in accordance with the School’s Conduct policy.

#### The composition of a Disciplinary Panel

44. The Conduct Policy is at [326]. Given Miss Grandfield’s recommendation, it fell to the Federation Governing Body to constitute a Decision Maker. A formal case did not expressly require a Panel but the GCC could advise the Federation and the Federation must properly consider that advice [322].
45. A meeting took place on 14 April 2021 [338] at which the GCC Director of Childrens Services, Mr Chris Spencer, set out the case for an independent Panel of Governors, i.e. a Panel that was independent of the Federation. He advised that the allegations against the Claimant were serious and he expressed the view that it might avoid allegations of bias or tainted outcome if experienced Governors from the Gloucestershire governors’ association (independent of the Federation) were appointed.
46. It appears to have been an uncomfortable meeting. It was described elsewhere as a hostile meeting. At one point, Mr Spencer suggested that he could use executive powers to remove the Governing Body and set up a new Interim Executive Board; that the best way forward was to appoint people who are independent of the Federation and that the existing Governing Body were now too involved in the matter. Mrs Smith proposed Federation Governors. Mr Spencer wanted independent Governors. In the end, the Governing Body adopted a final position [344] that the Panel would be made up of two specifically named Governors from the Federation Governing Body, James Hill and Amanda Chong, and a third who would be an independent Governor (Jane Foster).

47. The apparent resolution was not as uncontroversial as it might have first seemed. As the Claimant made plain later, Mr Hill albeit an experienced Governor, was in fact a GCC-appointed Governor, installed in September 2020 ostensibly as a Governor with prior experience of chairing a governing body undergoing change. It was not lost on the Claimant that this amounted to an imposition by GCC. Amanda Chong was also a local authority governor. Nevertheless, the Disciplinary Panel of Hill, Chong and Fisher was constituted.
48. The Claimant's solicitor wrote shortly after, on 22 April 2021 requesting that the Claimant's earlier grievance (from 25 November 2020) should be dealt with and, on 27 April 2021, the Claimant raised a second grievance [346]. It complained that the instigation of a second investigation (i.e. the Grandfield process) was not permitted under the Conduct policy and that obtaining a further report indicated that there was a pre-determination on the part of GCC to "initiate new investigations until the desired result was achieved". It is apparent that the Claimant must have been aware of the 14 April discussions concerning the composition of the Disciplinary Panel because the final point of grievance was that, "the same person who appears to have orchestrated the entire process is now trying to control which governors hear the matter". The letter of grievance concluded that Mr Spencer was the subject of the grievance.
49. There was a written response to the Claimant's grievance on 13 May 2021 by Mr Bird [349]. Specifically, regarding the second investigation, Mr Bird wrote that there was nothing to preclude an independent investigation if that was felt appropriate in the light of the "initial draft investigation". Regarding the composition of the Disciplinary Panel, his response was that the GCC had a responsibility to ensure appropriate governance at local authority schools.
50. The Conduct policy [331] refers to "an" investigation and "a" report (i.e. in the singular) from an investigator. It describes an investigation as, "the gathering of information relating to a conduct issue". The Conduct Policy also states that where the Headteacher is the subject of the formal action, "the governing body may delegate responsibility to a governor or more than one governor". There is no expression as to from where the governor/panel is to be selected.

#### The Claimant's suspension

51. On 6 July 2021, a review of the Claimant's suspension took place and the decision was made to lift the Claimant's suspension to enable her to return to work [357]. Given the nature of the ongoing conduct investigation, a number of financial-related restrictions were put in place. In the event, the Claimant commenced sickness absence from 3 September 2021.
52. In evidence to the Tribunal, the Claimant said that she later returned to work in November 2021. Mr Dan Gillingham was the new Chair of Governors as Mrs Smith had stepped down in September 2021. The Claimant said in evidence that when she returned to work, Mr Gillingham lifted her restrictions. In response to a comment from the Tribunal that this was not apparent from the documentation or from the Claimant's evidence, reference was then made to paragraph 36 of the Claimant's witness statement, in which it is stated that the Chair had expressed his surprise at the conditions that were placed on her and removed them. Paragraph 36 purports to refer to

the Claimant's suspension-related return to work meeting in July 2021. There was plainly a confusion of dates and chronology. It was somewhat perplexing that the Chair should have been surprised at the conditions placed on the Claimant given the serious nature of the financial-related allegations. Mr Gillingham had produced a witness statement for this Tribunal Hearing albeit that he was unable to attend the adjourned hearing dates in September 2023. In any event, Mr Gillingham did not refer to lifting the Claimant's restrictions in his statement. Mr Gillingham was not part of any decision-making in the disciplinary process.

53. Mr Hill, in evidence to the Tribunal, stated that he was unaware of these events. He had known that the Claimant's suspension had been lifted in July 2021 but with restrictions in place.

#### Events leading up to the Disciplinary Hearing

54. There was a significant amount of correspondence and discussion between the Governing Body and the Claimant's solicitor ahead of the disciplinary hearing. On 23 September 2021, the Claimant was invited to a hearing, due to take place on 7 October 2021. The hearing was postponed; no complaint is made about the postponement.
55. There was initially some doubt about whether the Claimant could be represented by her solicitor, Mr Sherborne, at the Disciplinary Hearing. However, once Mr Sherborne had made plain his dual representation by letter 8 November 2021 [546], in other words that he was both a solicitor and a TU representative, there was no objection to him representing the Claimant at the Disciplinary Hearing.
56. Mr Sherborne expressed concerns about the composition of the Panel and he and the Claimant shared the opinion that the process was predetermined as the Panel had been "cherry picked" by GCC and it would therefore be more inclined to decide the case adversely against the Claimant. Mr Sherborne had initially sought on behalf of the Claimant to have the Grievance regarding the composition of the Panel to be dealt with before the hearing itself. He was told that it would be dealt at the Hearing. There was further correspondence; the Claimant and Mr Sherborne were unhappy with what they perceived as a failure to fix an agenda and particularly a failure to agree to deal with the Panel composition point at the beginning of the Hearing. When asked specifically in cross-examination why he and the Claimant would not attend the Disciplinary Hearing, he replied that, "it would not dignify a process that felt predetermined; that by taking away from the Governing Body the right to select and choose the Panel, that this was a sign of a pre-determined outcome".

#### The Disciplinary Hearing

57. The Disciplinary Hearing took place on 16 December 2021. It proceeded in the absence of the Claimant. The notes of the hearing are at [558]. The Panel firstly addressed the Claimant's objection to the composition of the Panel. The Panel concluded that it was not unusual to look outside of the instant Governing Body to create a Panel and ensure independence. The Panel had no prior involvement with the Claimant. The Panel resolved to continue with the hearing.

