



EMPLOYMENT TRIBUNALS

Claimant: R DAVEY

Respondent: LEARNING CURVE GROUP

Heard at: Watford Employment Tribunal (in person)

On: 9, 10 and 11 December 2024

Before: Employment Judge Din (sitting alone)

Appearances

For the Claimant: Representing himself

For the Respondent: J-P van Zyl, Square One Law

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The Claimant's claim for unfair dismissal is dismissed;
2. The Claimant's claim for breach of contract for dismissing the Claimant without notice (wrongful dismissal) is dismissed; and
3. The Claimant's claim for breach of contract in respect of unpaid wages is dismissed, as the sums in question were paid to the Claimant.

REASONS

Introduction

1. The Claimant was employed by the Respondent with continuous service from 1 September 2020.
2. The Claimant was initially employed by APCymru Ltd, trading as the Military Preparation College, under the banner of the Motivational Preparation College for Training (**MPCT**). The Claimant was transferred to the Respondent under the

Transfer of Undertakings (Protection of Employment) Regulations 2006 on 2 November 2021.

3. The Claimant was latterly employed as a Centre Manager at the Respondent's military academy in Aldershot (**Academy**), having previously been a Training Instructor and then a Lead Training Instructor at the Academy.
4. The Respondent is a training and education business working with further education providers, employers and learners to deliver qualifications, including in relation to preparation for military service and entry to the uniformed services. As part of this, the Academy provides military preparation for learners in the age range 16 years to 19 years who are considering the military or fitness sector as a potential career.
5. The Claimant was dismissed for gross misconduct on 8 June 2023.
6. Early conciliation started on 16 May 2023 and ended on 27 June 2023.
7. The claim form was received by the Tribunal on 1 July 2023. In that claim form, the Claimant stated that he is making a claim of unfair dismissal. The Claimant further said that he is owed arrears of pay and other payments. As well as those claims, the Claimant stated that he is making another type of claim (to the other options set out in the claim form). Within the relevant box in the claim form, the Claimant put:

“Mental health discrimination. Lack of welfare, support, training and qualifications to do the role leading to reasoning for dismissal.”
8. Attached to the claim form, the Claimant set out further background and details of his claim. The Claimant claims compensation.
9. The Respondent provided a response, with attached Grounds of Resistance dated 4 August 2023. The Respondent denies the claims.
10. On 13 November 2023, the Tribunal sent the parties a notice of a hearing to take place on 19 December 2023.

Preliminary hearing – 19 December 2023

11. A preliminary hearing before Employment Judge Ord took place on 19 December 2023.
12. At that hearing, the claims and issues were clarified. Further, various case management orders were made.
13. A final hearing was set for 13 and 14 May 2024.

Preliminary hearing – 13 May 2024

14. A further preliminary hearing was held on 13 May 2024 before Employment Judge Partington.

15. The final hearing was moved to 9, 10 and 11 December 2024.
16. The parties agreed that the claims and the list of issues set out in the record of the preliminary hearing of 19 December 2023 were correct. These consisted of unfair dismissal and breach of contract (wrongful dismissal and unpaid wages). Further case management orders were made.

Application to amend and disclosure

17. On 26 August 2024, the Claimant made an application to amend his original claim. The Respondent provided a response on 2 October 2024.
18. On 5 December 2024, Employment Judge Shastri-Hurst informed the parties that the Tribunal had seen all the correspondence on file and proposed to convert the first day of the final hearing to a case management hearing to deal with outstanding matters that need to be resolved, including the Claimant's application to amend his claim and any disclosure issues.
19. The remaining material disclosure issues were dealt with by the parties during the course of the final hearing. Accordingly, the outstanding preliminary issues for decision concern the proposed amendments to the Claimant's claim.

Application to amend

Background

20. On 26 August 2024, the Claimant applied to amend his claim to add the following claims:
 - 20.1 Unfair dismissal for a protected disclosure under section 103A of the Employment Rights Act 1996 (**ERA 1996**) (**Automatic Unfair Dismissal Claim**);
 - 20.2 Detriment under section 47B of the ERA 1996 (**Protected Disclosure Detriment Claim**).
21. The Claimant's reasons why the amendments should be allowed are that he has become aware of more relevant facts and has received further legal advice since the time of his claim form.
22. The Respondent objects to the additional claims. In its response to the Claimant's application dated 2 October 2024, the Respondent stated that the Claimant did not refer to any protected disclosures in his claim form, nor referred to such in the subsequent case management hearings. The Respondent adds that the evidence it has produced for the final hearing is directed at the issues agreed by the parties at the case management hearings, and not to the new proposed claims.

23. The Respondent now acknowledges that the Automatic Unfair Dismissal Claim could potentially be regarded as a change of label with respect to the Claimant's existing claims.
24. However, the Respondent does not see this with respect to the Protected Disclosure Detriment Claim. It is wholly new and is not articulated properly by the Claimant. Further, the Respondent denies that new facts have come to light recently that give rise to grounds for such an application to be granted.

Decision

25. The Tribunal's decisions in relation to the application were given at the final hearing, along with detailed reasons. These reasons are summarised below.
26. When deciding whether to grant an application to amend, the Tribunal must carry out a balancing exercise of relevant factors, having regard to the interests of justice and the relevant hardship that would be caused to the parties by granting or refusing the amendment. This is founded on the case of *Selkent Bus Co Ltd v Moore* [1996] ICR 836 and subsequent cases.
27. The issue of unfair dismissal and the reason(s) for that unfair dismissal are already a part of the proceedings and the evidence. The Tribunal looks at the Claimant's application with that in mind. The Tribunal is also mindful of the fact that the Claimant is representing himself, albeit that he has had the benefit of legal and other advice at certain points in the proceedings.
28. As the Respondent acknowledges, the proposed Automatic Unfair Dismissal Claim appears to be a relabelling of parts of the Claimant's existing claims. Applying the *Selkent* principles, the Tribunal allows this amendment to proceed. This is because the *Selkent* balance falls in favour of allowing the Claimant's amendment.
29. By contrast, the Tribunal does not see particularised evidence in relation to the Protected Disclosure Detriment Claim. There is some material in the Claimant's witness statement that he refers to, but it is inadequate.
30. Specifically, there are insufficient particulars provided with respect to any actual detriment suffered following the alleged protected disclosures. There is some help in the Claimant's witness statement. However, more is needed in order to bring a fully formed claim in this regard. In particular, there needs to be more specificity about the link between each alleged protected disclosure and the alleged detriment (short of dismissal) that is said to have followed.
31. In light of this, and at this late stage of the proceedings, the Respondent has not had the opportunity to respond to the Protected Disclosure Detriment Claim and the Tribunal will be unable to make a proper assessment of that claim at this final hearing.
32. Accordingly, and applying the *Selkent* principles, the Tribunal does not allow the addition of the Protected Disclosure Detriment Claim. This is because the *Selkent* balance falls in favour of not allowing the amendment.

Evidence and other materials

Bundle of documents

33. There is a 1,585 page bundle setting out relevant materials (**Hearing Bundle**).
34. The Tribunal is also provided with 25 pieces of recorded media. No transcripts are provided.

Witness statements

35. The Tribunal has a witness statement from the Claimant and the Tribunal heard from him.
36. The Tribunal has the following witness statements for the Respondent:
 - 36.1 Justin Edwards, a Regional Operations Manager at the Respondent.
 - 36.2 Hannah Marshall, Chief Technology Officer at the Respondent;
 - 36.3 Donna Briggs, the Head of Happy People and Development at the Respondent;
 - 36.4 Gail Crossman, a Non-Executive Director of the Respondent;
37. The Tribunal heard from Mr Edwards, Ms Marshall, Ms Briggs and Ms Crossman.

Claims and issues

38. The claims and issues are as follows. These are as agreed by the parties at the case management hearing on 13 May 2024 (and confirmed subsequently), along with the additional Automatic Unfair Dismissal Claim, with accompanying issues.

Claims

39. The Claimant states that:
 - 39.1 He was unfairly dismissed;
 - 39.2 He was wrongfully dismissed;
 - 39.3 The Respondent committed a breach of contract relating to unpaid wages.

Issues

40. The issues for the Tribunal to determine are as follows.

Unfair dismissal

41. What was the reason, or if more than one, the principal reason, for the Claimant's dismissal?
42. Was the reason, or if more than one, the principal reason, for the Claimant's dismissal that the Claimant made a protected disclosure? If so, the Claimant will be regarded as automatically unfairly dismissed.
43. Otherwise:
 - 43.1 Did the Respondent have a genuine belief that the Claimant was guilty of the conduct alleged?
 - 43.2 At the time the Respondent formed that belief, did it do so on the basis of a sufficient investigation into the matters alleged?
 - 43.3 Did the Respondent have reasonable grounds on which to sustain that belief?
 - 43.4 Did the Respondent dismiss the Claimant for the conduct found and for no other reason?
 - 43.5 Was the decision to dismiss within the range of responses open to a reasonable employer?
 - 43.6 If the dismissal was procedurally unfair, what was the prospect of the Claimant being dismissed had a fair procedure been followed?
44. If the Claimant was unfairly dismissed, to what financial compensation is he entitled?
45. Should any such compensation be adjusted upwards or downwards for any failure to comply with the terms of a relevant ACAS Code of Practice?

