Case No: 6011511/2024
6014998/2024

EMPLOYMENT TRIBUNALS

Claimant: **Russell Cherrington**

Respondent: **University of Derby**

Heard at: **Nottingham**

On: **24 - 26 March 2025**

Before: **Employment Judge Price**

Representation
Claimant: **In Person**
Respondent: **Mr Wilson, Counsel**

JUDGMENT

1. The Claimant's claim of unfair dismissal is not well founded and is dismissed.

REASONS

Preliminaries

2. This is judgment and reasons in case 6011511/2024 – which was consolidated with case no. 6014998 / 2024 by Order of 14 January 2025.

3. The Tribunal notes that no response was in fact received in relation to claim 6014998/2024. That claim was in all respects - save as to the information contained in box 9.2 relating to compensation – the same as claim no 6011511/2024 – namely, a complaint of unfair dismissal with the same grounds of complaint relied upon.

4. The Respondent had provided a response which was accepted in relation to claim 6011511/2024.

5. Pursuant to ETR r22, the ET determined that, on the available material, a determination could properly be made of the claim 6014998/2024 to which no response was received and this judgment and reasons is therefore issued in respect of both claims.

Procedure

6. The hearing was heard over 3 days (24-26 March 2025).

7. I was provided with a bundle consisting of 553 pages. There were a number of disputed documents from page 454 onwards. One of those documents (the How We Work policy – [531-551]) was permitted into evidence on day 2 following an application by the Respondent. I gave reasons during the course of the hearing for permitting that document to be added to the bundle.

8. I read an opening statement by the Claimant before hearing evidence.

9. I heard evidence from the Claimant, Dr Broome and Mr Heyburn and, on behalf of the Respondent, from Mr Burns, Professor Molasiotis and Mr Andrews. All confirmed the truth and accuracy of their witness statements, save for minor corrections as to page references in the statements of the witnesses called by the Respondent.

10. I also read a statement from Dr Hall, a witness for the Claimant, which was unchallenged.

11. In making my findings of fact I have applied the balance of probabilities to determine issues that are in dispute.

12. I consider that all the witnesses I have heard from have given honest evidence (and this includes the unchallenged evidence from Dr Hall) and have done their best to assist the Tribunal in its function.

Issues

13. At the outset of the proceedings I discussed the issues the Tribunal was asked to determine and confirmed these as follows:

Unfair dismissal

a. It being agreed that the Claimant was dismissed, what was the reason for dismissal? The Respondent contended that the reason was conduct. The Tribunal needed to decide whether the Respondent genuinely believed the Claimant had committed the misconduct.
b. If the reason was misconduct, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant (applying s.98(4) ERA 1996)? In particular:
    i. were there reasonable grounds for that belief;
    ii. at the time the belief was formed had the respondent carried out a reasonable investigation;
    iii. did the Respondent otherwise acted in a procedurally fair manner;
    iv. was the dismissal within the range of reasonable responses.

Remedy for unfair dismissal

c. Did the Claimant wish to be reinstated to their previous employment? The Claimant stated that he did not, but that if his position changed he would confirm in submissions.
d. Did the claimant wish to be re-engaged to comparable employment or other suitable employment?
e. Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
f. Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
g. What should the terms of the re-engagement order be?
h. If there is a compensatory award, how much should it be? The Tribunal will decide what financial losses has the dismissal caused the claimant?

Submissions

14. I heard submissions from both parties.

15. In the course of submissions, the Respondent drew my attention to, and I have read, ***Hewston v Ofsted*** [2025] EWCA Civ 250.

16. In the course of submissions the Claimant drew my attention to, and I have read, the following cases:

a. ***Ramphal v Department for Transport*** [2015] I.R.L.R. 985
b. ***Talbot v Costain Oil, Gas and Process*** [2017] ICR D11
c. ***AB v University XYZ*** [2020] EWHC 2978 (QB)
d. ***Umudi v Lidl GB Ltd*** ET Case 2500358/2021
e. ***Sekander v Rocket Mill Ltd*** ET Case 2301645/2016
f. ***Adeshina v St George's University Hospitals NHS Foundation Trust*** [2015] IRLR 704.

17. As to ***Talbot v Costain Oil***, it became apparent that this decision of HHJ Shanks concerned matters of drawing inference in cases of discrimination. This was not authority for a proposition that a dismissal may be rendered unfair if an employee is not permitted to be represented at a meeting where they are suspended, which was the proposition that the Claimant relied on the authority for. After exploring with the Claimant if there had been another authority he wished to rely on in support of that proposition, he told me there was no other authority he wished to draw my attention to.

18. ***Umudi v Lidl*** and ***Sekander v Rocket Mill*** are first instance decisions of the Employment Tribunal. They contain restatements of relevant but settled legal principles - such as the need for a fair investigation that looks for and considers exculpatory as well as inculpatory evidence.

Findings of fact

19. The Claimant was employed as a Senior Lecturer in Media and Film from 1 September 2010. The Claimant had, until the matter giving rise to this case, an unblemished personnel record.

20. At the time these matters relate to, the Claimant taught students in the second and third year of the Film and High End TV programme at the University.

21. The Head of the School was Mr Burns and The Dean of the College of Arts was Professor Molasitotis.

22. In July 2022 the Claimant undertook a number of online training courses, which included training on the How We Work policy document and on the Equality Diversity and Inclusion policy.

23. I accept the Claimant's evidence that despite undergoing that training he did not have perfect recall of all the aspects of the training or the policy documents underlying the training.

24. In November 2023 the Claimant emailed Mr Andrew-Roberts with a vote of no confidence in Mr Tom Craig, who was the Programme Leader. This reflected concerns that the Claimant had as to the management and direction of the programme.

25. I accept the Claimant's evidence that there was dysfunction in the management of the school and that this was having an adverse effect on the delivery of the module as well as on student and staff relationships.

26. At around the same time (November 2023) the Respondent carried out the National Student Survey ('NSS') to gather feedback from its student body on the student experience overall as well as the subjects taught at the University. This was completed by the students that were leaving the programme. These were anonymous surveys.

27. The Film and High End Television Programme received low scoring in the NSS outcomes. There was dispute as to the exact scores – and whether this was in the range of 30-35% - which I understand C said referred to the preceding years' survey – or in the region of 70%. I find it more likely that the scoring received in Autumn 2023 was in the region of 30-35%. I find this because that was the unchallenged evidence of Professor Molasiotis and because it was a sufficiently worrying survey result that it would likely have given rise to the type of meetings that then took place with both staff and students in that department. Those meetings were to consider how the University should respond to the poor survey results. Not a great deal however turns on this given it is common ground that these meetings did in fact take place, whatever the scoring in fact received.

28. During these meetings Professor Molasiotis said to the Claimant, and others present, that he was not afraid to make changes if the NSS did not improve.

29. Several other programmes including MA programmes in music, drama and art therapy, were programmes which were also poorly performing. Meetings were had with the staff and students in these courses too.