58. The Panel was aware of the Smith Report did not consider it relevant. Mr Hill was aware that the Governing Body had made a decision that the Smith report was not going to be used and that a new report would be required in order to progress the disciplinary process. Further, the additional report would be an “independent” report. Mr Hill understood that the decision of the Governing Body was, in his words, “let’s now get the independent report done and done quickly”. Mr Hill stated that Mrs Smith had not made her personal feelings known to Mr Hill about the circumstances of her Report.
59. The Panel heard from Miss Grandfield, who outlined her Report and its conclusions. In the Hearing, the Panel adjourned to consider the new evidence submitted by the Claimant. This adjournment took approximately one hour. After digesting that information, the Panel were content to continue with the hearing. Mr Storer was questioned by the Panel. At [564], for example, there was a detailed question and answer exchange regarding playground resurfacing and kitchen and dining hall projects in 2016 and 2017. It was Mr Storer’s view that there could not be a misunderstanding as to who was running the Projects and that they were managed by the School. The Panel also questioned Mr Bradley and Mr Dangerfield. Mr Bird was also present at the hearing and he was asked a number of questions about the Claimant’s outstanding grievances [568].
60. In summarising the management case, Miss Grandfield [569] explained that the Claimant was an experienced Executive Headteacher who was responsible for the setting of standards for those Schools and complying with the seven principles of public life [the Nolan principles] but despite that Miss Grandfield said that the evidence showed that the Claimant had enabled Mr Lane to operate without checks or balances and without reference to the Schools Finance Policy. The hearing lasted from 10am to 3pm. The Panel had independent legal advice. After some deliberations, the Panel was unable to reach a final decision and indicated that an outcome would be delivered after the Hearing.
61. On 17 December 2021, an outcome letter was sent to the Claimant. The outcome letter is at [570]. The Panel upheld the allegation that, “you have failed to follow the Schools’ Finance policies including relating to declarations of interest and procurement processes, calling into question your suitability to continue in your role as executive head teacher”.
62. In the letter, the Panel concluded that the Claimant had failed to comply with Finance policies and had not made appropriate declarations of interest. The Panel also concluded that procurement processes for contracts which were site-managed were not followed in accordance with the School Finance Policy. The Panel concluded that by not appropriately declaring interests, the Claimant had not upheld the well-established principles of public life. The Panel concluded that these actions amounted to gross misconduct and that the appropriate sanction was summary dismissal.
63. Mr Hill was the Chair of the Panel and he gave evidence to the Tribunal. He knew of the Smith Report but did not consider it to be relevant and that there had been a decision to obtain an independent report. He said that there was no benefit in seeing the Smith Report as a result. When asked about the elements of potential financial benefit to the Claimant (i.e. £400 to Mr Lane in 2011 and £14,000 in dividends over 4 years), he said that financial gain was, “not high on the list of considerations”. Instead, financial aspects were a link to show that the Claimant was aware of Mr Lane’s activity. The key issue was

whether the Claimant had “knowledge” of Mr Lane’s activities. Mr Hill was cross examined closely on this point: he maintained that he, “understood that the Claimant said that she didn’t have the knowledge, but the Panel rejected that given that she was a highly experienced Headteacher, who knows how to run a school, and its basic that you declare an interest”. Mr Hill confirmed that it was not based on financial considerations as, in his words to the Tribunal, “we did not dwell on whether she is making money”.

64. Mr Hill was further challenged on the obligation to declare. He referred to the Finance Policy [277] and the mode of Declaration at [300] and identified examples showing the opportunity to make declarations in meetings. He reaffirmed the importance of declarations. He said that the Panel unanimously agreed that the Claimant had failed to declare an interest in the light of Mr Lane’s activities and also that she was a shareholder in Mr Lane’s business.
65. When challenged about the procurement processes, Mr Hill said that the Panel was satisfied that it had been explained to them in the course of the Hearing. The Panel could not see 3 quotes being obtained; that if it had been 1 or 2 occasions, that might be understandable, but the Panel were satisfied that the Claimant knew she should have followed the process as by contrast was evident when looking at a comparable catering contract; despite that, there were “countless examples when it came to building projects”.
66. Mr Hill was challenged on his consideration of the appropriate sanction. He responded that, once the Panel had decided that the Claimant had not followed the policy on making a declaration, the Panel adopted sanctions “in reverse” (i.e., lowest first) and asked whether a lower outcome was acceptable: for example, whether a warning, or perhaps a demotion to teacher or senior leader. The Panel concluded that the Nolan Principles had not been followed by the Claimant, an experienced Headteacher, and that summary dismissal was an appropriate sanction. It was, in Mr Hill’s evidence, “the only appropriate sanction”.
67. The Claimant’s employment came to an end on 18 December 2021.

#### The Claimant’s Appeal

68. The Claimant appealed. The grounds of appeal are at [574]. The first of these grounds was that the decision was not reasonable because, “it is impossible to conclude that on the balance of probability the Claimant knew that there was anything by way of an interest to declare, and that her knowledge is entirely assumed”. It was asserted that if the Claimant did not know that her husband had been charging for work through an external party, then she did not know she had an interest to declare. The grounds of appeal are reflected in the agreed list of issues at 1.3 and 1.5 [57].
69. A dismissal appeal meeting took place on 17 March 2022. The Appeal Panel was made up of independent governors. Mr Sherborne acknowledged in his evidence that he might have objected to the composition of this panel but the Claimant had indicated to him that she felt it was more important that she should take the opportunity to be heard. The Claimant and Mr Sherborne therefore attended the appeal meeting. The notes are at [594]. The meeting concluded without the Claimant being informed of an outcome.

70. In circumstances set out above, and attending under the terms of a witness order, Reverend Katrina Scott gave evidence to the Tribunal. Reverend Scott had agreed to be part of the Appeal Panel having been approached by a member of the HR team from GCC. She had no prior knowledge or involvement of matters. She understood that the Appeal Panel remit was to review the reasonableness of the decision made by the Disciplinary Panel. She informed the Tribunal that there had been a number of questions that arose that caused them some concern. They had questioned the reasonableness of the disciplinary decision based on a number of factors. They questioned whether the Disciplinary Panel had read all the paperwork albeit that Mr Hill was satisfied that they had read all the relevant paperwork. The Appeal Panel looked at the reasonableness of the decision based on what it perceived as an assumption of knowledge. The Appeal Panel felt that they would have liked to go back to speak to witnesses.
71. Their concerns led them to recognise that the Claimant had been guilty of misconduct; but that there was a question relating to the reasonableness of the decision, carrying with it a consideration of amending the decision to misconduct rather than gross misconduct. The Appeal Panel received legal advice which they reflected on. The Tribunal has not been informed of the nature of that legal advice and neither side sought to place it in front of the Tribunal.
72. Reverend Scott told the Tribunal that, following on from receiving that legal advice, the Appeal Panel, “felt unable to make a final decision”. In answer to the Tribunal’s question as to why that was the case, Reverend Scott responded that, “we didn’t have sufficient clarity to make a final decision without having further conversations or a rehearing”. The Appeal Panel felt that, “a rehearing might have been thought to have not been correct legally or procedurally”. Reverend Scott agreed that, “no-one prevented the Appeal Panel from having a further hearing” but it was very much their decision in the light of legal advice. Again, in response to a question from the Tribunal, Reverend Scott agreed that letter from the Chair of Governors, at [620], correctly confirmed the position that the Appeal Panel had reached, namely, “the appeal panel have confirmed that they are unable to make a decision on the appeal one way or the other without straying into a rehearing of the matter which was not the intention as to how the appeal would be dealt with”.
73. On 25 May 2022, Mr Bird wrote to the Chair of Governors. He noted that the Appeal Panel had confirmed that, having regard to the remit of the appeal, the Appeal Panel felt that it was unable to make a decision on the appeal. Mr Bird’s suggestion was therefore that the Claimant should be informed of this position and offered a further appeal before a new appeal panel [606]. On 27 May 2022, the Claimant was informed that, “the appeal panel have confirmed that they are unable to make a decision on the appeal one way or the other without straying into a rehearing of the matter which was, as previously noted, not the intention as to how the appeal would be dealt with. I would therefore propose that the right process to follow is that the appeal is considered by a separate appeal panel by way of a review of the decision as was the case previously”. The Claimant was asked to confirm whether she would be willing to attend a further hearing of her appeal.
74. The Claimant sought further information as to the Appeal Panel’s reasoning. The request for disclosure of the legal advice received by the Appeal Panel was refused. During the course of the ensuing correspondence, the Claimant indicated that she would only participate in another appeal if an independent barrister was jointly instructed to hear it.