Wrongful dismissal

46. If the Claimant was not paid for his notice period, did the Claimant do something so serious that the Respondent was entitled to dismiss him without notice?

Unpaid wages

47. Was the claimant due any sum for unpaid wages at the time he was dismissed (including any short paid wages)?

Law

Unfair dismissal

48. Section 94 ERA 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111 ERA 1996. The Claimant must show that he was dismissed by the Respondent under section 95 ERA 1996.

Dismissal

49. There is no dispute that the Claimant was dismissed by the Respondent.
50. The next stage is for the Tribunal to consider the reason for the dismissal, and if appropriate, the question of fairness.

Reason for dismissal and fairness

51. The Tribunal must decide what was the reason, or if more than one, the principal reason for the dismissal.
52. In the case of *Abernethy v Mott, Hay & Anderson* [1974] ICR 323, it was said that “A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee”
53. Where the reason is made for more than one reason, the Tribunal must identify the principal reason. Reasons that are not the principal reason do not have a bearing on the outcome.
54. Under section 103A ERA 1996, an employee who is dismissed shall be regarded as automatically unfairly dismissed if the reason, or, if more than one, the principal reason, for the dismissal is that the employee made a protected disclosure. The meaning of a protected disclosure is set out in section 43A ERA 1996.
55. If the dismissal is not automatically unfair, section 98 ERA 1996 deals with the fairness of dismissals. There are two stages within section 98 ERA 1996. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2) ERA 1996. Second, if the Respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the Respondent acted fairly or unfairly in dismissing for that reason.
56. Section 98(4) ERA 1996 deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether, in the circumstances (including the size and administrative resources of the employer’s undertaking), the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.
57. In misconduct dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) ERA 1996 in the decisions in *British Home Stores Ltd v Burchell* [1978] IRLR 379 and *Post Office v Foley* [2000] IRLR 827. The Tribunal must decide whether the employer had a genuine belief in the employee’s guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation.

58. In all aspects of the case – including the investigation, the grounds for belief, the penalty imposed, and the procedure followed – in deciding whether the employer acted reasonably or unreasonably within section 98(4) ERA 1996, the Tribunal must decide whether the employer acted with the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made. Critically, the Tribunal must not substitute its view for that of a reasonable employer (see *Iceland Frozen Foods Limited v Jones* [1982] IRLR 439, *Sainsbury's Supermarkets Limited v Hitt* [2003] IRLR 23, and *London Ambulance Service NHS Trust v Small* [2009] IRLR 563).
59. More will be expected of a reasonable employer where the allegations of misconduct, and the consequences to the employee if they are proven, are particularly serious (see *Salford Royal NHS Foundation Trust v Roldan* [2010] IRLR 721).
60. Any relevant Code of Practice must be taken into consideration by the Tribunal insofar as its provisions are relevant. The most relevant here is the ACAS Code on Disciplinary and Grievance procedures (**ACAS Code**).

Breach of contract

61. An Employment Tribunal can deal with breach of contract claims under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.
62. With respect to summary dismissal and a potential breach of the employment contract as a result, the Tribunal must decide whether an employee's conduct placed them in a fundamental or repudiatory breach of contract. The Tribunal must make a finding about that objectively for itself, based on the evidence presented to it.

Relevant findings of fact

Background

63. On joining the Respondent, the Claimant was employed as a Training Instructor. He was promoted to Lead Training Instructor in May 2022. On 1 August 2022, the Claimant became the Academy's Centre Manager.
64. Also on 1 August 2022, the Claimant was granted a 12-month leave of absence as a result of his mobilisation with the Armed Forces. Following an injury, the Claimant returned to work with the Respondent on 12 September 2022.
65. At the relevant time, the Respondent employed two other Training Instructors at the Academy, Liam Oldroyd and Gopal Gurung. The Respondent also employed a Learner Support Coach at the Academy, Victoria Evans.

Working environment

66. The Claimant taught young adult learners, typically aged between 16 and 19 years old.
67. The environment was heavily military orientated, featuring morning parades, inspections, physical training and military lessons led by instructors.
68. The Claimant referred the Tribunal to a BBC documentary about basic training in the Army, as evidence of the approach taken by the Army, which the Claimant says was replicated at the Academy. The Claimant states that he, Mr Oldroyd and Mr Gurung served a collective total of 51 years with the military. They were, according to the Claimant, from military backgrounds, recruited by the Respondent to be military training instructors in a military environment.
69. The Claimant states that the instructors displayed behaviour that was typical of military training settings, *“including shouting, swearing, but...never aggressively”*.
70. The Claimant says that the Academy thrived during his time there. It received a positive Ofsted report and was chosen by MPCT and the Respondent for public relations purposes. Further, there were never any issues with his conduct until the incidents that led to his dismissal.

Education training

71. The Claimant was not required by Ofsted to have any formal teaching qualifications, and did not have such qualifications. The Claimant did not require a formal teaching qualification due to his occupational experience.
72. The Claimant states that he did not receive formal educational training, including when he was moved to the post of Centre Manager. The Claimant states that he asked for the Level 3 Award in Education and Training (**AET**) on numerous occasions. The Respondent acknowledges that it is its internal policy to put all of its teaching staff through the AET at the *“earliest opportunity”*. The Claimant was not put through this qualification.
73. The Claimant had been registered for an AET qualification on 13 June 2022 and invited to attend a course on 23-24 June 2022. However, the Claimant could not attend due to annual leave, and he was then mobilised at the end of July 2023. He was subsequently due to attend a course in March 2023, but was suspended.

MPCT Safeguarding and Health and Safety Handbook (**Handbook**)

74. The Handbook states that humiliation; abusive, bad language; and touching *“must be avoided”*. It goes on to say that *“The instructor must never strike a learner”*. It further says *“MPCT staff should never...” “Contact or touch learners in an inappropriate or aggressive manner” or “Use inappropriate language or allow learners to use inappropriate language unchallenged”*.
75. The Handbook says that *“Failure to comply with H&S duties, regulations, work rules and procedures regarding any H&S, on the part of the employee, will lead*

to investigation and where required disciplinary procedures taking place". It goes on, *"In the case of serious breaches of H&S duties or in the event of repeated breaches of less serious issues dismissal may be instant"*. "H&S" is defined as *"Health & Safety"*. No point was taken as to whether or not this includes safeguarding. The Tribunal finds that it did include safeguarding.

76. The Claimant denies that he saw this document and states that he was not trained on it. In evidence, the Claimant acknowledged that there was not anything above that was not common sense or reasonable. He also agreed that he would not want his children to be treated in a way that allowed these sorts of behaviours, albeit he would expect any teacher to be properly trained and qualified.
77. The Respondent's records appear to indicate that the Claimant received training on safeguarding in August 2020, September 2020, July 2021, October 2021 and November 2022. The Claimant says that the August date is before he started his employment (1 September 2020) so cannot be correct.
78. In respect of the other dates, the Claimant challenges the overall accuracy of the records and denies that training took place. The Claimant states that the only recorded safeguarding confirmation was dated November 2022. This consisted of 22 minutes and was done online at his home.

Alleged attempts to manage out the Claimant

79. In October 2022, the Respondent announced the launch of a Level 3 certificate in uniformed services. The Claimant states that he, again, asked to be put through the AET but was ignored. The Claimant alleges that the speed with which the Level 3 certificate in uniformed services was introduced and the lack of support that he received meant that he was being set up to fail.
80. The Claimant alleges that an attempt had been made in January 2023 to suspend him following unsubstantiated complaints from learners and this was part of efforts on the part of the Respondent to manage the Claimant out on performance grounds.
81. The Claimant states that throughout March 2023, he received text messages from Lee Winders, his line manager, telling him that the Academy was in the risk category for not submitting any work or submissions for the qualifications that the Claimant was responsible for. According to the Claimant, this is support for his contention that the Respondent was trying to manage him out. The Claimant says that this was despite numerous attempts by the Claimant to receive the appropriate training.
82. Reference is made by the Claimant to a text message from Mr Winders on 27 February 2023 saying *"...Aldershot haven't submitted any quals for L2 or L3 yet this month? Deadline is today and currently your showing nil? And will be added to at risk...Can we submit today?"*. There then follow further text messages between the Claimant and Mr Winders on the same topic.
83. The Claimant states that this is a criticism of his teaching. The Respondent disputes this, and says that it relates to reporting and administration, not

teaching. The Respondent denies that there was any attempt to manage out the Claimant on performance grounds.