30. On 30 November 2023 Professor Molasiotis and Mr Burns invited students of the Film and High End TV programme to attend a meeting to address the concerns raised during the survey. During those meetings a number of complaints were raised about the nature and quality of teaching on the course – this included, but was not limited to, teaching by the Claimant. However – particular complaints were made specifically about remarks and comments made by the Claimant. On that day and days following, emails were then sent in by students who had taken part in the meetings, setting out their complaints in writing. These complaints – again – covered both broader issues as to the teaching and course management as well as specific complaints about the Claimant's behaviour, remarks and comments. Dr Broome gave evidence that during the appeal hearing Professor Molasiotis' stated that the emotional impact on him was such that he felt unable to continue listening to the students. The appeal notes record that Professor Molasiotis commented that one student became visibly upset when recounting their experience, had been 'in tears' and that he had not come across this before in his professional career. I do find that the students who made complaints about the Claimant's remarks and comments were distressed during the meeting and Professor Molasiotis observed them to be so. I accept Dr Broome's evidence that Professor Molasiotis said during the appeal hearing that he was emotionally affected by the accounts being given by the students.

31. On 4 December Prof Molasiotis asked his secretary Rebecca Pickering to arrange a 15 minute online meeting with those students – following this further meetings were to take place with Thomas Craig and with Chas Andrew-Roberts. Though it is unclear if these meetings ever took place - I accept Prof Molasiotis' evidence that these meetings were to address the broader issues as to course management. That this is so appears to be reflected in the email on 18 December at [265] in the bundle.

32. On 14 December 2023 Ms Finlay in the Respondent's HR department sent an email to Karen McDonald and Sarah Setchell – Head of the HR department. That email had a letter attached. The letter set out a recommendation to suspend the Claimant. This recommendation was due to complaints from both students and staff. The proposal or recommendation appears to be that the Claimant be suspended from all work.

33. On 15 December Mr Burns arranged a meeting with the Claimant. The email invite stated that 'following recent course review meetings, I need to meet with you to discuss'. The Claimant was not aware that specific complaints had been made about him, was not told that HR would be in attendance and was not told that he could or should be accompanied at the meeting. That meeting took place on 18 December 2023.

34. The meeting was attended by the Claimant, Mr Burns and Ms Finlay (HR). No notes were taken of that meeting. I find that the meeting lasted for about

1 hour 20 minutes, that the Claimant was told about a number of concerns – including matters relating both to teaching and course management as well as specific complaints about the Claimant's language and what has come to be described as inappropriate comments. I find that at the end of that meeting the Claimant was told he was to be suspended from student facing activities and was told to go and work from home. The Claimant therefore did not attend a meeting later that day involving staff from the Film department.

35. The Claimant's suspension was confirmed in a letter dated 21 December 2023.

36. The decision to suspend the Claimant was therefore not consistent with the recommendation set out in the HR letter. Whilst I accept Mr Burns evidence that the final decision to suspend the Claimant – either at all or in part – had not been reached until the meeting on 18 December 2023 took place, I find that the primary purpose of the meeting was two-fold - first to inform the Claimant of the allegations which then, secondly, gave context for why it would, very likely, be placing him on suspension.

37. On 15 January 2024 the Claimant was invited to an investigation meeting. The invite stated it was to "explore allegations that you have used inappropriate an unprofessional language towards students".

38. The (first) investigation meeting took place on 23 January 2024. The Claimant attended, along with a union representative, Dr Broome. The meeting was chaired by Mr Burns and he was supported by Ms Watkins from HR. Ms Hernady took notes of the meeting and produced a minute of it. I find that the minute of that meeting is a reasonably accurate record of what was said during it.

39. In that meeting the Claimant provided Mr Burns with a list of eight students that he wished Mr Burns to speak with. The notes record that the Claimant said this was a 'diverse' group of students who could speak to the Claimant's teaching and how he treated students. Mr Burns did not interview or speak with any of the eight students on the list provided by the Claimant.

40. Following this meeting Mr Burns met with the following people as part of the investigation; Chas Andrew Roberts, Tom Craig and Nigel Douglas.

41. On 13 February 2024 the Claimant was invited to a further investigation meeting. The invite to that meeting states that "Since the investigation meeting that was held on Tuesday 23 January 2024, further allegations of inappropriate and unprofessional language towards students have been raised which requires exploration." This in fact was reference to a number of questions that the Respondent had posed the students who had provided written accounts of their complaints and concerns and responses the students had provided to those questions.

42. A second investigation meeting took place on 20 February 2024. The Claimant attended, along with his union representative, Dr Broome. The meeting was chaired by Mr Burns and he was supported by Ms Watkins

from HR. Ms Hernady took notes of the meeting and produced a minute of it. I find that the minute of that meeting is a reasonably accurate record of what was said during it.

43. In that meeting, the Claimant told Mr Burns that, in relation to allegations about the Claimant making derogatory comments concerning a colleague (Ms Marmalade), he should speak with Mr Squires who would confirm that nothing derogatory was said by the Claimant. Mr Burns did not meet with Barry Squires, though it is correct to say that as part of the staff meetings that had originally taken place after the NSS, Mr Burns had met with Mr Squires at that time. None of that discussion had concerned the Claimant specifically.

44. Further, in that meeting Ms Watkins (HR representative supporting Mr Burns) asked the Claimant he felt the students had a 'vendetta' against him. The Claimant is not recorded as having said yes or no to this question, but instead is recorded to have remarked that he had been 'warned' in November that certain students had a 'problem' with him and that he believed things had been written on social media about him. Further, the Claimant stated that he was 'aware' he could not get on with anybody but that after reading the submissions noticed that these 'things correlate'. I find that this is a reasonably accurate record of what the Claimant said in that meeting.

45. Mr Burns produced an investigation report on 26 March 2024. In a letter dated 29 March 2024 the Claimant was told that a "…decision has been taken to recommend the case going forward to a disciplinary hearing. Following the review of the evidence gathered during the investigation, we are now considering these allegations as amounting to potential gross misconduct.". The letter stated that Professor Molasiotis would chair the disciplinary hearing. The letter set out several sections of the Equality, Diversity and Inclusion policy and the How We Work policy which it was said that the use of inappropriate and unprofessional language would be in direct breach of.

46. Accompanying documentation was provided to the Claimant with this letter. This did not include the Equality, Diversity and Inclusion policy or the How We Work policy. The letter did however direct the Claimant to the Disciplinary policy. The written accounts from the students were provided, unredacted. The names or initials of the students were, it seems inadvertently, disclosed to the Claimant. As the Claimant had raised during the investigation meeting, he considered that he was aware of who the students who had made the complaints were given his remarks about collusion by the students that he had been warned about in November. The identities were expressly revealed in the investigation report.

47. As to the wider teaching matters, the letter stated that "… the report concluded that there had been a breakdown in workplace relationships which had contributed to a lack of resolve in relation to the issues, but that the Claimant was not solely responsible and that this should be addressed outside of this process."

48. On 9 April 2024 the Claimant emailed the Respondent to object to Professor Molasiotis chairing the disciplinary hearing. The Respondent's Head of HR responded that same day, refusing the Claimant's request that there be a change in chair.

49. The disciplinary hearing took place on 22 April 2024. The Claimant attended and was accompanied by Dr Broome. Professor Molasiotis chaired the hearing. Mr Burns attended in the capacity as investigating officer and there were three further members of the Respondent's HR department in attendance – one of whom took notes (Ms Gibson).