75. The Respondents rejected that proposal, but confirmed that the Appeal Panel were unable to make the decision and in addition were unwilling to further consider the matter. At Tribunal, Reverend Scott confirmed that was correct.
76. It was the Respondents' view that a further appeal hearing was necessary. The Claimant's position was crystallised by 11 July 2022 [608]: once again the suggestion of a panel independent of the Governing Body was criticised by the Claimant's solicitor. It was said that the Conduct policy required the panel to be made up of governors from the Claimant's School. The Claimant considered that the process was a further indication of a predetermined outcome. The Claimant was not prepared to give the Respondents "another bite of the cherry" and felt that because the Appeal Panel was unable to conclude that the dismissal was reasonable, then the dismissal should not be upheld and that it was accordingly unacceptable that the Respondent should aim to "re-run" the appeal with a new appeal panel.
77. As above, the Respondents were not willing to appoint an independent barrister to conduct the appeal. A Second Appeal Panel was constituted, made up of experienced governors with experience outside of Gloucestershire, and wholly unconnected to the Claimant or the Federation. The Claimant declined to attend.
78. The Appeal Hearing took place on 5 September 2022. The notes are at [650]. Mr Tyndall was the chair of the Second Appeal Panel and he gave evidence to the Tribunal. He acknowledged that the Claimant had chosen not to attend and had inferred that this was because of a question about the legitimacy of the Second Appeal Panel. Mr Tyndall was satisfied that the Claimant was fully aware of the proceedings and had declined to attend and thus the panel made the decision to go ahead. Mr Tyndall made no further enquiry into why the first Appeal Panel had apparently not been able to reach a decision.
79. In evidence to the Tribunal, Mr Tyndall was referred to the grounds of appeal, at [574]. He stated that the outcome letter at [660] sought to deal with each of those grounds of appeal. He emphasised that the central issue for him was that of the Claimant's knowledge. In the Second Appeal Panel's view, it was irrelevant whether or not the Claimant knew that Mr Lane was being paid for work undertaken at the School. The Second Appeal Panel was satisfied that the Disciplinary Panel had taken into account that Mr Lane was clearly involved with building works at Schools that the Claimant was responsible for, and that his involvement was substantial including suitability bids for projects, management of contractors and attendance at meetings at which the Claimant was present. In those circumstances it was irrelevant whether or not the Claimant knew of Mr Lane's actual financial arrangements.
80. Secondly, the Second Appeal Panel had regard to the fact that the Claimant was a shareholder in Mr Lane's company which was involved in building works in schools. Thirdly, the Claimant was an experienced Executive Head teacher who should have known that her involvement with Mr Lane's company and Mr Lane's involvement in building works at the Schools were interests that the Claimant should have declared, regardless of any direct financial benefit that she or Mr Lane may have received.
81. The Second Appeal Panel noted that the interest was not only disclosable if money had been received directly but also that there was a clear requirement to disclose an interest which may give rise to conflict. Mr Tyndall was questioned closely on this in cross-examination: he reasserted that the foundation of the requirement for all Governors to



make declarations is the “potential” for conflict of interest. That gave rise to an absolute obligation to declare, both annually and every time a relevant process arose.

82. Mr Tyndall accepted that the Second Appeal Panel was required to conduct a review of reasonableness, and not a rehearing of the decision to dismiss. As part of that review, Mr Tyndall gave evidence that it took account of concerns that there was more than one investigation. Mr Tyndall felt that although the Conduct Policy arguably only referred to “an” (i.e. singular) investigation, the Second Appeal Panel had looked at the circumstances for the need for a re-investigation. Secondly, Mr Tyndall stated that the Second Appeal Panel had looked at the role of the GCC and concluded that it was not unreasonable. Thirdly, it had considered the delay and whether it had caused the Claimant to suffer undue detriment or harm in terms of her dismissal and appeal.
83. The appeal outcome is at [659] and it was sent to the Claimant on 9 September 2022. Over the course of a 10-page letter, the Second Appeal Panel addressed the absence of the Claimant from the appeal hearing and also the Claimant’s grounds of appeal. The appeal panel unanimously decided not to uphold the appeal.

#### The Claimant’s evidence

84. In evidence and under cross-examination, the Claimant acknowledged the Finance Policies at Coney Hill School, [276] and similarly at Finlay School [311]. Those policies were reviewed in May 2018. The Claimant accepted that key to the policies was the Register of Interests [286] and the requirement to declare in the event of a close personal interest within any of the relevant categories.
85. The Claimant maintained that, “my understanding was that an interest was to be declared if a member of family had an interest in business that would benefit from work in the school. However, my understanding was that my husband’s business never benefited or wouldn’t benefit from work at the school”. In response to a question in cross-examination, that it was necessary to consider “potential” risk is much as “actual”, the Claimant responded by saying that if you were to consider any “potential” then you could be “listing everything”. The Claimant asserted that she did not know and did not think that it would happen that her husband would benefit financially from his involvement with the Schools.
86. The Claimant had married Mr Lane in March 2013. Mr Lane had regularly assisted the Claimant in respect of projects at the Schools. The Claimant accepted the summary of the evidence that she gave in the police interview, namely, that Mr Lane was an expert in the field and that she would “be lost” without his help.
87. When asked in cross-examination why she would not make a simple declaration, the Claimant responded that, “I didn’t believe my husband would have made a financial gain in anything happening at my School”. When challenged that it would have been an appropriate declaration to make in the interests of transparency, the Claimant accepted, “in hindsight, I should have declared”. The Claimant repeated this hindsight view during the course of her evidence. The Claimant said that she knew that Snape had conducted a lot of work at the Schools but maintained that she did not know that Snape had paid her husband. The Claimant did acknowledge that her husband had helped significantly at the Schools including making bids for projects, but asserted that he had done so

voluntarily. That notwithstanding, the evidence available to the Disciplinary Panel clearly showed that Mr Lane had received significant sums from Snape over a period of time.