Alleged protected disclosure

84. The Claimant states that he first raised an issue regarding the funding for study hours at a regional staff conference in February 2022. He states that he and his colleagues had been pushed to remove learners from one programme and re-add them as new learners to a new programme. The Claimant regarded this as improper.
85. The Claimant says that he raised this with Mr Winders. In an exchange of texts on 3 March 2023, following a discussion about marking learners as present (“P”) or absent (“U”), the Claimant said “*Aren’t we claiming for something not happening by doing that? I’ll change if that what you want me to do*”. Mr Winders said “*P if they turned up...U if they didn’t*”. The Respondent states that Mr Winders took the correct approach and there was not issue.
86. The Claimant also refers to an undated WhatsApp message from Mr Winders in which Mr Winders said “*Learner support Friday tomorrow please really promote this as I know UPS learners are behind so why not get some donuts on company card for the learners that come in. The way it works is invite 15 learners in and only 2 turn up we get the funding for 15 win win for your college funding*”.
87. The Claimant further states that he raised his concerns with Tim Williams, a senior member of the Respondent’s team. As part of the grievance process (see below), Mr Williams denied this and there appears to be no record of the meeting.
88. The Claimant provided details in relation to his allegations on this topic as part of his grievance on 9 May 2023 (see below).
89. The Claimant says that at no stage did his line manager point him towards the Respondent’s whistleblowing policy. Nor did any of the members of management who were involved in his disciplinary or grievance processes. Further, no-one from the Respondent addressed the concerns he had raised.
90. The Respondent denies that the Claimant made any protected disclosures. It further denies that the substance of the Claimant’s allegations in this regard are correct. The Respondent also denies that any alleged protected disclosures were the reason for the Claimant’s dismissal.

Initial allegations

91. On 22 March 2023, a parent raised a complaint of bullying against staff at the Academy. Following this complaint, an unannounced visit was made by Mr Winders to the Academy on 29 March 2023.
92. At that visit, Mr Winders was informed by Ms Evans that she had witnessed learners having their arms twisted and being spoken to in an aggressive manner by instructors. Ms Evans raised specific concerns with respect to the Claimant

and provided video clips showing allegedly inappropriate behaviour by the Claimant.

93. In light of the allegations, the Respondent made a referral to the Local Authority Designated Officer (**LADO**). The LADO informed the police.
94. The Claimant raises a number of issues regarding the allegations made against him. In particular, he states that they are based on points raised by Ms Evans who later said that she wanted the Claimant's job and had monitored and recorded the Claimant. He says that the points raised by Ms Evans were without substance and found to be untrue.
95. The Claimant also says that the issues, as alleged by Ms Evans and subsequently, were not logged by the Respondent as safeguarding issues contrary to the Respondent's policies. The Claimant says that this demonstrates that the Respondent did not regard the allegations as serious.
96. On 30 March 2023, the Respondent suspended the Claimant and Mr Oldroyd. The Claimant's suspension was confirmed in writing on the same day. The suspension letter confirmed that the Claimant was suspended on full pay pending an investigation into the allegations of gross misconduct which related to allegations of inappropriate behaviour towards learners. The letter went on to state that this was a potential breach of safeguarding policies and that the respondent had made a referral to the LADO "*as we are duty bound to do so*". It went on to say "*We are waiting for the [LADO] to confirm that we can carry out our internal investigation alongside any investigation they take*".
97. On 5 April 2023, the LADO told the Respondent to suspend its internal investigation pending a review by the police.
98. The Claimant states that he was informed by the police on 5 May 2023 that the police had a video showing physical contact between the Claimant and a 17 year old learner. According to the Claimant, the police informed him that no action was to be taken but that a Community Resolution would be imposed as a record. The police explained that a Community Resolution is not a criminal conviction or caution.
99. According to the Sentencing Council, a public body that is responsible for developing sentencing guidelines, a Community Resolution is an informal, non-statutory disposal used for dealing with less serious crime and anti-social behaviour where the offender accepts responsibility. The views of the victim (where there is one) are taken into account in reaching an informal agreement between the parties which can involve restorative justice techniques.
100. The Claimant says that this was the first time the reasons for his suspension had been explained. Again, according the Claimant, the police "*...additionally stated the video is clear that the learners have a good rapport with you, they laughed, joked and carried on with the lesson, a clear indicator no abuse was taking place beyond the isolated contact*".
101. On 9 May 2023, a parents' evening was held at the Academy. The Respondent says that a pre-prepared statement was read out by the relevant regional

manager, Matthew Thacker. Also at the meeting from the Respondent were Mr Winders and Simon Woller, a centre manager from a different location who was tasked with instructing the Academy learners in the Claimant's absence.

102. The Claimant alleges that Mr Woller, who, according to the Claimant, should have known nothing of the Claimant's suspension, had clearly been told details of it and was answering questions about it. The Claimant says that this was a breach of confidentiality. Further, Mr Woller revealed that the Claimant was the subject of a police investigation, and that the police had the Claimant's laptop and mobile phone. The Claimant says that this suggests that he was being investigated for something akin to child abuse.
103. In answer to a question at the parents' evening regarding the allegations, Mr Winders stated that "*we've been monitoring them for months*". The Claimant states that this demonstrates that there was a campaign to remove the Claimant that had been ongoing for some time.
104. The Respondent denies that anything inappropriate was said about the Claimant at the parents' evening. The Respondent further denies that there was any campaign to remove the Claimant.

Internal investigation

105. An internal investigation in relation to the Claimant's conduct was initially conducted by Neil McCluskey, a regional manager at the Respondent from a region outside the Academy's region. Mr McCluskey visited the Academy on 3, 4 and 5 April 2023 and interviewed over 18 people including Ms Evans.
106. At Ms Evans' interview, Ms Evans referred to the Claimant physically assaulting learners. She stated that the Claimant had slapped a particular learner, who the Tribunal will refer to as Learner A, around the head.
107. The Claimant states in evidence that Ms Evans' account was a deliberate exaggeration. It was a single incident. The Claimant further said he admitted to contact in the manner of a joke, and this was later confirmed by Learner A and his parents.
108. Ms Evans also referred to one learner being called "*Dipshit*" by the Claimant. The Claimant denies that this was improper and that Ms Evans was, again, exaggerating. The Claimant further says that Ms Evans made a reference to learners having their hands tied behind their backs and a number of other allegations – and these were found to be untrue.
109. It was following these interviews that the referral to the LADO was made and the internal investigation was paused on the instruction of the LADO. After the LADO stated that the Respondent could proceed with its internal investigation on 10 May 2023, it was taken over by Mr Edwards. The investigation concluded on 23 May 2023 and an investigation report was produced by Mr Edwards.
110. Mr Edwards states that he determined that there was enough evidence both in terms of physical evidence comprising videos and photographs, as well as

witness accounts, as to the Claimant's misconduct and possible gross misconduct.

111. As part of the investigation process, Mr Edwards held an investigation meeting with the Claimant on 19 May 2023. Notes of that meeting were prepared by an HR representative at the Respondent.
112. The Claimant makes a number of points regarding the investigation meeting. He states that he was only given two days to prepare for it. He had been sent a meeting invitation on 17 May 2023, and that was the first time he had been told what he had allegedly done. The Claimant said that a number of the allegations put to him could have been dealt with in advance if he had more time and access to information. Further, the meeting was conducted by Mr Edwards who, as well as being ex-military, was an ex-policeman who was experienced in "*interview tactics*". This was in contrast with Mr Oldroyd and Mr Gurung, who were interviewed by a centre manager (Mr Thacker).
113. The Claimant states that the meeting was conducted improperly. He states that he was subject to "*a barrage of interrogation questions*". Further, allegations were put to the Claimant "*...in an attempt to blind side me in to incriminate myself, such as drinking alcohol in the centre*". After reviewing Ms Evans' interview transcript, the Claimant believes that the investigation was to make the investigation fit Ms Evans's interview.
114. The Claimant says in his witness statement that the meeting lasted for two hours with no breaks. He alleges that it placed him under unnecessary stress. He complained about this the following day, but his complaints were dismissed.
115. During the investigation meeting, a video was played to the Claimant (**Video 1**). The video was, according to the investigation report, from 19 January 2023 and had been recorded by the Claimant. In the investigation report, there is a section headed "Summary of all written physical evidence" and "Video and Photo Evidence", there is a heading "(1) Physical & emotional abuse". This gives the following description of the video:

"Staff Davey is behind the camera recording learner activities. Staff Davey calls [Learner A] 'a fat fuck' for getting the drill wrong 4-6 secs on the video. 22 secs into the video it appears that staff Davey pushes [Learner A] into the wall before the learners carry on with the activity. 31 seconds into the video staff Davey strikes the learner on the back of the head to which the learner holds his head in discomfort & pain. Staff Davey then pushes the learner in the back at 40 seconds on the video and then at 46 seconds on the video call another learner a 'fucking bell end' for getting the drill wrong. This behaviour from staff to learners seemed very normal and [Learner A] confirmed this in his interview that it happens often if we (learners) do something wrong".
116. When the video was put to the Claimant at the investigation meeting, according to the notes, the Claimant said: "*...I over stepped the mark however because of the understanding of their culture there is much more of a squaddie relationships. You will tell me this is inappropriate however I don't think it is. It is banter. They are having a laugh as the video goes on. The police are taking no*

further action, writing a letter of reflection. I can read it out now. It is just a place of acceptance. I know it doesn't count for much if I was hurting someone intentionally I wouldn't be videoing it".