50. From Ms Gibson's notes, which I find to be a largely accurate minute of the meeting, the hearing took the format of Mr Burns presenting a summary of the investigation report, the Claimant providing a response and general account to that and then a series of questions and answers, principally between Professor Molasiotis and the Claimant. During that hearing, particular reference is made and discussion had relating to the use of the word 'female' to describe or 'group together' the female students in the group and the use of the phrase 'troublesome trans kid'. The Claimant gave an account as to how he had used the word 'female' at the start of the semester given he did not know names, but had not thereafter and denied using the phrase 'troublesome trans kid'.

51. During the disciplinary hearing the Claimant noted that he had provided a list of students that had not been spoken to. I accept the Claimant's evidence that he did not himself describe these students as 'character witnesses'. However I find that despite several questions seeking clarification, the Claimant did not say that these witnesses would, if spoken to, contradict the comments attributed to him by those other students. Rather, I find that the Claimant wished that they be spoken to because they would, in his opinion, provide a balanced view as to his teaching, behaviour and use of language. I find this because this is consistent with both the meeting notes, the Claimant's own witness statement and the evidence the Claimant gave to the Tribunal. It is also consistent with how the Claimant described the list of students to Mr Burns. I accept Professor Molasiotis' evidence that the reason he did not consider it necessary to speak to those students was because he did not consider he should 'weigh' what might have been positive accounts of the Claimant against the allegations of inappropriate and unprofessional language.

52. Further, the Claimant stated that the students in question were in social media groups where they spoke to each other and conversed about who said what. This was to some degree echoing what the Claimant had said in response to the question from Ms Watkins as to whether the Claimant felt the students had a vendetta against him.

53. Professor Molasiotis reconvened the disciplinary hearing on 29 April 2024 to deliver his decision. Professor Molasiotis concluded that several of the alleged examples of inappropriate and unprofessional language had been proven. These were; referring to women in the class as females, creating a divisive atmosphere; questioning the attractiveness of a woman cast in a music video; an anecdote given about a transgender student; and

comments made about universities becoming care homes. Professor Molasitois characterised these remarks as examples of misogynistic, transphobic and ableist comments. Prof Molasitotis also found proven two further examples of comments which he categorised as misconduct (comments made to a student wearing nail polish and comments about student stress). For all these comments, Professor Molasiotis noted that they were 'corroborated'.

54. Professor Molasiotis also remarked that during the disciplinary hearing the Claimant had suggested, amongst other matters, that the students may have colluded and embellished or misquoted his language due to their dissatisfaction with the course. Professor Molasiotis noted that the students were in the same year and course. However, the volume and similarity of other uncorroborated examples of inappropriate language caused Professor Molsiotis to reject the suggestion that the allegations were caused by a general dissatisfaction with the course.

55. Professor Molasiotis then set out what was later described in the outcome letter as matters of 'mitigation'.

56. Professor Molasiotis told the Claimant that he had considered if a sanction lesser than dismissal would be appropriate, recognising that the Claimant was a long-standing member of staff and recognising that he did not believe that the Claimant intended to cause harm. However, Professor Molasiotis noted the profound impact the Claimant's actions had on the students, referred to the Claimant's lack of insight into his actions - despite being up to date with relevant training - and determined that he had no confidence that the Claimant could return to his role without risk of further incidents occurring. Professor Molasiotis made the recommendation of dismissal on the grounds of gross misconduct.

57. In accordance with the Respondent's Disciplinary Policy, Professor Molasiotis' decision had to be ratified by the Vice Chancellor, Professor Kathryn Mitchell.

58. Professor Mithcell did ratify that decision and sent a letter to the Claimant on 3 May 2024 telling him that he was being dismissed without notice. In advance of sending this letter Professor Mitchell was provided with the recommendation from Prof Molasiotis and the 'file' – which meant the investigation report and accompanying documentation.

59. On 9 May 2024 the Claimant appealed the decision to dismiss him. The Claimant's grounds of appeal were, in summary, that the decision to dismiss was unduly harsh, that he had not been given the opportunity to address issues prior to implementation of formal action and that the dismissal was a breach of the Higher Education (Freedom of Speech) Act 2023.

60. An appeal hearing was held on 12 June 2024. The hearing was chaired by Tony Edwards, Governing Council Member, who was accompanied by two other independent governors; Marianne Neville Rolfe and The Very Revd Dr Peter Robinson. The decision of the appeal panel was to uphold the

decision to dismiss the Claimant. The outcome was confirmed to the Claimant in writing on 17 June 2024 as well as the rationale for the decision.

61. I find the minute of the appeal hearing to be a reasonably accurate record of what was said during that hearing. I find that the Claimant was given full opportunity to advance his grounds of appeal. I find that the appeal panel identified the grounds of appeal and explored these in the course of the hearing because the minute of the appeal hearing demonstrates this and because the appeal outcome letter expressly addresses each ground of appeal. As to the reasons for rejecting the appeal, I find as follows.

62. As regards the first ground of appeal (harshness of sanction), I accept Mr Edwards' evidence that the appeal panel considered whether the sanction imposed was unduly harsh and that the reasons it determined it was not was that the Claimant, despite having received relevant training, had engaged in behaviour toward the students that was discriminatory, created an unsafe learning environment and that it did not have confidence that the Claimant would repeat that behaviour.

63. As regards the second ground of appeal (informal as opposed to disciplinary action), I accept Mr Edwards' evidence that the appeal panel did not consider his actions to have constituted a lapse in standards such that informal action was justified and that such matters had not previously been addressed with the Claimant because the students had not previously complained.

64. As regards the third ground of appeal (breach of the Higher Education (Freedom of Speech) Act 2023), Mr Edwards' evidence, which I accept, is that the appeal panel determined that the inappropriate and unprofessional comments did not constitute an academic line of conversation and was not part of, or arose from, the teaching material. I also accept that the appeal panel considered the nature of the language to be discriminatory. I also accept Mr Edwards' evidence that the appeal panel therefore did not give this ground of appeal 'much weight'.

Relevant Legal Principles

65. Where it is agreed that an employer has dismissed an employee, the Respondent has the burden of establishing that it dismissed the claimant for an admissible reason in accordance with section 98 (1) of the Employment Rights Act 1996. Conduct is a potentially fair reason.

66. Determining who the person or directing mind of the employer is that took the decision to dismiss, and therefore whose reasons should be interrogated by a Tribunal, is a question of fact for the Tribunal to determine; ***Citizens Advice Merton and Lambeth Ltd v Mr P Mefful*** [2022] EAT 11.

67. In a misconduct dismissal the Tribunal in determining the fairness of the dismissal should consider the following factors in accordance with ***BHS v Burchell*** (1978) IRLR 379 namely whether (a) the employer believed that the employee was guilty of misconduct; (b) the employer had reasonable

grounds for believing that the employee was guilty of misconduct; and (c) at the time it held that belief it had carried out a reasonable investigation.

68. In terms of investigations into possible misconduct, there is no set rule as to the level of inquiry the employer should conduct into the employee's (suspected) misconduct in order to satisfy the test in ***BHS v Burchell*** (1978) IRLR 379. In ***Miller v William Hill Organisation Ltd*** EAT 0336/12 the EAT acknowledged that there is a limit to the steps an employer should be expected to take to investigate an employee's alleged misconduct. How far an employer should go will depend on the circumstances of the case, including the amount of time involved, the expense and the consequences for the employee being dismissed.