88. The Claimant, in evidence, said that although she was a nominal shareholder in Mr Lane's company, ostensibly only for tax reasons, she had never had access to his business or to his accounts and indeed they held completely separate bank accounts. When she was challenged that in effect she had simply "closed her eyes" to what Mr Lane was doing, she replied, "I was naïve and too trusting of my husband. Maybe I should have declared an interest, but I didn't, and it was not deliberate".
89. The Claimant was shown a number of documents which indicated the extensive role that Mr Lane had played in projects at the Schools, including that Mr Lane had signed a certificate of interim payment at [672] and a certificate of practical completion at [673]. The Claimant accepted that Mr Lane was copied into a letter sent by the Claimant to Snape in June 2016, at [675], although in Tribunal the Claimant could not recall why Mr Lane had been copied into the letter. When it was put to the Claimant that these documents indicated the extent of Mr Lane's involvement with work at the Schools, the Claimant responded that she had never denied his involvement in projects but that "whatever he did for the School was not paid for and was voluntary. Yes, I should have declared it and I will have to live with that decision".

### **The Law**

90. In relation to unfair dismissal, section 98(1) and (2) of the Employment Rights Act 1996 sets out the potentially fair reasons for dismissal. Section 98(2) states that a reason falls within this subsection, *inter alia*, if it relates to conduct.
91. When determining the fairness of conduct dismissals, according to the Employment Appeal Tribunal in British Home Stores v Birchell [1980] ICR 303, a tribunal must consider a three-fold test: (i) the employer must show that he believed that the employee was guilty of misconduct, (ii) that he had in his mind reasonable grounds upon which to sustain that belief, (iii) that at the stage at which the employer formed that belief he had carried out as much investigation into the matter as was reasonable in the circumstances.
92. Section 98(4) then sets out what needs to be considered in order to determine whether or not the decision is fair. It states "determination of the question whether dismissal is fair or unfair... (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".
93. For the purpose of section 98(1) and 98(2) the burden of proof is on the Respondent. What matters is whether the respondent has established the operative reason for the dismissal: see Brady v ASLEF [2006] IRLR 576. The relevant reason for dismissal relies on a finding as to the "set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee": Abernethy v Mott [1974] ICR 323; Beedell v West Ferry Printers Ltd [2000] IRLR 650.
94. For the purpose of section 98(4) the burden of proof is neutral in applying section 98(4). The Tribunal does not stand in the shoes of the employer and decide what it would have

done if it were the employer. Rather the Tribunal has to ask whether the decision to dismiss fell within the range of reasonable responses open to the employer judged against the objective standards of a hypothetical and reasonable employer. The case of Sainsbury's Supermarket Ltd v Hitt [2002] EW CA Civ 1588 makes it clear that the range of reasonable responses applies to all aspects of the dismissal decision. The Tribunal is required to consider whether dismissal fell within the range of reasonable responses: see Iceland Frozen Foods v Jones [1983] ICR. Here the question of whether an employer has acted reasonably in dismissing will depend upon the range of responses of reasonable employers. Some might dismiss others might not.

95. Consistency of treatment may be relevant in terms of fairness in circumstances where there is evidence of decisions being made in truly parallel circumstances: Hadjiioannou v Coral Casinos [1981] IRLR 352.
96. Fairness is a feature of the statutory test in section 98(4). Not infrequently, complaint is made of aspects of the process and/or the decision which amount to a breach of procedure or policy or is otherwise reasonable. The Tribunal falls into error if in considering those deficiencies it fails to consider the statutory test in the round: Westminster City Council v Cabaj [1996] IRLR 339; Taylor v OCS Group [2006] IRLR 613; Reilly v Sandwell Metropolitan Borough Council [2018] IRLR 558 ; Christou v LB Haringey [2013] IRLR 379. The Christou is helpful in the present situation, see for example, at para 56, "when a tribunal is considering whether the dismissal is fair, it will perforce have to ask itself whether it was fair to institute the second proceedings at all".
97. Turning to deductions from compensation, the Polkey principle established that if a dismissal is found unfair by reason of procedural defects then the fact that the employer would or might have dismissed the employee anyway goes to the question of remedy and compensation reduced to reflect that fact. Thornett v Scope [2007] ICR 236 affirmed the obligation on an employment tribunal to consider what the future may hold regarding an employee's ongoing employment.
98. Section 122(2) ERA provides that where a tribunal finds that any conduct of a claimant before the dismissal was such that it would be just and equitable to reduce the amount of the Basic Award, the tribunal must reduce that amount accordingly. Section 123(6) ERA provides that where a tribunal finds that the dismissal was to any extent caused or contributed to by any action of the claimant, it must reduce the amount of the compensatory award by such proportion as it considers just and equitable. Before any such deduction, a tribunal must make three findings (in accordance with Nelson v BBC (no2) [1979] IRLR 346): (i) that there was conduct which was culpable or blameworthy; (ii) that the dismissal was contributed to some extent at least by the claimant's culpable or blameworthy action, (iii) that it is just and equitable to reduce the assessment of the claimant's loss to a specified extent.
99. In relation to wrongful dismissal, a different test applies. It is necessary for a tribunal to reach a finding of fact as to whether the Claimant had in fact committed a breach of her contract that was sufficiently serious that it amounted to a repudiatory breach which entitled her contract to be terminated without notice. If not, then a breach of contract occurs when a respondent terminates without notice, and the usual measure of damages is the contractual notice period to which the claimant was entitled.

100. In a wrongful dismissal case, questions of reasonableness do not arise, and the issue is whether the employee was guilty of conduct so serious as to amount to a repudiation breach of the contract of employment entitling the employer to summarily terminate contract: Enable Care and Home Support Ltd v Pearson EAT/0366/09. In Palmeri v Charles Stanley [2021] IRLR 563, the test was described as, “whether objectively and from the perspective of a reasonable person in the position of the employer, the employee had clearly shown an intention to abandon and altogether refused to perform the contract”.

## **Discussion and Conclusions**

### **Unfair Dismissal**

101. Turning first to the reason for dismissal, under section 98(1), the Tribunal reminded itself that the onus falls on an employer dismissing an employee to establish that the reason for dismissal was one which was potentially fair.

102. The Tribunal has taken account of the fact that the Claimant was subject to a disciplinary process, which is the normal mechanism for dealing with issues of conduct in the workplace. The evidence of Mr Hill was that the Disciplinary Panel concluded that the Claimant had failed to adhere to the Nolan principles by failing to make appropriate declarations of interest and found that the failure constituted gross misconduct. Although the Claimant was absent from the Hearing, the Tribunal finds that the notes of the Hearing [558], running to some 12 pages, fairly reflected the nature of the allegations discussed and that they related to the role of the Claimant and Mr Lane in building works at the Schools. The decision to dismiss the Claimant was communicated to the Claimant in an outcome letter dated 17 December 2021 [570]. The outcome letter informed the Claimant that her actions amounted to gross misconduct and that the appropriate sanction was summary dismissal.