117. In answer to a question about the language used in Video 1, the Claimant said *"It is not a typical thing no, however it is not acceptable. There was no malicious meanings to my action. We are all laughing in the video, my language is awful in the video I know it is not right and not acceptable"*.
118. The Claimant says in his witness statement that he was confused by what was being said about Video 1. The Claimant had been told by the police that Learner A regarded the incident as a joke, it only occurred once and that the Claimant and Learner A had a good professional relationship. However, at the investigation meeting, a different version of events was being put to him.
119. In evidence, the Claimant said that the incident took place in a tight, enclosed room and the sound of the slap was amplified. The Claimant continues to deny that it was done in the manner alleged.
120. At the investigation meeting, the Claimant was also referred to a number of other instances where the Claimant had, according to Mr Edwards, used inappropriate language. The Claimant agreed that they were not appropriate. He went on to say *"It is just how I am; I treat them like my squaddies. I am fully accepting that I have crossed the line, however the more time I have gone on I do get it. I fully understand that I have lost my job. I don't want to be perceived of this abusive, racist person"*.
121. In evidence, the Claimant said that he talked to everyone in this way in a military environment. It was not the same as a school environment and the majority of the people that were there were adults.
122. In light of the evidence, Mr Edwards found that the evidence tended to show that the Claimant had admitted to striking a learner and had admitted to using inappropriate language. These were, in Mr Edwards's view safeguarding failings. He further stated that the language the Claimant had used towards a Nepalese learner in a further video could have racial undertones.
123. Mr Edwards concluded that the Claimant had a disciplinary case to answer.
124. A letter was sent to the Claimant on 2 June 2023 requiring him to attend a disciplinary hearing on 8 June 2023. This related to the following allegations:
 - 124.1 Failure to adhere to safeguarding procedures;
 - 124.2 Physical abuse or harm to learners;
 - 124.3 Using aggressive and intimidating behaviour towards learners e.g., using physical punishments and name calling toward learners;
 - 124.4 Inappropriate language used towards learners;

- 124.5 Racist language towards learners specifically using phrases with racial undertones.
125. Details in relation to each of the allegations were provided.
126. There were a number of other issues Mr Edwards investigated that did not, in his view, warrant further examination. These included concerns about the Claimant sleeping in the Academy, the consumption of alcohol, data breaches and an alleged inappropriate relationship with a female learner.
127. Mr Edwards states that the Claimant did not make any allegations to Mr Edwards that the Respondent had manipulated learning hours or claimed funding that it was not entitled to claim. Mr Edwards further states that he was not aware at the time that the Claimant had made any such allegations to anyone else at the Respondent.

Grievance

128. The Claimant raised a grievance on 9 May 2023. The Claimant's grievance related to the following:
- 128.1 Breaches of contract regarding pay;
 - 128.2 Gross negligence on the part of the Respondent in respect of:
 - 128.2.1 Failing to provide the Claimant with any training or support, including not having a first aid qualified person at the Academy in line with HSE guidance and / or the Respondent's internal policies;
 - 128.2.2 Failing to carry out a fire risk assessment on the building or having a trained fire warden on site;
 - 128.3 Breach of the Armed Forces covenant concerning lack of support and welfare before and after the Claimant's mobilisation;
 - 128.4 Failure to support the Claimant in the transition to Centre Manager;
 - 128.5 Failure to support the Claimant regarding his ability to teach without any formal teaching qualifications;
 - 128.6 Carrying on a biased and prejudiced disciplinary investigation in the allegations of gross misconduct against the Claimant, including breaches of confidentiality;
 - 128.7 Discrimination in respect of the Claimant's treatment by Mr Winders when compared with other colleagues;
 - 128.8 Misleading Ofsted during its inspection of the Academy in July 2022 regarding the Claimant's qualifications and experience;

128.9 The Respondent's funding data being incorrect, as was the manner in which the Respondent claimed certain study hours.

129. The Respondent's response to the Claimant's grievance is described in the section "Grievance hearing and outcome" below.

Disciplinary hearing and outcome

130. The Claimant resigned on 30 May 2023. He was informed that he was still subject to the Respondent's disciplinary procedure until his last day of employment.
131. A disciplinary hearing was held on 8 June 2023 and was chaired by Ms Marshall, with an individual from HR (Beth Carpenter) in attendance. The Claimant attended with a Union representative. The Claimant provided a letter for Ms Marshall to read in advance of the hearing.
132. Ms Marshall had not seen Mr Edwards's report. She was only aware of the concerns set out in the 2 June 2023 letter. Ms Marshall was aware that the Claimant had raised a grievance, but did not deal with the issues in that grievance – albeit she did invite the Claimant to refer to any evidence in the grievance that may be relevant to the disciplinary.
133. The Respondent had decided in advance of the disciplinary hearing, and had informed the Claimant, that it did not consider it reasonable or appropriate to ask then current learners to attend the hearing in person. The Claimant believes that this was because the Respondent did not want the Claimant to question the learners, and did not want to question the learners themselves. The Claimant was invited by the Respondent to send to the Respondent any questions he wanted to put to current learners. The Claimant did not send any such questions. The Claimant was also invited to have former learners attend the hearing as witnesses. No former learners were requested to appear.
134. The Claimant believes that Ms Marshall (and Ms Carpenter) were poorly prepared for the meeting as they appeared to think that the Claimant had been trained and had qualifications. Further, Ms Marshall had not read the MPCT safeguarding policy and found that it did not specifically mention swearing.
135. The disciplinary hearing was recorded and a transcript is part of the Hearing Bundle. Immediately following the hearing, the Claimant was summarily dismissed for gross misconduct. The Claimant was sent the written reasons for the decision on 12 June 2023.
136. Ms Marshall states that she was not aware that the Claimant had alleged that he had made protected disclosures or that he considered that he had been dismissed because he had made protected disclosures. Ms Marshall states that her decision to terminate the Claimant's employment was based on the allegations presented at the disciplinary hearing.
137. The allegations and Ms Marshall's findings are described below.

Allegation 1: Failure to adhere to safeguarding procedures

138. This allegation was fully upheld.
139. The Claimant confirmed that he had completed a Mandatory Refresher Course in 2022, and the modules included in the refresher were safeguarding and keeping learners safe in practice. Ms Marshall concluded that it was reasonable to suggest that the Claimant was aware of the Respondent's policies and procedures regarding safeguarding. She went on to conclude that the behaviours demonstrated in the video clips in evidence were in direct breach of those policies and procedures.
140. In any event, as Ms Marshall states in evidence, it appeared to her that "*...none of the explanations that the Claimant had raised detracted from the basic premise that he should not swear at or strike a learner and the he knew it was wrong to do so in this environment or any other*".

Allegation 2: Physical abuse or harm to learners

141. This allegation was fully upheld.
142. Referring to Video 1, Ms Marshall found that the Claimant was seen pushing Learner A into a wall and then striking the learner on the back of the head. Video 1 then shows further incidents in which the Claimant pushed the same learner in the back.
143. The Claimant accepted that his behaviour in Video 1 was inappropriate, but that it was "*banter*". The Claimant stated that it was unusual, albeit Learner A had said in a statement that he had been struck on the head three times that day. The Claimant challenged Learner A's evidence in this regard.
144. The Claimant stated that he treated learners as he would his Army "squaddies". He said that the behaviour would have been acceptable around other squaddies. Ms Marshall, who served in the military and instructed new recruits in a military setting, said that it is not acceptable to strike and use abusive language towards new recruits in the military, and she had not seen such behaviour in the military.
145. The Claimant further stated that he felt the support he had received from the Respondent was insufficient and questioned some of the witness evidence that was put before him.
146. Ms Marshall found that the allegation was substantiated and that it constituted gross misconduct. It breached the Respondent's "*Keep Learners Safe in Practice*" procedure, which states that someone in the Claimant's position should not:
- 146.1 Use any type of physical punishment in order to discipline;
 - 146.2 Make unnecessary physical contact with children or vulnerable adults;
 - 146.3 Issue or threaten any form of physical punishment.

147. The 12 June 2023 letter then stated “*We believe that it is always unacceptable for a child to experience abuse, be that physical or verbal...*”. It further said that the allegation is in direct breach of the Respondent’s disciplinary policy, specifically “*Serious conduct or negligence which places...learners...at risk of unacceptable loss, damage or injury*”.

Allegation 3: Using aggressive and intimidating behaviour towards learners e.g., using physical punishments and name calling toward learners

148. This allegation was partially upheld.

149. The 12 June 2023 letter referred to the following evidence:

149.1 Video 1 where the Claimant calls Learner A, a “*fat fuck*” and a “*fucking bell end*” for conducting a drill incorrectly.

149.2A further video where the Claimant calls a learner a “*fucking bell end*” and tells them to go away (**Video 2**).

149.3A video where a learner is on top of an ISO container. The Claimant appears to laugh at the learner and calls the learner an “*idiot*”, despite the learner appearing to be in distress (**Video 3**).

149.4A video where the Claimant tells two learners to kneel down and put their hands behind their backs. The learners are then told to race each other eating chocolates one by one (**Video 4**).

150. The Claimant confirmed that he filmed Videos 1, 2 and 4. He further confirmed that he was present when Video 3 was filmed.

151. At the disciplinary hearing it was acknowledged that bad language sometimes occurs. Ms Marshall stated that the language and name calling was directed at individual learners and that contravenes the Respondent’s “*Keep Learners Safe in Practice*” procedure. Specifically under that procedure, someone in the Claimant’s position should “*act as a role model*” and “*should not allow the use of inappropriate language to go unchallenged*”.