69. In terms of the decision to dismiss, the Tribunal must consider whether the employer's decision to dismiss fell within the band of reasonable responses that a reasonable employer in those circumstances might have adopted; ***Iceland Frozen Foods Limited v Jones*** (1982) IRLR 439)

70. The range of reasonable responses test applies not only to the decision to dismiss but also to the investigation, meaning that the Tribunal must decide whether the investigation was reasonable and not whether it would have investigated things differently; ***Sainsbury's Supermarket Limited v Hitt*** (2003) IRLR 23.

71. The size and administrative resources of the employer's undertaking are relevant, as is the ACAS Code of Practice on Disciplinary and Grievance Procedures (the "ACAS Code"). The ACAS Code recognises that an employee might be dismissed even for a first offence where it constitutes gross misconduct.

72. The approach to be taken to procedural fairness is to assess it as part of the overall picture, not as a separate aspect of fairness. Any procedural defects in the initial disciplinary hearing may be remedied on appeal provided that in all the circumstances the later stages of a procedure are sufficient to cure any earlier unfairness; ***Taylor v OCS Group Ltd*** [2006] IRLR 613).

73. In ***Hewston v Ofsted*** [2025] EWCA Civ 250, the Court of Appeal stated that; "It is a common sense proposition that it will not normally be fair to dismiss an employee for an act which they could not reasonably expect the employer to regard as serious misconduct. For that reason the ACAS Code of Practice on Disciplinary and Grievance Procedures recommends that employers should in their published disciplinary procedures give examples of acts which the employer regards as acts of gross misconduct. But it is well recognised that such examples cannot be comprehensive, and there will be cases where the question whether the employee should have appreciated that the employer would regard what they were doing as serious misconduct has to be determined as a matter of judgment having regard to the nature of the act and the surrounding circumstances." (para 16).

74. It further stated that; "As a general proposition, I find it hard to see how in such a case it could be reasonable for the employer to bump up the seriousness of the conduct only because the employee fails during the disciplinary process to show proper contrition or insight. I take this to be the point being made by the EAT at para. 82 of its judgment. It is reinforced by the fact that how employees react to an allegation of misconduct is likely to vary greatly according to individual temperament and the dynamics of the particular situation. The stressful circumstances of a disciplinary hearing or interview are unlikely to be conducive to calm self-reflection, and it is inevitable that some employees will be overly defensive. In some cases also, where the issue is whether what was done constituted misconduct, an employee who genuinely believes that it did not faces the dilemma that if they say that they would not do the same thing again they may be taken to be accepting guilt." (para 66).

75. In accordance with ***Ramphal v Department for Transport*** UKEAT/0352/14/DA, although a dismissing or investigating officer is entitled to seek guidance from Human Resources or others, such advice should be limited to matters of law and procedure and to ensuring that all necessary matters have been addressed and achieve clarity. A Claimant facing disciplinary charges and a dismissal procedure is entitled to expect that the decision will be taken by the appropriate officer, without having been lobbied by other parties as to the findings he should make as to culpability, and that he should be given notice of any changes in the case he has to meet so that he can deal with them.

76. As regards bias, the test that is "whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased." ***Porter v Magill*** [2002] AC 357 para 102). Further, the EAT in ***Adeshina v St George's University Hospitals NHS Foundation Trust*** [2015] IRLR 704 set out the following principles concerning bias or impartiality;

    a. The strict rules regarding apparent bias applicable to judicial processes are not applicable to internal disciplinary proceedings (***Christou & Anr v London Borough of Haringey*** [2013] ICR 1007 CA , per Elias LJ at paragraphs 48 to 50, and the case of ***Mattu v University Hospitals Coventry and Warwickshire NHS Trust*** [2013] ICR 270 cited therein; also see ***McMillan v Airedale NHS Foundation Trust*** [2014] IRLR 803 CA per Floyd LJ at paragraphs 51 to 52 and Underhill LJ at paragraph 74);
    b. That said, actual bias giving rise to a breach of natural justice could be fundamental to the question of fairness (per Lady Smith in ***Watson v University of Strathclyde*** [2011] IRLR 458 EAT(S) , paragraphs 29 to 31 and 44).
    c. In any event, whether there is an appearance of bias may be a relevant factor in an unfair dismissal case; it will be something that will go into the mix for the ET to consider as part of fairness as a whole, as will the question whether the panel did in fact carry out the job before it fairly and properly, see ***Rowe v Radio Rentals Ltd*** [1982] IRLR 177 EAT , per Browne-Wilkinson J (as he then was), at paragraphs 11 to14, citing Lord Denning in ***Ward v Bradford***

Corporation [1971] 70 LGR 27 at page 35: "We must not force these disciplinary bodies to become entrammeled in the nets of legal procedure. So long as they act fairly and justly, their decision should be supported." See also per Kilner ***Brown J in Haddow v ILEA*** [1979] ICR 202 EAT , at 209 G-H,: "… the only thing that really matters is whether the disciplinary tribunal acted fairly and justly. …".

Discussion and Conclusion

77. I firstly considered what the reason was for the Claimant's dismissal, bearing in mind that the Respondent's burden to show the reason for the dismissal and that it was a potentially fair one.

78. Whilst there was during the course of the hearing some relatively muted suggestion that there was dysfunction in the programme – and in particular a poor working relationship between the Claimant and Mr Craig – and that this may have been relevant to the Claimant's dismissal, I find that the reason that the Claimant was dismissed was the misconduct of which he was accused. Though not determinative, I note that the Claimant did not, in submissions, suggest an alternative reason. There was no other credible evidence to suggest an alternative reason.

79. As to what that specifically conduct was, I was initially unsure whether Professor Molasiotis determined that the misconduct for which the Claimant was being dismissed took into account what are described as 'uncorroborated matters' in the outcome letter. The outcome letter certainly gave me the initial impression that they were. However, I accept Professor Molasiotis' evidence to me that the matters for which the Claimant was dismissed are the remarks set out in the outcome letter and headed, separately, as 'alleged misogynistic language', 'alleged transphobic language' and 'alleged ableist language'. I refer, hereafter, to these remarks collectively as the inappropriate and unprofessional language toward students (adopting the language from the Respondent's letter dismissing the Claimant, dated 3 May 2024). I consider these were correctly considered matters of conduct.

80. Conduct being a potentially fair reason to dismiss under s.98(2) ERA, I next considered whether the dismissal was fair applying s.98(4) ERA 1996.

81. First, I find that the decision-maker as to the Claimant's dismissal – and the person whose reasons I should consider – was Professor Molasiotis. Professor Molasiotis, who chaired the disciplinary hearing, gave a recommendation to the Vice Chancellor Professor Mitchell to dismiss without notice. This is because, in accordance with the Respondent's disciplinary policy, a recommendation to dismiss with notice or to dismiss summarily, required ratification by the Vice Chancellor. Professor Mitchell did ratify that decision and it was her letter which had the effect of dismissing the Claimant, not the communication of the recommendation to dismiss delivered on 29 April 2024. It is not in issue that the effective date of termination was 3 May 2024, in accordance with the letter sent by Professor Mitchell. However, I find, applying the guidance from ***Meful***, that in all material respects Professor Mitchell played no greater role in deciding to

dismiss the Claimant than adopting the reasoning of Professor Molasiotis and approving his decision.