103. On those facts, the Tribunal is likely to conclude that the reason for dismissal is established by the Respondents as relating to the Claimant’s conduct.

104. The Claimant has not conceded that the Respondents have discharged the burden of proof. In his closing submissions, Mr Currie put it in this way, namely, the reason for dismissal is in question because the Claimant had not in fact acted fraudulently in not declaring a relevant interest. However that does not amount to an attack on the existence of the reason itself but rather the seriousness with which the Disciplinary Panel ought to have considered the Claimant’s conduct. It is relevant also to note that the Claimant acknowledged in evidence in, as well as on her behalf in closing oral submissions, that there was relevant conduct on her part so that the real consideration is of whether it was conduct that should have merited dismissal.

105. These are matters that go to the reasonableness of dismissal and do not undermine the likelihood that the reason for dismissal has been established by the Respondents as relating to the Claimant’s conduct. Further, the Tribunal has taken into account that a key aspect of the Claimant’s claim is that the decision to dismiss her was predetermined since, in effect, GCC had managed the process with that result in mind and this is evidenced by the fact that there were 2 investigations and 2 appeal hearings.

106. The Tribunal accepted Mr Hill's evidence that the Disciplinary Panel examined evidence relating to the Claimant's failure to make a relevant declaration and reached a conclusion that the Claimant had failed to adhere to the Nolan principles. Mr Hill and the other Panel members were not said to be influenced by any ulterior motivation. The fact that Mr Hill had been appointed by the local authority initially as a governor does not of itself indicate any restriction on his ability to make an open minded decision in the Claimant's case. No personal animus towards the Claimant was suggested in relation to any of the Panel members.
107. The Tribunal finds that the relevant decision makers were the three members of the Disciplinary Panel as chaired by Mr Hill and that the reason for dismissal was that set out in the dismissal outcome letter which in addition were actions for which the Claimant had largely admitted albeit that she does not accept that the amounted to gross misconduct.
108. The Tribunal is satisfied on the evidence that the reason for dismissal was the Claimant's conduct and the Respondents have accordingly satisfied the burden of establishing the reason for dismissal was a potentially fair reason, namely, conduct.
109. Turning to the second question, under section 98(4), of whether all of the requirements of that section have been satisfied. Neither party has an onus to prove their case over the other under these provisions. The Tribunal has considered that the Burchell principles will be relevant. According to that authority, three things must be established for a conduct related dismissal to be fair. First, the employer must genuinely believe the employee guilty of misconduct. Secondly, there must be reasonable grounds for holding the belief. Thirdly, the employer must have carried out as much investigation as was reasonable in the circumstances in reaching that belief. The Tribunal has taken into account the matters identified in paragraph 1.3 of the List of Issues [57].
110. Did the employer genuinely believe the employee is guilty of misconduct? Here, Mr Hill maintained that the Disciplinary Panel genuinely believed that the Claimant was guilty of some form of misconduct because she had failed to adhere to the Nolan principles. Specifically, that, "you did not make the appropriate declarations of interest regarding the fact that you are married to someone who has a direct or indirect financial or other interest in an organisation which provide goods/services to the School" [570]. This finding is sufficient to support a belief as to misconduct. Mr Hill was well informed about the matters that supported the finding and in particular he had a good understanding of the facts that were set out in the Grandfield report. Even if GCC had tried to manage the disciplinary process in order to seek a specific result, there is no sound factual basis for the Tribunal to conclude that Mr Hill, and the Panel, merely followed a direction from GCC and did not therefore form their own conclusions.
111. Mr Hill satisfied the Tribunal that he was genuine in his belief about the Claimant and that he genuinely believed that she had failed, despite being an experienced Executive Head teacher, to follow finance policies and to make a declaration of interest.
112. The Claimant alleges (para 1.3.1) that it was impossible to conclude that the Claimant knew she had an interest she was required to declare. By contrast, Mr Hill concluded that the Claimant was an experienced Head Teacher who was aware of Mr Lane's extensive dealings in construction projects relating to the Schools. Underlying the Claimant's allegation appears to be the implication that "knowledge" required knowledge of an actual financial benefit accruing to Mr Lane. Mr Hill satisfied the Tribunal that he

well understood that a declaration of interest might be required not just in cases of “actual” risk and also in the event of a “potential” risk.

113. Secondly, were there reasonable grounds for holding that belief? The Claimant herself acknowledged in evidence that there was an error on her part and that, at least in hindsight, she ought to have made a declaration. That was the position also adopted in closing submissions. It was a position which was relied on in support of the credibility of the Claimant’s evidence. It showed that the Claimant maintained a view that she did not need to make a declaration in circumstances where she did not know that Mr Lane had financially benefited from his activities at the Schools. By contrast, Mr Hill’s belief was not based on any fraudulent nature of the Claimant’s actions or upon an actual financial benefit accruing. The Disciplinary Panel had reasonable grounds holding the belief that the Claimant should have made a declaration because the requirement for a declaration arose from her knowledge of the significant levels of activity of Mr Lane at the Schools and the fact that he was engaged in business activities of that kind including in respect of which she was a shareholder and had received dividends. It was, in the words of Mr Hill, the “role of Mr Lane” rather than the “fact of payments” that brought about the need for a declaration. The Claimant did not dispute that she was aware of the extensive role undertaken by Mr Lane.
114. The Claimant alleges (para 1.3.2 and 1.3.3) that the evidence showed that the Council was responsible for managing building projects and that two of the Council officers were in breach of Council Standing Orders and gave false evidence to the hearing. Neither of these allegations undermines the existence of reasonable grounds for holding the belief that the Claimant was guilty of misconduct. Mr Hill had plainly taken into account the evidence provided to him in the course of the Hearing and that was available in the Grandfield report. Nor was the Disciplinary Panel likely to conclude that the two officers might have given false evidence particularly in circumstances where the witnesses, who had attended the Hearing, were not the subject of such challenge by the Claimant, who had not attended the Hearing. The difficulty that the Claimant has in relation to this allegation is that the central conclusion reached by the Disciplinary Panel is not likely to be impugned by any potential shortcoming in the actions of the officers. That central conclusion was, as Mr Hill reaffirmed in evidence to the Tribunal, that the Claimant should have declared an interest either as a result of her shareholding and/or the extensive professional activities of Mr Lane at the Schools. These facts were not in dispute. They establish that the panel had reasonable grounds for their belief.
115. Thirdly, did the employer carry out as much investigation as was reasonable in all the circumstances? That does not require an employer to carry out all possible investigations. The purpose is to establish whether there were reasonable grounds of the belief formed. The scope of the investigation needs to be reasonable in all the circumstances. The legal test, as emphasised in Hitt, is whether the investigation fell within the band of reasonable approaches, regardless of whether or not the Tribunal might have approached any particular aspect differently.
116. The Disciplinary Panel was not required to have regard to the Smith Report. Mr Hill was aware that the Governing Body had concluded that the Smith Report would not be used, and an “independent” report was needed in order for the disciplinary process to continue. The Disciplinary Panel therefore had available to it what it regarded as “independent” information in the form of the Audit Report (Mr Dangerfield) and the

Grandfield Report. Mr Hill had actively considered the relevance of the Smith Report but concluded that it was not.