152. Ms Marshall’s conclusion was that this allegation was partially substantiated. This is because she did not believe that the Claimant’s intent was to intimidate or be aggressive towards the learners. Nonetheless, Ms Marshall did find that the Claimant had name-called learners and displayed behaviours that directly contravened the Respondent’s disciplinary policy. As such, this constituted misconduct, specifically “*poor conduct and behaviour*”.

Allegation 4: Inappropriate language towards learners

153. This allegation was fully upheld.

154. Ms Marshall found that throughout the videos referred to in evidence, it was established that the Claimant continuously used inappropriate language in front of and towards learners.
155. The Claimant had confirmed that he had been guilty of behaving more like a soldier than a Centre Manager. Further, at the disciplinary hearing, the Claimant admitted to using bad language in front of learners and that, according to the Respondent, understood why this was unacceptable.
156. In his witness statement, the Claimant states that “*On occasion I used language some would deem inappropriate*”, but he referred to his 18 years in the Army and his being a military instructor in a military environment.
157. Ms Marshall found that this allegation was substantiated and that it constituted gross misconduct.

Allegation 5 – Racist language towards learners specifically using phrases with racial undertones

158. This allegation was dismissed.
159. Ms Marshall referred to two pieces of video evidence:
 - 159.1 A video where, during a military training session, learners are seen crawling through a low flowing stream with a ditch. The Claimant makes a comment to a Nepalese learner “*you may as well keep crawling because it’s like being back in your natural habitat*”. The Claimant tells a learner to “*stop pulling little bitch faces*” and then calls the Nepalese learner a “*fucking prick*” for going the wrong way (**Video 5**).
 - 159.2 A video where during a personal training session, the Claimant recorded two learners carrying out an exercise. The staff at the end of the video call the learner “*Dipshit*” rather than his similar sounding name (**Video 6**). In an interview, the learner in question stated that the Claimant often called him this.
160. Ms Marshall found that Allegation 5 was not substantiated and it was therefore not upheld.

Grievance hearing and outcome

161. Ms Briggs investigated the Claimant’s grievance and a grievance hearing took place on 25 May 2023.
162. Ms Briggs then met with a number of people to consider the Claimant’s allegations further. The Claimant believes his grievance was delayed so that the outcome would not be ready in time for his disciplinary hearing on 8 June 2023.
163. The written outcome of the grievance was sent to the Claimant on 14 June 2023. The key points are as follows.

- 163.1 The Respondent acknowledged that communication between the Respondent and the Claimant regarding a potential salary uplift on the Claimant's promotion to Centre Manager was unclear. The Respondent accepted that the lack of clarity had led the Claimant to believe that he would get a £2,000 pay increase with effect from 12 September 2022. Following the grievance, as goodwill gesture, the Respondent agreed that a pay rise of £2,000 that had taken effect from 1 February 2023 should be backdated to 12 September 2022. A payment was made to the Claimant on 30 June 2023 in light of this.
- 163.2 With respect to mobilisation, Ms Briggs stated that the Claimant had not asked for support. In any event, the Claimant had positively asserted that he was fit and wished to return to work at the time that he resumed his duties. Nonetheless, as a general point, a recommendation was made that all colleagues returning to work from a period of absence should be offered a return-to-work interview.
- 163.3 None of the other elements of the grievance were upheld.
164. The Claimant states that the grievance process was biased and the findings not properly substantiated.
165. In her witness statement, Ms Briggs states that she was not aware that the Claimant had made protected disclosures regarding funding and the alleged manipulation of guided learning hours. She did not refer the Claimant to the Respondent's whistleblowing policy.
166. She considered that the Claimant had received fire marshal training, as well as training in relation to the safeguarding and health and safety handbook, risk assessment and the certified military annual training test. The training records demonstrated this. Further, both the Claimant and Mr Oldroyd were competent to a high standard with respect to first aid.
167. In relation to the allegation that he was being set up to fail as a teacher, not least because he did not have the AET qualification, Ms Briggs took the view that the Claimant's teaching ability was not in question. He had been assessed as "*meets expectations*". Ms Briggs said that training instructors were regularly monitored and if there had been an issue, the Claimant would have been provided with personal support. This was not the case with the Claimant.
168. Ms Briggs further added in evidence that the Claimant and others were provided with general support in relation to the delivery of the Level 3 in uniformed services qualification. There was no evidence to suggest, in her view, that the Claimant was failing in his duties in this regard.
169. Ms Briggs stated that there had not been a breach of confidentiality at the 9 May 2023 parents' meeting. Mr Thacker had read a pre-approved statement and the statements made were accurate. There had been comments made about Mr Oldroyd at that meeting that have been put more carefully. However, they related to Mr Oldroyd and not to the Claimant. In relation to the Claimant, Ms

Briggs in evidence continued to deny that there had been any breach of confidentiality.

170. Ms Briggs considered the allegations about the investigation being biased and prejudiced. She did not find that there had been undue pressure on witnesses, or that there was a bias to substantiate what was said by Ms Evans. There had been a full investigation and it was found that there was a case to answer. The matter was then referred to a disciplinary hearing. The internal aspects were handled by impartial and independent people.
171. Ms Briggs found that there was no evidence to support the Claimant's allegation that Ofsted inspectors had been misled as to the Claimant's qualifications.
172. Ms Briggs stated in evidence that she spoke to Mr Williams regarding the Claimant's concerns about the integrity of funding data and claims for study hours. Mr Williams did not recall a meeting with the Claimant in this regard. Ms Briggs added that, although the Claimant had raised this issue as part of his grievance, he did not say that the allegations of inappropriate behaviour against him had been made or pursued because of the concerns he had raised.
173. In her statement, Ms Briggs further says that the Claimant alleged that the Level 3 certificate in uniformed services course was rushed out, that Level 2 learners were forced to take the Level 3 course and Level 2 learners were removed from the Academy and re-enrolled so that the Respondent could claim double funding for the academic year. Ms Briggs found that Level 2 learners were not forced to sign up to the Level 3 course. It was standard practice for a learner to complete one course and then move to another. This was not double funding or inappropriate conduct in this regard. She refuted the other allegations.
174. In contrast with Ms Briggs' view, the Claimant states that he made protected disclosures to Ms Briggs. In particular, he passed on the text messages of 3 March 2023 and the undated WhatsApp message from Lee Winders.
175. The Claimant has also taken the matter up with the NCFE (the relevant qualification awarding body), who the Claimant states supports his view. In addition, the Claimant refers to a court case between the Respondent and the previous owners of MPCT in which allegations are made regarding overfunding. The Claimant states that these allegations involved Mr Williams, Ms Briggs and others now at the Respondent.
176. In evidence, Ms Briggs stated that she had spoken to Mr Williams and Brian Edwards, Director of Military Academies. Ms Briggs was satisfied with what she had been shown. In short, it was not possible to double-claim for a learner, whatever qualification they were working towards.

Grievance appeal

177. On 15 June 2024, the Claimant appealed the grievance outcome. Rachel Butt, the Respondent's Director of Excellence, heard the appeal. A hearing took place on 10 July 2023. None of the grounds of appeal were successful and this was communicated to the Claimant on 20 July 2023.

178. The Claimant states that the appeal was not handled properly – and, in particular, Ms Butt did not look at all of the relevant evidence. The Respondent disputes this.

Disciplinary appeal

179. On 12 June 2023, the Claimant appealed his dismissal and set out his grounds of appeal.

180. Following extensive correspondence between the Respondent and the Claimant, it was not possible to arrange a convenient time for the appeal hearing to take place with the Claimant present, and the Claimant did not provide written submissions for consideration at the appeal hearing. In his witness statement the Claimant says “...*this meeting was, at my request done in my absence due to the failings in the grievance appeal*”.

181. The appeal hearing was held in the Claimant’s absence on 24 July 2023. It was chaired by Ms Crossman. In evidence, Ms Crossman confirmed that she had reviewed all of the items of evidence that were put before her, including listening to any recordings.

182. None of the grounds of appeal were accepted and the decision to summarily dismiss the Claimant was upheld. A letter setting out Ms Crossman’s decision and her reasons was sent to the Claimant on 26 July 2023.

183. The Claimant’s grounds of appeal and a summary of Ms Crossman’s findings in relation to them are set out below.

183.1 The Claimant stated that the investigation was corrupt. Ms Crossman found there was no evidence to conclude that the investigation was conducted in a way that was corrupt or dishonest. Both Mr McCluskey and Mr Edwards were impartial and did not have any prior involvement with the Academy. They were also not the decision-makers – the decision was made by Ms Marshall.

183.2 The Claimant stated that his mitigating circumstances were not considered. Ms Crossman confirmed that all evidence had been reviewed, including points raised in the grievance. Ms Crossman found that mitigation highlighted by the Claimant would not have significantly impacted or contributed towards a lesser sanction for the Claimant.