82. Next, I find that Professor Molasiotis had a genuine belief that the Claimant had committed the misconduct of which he was accused. I make that finding because Professor Molasiotis gave evidence to the Tribunal, which I accept, that he determined that the inappropriate and unprofessional language toward students had occurred. It was not in fact suggested by the Claimant that Professor Molasiotis did not in fact believe that that language had been used – rather, it was his contention that Professor Molasiotis should not have come to that conclusion.

83. It was however contended by the Claimant that Professor Molasiotis was not sufficiently impartial or independent to have chaired the disciplinary panel. I reject that contention.

84. It is correct that Professor Molasitois had been involved in the meeting on 30 November 2023 during which students had set out complaints regarding the Film programme generally and the Claimant specifically. Professor Molasiotis' involvement in these meetings was reasonable given the need to address the low scores and demonstrate that the Dean of the College would seek to make changes to achieve such redress. That Professor Molasiotis observed students' distress about their experience and that their distress had affected him also would not mean, in my view, that he was unable to fairly and sufficiently impartially determine both what had taken place and how what had taken place had impacted on the students. I have not found that Professor Molasiotis had prejudged either issue. Professor Molasiotis' determination of what language had been used and in what context it had been used occurred only after reviewing the investigation report and after hearing from the Claimant in the disciplinary hearing. The upset caused to the students was part of the evidence apparent in the written accounts procured during the investigation process. Applying ***Magill*** and ***Adeshina*** I consider that a reasonable employer could conclude that Professor Molasiotis' role in chairing the disciplinary hearing did not give rise to actual or apparent bias and acted within the band of reasonable responses by appointing him to chair the disciplinary hearing.

85. It is also correct that on 4 December 2023, Professor Molasiotis sent an email to his secretary proposing several meetings with both students and staff within the Film and High End Television programmes to deal with what was described in the email as the 'Film issues'. I therefore accept that this shows that that Professor Molasiotis had some further involvement in dealing with the fallout from the issues that had been raised by the student cohort that had attended the 30 November meeting.

86. However, I accept Professor Molasiotis' evidence to the Tribunal that this related to the broader issues raised about the teaching on the programme, rather than about specific complaints relating to the Claimant. I also accept that, as Dean of the College, it was reasonable for him to be involved given the nature of the issues affecting the teaching and management of the Film and High End Television programme. This, in my view, did not unduly compromise Professor Molasitotis' partiality in later chairing, and

determining, the disciplinary matters relating to the improper and unprofessional language towards students. Further, as the Dean, Professor Molasiotis was an entirely suitable person of sufficient seniority and sufficient experience in conducting disciplinary hearings to be appointed as chair of this disciplinary hearing. For these reasons I consider it was within the range of reasonable responses for Professor Molasitois to be tasked by the Respondent with chairing the disciplinary hearing.

87. For completeness, I find that Professor Molasiotis' position as Mr Burns' line manager did not cause any reason to doubt his partiality. There was no evidence from which I could conclude that there may have been – as suggested in the Claimant's email contesting Professor Molasiotis' appointment on 9 April 2024 – collusion between Mr Burns and Professor Molasiotis. Further, that Professor Molasiotis and the Claimant knew one another did not cause me any reason to doubt Professor Molasiotis' partiality. There was no evidence that, having worked together as part of the academic staff in the University, there was any past grievance or ill-will between the two that might raise doubt as to Professor Molasiotis' partiality. Applying the guidance from ***Magill*** and ***Adeshina***, I therefore conclude that the Respondent did not act unfairly in retaining Professor Molasiotis as the chair of the disciplinary hearing.

88. Next, I find that Professor Molasiotis had reasonable grounds for holding the belief that he did that the Claimant had committed the misconduct of which he was accused.

89. I reach that finding for the following reasons.

90. First, there were four written accounts provided from students who were part of the second year cohort of students that the Claimant was teaching which alleged that he had made remarks which came to be described as misogynistic, transphobic and ableist.

91. Second, those students were asked to provide further particulars about the remarks. All four students responded with further particulars which provided context and detail about the allegations of inappropriate and unprofessional language. Those particulars included:

    a. Citing an example of the showing of a Madonna music video to demonstrate the benefits of 'selling her body';
    b. When reviewing a script for a project development module involving a character with autism the Claimant remarked that Universities were becoming a care home for people with disabilities;
    c. The discussion of a script at a group meeting, giving rise to comments by the Claimant about not accommodating a trans person struggling with their mental health;
    d. That during a discussion about diversity in the industry in a product development module the Claimant commented that people are hired to 'tick boxes', stopping 'normal people from getting work'; and
    e. During the editing session for a music video, the Claimant commented that for the video to work the actress needed to be 'out of his [the actor's] league'.

92. Third, the written accounts corroborated one another in significant respects. For instance;

    a. two students both described the Claimant only or exclusively referring to the women in the class as 'females', creating a division within the group.
    b. Two students stated the Claimant had described an actress in a music video as not 'pretty enough' or 'attractive enough' for the role;
    c. Three students referred to the Claimant telling a story about, either having to deal with a 'troublesome trans kid' or having to 'accommodate a trans person'; and
    d. Three students referred to the Claimant had remarked that Universities were becoming a care home for people with 'disabilities' or 'difficulties'.

93. Fourth, during the investigation process and in the disciplinary hearing, the Claimant at times accepted that discussions of the *kind* alleged were had, albeit he denied making some of the specific remarks attributed to him or contended that the remarks had either been embellished (or 'untrue details added to the stories'), distorted in their retelling or taken out of context.

94. In the course of cross-examination, the Claimant was asked about these remarks and it was put to him that he had said them. The Claimant in large part denied having said the above, but also said that 'evidence' would be needed that he said them, suggesting this might be something 'recorded' or someone having witnessed the remarks. The Claimant also said during evidence that accounts and stories can change in the retelling, and he believed that this had happened with regard to the above remarks.

95. First, I accept that it is correct that accounts often change with the retelling. That is borne out in the learning and experience of Courts and Tribunals. Second, I consider the Claimant's answer to be understandable from his perspective. I considered he was seeking to stress that given the seriousness of the allegations, he should not be at risk of disciplinary sanction without credible evidence.

96. However, an employer, acting reasonably, is not prohibited from, firstly, investigating complaints where there is no contemporaneous documented recording of the matter in issue. Indeed, it might well be the case that an employer would not be acting reasonably if it refuses to investigate matters for the reason that they are not contemporaneously recorded.

97. Further, I consider it relevant in this case that the workplace was a University. The accusations against the Claimant came from several students he was teaching. That relationship involves a particular power dynamic that might not be replicated in other workplaces. In my view, it is readily understandable that, given that dynamic, students may not have felt able to have challenged the remarks at the time they were made (and thereby perhaps giving rise to a more contemporaneous 'recording' of the exchange or statement). I therefore did not consider the nature of the evidence available to Professor Molasiotis was compromised by the

absence of a contemporaneous recording of it. Further, contrary to the Claimant's objection, several accounts were ostensibly 'witnessed' by other students.