117. The Claimant alleges (para 1.3.4) that the panel did not properly consider the evidence provided by the Claimant. This allegation appears to have been expressed in more detail within the grounds of appeal [577] in which the complaint is that the Disciplinary Panel, during its adjournment of 11.07hrs – 12.03hrs, could not have properly “digested” the Claimant’s evidence. Notwithstanding, in the minutes of the Disciplinary Hearing, Mr Hill noted that the Panel had considered “all 60 points” raised by the Claimant. The reference to “60 points” is a reference to the numbered paragraphs of the statement of the Claimant [524]. The Panel’s consideration was not limited to the adjournment period but also included its deliberations as it did not reach its decision at the Hearing. In the subsequent outcome letter the Disciplinary Panel stated that it gave “extensive consideration to the paperwork submitted” including the witness statement. Despite extensive cross-examination of Mr Hill, there were no material examples of how the Panel had apparently failed to take into account material parts of the Claimant’s statement. The Claimant has not established that the panel failed to take proper account of her evidence.
118. The Claimant alleges (para 1.3.5) that the decision to dismiss was inconsistent with the treatment of Tracey Satherley. There was limited evidence adduced to the Tribunal. There is reference in the Claimant’s witness statement, at paragraph 22, to Ms Satherley, who is said to be, “a company secretary in her husband’s business, who had worked for contractors working in the School”. Ms Satherley was that one time a Business Manager. The Claimant asserts that Ms Satherley had not declared any interest but notwithstanding that she was not the subject of any disciplinary process. The Claimant is not alleging that those circumstances misled her into believing that she need not make a declaration of her own. Nor does the Claimant allege that it is relevant in respect of an inference that the purported reason was not the real or genuine reason. The Tribunal notes the limited extent to which this was addressed in the evidence. There is insufficient evidence to conclude that there were “truly parallel” circumstances, as indicated by Hadjiannou, not least because (i) there is no evidence of any decision making process regarding Ms Satherley, (ii) the Claimant was the Executive headteacher, the “eyes and ears of the School”, a description accepted by the Claimant when cross-examined, (iii) the Claimant had been subject to a police investigation and extensive audit investigation..
119. The Claimant alleges (para 1.3.6) that the decision to dismiss was not reasonable given she had returned to her duties. The Claimant had been suspended pending disciplinary investigation. In July 2021, her suspension was lifted. This is evidenced in writing by an email to the Claimant [357]. Her return to work was subject to restricted duties and conditions and these included, “any finance/building decisions will need to be made by the Heads of School unauthorised by governors”. That was entirely consistent with the financial related allegations that the Claimant continued to face. This was what Mr Hill understood.
120. At paragraph 36 of her witness statement, the Claimant suggests that the conditions were subsequently removed. The evidence regarding this is unsatisfactory. The reference, at paragraph 36, is to the Claimant’s return to work in July 2021. The Claimant contends that was an error and was meant to be a reference to subsequent events in November 2021. That is not consistent with (i) the chronology of the witness statement,

(ii) the fact that the claimant does not make any reference to a later conversation in November 2021, and (iii) the mistaken reference in the later appeal documentation [597] to returning to work on full duties for “a full 6 months”. The Claimant contends that the Chair of Governors at the time, Mr Gillingham, “expressed surprise” at the conditions which in itself, as referred to above, is perplexing given that the Claimant had an imminent formal disciplinary hearing and was under investigation for serious finance-related allegations.

121. The Tribunal is not satisfied that the Claimant did at any time formally return to her duties without any relevant restricted conditions. Those restrictions had been entirely consistent the disciplinary process. The evidence is unconvincing and confusing. If the Claimant was permitted to return on full duties in November 2021, it was a reflection only of the views of Mr Gillingham who had no involvement in the decision-making process and in all likelihood no insight into the detail of the allegations. Thus, his decision was not fairly reflective of the seriousness of the allegations or the belief of those making the disciplinary decision. In any event, the Tribunal is satisfied that the Disciplinary Panel, including Mr Hill, was not aware of such an event at the time that it made its decision to dismiss and it thus cannot materially impact on the decision making process.

122. The Claimant alleges (paragraph 1.3.7) that the process was predetermined, hence why there were two investigations and two appeal panels. The Conduct policy [331] defines an investigation as “the gathering of information relating to a conduct issue”. The policy refers to arranging “an investigation to establish the facts”. This does not circumscribe the specifics. It was not contrary to the express terms of the Conduct policy to commission the Grandfield Report. “An” investigation is capable of extending to the involvement of both the Smith Report and the Grandfield Report if, in the circumstances, it was genuinely felt that further investigation was required to be able to establish the facts. Mr Bird raised his concerns with his manager who agreed: the Tribunal accepts Mr Bird’s evidence that he had legitimate concerns that the Smith Report did not sufficiently address the evidence in the Audit Report as what the Audit Report had said was “starkly different”. It was not unreasonable to propose a second report. This was not evidence of pre-determination. The second report was sought from a wholly independent and experienced investigator; whose motivation or capacity to form her own conclusions was not challenged. That itself is inconsistent with predetermination.

123. The Second Appeal Panel was constituted because the first Appeal Panel was unable to reach a decision and was unwilling to consider the matter further. That undoubtedly created an uncomfortable situation. The Claimant contended that the second appeal was “not valid” because it had not been initiated by the Claimant. The Tribunal rejects that submission. The Claimant had initiated an appeal and no decision had been reached: the constituting of a second panel may go to fairness but does not in the Tribunal’s view impact on the “validity” of the Second Appeal Panel.

124. The Claimant contends that her dismissal should have been overturned in circumstances where the first Appeal Panel could not reach a decision. That may have been an efficient option to take, but it was not by any means the only option. Nor, the Tribunal concludes, would it have been a compelling option given that the Disciplinary Panel had concluded that the Claimant had committed an act of gross misconduct. Reverend Scott clearly showed sympathy towards the Claimant’s position but it is equally clear that the first Appeal Panel was unable to make a decision. In order to act reasonably, the Respondent was not required to re-instate the Claimant. The decision to



constitute a Second Appeal Panel was not, in those unusual circumstances, evidence of a pre-determined process or a motivation to achieve a desired result. The Tribunal notes that the Second Appeal Panel was a wholly independent and highly experienced panel, which, again is inconsistent with a pre-determined process. Yet further, the Tribunal was satisfied that Mr Tyndall was evidently capable of forming his own conclusion and was not likely to be swayed by ulterior or prejudiced considerations.

125. Was the decision to dismiss a fair sanction? To answer this question the Tribunal must ask itself whether the dismissal fell within the band of reasonable responses to the conduct in question which is open to an employer in that situation. This principle recognises that in a given disciplinary scenario there may not be a single approach available, and provided the employer chooses one of a potentially wider number of fair outcomes that would be lawful even if another employer in similar circumstances would have chosen an alternative option with different consequences. In some cases, one employer could decide to dismiss one another equally reasonable employer might only issue a warning.

126. In closing submissions on behalf of the Claimant, it was suggested that the reality was that the Respondent did not consider the sanction appropriately, such that although there had been some error on the Claimant's part, there was no real consideration of whether it was conduct that should have merited dismissal. It was submitted that there was no deliberate conduct on the part of the Claimant to evade the Finance policy or the procedures.

127. The Disciplinary Panel found that the Claimant, as an experienced Executive Head teacher, was well aware of the Finance policies of the Federation and of the requirement to make declarations of interest either in an annual declaration and/or at any relevant Governing Body meeting. It was no part of the Disciplinary Panel's finding that the Claimant had acted fraudulently but on the other hand, there was no dispute that the Claimant was well aware of Mr Lane's activities at the School and of his business interests in working with the firms that were providing work to the Schools and including her own shareholding in his business.

128. The Disciplinary Panel came to the conclusion that by not appropriately declaring those interests the Claimant had not upheld principles of integrity and accountability. That was, in the Tribunal's view, a reasonable conclusion for it to reach. A School ought to be able to take informed decisions about the risks that arise in respect of its expenditure of public money, and this plainly extended to being informed of "potential" risks as well as "actual" risks. Misconduct need not be deliberate. It may even be inadvertent, including serious omission or carelessness. A serious and persistent failure to comply with vital systems of disclosure can amount to misconduct.

129. The question of sanction was actively considered by the Disciplinary Panel. Mr Hill described the process of reasoning being one in which the Disciplinary Panel looked at sanctions "in reverse" which meant that they considered the sanctions in reverse order by looking at the lowest possible sanction and determining whether it was an appropriate sanction in the case of the Claimant. This consideration included the appropriateness of a warning and a potential demotion. Mr Hill gave evidence to the Tribunal that the Disciplinary Panel decided that in the light of the fact that the Claimant had failed to comply with the Nolan principles, persistently and in the face of extensive unchecked activity by Mr Lane, and in circumstances where the Claimant was the executive head

teacher and the issue had related to the appropriate use of public funds, the only fair outcome was that of dismissal. The Tribunal noted that Mrs Smith had previously concluded in her investigation that the Claimant had not acted purposely in failing to make a declaration and as a result the Claimant should be reinstated. In the Tribunal's view, that approach is liable to understate the significance of a failure to make a declaration given both the degree of trust and authority placed on the Claimant's leadership role and the consequent real risk to public money. That was a risk that transpired in this case, albeit due to (in the Claimant's own word) the Claimant's naivety. Such an approach does however indicate that an alternative outcome of a sanction short of dismissal might have been the decision reached by a different decision-maker.

130. That said, the relevant question for the Tribunal to answer is not to ask what it would have done or what other outcomes might have been available to the decision-maker. The question is whether this dismissal fell outside the range of reasonable responses. The Tribunal concludes that it did not. It was not outside the range of reasonable responses for the Disciplinary Panel to conclude that dismissal was the appropriate sanction for the Claimant's persistent failures over a long period of time to make appropriate declarations of interest.
131. Did the Respondent adopt a fair procedure? The Claimant has helpfully identified challenges that she has made to the procedure, as set out in the list of issues [57].
132. No unfairness arises from the fact that the Claimant was never told who had made the original complaint about her (paragraph 4.5.1). The original complaint was anonymous. The original complaint was the trigger for the Audit investigation. The investigation did not need to, and did not, include identification of the author of the original complaint.
133. The Claimant complains that the delay of 4 years resulted in the absence of evidence (paragraph 1.5.2). The Claimant appears to have measured the delay by reference to the anonymous complaint which was dated 7 September 2018. It was appropriate that there was a considered audit-style investigation and, given Mr Dangerfield's belief as to the potential seriousness, that the matter was then referred to the police. The police were involved from July 2019 and it was not until September 2020 that the police had allowed a parallel employment disciplinary investigation to get underway. Reasons for delay are relevant in terms of the Tribunal's consideration of overall fairness. Mrs Smith acted promptly but so did Miss Grandfield, who delayed her report in January 2021 in anticipation of the Claimant engaging in the process once the police had indicated (as they did in February 2021) that there would be no criminal prosecution. The resulting Reports (in other words, the Audit Report and Grandfield Report) were heavily based on documentary evidence. The Claimant acknowledged in her evidence to the Tribunal that she had access to the documents relied on. A case which is predominantly dependent on documentary evidence mitigates the effect of memories fading with the passage of time. The Claimant, in her appeal, refers to an individual who had since passed away, who had managed projects at the Schools. The Tribunal is not satisfied that person's evidence would have materially impacted on the underlying findings as to the Claimant's knowledge of the activities of Mr Lane and his business. The Claimant complains of the time delay as part of her submission to the Disciplinary Panel, at paragraph 7 [524], but principally in terms of a general loss of recollection due to the lapse of time.

134. The Tribunal has taken into account the reasons for the delay. Crucially, and having regard to the fact that the documents referred to in the Reports were accessible by the Claimant and underpinned the allegations that the Claimant faced, the Tribunal concludes that there was no material obvious prejudice to the Claimant given that she remained able to put forward a defence to the allegations.
135. The Claimant complains that the matter was referred to the police before interviewing the Claimant (paragraph 1.5.3). Mr Dangerfield recommended to the Statutory Officers Group at GCC that it was passed to the police. He had investigated the matter and plainly had concerns as to the criminal potential of the allegations. In those circumstances, it was entirely appropriate that the police should be contacted and to await their advice before proceeding with any internal disciplinary process or interview with the Claimant. Although it caused delay, the police investigation took priority. Mr Dangerfield's recommendation and the decision to pass to the police before contacting the Claimant was appropriate and not unreasonable. It is not a matter that goes to the fairness of the process or of the decision to dismiss.
136. The Claimant complains that there was no provision in the Conduct policy for a second investigation (paragraph 1.5.4) and that GCC insisted that they were to appoint the second investigator (paragraph 1.5.5). The decision to instruct Miss Grandfield to conduct an external independent investigation was not contrary to the express terms of the Conduct policy. While the policy provided for "an" investigation, it does not circumscribe specifically what amounts to an investigation. The conclusion that Mrs Smith had not provided an objective and balanced report was a reasonable conclusion to reach: rather than undertake an objective analysis of the facts set out by the Audit Report, the conclusions of the Smith Report evidence that it placed undue weight on the issue of whether the Claimant had acted deliberately and on perceived shortcomings in the conclusions of the Audit Report. In Westminster City Council v Cabaj, above, it was held that even if there was a contractual failure, a finding of unfair dismissal was not inevitable. The Claimant was not denied a reasonable opportunity to defend the allegation and to show that her conduct was not sufficient to justify her dismissal. The role of the GCC is to offer advice, even if forcefully delivered, and the Federation was bound to consider the advice. Given the genuine concerns of Mr Bird and Mr Parkin, it was appropriate to advise the Federation to continue the investigation by appointing an independent and experienced external investigator.
137. The Claimant complains that GCC wanted to commission investigations until it got the result they wanted (paragraph 1.5.6). The Tribunal finds that GCC advised the Federation to carry out an independent external investigation. Miss Grandfield was an independent and experienced investigator. Even if forceful, that advice does not evidence that GCC wanted a specific result, in other words, that it wanted the Claimant's dismissal. Mr Bird emphasised that the Claimant was a strong Headteacher and that he did not have any pre-conceived motive to form any view about the Claimant. The reason why "a second opinion" was promoted by GCC was because of legitimate concerns about the balance and objectivity of the Smith Report.
138. The Claimant complains that the bias tainted the disciplinary panel (paragraph 1.5.7). The Disciplinary Panel was made up of two governors of the Federation and an independent governor. The Tribunal is satisfied that the Disciplinary Panel was not biased. Mr Hill was a governor appointed by the local authority. That fact does not indicate bias, actual or perceived. The fact that the composition of the Disciplinary Panel