183.3 The Claimant said he was not allowed to call learners as witnesses. Ms Crossman stated that the Claimant was given the opportunity to bring witnesses to the disciplinary hearing. However, it was not appropriate for current learners to attend. It was possible for the Claimant to put forward questions for current learners, but the Claimant did not do so. Ms Crossman noted that the Respondent was not saying that learners did not appreciate the Claimant. The case was about specific incidents related to safeguarding. In evidence, Ms Crossman stated, as a safeguarding expert, she was aware that all learners can be vulnerable. As such, sometimes learners do not understand what is appropriate and

what is inappropriate. Learners can look up to teachers. In any event, the evidence that she did see spoke for itself.

183.4 The Claimant alleged that questions put to the Claimant at the investigation meeting were leading questions. Ms Crossman found that there were not leading questions, or that there was bias in the questions being asked. The questions were to establish facts, to clarify and to probe further into points.

183.5 The Claimant said that witness transcripts were false and had been edited or manipulated. Ms Crossman found that there had been some paraphrasing in the investigation meeting notes and an error with regard to what a learner had said. Ms Crossman concluded these did not fundamentally change the outcome of the disciplinary hearing.

183.6 The Claimant stated that the grievance policy had been breached. Ms Cross said that this was a matter for the grievance process.

183.7 The Claimant alleged that evidence was falsified. Ms Crossman noted that if the Claimant had attended the appeal hearing, further clarification on this point would have been sought as the allegation was not entirely clear. However, on the basis of what was before her, the point was not upheld.

183.8 The Claimant asserted that other staff were implicated in the misconduct. Ms Crossman noted that the treatment of other staff would involve separate processes.

183.9 The Claimant said that the Respondent's whistleblowing procedure was not followed by Ms Evans. He also stated that entrapment had taken place. Ms Crossman referred to a separate process in this regard.

183.10 The Claimant said that the investigation was not neutral or confidential and this was demonstrated by the parents' evening on 9 May 2023. Ms Crossman stated that the Respondent staff at that meeting had read from an approved script. More importantly, that meeting (or the script) had no bearing on the investigation.

183.11 The Claimant alleged that notification to him on 2 May 2023 of a cancelled Medicash policy (a health benefit offered by the Respondent to its employees) indicated that the dismissal was pre-determined. Ms Crossman found that an email had been sent to all staff cancelling the existing Medicash scheme, with an offer to join an alternative scheme. There was no evidence that this was a pre-emptive move around the Claimant's dismissal. In his evidence, the Claimant asserts that he was not asked to join an alternative scheme and no-one else received the email. Ms Briggs in her statement says that all relevant staff received the same email and it was not at all linked to his dismissal.

- 183.12 The Claimant alleged indirect discrimination relating to mental health due to lack of support on return from military service. Ms Crossman's fundamental conclusions were that, even if there was an issue here – which she did not think was the case – it would not have changed the Claimant's behaviour or conduct. In terms of support following the Claimant's return from mobilisation, this was dealt with as part of the grievance process.
- 183.13 The Claimant said that the evidence against the Claimant was mainly captured between September and November 2022, when his safeguarding refresher training was not carried out until November 2022. Ms Crossman said that it was established that there was enough training on the principles of safeguarding undertaken by the Claimant. In evidence, she says that the Respondent was entitled to expect a professional to read policies. Further, if the professional had confirmed that they had read policies, the Respondent was entitled to expect that the professional had read them.
- 183.14 The Claimant said his training record was inaccurate. Ms Crossman noted that this was an issue related to recording. To the extent that the record was incorrect, this should be taken up by the relevant people within the Respondent. However, it was not upheld as a ground of appeal.
- 183.15 The Claimant said that he was bound by the MPCT safeguarding policy, which did not mention swearing. Ms Crossman stated that there were clear directives that employees should not use bad language at or in front of learners, and specifically they should not strike learners.
- 183.16 The Claimant said the Respondent was selective in investigating safeguarding concerns. Ms Crossman stated that this related to others' processes and was therefore not relevant to the Claimant's appeal.
- 183.17 The Claimant said that the Respondent had failed to properly take into account that learners felt safe. Ms Crossman noted that a child may say they feel safe. However, the overriding principle was to look at this in the context of the actual behaviour and conduct of the person in question.
- 183.18 The Claimant said that each of his points had been ignored or dismissed. Ms Crossman acknowledged the large amount of material and stated that every piece had been reviewed. In her view, the evidence did not mitigate the fact that the Claimant struck a learner, the Claimant used bad language in front of them and towards them, and the Claimant had fundamentally failed to adhere to safeguarding procedures. Subsequent to the relevant events, the Claimant had made a disclosure that he was neurodivergent / had ADHD. However, the Claimant had acknowledged that it had no impact on his conduct or behaviour with respect to the matters in question.

184. In evidence, Ms Crossman confirms that she remains confident in the decision and that there had been a fair process.

Further allegations by the Claimant

185. In his witness statement, the Claimant makes further allegations regarding the Respondent. To the extent potentially relevant, these are summarised below.

186. The Claimant alleges that his line manager when he was with MPCT ran various businesses from the Academy, including providing staff for Nepalese and Indian weddings. As part of this, the line manager would use learners as staff for such events. In his witness statement, the Claimant refers to this as “*a...potential crime of child exploitation...*” and, although he reported this to the Respondent, the Respondent did not take any action. Ms Briggs, in her statement, says that she was not aware of any concerns in his regard, although learners were encouraged to take up part time employment as long as it was legal and appropriate.

187. The Claimant further states that the inadequate checks were made prior to Ms Evans joining in February 2021, and that nine months later her DBS checks had not been completed. In evidence, Ms Briggs states that Ms Evans’ DBS check took longer than usual, as she got married and had a different surname. Ms Briggs adds that while the DBS check went through, management would have been kept updated. Ms Briggs further says that Ms Evans’ DBS check came through.

188. The Claimant states that various other former employees of MPCT and the Respondent were treated differently to the Claimant even though they had been accused of serious misconduct:

188.1 One former employee (Matt Cox) was alleged to have inappropriately messaged female learners, but no suspension, disciplinary or reporting to the LADO followed.

188.2 Mr Oldroyd was able to resign with no further disciplinary action taken. The Claimant considers that Mr Oldroyd’s allegations list warranted reporting to the LADO, but this was not done.

188.3 Mr Gurung’s disciplinary process was suspended while his grievance was dealt with. Mr Gurung was stated by the Respondent to have been dismissed following a LADO recommendation. However, the Respondent had not reported the matter to the LADO.

188.4 Chris Couling was a centre manager who was suspended for sexual assault and other matters. The Claimant states that Mr Couling negotiated pay and holiday pay in return for his withdrawing his grievance. Despite, according to the Claimant, a crime being committed, Mr Couling was not reported to the police or the LADO by the Respondent. Ms Briggs in her witness statement says that there was not sufficient evidence to take Mr Couling’s conduct to a disciplinary hearing. She adds that a referral had been made to the LADO.

189. The Claimant alleges a number of instances of monitoring and attempts at entrapment, leading to a number of elements of the investigation carried out by Mr McCluskey and Mr Edwards.
190. The Claimant alleges that the Respondent had been in contact with DBS in retaliation for his issuing a claim form. The Claimant maintains this although the instruction to complete a DBS referral came from the LADO (and not the Respondent) on 20 July 2023.
191. In his witness statement, the Claimant states that he has reported the Respondent to the NSPCC, the LADO, Ofsted, the Department of Education, Ofqual and the DBS. He has also reported the matter to the Social Care Ombudsman and the Information Commissioner. The Claimant has further complained to the Office for Police Conduct as to the police's handling of the matter. He has also referred the Respondent's solicitors to the Solicitors Regulation Authority. The Claimant states that he is awaiting updates.

Discussions and conclusions

Unfair dismissal

192. There is no dispute that the Claimant was dismissed by the Respondent.

Reason for dismissal

193. The Tribunal must decide what was the reason, or if more than one, the principal reason for the dismissal.
194. It is the Respondent that must show the reason for the dismissal, and that it is one of the six potentially fair reasons set out in section 98(1) and 98(2) ERA 1996.
195. In this case, the Respondent relies on the conduct of the employee as the reason for the Claimant's dismissal under section 98(2)(b) ERA 1996. The Claimant states that the reason for the dismissal was that he made protected disclosures under 43A ERA 1996. During the course of his evidence, the Claimant also said the true reason for his dismissal (amongst other matters) was that the Respondent wanted to manage him out on performance grounds.
196. With respect to the alleged protected disclosures, the Claimant refers to a regional staff conference in February 2022, texts with Mr Winders on 3 March 2023 and an undated WhatsApp message, as proof of protected disclosures. The Respondent denies that these were protected disclosures. In the Tribunal's view there is insufficient evidence that these three instances (whether individually or in aggregate) could constitute protected disclosures as set out in ERA 1996. None are clear enough to constitute protected disclosures.
197. The Claimant further states that he raised concerns with Tim Williams, a senior member of the Respondent's team. As part of the grievance process, Mr Williams denied this. Again, in the absence of anything further, the Tribunal is of

the view that there is insufficient evidence that protected disclosures took place on the basis of this alleged meeting, or in combination with one of more of the three instances referred to in the previous paragraph.