98. Fifth, the Claimant had suggested that there had been collusion by the students through their interaction on social media. He had, he said, been warned that some students had a problem with him in November 2023. An employer, acting reasonably, should consider whether allegations against an employee may have been embellished, or even fabricated, through collusion if there is a credible basis for that. The Claimant's suggestion was not dismissed out of hand – Ms Watkins explored the issue with the Claimant during the investigation meeting and Professor Molasiotis expressly put his mind to the question as shown in the notes of the reconvened disciplinary hearing. However, when raised with the Claimant, other than noting the students were in the same year group, may have been dissatisfied with the teaching on the course and would communicate on social media, he had not offered the Respondent any particular basis for it to have reason to suspect collusion had occurred. That some remarks were corroborated would equally, of course, provide a sounder basis for concluding that they had been made. Further, insofar as dissatisfaction with the course may have been a basis for suggesting that the students had colluded or even manufactured complaints, Professor Molasiotis' reasoning for rejecting the suggestion of collusion included that no other teaching academic on the course about which there was general dissatisfaction had been the subject of allegations of misconduct. I find that was also a reasonable basis for rejecting the suggestion that dissatisfaction with the course was a reason for the allegations. In my view, given the above, the Respondent did not act unreasonably in concluding that there had not been collusion.

99. Sixth, the Claimant contended that the evidence that the Respondent relied on from the students had been 'solicited'. By this, I understood him to mean that the Respondent was procuring complaints from the students about him, or encouraging them to make or add to their complaints – in particular by writing to the students that had made the initial written complaints and asking them to provide particulars. In my view the Respondent did not solicit complaints from the students and did not act unreasonably in seeking to obtain further particulars of the complaints. I reach this conclusion because Mr Burns gave evidence, which I accept, that the initial complaints raised in the meeting on 30 November 2023 had occurred independently and of the students' own volition. Professor Molasiotis gave evidence, which I accept, that the comments made in that meeting were entirely unexpected. Those students then reduced their complaints to writing. The Respondent then wrote to those students posing questions to them. Critically, those questions were seeking particulars of the information that had already been given. The questions did not seek to elicit or solicit further or additional complaints (save for a general question - 'do you have anything else you wish to add?' at the end of the questions). For several of the questions, the students are asked to provide examples, context, and timings, as well as being asked why such concerns had not been raised previously. I consider an employer acting reasonably is permitted seek to interrogate or obtain particulars of the complaints made in this manner.

100. For the above reasons I consider that the Respondent had reasonable grounds to found its genuine belief that the Claimant was guilty of the misconduct he was accused of.

101. Next, I find that at the time the Respondent held that belief it had carried out as much investigation as was reasonable.

102. Mr Burns was the investigating office. Mr Burns had not conducted an investigation prior to this one. I noted that much of Mr Burns evidence to me referred to his reliance on HR throughout the process. I considered that was understandable given his lack of experience and that it is reasonable for managers inexperienced in conducting disciplinary processes to use and rely on HR support perhaps more often than managers experienced in conducting such investigations might. Indeed, I have borne in mind that the Respondent is a large University with ample HR resources when determining the fairness of the dismissal overall. Bearing in mind ***Ramphal***, I do not find that Mr Burns' decision making relating the investigation was in any way improperly influenced by his reliance on HR support. Indeed, that after meeting with the Claimant on 18 December 2023 Mr Burns decided to impose a suspension limited to student facing activities (as opposed to suspension from all work as had been recommended by HR) would suggest he departed from HR input where he decided it appropriate to do so. There was no suggestion in the case that any other relevant person (i.e. the dismissing officer or appeal panel) were unduly influenced.

103. I note that investigation involved not only having the students reduce their accounts to writing but, as noted above, it involved interrogating those accounts for particulars. These matters were then presented to the Claimant initially on 18 December – and then formally at the first of two investigation meetings on 23 January 2024. I do not consider there was any undue delay or any delay that might have compromised the fairness of the process. I accept that the timing of the complaints meant that the Christmas period was a distressing period for the Claimant but that was a happenstance of timing that could not reasonably have been avoided.

104. During the interviews on 23 January 2024 and 20 February 2024 the Claimant was permitted to be accompanied by a Union representative, Dr Broome. Dr Broome was permitted to make representations and have input during these meetings. I consider that in advance of both these meetings the Respondent acted reasonably in furnishing the Claimant with the relevant evidence of the alleged misconduct and that it acted reasonably in the conduct of these meetings by allowing the Claimant to give his a full account in response to the allegations.

105. Mr Burns' report is detailed and carefully distinguishes between those matters which were deemed to be potential acts of misconduct or gross misconduct and those matters which are not and should not therefore proceed to a disciplinary hearing.

106. During the disciplinary process the Claimant requested that the Respondent interview or speak with Barry Squires and, also, that it interview

or speak with eight named students, across two different year groups. It did neither. Fairness in a disciplinary process requires an employer to look for and consider not just inculpatory evidence but also exculpatory evidence. Where an employee who is subject to an investigation about their conduct names particular people who they wish their employer to speak to, it is often necessary for an employer, if it is to act reasonably, to do so. This is for many reasons, not least that it can be satisfied that any conclusions it reaches are robust.

107. Regarding Mr Squires, I find that the Claimant requested that he be spoken to not because he would provide relevant insight and evidence as to the allegations of inappropriate and unprofessional language toward the students, but rather as to matters relating to the management of the Film programme. This is reflected in the answers Mr Squires gives to questions posed to him in an email on 5 June 2024. The only matter about which he is asked that is not related to those matters concerned alleged remarks about a colleague, Ms Marmalade. That matter was not part of the misconduct that Professor Molasiotis found to be proven or a matter which caused Professor Molasiotis' to dismiss the Claimant. Mr Squires was not therefore a person who would have corroborated, undermined or even shed further light on the allegations of improper and unprofessional language. I therefore do not consider that the failure to speak with Mr Squires was outside the range of reasonable responses open to an employer.

108. Regarding the eight students, I do not consider the Respondent acted unfairly by not interviewing or speaking with them. My reasons for this are that these students were suggested by the Claimant as offering a 'balanced view' about him, his teaching and his behaviour. Whether or not these students were properly described as 'character' witnesses, what I do find is that, acting reasonably and applying ***Miller***, an employer may decide that if proposed 'witnesses' will not provide relevant evidence or information as to whether specific acts of misconduct occurred, it is not required to interview or speak with those proposed 'witnesses'. I consider the Respondent acted reasonably in deciding that it should not 'weigh' what may have been positive accounts of the Claimant against the allegations of inappropriate and unprofessional language.

109. Next, I considered whether the decision to dismiss the Claimant was within the range of reasonable responses open to the Respondent. I reminded myself, applying ***Iceland Frozen Foods***, that I must not step into the shoes of the employer and it was irrelevant whether I would have taken the decision to dismiss. I concluded that the decision to dismiss was within the range of reasonable responses open to the Respondent. My reasons are as follows.