took place in unusual circumstances and in the face of opposition from the Chair of the Governing Body at the time does not indicate bias, actual or perceived. The original proposal suffered from the disadvantage that there might be a perception of bias. This was fully aired at a meeting on 14 April 2021 [338] by Mr Spencer. Mr Spencer was undoubtedly forceful at that meeting but the stated concern was that governors with longstanding knowledge of the Claimant might be seen to be biased. The eventual proposal [343] was to appoint James Hill and Amanda Chong, “those two you could make a reasonable case for attending as they are far removed from it and they are relatively independent” and in addition an external experienced governor. The Tribunal finds that the Disciplinary Panel was not tainted by any bias, actual or potential. Their appointment tended if anything to reduce the potential for bias in the decision making.

139. The Claimant complains that the first Appeal Panel was unable to make a decision and because it was not able to say it was reasonable to dismiss, the benefit should have been given to the Claimant and she should not have been dismissed (paragraph 3.5.8) and that the second appeal panel was constituted in order to obtain GCC’s desired result which was the dismissal of the Claimant (paragraph 1.5.9). The Tribunal finds that it was reasonable to constitute the Second Appeal Panel given that the Disciplinary Panel had concluded that the Claimant had committed an act of gross misconduct and the First Appeal Panel was unable to make a decision and was unwilling to consider the matter further. In order to act reasonably, the Respondent was not required to re-instate the Claimant. The decision to constitute a Second Appeal Panel was not, in those unusual circumstances, because of any motivation to achieve a desired or predetermined result. Mr Tyndall showed himself to be a highly experienced governor who was capable of forming his own conclusions without direction or pressure from outside.
140. Having regard to all of these features, the Tribunal is not satisfied that the procedure was unfair. The Tribunal therefore finds that dismissal was within the range of reasonable responses and that the dismissal was both procedurally and substantively fair. The claim for unfair dismissal is not well founded and is dismissed.
141. In light of the Tribunal’s conclusions that the dismissal was fair it is not necessary for the Tribunal to make findings on the questions of contributory conduct or Polkey. Notwithstanding, the Tribunal noted the Claimant’s acknowledgement in the course of evidence that she recognised that, in hindsight at least, she should have made declarations of interest. The reason she did not do so in essence because it was her understanding that her husband “was not paid” in respect of his involvement in Schools whereas, in her words, “I can now see how my husband has been paid”. In oral closing submissions, Mr Currie on behalf of the Claimant recognised likely contributory fault given that the Claimant conceded that she ought to have made declarations. Mr Currie’s recognition was appropriate and pragmatic and reflected the fact that the conduct alleged did not depend on the Claimant knowing that her husband had in fact been paid but instead upon the facts that the Claimant was a highly experienced Executive Head teacher who had ample knowledge of Mr Lane’s involvement in the Schools.
142. The requirements of declarations of interest are integral to the proper running of a School. The Tribunal would have found that the Claimant’s persistent failure to make appropriate declarations of interest was blameworthy and did cause or contribute to her dismissal such that it would have been just and equitable to reduce any award that the Claimant would have received by a significant extent. The Tribunal would have found that an appropriate reduction was 75%.

Wrongful Dismissal

143. Turning to the claim of wrongful dismissal, the Tribunal reminds itself that the test that the Tribunal has to apply in a wrongful dismissal case is different to that in an unfair dismissal case. It is not a question of belief or reasonableness, but rather whether the Claimant's conduct amounted to a fundamental breach of the contract of employment.
144. The Claimant's failures to make appropriate declarations of interest went to the root of her relationship with her employer. This takes account of the role held by the Claimant and the nature of her work undertaken at the Federation and in respect of her responsibility for building projects. The Claimant was a highly experienced Executive Head teacher and, in that role, the Claimant was responsible for setting standards in the Schools and for advancing the Nolan principles of public life.
145. The Claimant failed to discharge her responsibility to make a declaration not just in respect of an "actual" conflict situation but also in respect of those matters where there may be an appearance of conflict. The Claimant did not require a warning or similar to emphasise the crucial importance of declarations of interest. Given the significant extent of Mr Lane's involvement in the Schools and the obvious potential for financial conflict, the Claimant's conduct was such as to undermine the relationship of trust and confidence between herself and her employer.
146. Despite that, the Tribunal noted that Mr Hill and Mr Tyndall gave evidence that was consistent. The key concern was whether the Claimant failed to declare an interest, and it was not about whether the Claimant had benefited personally or had acted dishonestly. The Tribunal finds that the Respondent has not discharged the burden of proving that, looked at objectively, the conduct of the Claimant clearly showed an intention to abandon and altogether refused to perform the contract. The Claimant valued her leadership role and did not act deliberately so as to damage that. Her actions may have been misguided or perhaps, using the Claimant's own description, naive, but applying principles of contract law, this did not amount to a repudiatory breach of contract.
147. The claim for wrongful dismissal is well founded and succeeds.
148. The Claimant is entitled to notice of termination of employment in accordance with the terms of her contract. In closing submissions, the Respondent indicated that the default provisions of section 86 of the ERA may apply thus giving the Claimant 12 weeks' notice entitlement. The Tribunal heard no argument on the point but it is likely to be something that the parties can resolve without the need for a remedy hearing. The Tribunal directs that the parties should inform the Tribunal within 28 days of this judgement being sent to the parties of the settlement of the claim or the requirement for a remedy hearing.

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**EMPLOYMENT JUDGE BEEVER**

**Dated: 27 October 2023**

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**JUDGMENT SENT TO THE PARTIES ON 22 November 2023**

**FOR THE TRIBUNAL**

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