198. The issues that the Claimant states are the subject matter of the alleged protected disclosures were raised in the Claimant's grievance on 9 May 2023. This was after the complaints about the Claimant's conduct were made, the investigation into that conduct had started, the LADO had been informed and the Claimant was suspended. As such, the Tribunal does not agree that the protected disclosures (as alleged) could have been the only or principal reason for the Claimant's later dismissal. There is an argument to say that the Respondent, and Ms Briggs in particular, should have directed the Claimant to the Respondent's whistleblowing process. However, this does not impact the Tribunal's finding as to whether the protected disclosures could have been only or principal reason for the Claimant's dismissal.
199. Further, the Tribunal has seen no evidence to suggest that Ms Marshall, as the decision maker in the disciplinary process, was influenced by the alleged protected disclosures. She was aware of the grievance. However, on the basis of the evidence, the alleged protected disclosures did not form any part of the allegations put before Ms Marshall as part of the disciplinary process following the investigation. Nor were they part of Ms Marshall's considerations or decision. Ms Marshall, was focused on the issues that were in the 2 June 2023 letter.
200. As such, the Tribunal accepts that the Claimant was dismissed for the matters set out at the end of the disciplinary hearing on 8 June 2023 and confirmed by way of a letter to the Claimant on 12 June 2023.
201. The Tribunal makes no finding as to whether the matters relating to funding raised by the Claimant were, in fact, protected disclosures under the relevant legislation or whether there is any substance to those allegations. The Tribunal has only examined whether those alleged disclosures could have been the reason (or the principal reason) for the Claimant's dismissal. The Tribunal has found that they were not.
202. As well as potential protected disclosures, the Claimant also alleges that the true reason for his dismissal was a campaign to manage him out, potentially on performance grounds. Again, these points did not form part of the allegations against him in the disciplinary process nor were they part of Ms Marshall's findings.
203. The overall issue of performance was examined as part of the Claimant's grievance. It was found that the Claimant's teaching ability was not in question. He had been assessed as "*meets expectations*" in his formal performance management assessment. Further, Ms Briggs (who examined the grievance) states that training instructors were regularly monitored and if there had been an issue, the Claimant would have been provided with personal support. This was not the case with the Claimant.

204. The only substantive evidence put forward by the Claimant of criticisms of his performance concern a text message from Mr Winders, his line manager, in March 2023 about submissions of certain data. In the Tribunal's view, this was about reporting data and not about (as the Claimant alleges) the Claimant's teaching performance. It does not, in the Tribunal's view, form a reason for the Claimant's dismissal.
205. The Claimant also points to a comment by Mr Winders at the parents' evening on 9 May 2023 that "*we've been monitoring them for months*" as evidence that the Respondent was on a campaign to remove him. It is unclear what Mr Winders' comment relates to. In itself, or with the other purported evidence in this regard, it provides insufficient evidence of the Claimant's contention. In any event, as outlined above, the investigation, disciplinary process and outcome did not reference these issues and stood on their own on the basis of the allegations set out in the 2 June 2023 letter.
206. Taking all of these matters into consideration, the Tribunal finds that the only or principal reason for the dismissal was conduct. There is insufficient evidence to suggest that the only or principal reason for the dismissal was because the Claimant made protected disclosures, because the Respondent wanted to manage out the Claimant on performance grounds or for any other reason.
207. As the alleged protected disclosures were not the only or principal reason for the dismissal, the Tribunal finds that the Claimant was not subject to automatic unfair dismissal under section 103A ERA 1996 as alleged by the Claimant.

Fairness - general

208. The Tribunal must now look at the question of fairness in further detail.
209. Misconduct is a potentially fair reason for dismissal under section 92(2)(b) ERA 1996.
210. In considering questions of fairness, the Tribunal has had regard to the size and administrative resources of the Respondent. The Respondent is a large organisation with a dedicated HR function and a set of, what appear to be, developed policies and procedures.
211. The Tribunal is conscious that more is expected of the Respondent in this case as the allegations of misconduct, and the consequences to the Claimant of their being proven, are particularly serious.
212. The Tribunal is also required to (and has) determined these matters in accordance with equity and the substantial merits of the case.
213. In addition, the Tribunal has considered the ACAS Code.
214. As set out above, the Claimant has made a large number of allegations regarding the fairness of his dismissal. The Tribunal only deals with the potentially relevant ones below.

Fairness – genuine belief

215. Taking into consideration the above points, the first question is whether the Respondent had a genuine belief that the Claimant was guilty of the conduct alleged. On the basis of the disciplinary process and Ms Marshall's evidence, the Tribunal finds that it did have a genuine belief that the Claimant was guilty of the conduct.
216. This is as set out in the record of the 8 June 2023 disciplinary hearing and the detailed letter to the Claimant that followed it on 12 June 2023. The Tribunal also refers to the points above regarding the only or principal reason for the dismissal.

Fairness – sufficient investigation

217. The Tribunal must consider whether, when the Respondent formed its belief that the Claimant was guilty of the conduct, it did so on the basis of a sufficient investigation into the matters alleged. The Tribunal finds that it did.
218. The Respondent conducted a comprehensive initial investigation. Both Mr McCluskey and Mr Edwards were independent of the Academy. Through Mr Edwards, the Respondent narrowed down the initial allegations, and the allegations that formed part of the disciplinary process were then passed to Ms Marshall for consideration and a final decision. On the basis of that, and an assessment of the evidence, she came to a reasoned outcome which was communicated to the Claimant in some detail in a letter on 12 June 2023.
219. The Claimant considers that the investigation and disciplinary processes were both flawed as they did not sufficiently taken into account learners' views and, in particular, learners' perspectives that the Claimant's actions were acceptable to learners. The Tribunal considers that it was reasonable for the Respondent to look at the Claimant's conduct objectively – learners may not be the best judges of what is and what is not appropriate conduct by the Claimant particularly in a safeguarding context. The Claimant did have the opportunity to put questions to current learners in writing as part of the disciplinary process, but did not take up this opportunity. In light of this, the Tribunal does not consider that the Respondent's actions were unreasonable.
220. The Claimant also makes a number of allegations regarding the evidence against him – including that witness transcripts had been manipulated and evidence had been falsified. The Tribunal does not find that the matters alleged, even if true, had a material impact on the disciplinary outcome.

Fairness – reasonable grounds to sustain belief

221. The Tribunal must decide whether the Respondent had reasonable grounds on which to sustain its belief that the Claimant was guilty of the conduct alleged.
222. The disciplinary process examined five key allegations. Of those, three were fully upheld (Allegations 1, 2 and 4), one was partially upheld (Allegation 3) and one was not upheld (Allegation 5).

223. The Tribunal has reviewed evidence that was put before Ms Marshall, and in particular the videos that form the foundation for Ms Marshall's findings.
224. On the basis of the evidence, and in particular the videos that were put before Ms Marshall, the Tribunal finds that the Respondent had reasonable grounds on which to sustain its belief that the Claimant was guilty of the conduct alleged.

Fairness – procedure

225. The Tribunal finds that the procedure that was applied to the Claimant was fair. The Respondent acted fairly by giving the Claimant sufficient details of the allegations and evidence against the Claimant in enough time before the disciplinary hearing to enable the employee to have a fair chance to respond. The investigation and disciplinary processes were conducted by sufficiently independent people. There was separation between the investigation and the disciplinary processes, such that Ms Marshall was only made aware of the matters that warranted examination as part of the disciplinary process. Further, the Claimant was given a right of appeal to another person (again independent) as he was dissatisfied with the decision. There is insufficient evidence to say that the appeal was conducted unfairly. The results of the appeal were communicated in some detail to the Claimant.
226. The Claimant has said that the first time that he became aware of the substance of the allegations against him was in May 2023 when he was told by the police that the police had a video showing physical contact between the Claimant and a learner. The Tribunal does not consider that this materially impacted the procedure. The Claimant still had sufficient time and opportunity to consider the allegations against him and to provide a response prior to the disciplinary process and the decision to dismiss.
227. The Claimant also states that there was a breach of confidentiality at the parents' evening on 9 May 2023. There is reference to the Claimant at that meeting, in particular that his laptop and mobile phone had been taken by the police. Although there can be criticism of what was said at the meeting, both with respect to the Claimant and Mr Oldroyd, the Tribunal is of the view that this did not prejudge the disciplinary process with respect to the Claimant or impact the fairness of the procedure as applied to him. The disciplinary process was conducted by an independent person, Ms Marshall, on the basis of the evidence that was put before her.
228. The Claimant alleges that a number of unsubstantiated and incorrect points were made to the LADO. The Tribunal accepts that the Respondent made a report to the LADO once allegations came to light and on the basis of incomplete information, as it had not yet had the opportunity to conduct a full investigation. However, the Tribunal further accepts that the Respondent was reasonable in its approach given the LADO's role, as it is important that relevant authorities (including the LADO and the police) are engaged at an early stage even if all facts are not fully known. The Respondent passed on the allegations that were made to it and the LADO was aware that the Respondent had not conducted its internal investigation. Significantly for current purposes, the disciplinary process

stood outside interaction with the LADO. The Tribunal has seen no evidence to suggest that the disciplinary outcome was improperly tainted by such interaction.