110. First, I determined that the Respondent was entitled to characterise the inappropriate and unprofessional language toward the students as gross misconduct. This is because the Respondent's Disciplinary Policy identifies that improper behaviour towards students (taking into account any local policies / guidelines appropriate to a specific area) is a matter that the University may view as serious enough to amount to gross misconduct. I

find that the inappropriate and unprofessional language toward the students fell within that description.

111. Second, I am reinforced in that finding by the Respondent's How we Work policy. I considered this was a 'local' policy as referred to in the Disciplinary Policy. That policy provides that 'if an employee breaches the standards outlined in this document it may lead to action under the disciplinary procedure and in serious cases, it may result in dismissal.' I accept the Respondent's submission that this shows that the Respondent placed a 'high premium' on compliance with it.

112. I have borne in mind in determining the fairness of the dismissal that the Claimant was not expressly provided with a copy of this policy during the course of the disciplinary process. However, this is a document on which the Claimant had undergone training in July 2022. Further, excerpts of the document (albeit not the provision that breach of the policy may result in dismissal) were set out in the invitation letter to the disciplinary hearing. I therefore consider that the Claimant either was, or ought to have been, aware that contravention of that policy – which, in part, concerned adherence to principles of equality and diversity – could amount to improper behaviour toward students.

113. Further in this respect I have particularly borne in mind, as the Respondent directed me to, the decision in ***Hewston***. However, in my view, unlike the facts of that case, the Claimant could reasonably have expected that his employer would treat the misconduct of which he was accused as a serious matter. Not only was this conduct which was captured in the relevant policy documents referred to above, it was conduct which the Claimant knew his employer would treat seriously. Indeed, the Claimant's evidence to the Tribunal, which I accept, was that he agreed that the inappropriate and unprofessional language would, if it had occurred, be a serious matter.

114. Third, I consider the Respondent was reasonably entitled to take into account the impact that the misconduct had had on the students. The Respondent is a teaching institution and it is therefore reasonable for it to take into account how an employee's conduct may adversely affect the service it provides to its students.

115. Fourth, when determining the sanction to be imposed, the Respondent considered the Claimant's response to the allegations. I find that the Respondent did not 'bump up' the severity of the misconduct because of the Claimant's responses to the allegations. Rather, having determined irrespective of that position that the proven allegations amounted to gross misconduct, the Respondent then considered what sanction it should impose. I find that in determining that question the Respondent was reasonably entitled to take into account the Claimant's response. Two aspects of the Claimant's response were particular factors in Professor Molasiotis' decision making – the Claimant's contrition or willingness to apologise for his conduct and his insight into that conduct. During the disciplinary hearing the Claimant's had stated that he would apologise if he had done anything to upset anyone and that the disciplinary

process had made him realise how his language could be 'interpreted' and that he would not do it again. The Claimant's evidence to the Tribunal was that 'if we had got to a place of agreement, that I did say those words, then I would apologise to anyone upset. But this would be after we discovered what was actually said – I cant take responsibility for something not said.' I find this is consistent with how the Claimant's responses as to any contrition were conveyed during the disciplinary process. Professor Molasiotis determined that he could not have confidence that the Claimant would not engage in similar behaviour given this response. I consider that an employer acting reasonably could reach that conclusion.

116. Fifth, having found that the corroborated remarks were said, Professor Molasiotis properly considered the Claimant's motive or intention. Professor Molasiotis' determined that there was no 'malice' by the Claimant in engaging in the misconduct. Indeed, the Claimant put to Professor Molasiotis in cross examination that he considered himself to be an empathetic person and Professor Molasiotis did not disagree with that. It was in my view reasonable for an employer to consider the motive or intention of an employee found to have committed misconduct. It was also within the range of reasonable responses for an employer to conclude that, despite there being no malice intended, the fact of contravention of important principles as to equality, dignity and inclusivity towards students, the impact that that contravention had on the students and the lack of confidence that the employee would not engage in similar behaviour in the future meant that a sanction of dismissal was warranted. Further, I make clear that I accept the Claimant's evidence that he is a passionate educator. I also accept the evidence of Mr Heysmond that his experience of the teaching he received from the Claimant was a positive one. Nonetheless, I consider that the Respondent acted within the range of reasonable responses in determining that either an absence of malice in respect of the specific allegations of inappropriate and unprofessional language or a more general recognition of positive teaching experiences from other students did not mean that a sanction of dismissal was not warranted. For completeness, I reject the contention that by concluding there was no malice in the Claiamnt's actions this was in some sense inconsistent with either the findings made by Professor Molasiotis or the decision to impose a sanction of dismissal.

117. Sixth, the Respondent considered any mitigation advanced by the Claimant, including that he had an unblemished personnel record. The Claimant reasonably contended that any adverse findings about his conduct should be set against that record. I find that the Respondent did do that and that it was within the range of reasonable responses for it to determine that this did not justify a sanction less than dismissal. This is because of the conclusions I have set out above.

118. Next, applying ***Taylor***, I considered specific matters relating to the process leading to the Claimant's dismissal that were raised during the hearing and considered if individually or cumulatively any aspects rendered the dismissal unfair.

119. The Claimant contends that the Respondent failed to follow its own disciplinary policy. In particular, it was contended that the Respondent should have, before instituting a formal investigation, made the Claimant aware of the issues and advised the improvements or changes required on the basis that the allegations constituted lapses in acceptable standards. Whilst I accept that it is often good practice for an employer to seek to resolve issues arising from 'lapses in acceptable standards' in an informal manner, I find that the Respondent acted reasonably in not taking that approach and instituting a formal disciplinary process. This is because the Respondent reasonably did not consider that the allegations merely constituted lapses in acceptable standards, but rather considered that they merited formal investigation as matters of potential gross misconduct. This inevitably involves making an evaluative assessment of whether the matters going to the employee's behaviour are serious enough to warrant formal disciplinary action, which can reasonably occur even if the matters have not previously been addressed informally. I consider it was within the range of reasonable responses for the Respondent to take the approach it did and I do not consider in doing so it breached its own disciplinary policy.

120. The Claimant contends that the meeting on 18 December 2023 was unfair given he was not told what it concerned in advance, was not told HR would be present, was not told he could or should be accompanied at the meeting and no notes were taken at the meeting. I have found above that the Claimant is correct about the fact of these matters, but I do not consider that the Respondent acted outside of the range of reasonable responses in so acting or that these matters rendered the dismissal unfair for the following reasons.

121. As regards the Claimant not being told in advance what the meeting was about, it was necessary that the Respondent inform the Claimant of the allegations. An employer, acting reasonably, may choose to do this in a face to face meeting. I have considered the emails from the Claimant's union representative about this meeting. I have no doubt that the Claimant genuinely felt blindsided by what he was being told in the meeting – I accept that no complaints of this type had been raised with him prior to this meeting. However, I do not consider that an employer can only act reasonably in such circumstances by telling an employee in advance that the meeting concerns allegations of misconduct. There are inevitably matters of confidentiality that arise in such meetings and informing an employee in advance of what will be discussed may simply lead to questions from an employee which the employer would reasonably wish to address in the meeting itself. As regards accompaniment, there is no entitlement in any of the Respondent's policies, in any ACAS guidance or in any statutory instrument for an employee to be accompanied at a meeting of this type and consider an employer may act fairly by not permitting an employee to be accompanied at such a meeting.

122. I did however have a concern as to the purpose of the meeting and the consequences of the decision to suspend the Claimant. This concern arose from the fact that, although I found that the decision had not been taken until the meeting occurred to suspend the Claimant, a recommendation had seemingly been made to this effect by the Respondent's HR team in advance of the meeting. Further, having been

told that he was suspended only from student facing activities on 18 December 2023, the Claimant should not have been prevented from attending the meeting of the academics in the Film programme later that day. I do understand why the Claimant therefore felt aggrieved by this meeting.

123. Nonetheless, I note that the Respondent's disciplinary policy directs that suspension should be considered where gross misconduct is alleged. I have already determined above that Mr Burn did not act unfairly in the decision he took as to suspending the Claimant, or that he was unduly influenced by HR in this regard. Further, the suspension was, from at least 21 December 2023 if not prior, limited to student facing activities. This was I find proportionate to the issues that the University considered may constitute gross misconduct.

124. Further, as regards the absence of notes from the meeting, I accept that it is very surprising that the Respondent took no notes of a meeting that lasted over an hour, concerned serious allegations of potential gross misconduct and, at the conclusion of which, the Claimant was suspended. I have borne in mind on this issue the evidence of Dr Hall, which is that the investigation he was subjected to was, in his view, not conducted in accordance with relevant procedures. However, no statements of the Claimant or matters raised by Mr Burns formed part of the evidence collated during the formal investigation and nothing said or done in this meeting formed part of any of the reasons for the decision reached by either Professor Molasiotis or the appeal panel.

125. Overall, I do not therefore consider the manner in which the meeting was arranged or conducted rendered the dismissal unfair.

126. The Claimant was critical of the fact that, in his investigation report, Mr Burns sated that he had been appointed to undertake an investigation into student's concerns about the Claimant on 18 December 2023. The Claimant contended this was not correct as Mr Burns had in fact sent a meeting invite on 15 December 2023 and so must have been appointed prior to 18 December 2023. Whilst I accept that it is correct that the invite had been sent on 15 December 2023, that was for a meeting at which the Claimant was informed of the allegations and, at its conclusion, suspended from student facing activities. The formal investigation process then began. Mr Burns' evidence to the Tribunal, which I accept, was that he was not asked to undertake an investigation until 18 December 2023. I therefore concluded that Mr Burns' investigation report was accurate. Nonetheless, even if Mr Burns had been appointed prior to 18 December 2023, I do not consider that this rendered the dismissal unfair. Mr Burns had taken part in the meeting with the students on 30 November 2023. It was not anticipated by anyone that at that meeting concerns about the Claimant's conduct would be raised by students. Between that date and 15 December 2023, Mr Burns had received any written accounts from students, or spoken with any students. There was therefore no relevant investigatory steps that took place prior to 18 December 2023.

127. Lastly, although the Claimant did not attack with any great vigour the appeal process or decision, I have still considered whether any action or inaction during this stage rendered the dismissal unfair and I have concluded it did not.

128. First, I have borne in mind that the provision of an appeal is a key aspect of fairness in a disciplinary process. The Claimant was afforded this and there was nothing about the process of the appeal that was suggested to have caused unfairness to the Claimant. As I have found above, the Claimant was permitted to advance his grounds of appeal without interference, the appeal panel correctly identified and explored those grounds and the appeal panel's reasons for rejecting those grounds was within the range of reasonable responses.

129. The Claimant's appeal was based on three grounds; 1) The harshness of the sanction; 2) That C had not had the opportunity to address issues with use of language prior to the formal action; and 3) the dismissal was a breach of the Higher Education (Free Speech) Act 2023.

130. I have set out my conclusions as to the first matter (the sanction) above. At the appeal stage, I consider the Respondent acted reasonably in reviewing the decision of Professor Molasiotis, took into account relevant matters when assessing whether the sanction imposed was justified and acted within the band of reasonable responses in upholding the decision to dismiss.

131. I have set out my conclusion as to the second matter (informal action as opposed to formal investigation and disciplinary process) above. At the appeal stage, I consider the Respondent acted reasonably in reviewing the decision to undertake a disciplinary investigation as opposed to engaging in informal action. This is because, as I found above, it was reasonable for the Respondent to have made an evaluative assessment of whether the matters going to the Claimant's behaviour were serious enough to warrant formal disciplinary action and I consider the appeal panel acted reasonably in reaching the same view.

132. As to the third matter, this was not – save as to a brief exchange in cross examination concerning 'free speech' more broadly - pursued in the course of the evidence. It was not a matter that was put by the Claimant to any of the Respondent's witnesses. However, in submissions, the Claimant did submit that the Respondent's actions were contrary to the important principle of academic free speech and, in particular, drew my attention to clause 2.1.7 of the How We Work policy, which I reviewed.

133. As regards the Higher Education (Free Speech) Act 2023 relied on in the Claimant's grounds of appeal, I note that the relevant provisions (in particular s.1) of that Act are not yet in force. Consequently, I do not find that the Respondent could have acted in a manner that breached that Act. Nonetheless, this matter was however expressly considered by the appeal panel. Although the appeal panel did not (as, indeed, it would rarely be necessary for a disciplinary panel or appeal panel to do in order to act fairly) grapple with the (ostensible) legal complexities of legislation that may have

competing interests, it was, in my view, reasonable for the appeal panel to determine that the language that the Claimant was found to have used could constitute harassment and/or be discriminatory in nature. Having reached that determination, I consider there was no unfairness in the appeal panel placing little 'weight' on this ground of appeal.

134. Lastly, as regards whether the Respondent's actions were contrary to the clause that the Claimant drew my attention to in the course of the hearing (2.1.7 of the How We Work policy), I find that they were not. The specific clause provides that members of the governing council and the vice chancellor's executive are expected to "maintain, promote and protect the principle of academic freedom, and take all reasonable steps to ensure that academic employees have the ability within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs or privileges". In my view, the Respondent did not act contrary to that requirement by subjecting the Claimant to a disciplinary process in this case. This is for the following reasons. First, I bear in mind in determining whether the Claimant's dismissal was rendered unfair by reason of this alleged breach that the Claimant did not specifically contend during the disciplinary process that the Respondent had contravened this clause of the policy. Second, I find that the Respondent did not act unreasonably in determining that the inappropriate and unprofessional language comprising the alleged misconduct could not reasonably be characterised as testing received wisdom, putting forward new ideas or controversial or unpopular opinions. Further, I consider that the qualifying phrase 'within the law' could encompass obligations that the University had as a provider of Higher Education to the student body under the Equality Act 2010. Those obligations include, under s.96, that a governing body of such an institution must not discriminate against a student in the way it provides education for the student. Where the Respondent determined that any expression of unpopular opinion would not be 'within the law', it would not be acting contrary to this policy by failing to, ostensibly, maintain, promote or protect the principle of academic freedom.

135. For all of the above reasons I find that the dismissal was fair, the Claimant's complaint of unfair dismissal is not well-founded and the claim is dismissed.

EJ Price

Employment Judge Price

Date: 2 April 2025

ORDERS SENT TO THE PARTIES ON

.....25 April 2025.....

.....

FOR THE TRIBUNAL OFFICE

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