229. The Claimant further complains about the number and seriousness of the allegations that were put to him as part of the investigation process. The Tribunal understand that this must have been difficult for the Claimant. However, the process that was followed was a reasonable one. It was reasonable for Mr Edwards to put the allegations that the Respondent had received to the Claimant to get the Claimant's view. Then, following an examination of the evidence, Mr Edwards was able to assess which of those allegations met the threshold to proceed to the disciplinary stage. At the conclusion of the investigation process, Mr Edwards took out a number of allegations that did not meet that threshold. In addition, Ms Marshall did not see Mr Edwards' report prior to her own assessment of the disciplinary position and so was focused on the allegations that had met the threshold.
230. The Claimant states that he was given only two days to prepare for the investigation meeting. The Claimant did have ample opportunity to input in both the investigation process and the subsequent disciplinary process. As such, the Tribunal does not find that the Respondent's actions were unreasonable in this regard.
231. The Claimant states that his interview at the investigation process stage was improperly done. The Tribunal does not find that the conduct of the interview made the overall procedure improper. In particular, neither the questioning by Mr Edwards nor the length of the interview (two hours without a break) appear sufficiently problematic so as to call into question the fairness of the process.
232. The Claimant makes complaints that Ms Marshall was not sufficiently prepared for the disciplinary meeting as she (according to the Claimant) believed that the Claimant had training and qualifications. Even if this is correct (which is disputed), the Claimant had the opportunity to make representations in this regard, both as part of the disciplinary process and the appeal process. As such, the Tribunal does not consider that this, even if true, fundamentally damages the credibility of the overall process.
233. The Claimant states that his grievance was delayed so that the outcome would not be ready in time for his disciplinary hearing on 8 June 2023. This does not, in the Tribunal's view, affect the fairness of the disciplinary process. In particular, Ms Marshall invited the Claimant to refer to any evidence in the grievance that may be relevant to the disciplinary. Further, any relevant findings from the grievance could (and were) referenced in the Claimant's appeal in relation to the disciplinary outcome.

Fairness – no other reason

234. The Tribunal must also decide whether the Respondent dismissed the Claimant for the conduct found and for no other reason.
235. As noted above, the Claimant alleges that he was dismissed due to the fact that he made protected disclosures and for other reasons. This is not shown by the

evidence. Ms Marshall based her decision on the evidence that was put before her, particularly the videos. Further, the Claimant has not been able to provide any firm evidence that the Respondent considered his alleged protected disclosures as part of the investigation or disciplinary processes, or as part of any wider campaign on the part of the Respondent to force the Claimant's removal.

236. In light of the above, the Tribunal is satisfied that the Respondent dismissed the Claimant for the conduct found, and for no other reason.

Fairness – dismissal

237. A key question is whether the decision to dismiss the Claimant was within the range of responses open to a reasonable employer.

238. On any view, striking and swearing at a learner in an educational setting is a serious matter.

239. In Ms Marshall's letter to the Claimant on 12 June 2023, Ms Marshall stated that with reference to Allegations 1, 2 and 4, there was sufficient evidence to support allegations of gross misconduct and that the letter provided formal notification of the termination of the Claimant's employment for gross misconduct. This is, in the Tribunal's view, reasonable.

240. As such, the question then becomes whether summary dismissal was within the range or responses open to a reasonable employer in light of that and any mitigating factors.

241. The Claimant has acknowledged that his conduct was inappropriate, but that he treated the learners as he would Army recruits or squaddies.

242. The Claimant states that the Academy was a military environment, and that he and the other Training Instructors were from military backgrounds recruited to be military instructors.

243. The Claimant refers the Tribunal to a BBC documentary about basic training in the Army as evidence of the approach that was to be replicated at the Academy.

244. The evidence from Mr Edwards and Ms Marshall, both of whom are ex-military, is that the Claimant's conduct was outside anything that they had seen when in the military and would have been unacceptable in a military context. In any event, the Academy is not the military and the learners are not soldiers.

245. For the purposes of its decision, the key point for the Tribunal in this regard is that the Claimant was teaching in an educational setting. The Claimant was well aware of this, not least as he considered that he should be given teaching qualifications. The Respondent was reasonable in approaching the disciplinary proceedings against the Claimant in the context of the Claimant teaching in an educational environment that is subject to the policies and procedures applicable to the Respondent's employees. Even if a true military environment tolerated the sort of the conduct that the Claimant engaged in (which the Respondent

denies), this is irrelevant to what could reasonably be expected of the Claimant as an employee of the Respondent.

246. The Claimant has suggested that shouting and swearing was tolerated at the Academy, and therefore was deemed to be acceptable. The Tribunal can see that this may have occurred. However, this does not mean that the behaviour is acceptable. The Respondent acted reasonably by dealing with this once formal complaints had been made and the issue was brought to its attention. More significantly, there is no evidence before the Tribunal to suggest that hitting a learner was held out as being acceptable at any stage.
247. The Claimant states that he did not receive sufficient training to recognise that his conduct was seriously inappropriate. There remains some dispute as to the extent to which the Claimant was trained with respect to safeguarding policies and procedures.
248. It is the case that the Claimant's training record shows that he did receive the relevant training and was aware of the relevant policies and procedures. However, the Claimant says that the training was inadequate, his compliance was not checked and he did not read the relevant policies and procedures.
249. Given his position as a Centre Manager and, prior that, Lead Training Instructor, it is hard to see how wilful blindness to policies and procedures that he was meant to have read can become mitigation for a serious breach of those policies and procedures.
250. In this case, though, the Tribunal finds that the Claimant was aware that the conduct was seriously inappropriate. First, this is because the training records show that he was aware of the relevant materials. Second, and significantly, the nature of the conduct in this case, particularly hitting a learner, is not something that the Claimant needed to have specifically brought to his attention as serious misconduct. The Claimant has acknowledged that there was not anything in the Handbook regarding striking learners or using inappropriate language that was not common sense or reasonable.
251. The Tribunal is aware that the Claimant did not receive a formal teaching qualification during his time at the Respondent. It was reasonable for the Respondent to decide that the Claimant did not require such qualifications in order to recognise that his conduct was inappropriate. Further, it was reasonable for the Respondent to see this as insufficient mitigation given the seriousness of that conduct.
252. It is recognised that this was the Claimant's first offence (he previously appears to have had a clean record). However, the seriousness of his conduct means that this does not, either itself or in combination with other factors, move the Respondent's decision to summarily dismiss the Claimant outside the reasonable range.
253. The Claimant suggests that the lack of formal police action beyond a Community Resolution Order demonstrates that his conduct with respect to the learners was not so serious. The Tribunal finds that the Respondent is entitled to take its own

view on this issue following proper investigation. Police action (or otherwise) is not determinative of what the Respondent may do in an employment setting.

254. The Claimant's makes a number of points regarding the treatment of others, which he contrasts with his treatment. This will be relevant if the circumstances of these other cases are comparable in a way that means it is unreasonable to impose a more severe punishment on the Claimant (*Paul v East Surrey District Health Authority* [1995] IRLR 305). It is very difficult for the Tribunal to make a full assessment in this regard without detailed evidence on these other matters. To the extent that the Tribunal has been provided with evidence, it does not see that the circumstances applicable to the others referred to by the Claimant is comparable. In particular, there is no evidence before the Tribunal that any of these others hit a learner.
255. In all the circumstances, it is, in the Tribunal's view, within the range of reasonable responses for the Respondent to decide that the Claimant was subject to summary dismissal in light of his hitting Learner A and swearing at Learner A and other learners. The mitigating factors, such as they exist, do not force the decision out of that reasonable range.

Conclusion

256. In light of the above, the Tribunal finds that the dismissal of the Claimant was not unfair in accordance with ERA 1996.

Wrongful dismissal

257. The Claimant was not paid for his notice period. The Tribunal therefore has to decide whether the Claimant did something that was so serious that the Respondent was entitled to dismiss the Claimant without notice.
258. The Claimant's employment contract with the Respondent states at paragraph 15.2 that "*Nothing in this contract will prevent [the Respondent] from ending [the Claimant's] employment, without notice or payment in lieu of notice, in a case of gross misconduct justifying summary dismissal without notice...*".
259. In the Tribunal's view, and for the reasons set out above in relation to the fairness of the Claimant's dismissal, the actions of the Claimant were so serious that they placed him in fundamental or repudiatory breach of his contract with the Respondent. As such, the Claimant's claim in this regard fails.

Unpaid wages

260. The Claimant's claim here concerned a possible salary uplift on the Claimant's promotion. As part of the grievance process, the Respondent acknowledged that communication between the Respondent and the Claimant was unclear and the Respondent accepted that the lack of clarity had led the Claimant to believe that he would get a £2,000 pay increase with effect from 12 September 2022.
261. Following the grievance, as goodwill gesture, the Respondent agreed that a pay rise of £2,000 that had taken effect from 1 February 2023 should be backdated

to 12 September 2022. A payment was made to the Claimant on 30 June 2023 in light of this.

262. The Claimant agreed during the course of evidence that the sums that he alleges were owed to him were paid on 30 June 2023. Accordingly, this aspect of the Claimant's case falls away.

Approved by:

Employment Judge Din

6 January 2025

Reserved judgment and reasons
sent to the parties on:

15 January 2025

For the Employment Tribunals: