



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M J Holland

**Respondent:** Great Academies Education Trust

**Heard at:** Liverpool (CVP)

**On:** 29, 30 April & 1 May 2025,  
29 May 2025 (in chambers)

**Before:** Employment Judge Shotter

## REPRESENTATION:

**Claimant:** Mr S Langton - Counsel

**Respondent:** Mr A Mohamed – Solicitor

## RESERVED JUDGMENT

The JUDGMENT of the Tribunal is:

1. The claimant was not unfairly dismissed and his claim for unfair dismissal is not well-founded and dismissed.

## REASONS

### Preamble

1. This has been an in person hearing by video which has been consented to by the parties. The form of remote hearing was Kinley CVP video fully (all remote). A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred are not in an agreed bundle. The agreed bundle consists of 259 pages. In addition I have before me the written statements of the claimant, Phil Smith, director of education no longer employed by the respondent, and Harj Kilshaw, trustee on the board of trustees.

2. At the outset of the hearing we discussed the Equal Treatment Bench Book and reasonable adjustments as the claimant has diabetes and needs breaks as and when requested.
3. In a claim form received on the 22 February 2024 following ACAS Early Conciliation that took place between 12 December 2023 to 23 January 2024, the claimant brings a complaint of unfair dismissal following his summary dismissal on the grounds of misconduct.
4. This case is sensitive and involves a number of children. To protect their identity I have referred to them by a letter, for example, in relation to "Z" I have referred to "Z the nun." In the original quotations the full name of the pupil would have been given. It was agreed with the parties that the children had no interest in these proceedings, their identity required protection and as such I have also made a limited reference to the year group and age taking into account the principle of open justice and balancing exercise involving safeguarding children.
5. Finally, this is an important case for the parties, particularly the claimant with whom I felt sympathy as he appeared to be an enthusiastic teacher who enjoyed his work. Originally, the in chambers date was listed for 26 July 2025 and I brought this date forward, finishing the reserved judgment and reasons in my own time to assist the parties. As I explained to the parties at the end of the final hearing, I have in mind the principle that I cannot substitute my view for that of the respondent on the issue of the fairness of the dismissal in this most difficult case.

### Evidence

6. The Tribunal heard evidence from the claimant on his own behalf, and on behalf of the respondent Phil Smith, director of education, who was no longer employed by the respondent, and Harj Kilshaw, trustee on the board of trustees. As far as the process was concerned there was little if no conflict between the evidence given the claimant had reviewed and signed off notes of meetings and the whole process from start to finish (with the exception of the March 2022 meeting) was well-documented.
7. Given my finding that on the balance of probabilities the claimant had been fairly dismissed, in the alternative I proceeded to make limited findings as to whether the claimant was guilty of the misconduct alleged. I found the claimant changed his story from investigation stage to the disciplinary process in respect of a number of matters, which raised an issue of credibility although this may in part be attributed to the fallibility of memory as time goes on and the claimant's ill-health given he had been signed off with stress during the process, understandably as he was well-aware that the allegations were serious and he could lose his job, despite this factor being underplayed by the union representative. An example of the claimant changing his story is the evidence concerning calling female student "Hideous H" when the claimant indicated it was more than once, and at disciplinary stage one time only before Halloween as a joke and part of a game. A similar point applies to the claimant describing a female student as a "dumb blond" when the claimant attempted to blame the phrase on the student as he alleged it originated from her

and/or her sister, failing to appreciate that when a teacher used such a phrase it could be interpreted as offensive and sexist.

8. There are a number of matters the claimant gave less than credible evidence about, including the meeting of March 2022 and the issue as to what sort of meeting it was. I took the view the claimant would have fully appreciated that when the deputy head discussed the complaints raised by pupils concerning him, he would have fully appreciated that it was a conversation about his behaviour and how he should be “mindful” of what he said to pupils as it could be misinterpreted. It is unfortunate the claimant has tried to underplay this meeting, however, it is clear from the evidence that he ignored the advice/instruction and went on to commit acts of gross misconduct. The claimant did not need to be issued with a formal warning or take part in a more formal process to understand the standards of behaviour expected of him.
9. The claimant’s evidence relating to the interpretation to be given to the safeguarding email concerning S repeated by Mr Langton is submissions also gave rise to credibility issues given the email was clear in its effect, namely, that S should not be photographed and the claimant raising her lack of a photograph on the SIMS system was a breach. This did not need to be spelt out to the claimant, the words given their ordinary commonplace interpretation were clear and the reality was that despite the seriousness of the safeguarding email the claimant had forgotten the instructions given.
10. Turning to Mr Smith’s evidence, despite his repeated reference to “triangulated evidence” or variations on this theme, which at times made little sense on occasion, I found on the balance of probabilities he was not swayed by the fact that the headmaster had at a late stage of the investigation, volunteered himself on to the investigating panel with the deputy head, which was a most unusual step and could be interpreted as an attempt to put pressure on a dismissing and/or appeal officer to find gross misconduct and dismiss given the tenor of the investigation report and references to findings that should have been left to Mr Smith, I was satisfied on the balance of probabilities Mr Smith’s evidence to the effect that the headmaster played a part in the investigation report made no difference to how he viewed the allegations and his decision making. He was independent and gave credible evidence on how he had approached this difficult case, with balance and objectivity, deciding whether an allegation set out in the investigation report had any basis or not, and rejecting it when it did not in favour of the claimant’s evidence.
11. Turning to Harj Kilshaw’s evidence, there was confusion as to whether the allegation relating to asking Z if she had a bomb under her hijab was put aside and her response on cross-examination as to whether it was put aside as not proven was unsatisfactory due to lack of clarity. Nevertheless, I accepted on the balance of probabilities that Harj Kilshaw tried as best as she could to act independently and it was in this context she was satisfied, taking into account all the evidence relating to the five allegations, that the claimant had admitted making a comment/comments to Z about looking like a nun in her hijab and given the seriousness of the cumulative allegations, dismissal should not be set aside.

Agreed issues

12. Liability was dealt with first together with the issue of contributory fault and the effect of the “Polkey no difference rule.” The issues were agreed at the outset of the hearing and are as follows:

1. **Unfair dismissal**

- 1.1 Can the claimant prove that there was a dismissal? It is accepted the claimant was summarily dismissed for misconduct on 27 September 2023.
- 1.2 If the claimant was dismissed has the respondent shown the reason or principal reason for dismissal?
- 1.3 Was it a potentially fair reason under section 98 Employment Rights Act 1996? The respondent says the claimant was dismissed for misconduct.
- 1.4 If so, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant?
  - (1) The respondent genuinely believed the claimant had committed misconduct;
  - (2) there were reasonable grounds for that belief;
  - (3) at the time the belief was formed the respondent had carried out a reasonable investigation;
  - (4) the respondent followed a reasonably fair procedure; there was no proper fair transparent investigation. Looking at the investigation with no witnesses dealing with the investigation. Ms Holroyd and Mr Waugh carried out the investigation.
  - (5) dismissal was within the band of reasonable responses.
- 1.5 If the respondent did not act reasonably is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason (known as “the Polkey no difference rule”) to be dealt with at liability stage?
- 1.6 If so, should the claimant’s compensation be reduced? By how much?
- 1.7 If the claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?
- 1.8 If so, would it be just and equitable to reduce the claimant’s compensatory award? By what proportion?
- 1.9 What basic award is payable to the claimant, if any?

- 1.10 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

## Remedy for unfair dismissal

2. Does the claimant wish to be reinstated to their previous employment?
3. Does the claimant wish to be re-engaged to comparable employment or other suitable employment?
4. 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.
5. 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.
6. What should the terms of the re-engagement order be?
7. If there is a compensatory award, how much should it be? The Tribunal will decide:
  - (1) What financial losses has the dismissal caused the claimant?
  - (2) Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
  - (3) If not, for what period of loss should the claimant be compensated?
  - (4) Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
  - (5) If so, should the claimant's compensation be reduced? By how much?
  - (6) Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
  - (7) Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?
  - (8) If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
  - (9) If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
  - (10) If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
  - (11) Does the statutory cap of fifty-two weeks' pay or [£105,707] apply?

8. What basic award is payable to the claimant, if any?
9. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

### Facts

13. The respondent is a multi-academy educational trust consisting of four schools. One of the four schools is the Great Academy Ashton which provides secondary education and is based in Ashton-under-Lyne.
14. The respondent issued a number of Policy and contractual documents including a Disciplinary Policy and Procedure, Staff Behaviour Policy (Code of Conduct) in addition to national safeguarding guidance issued by the Department of Education and national Teachers' standards. An example of gross misconduct set out within the Disciplinary Policy include a failure in duty of care to protect pupils, and staff are regularly trained on the Keeping Children Safe in Education Guidance known as "KCSIE." The respondent expects teachers to act as role models for the children they teach as reflected in the Teachers' Standards and if they fail to follow the Code of Conduct disciplinary action can be taken, including dismissal.
15. David Waugh was and remains the principal, and Rebecca Holroyd, assistant principal.
16. The claimant commenced his employment as a mathematics teacher on the 5 November 2018. He was aware of the respondent's policies and procedures and the expectations of behaviour including a requirement to treat all pupils with dignity and respect. The claimant had completed the KCSIE training on the 29 September 2021 and 12 October 2022. Up until the events resulting in his summary dismissal the claimant had a good employment record, and he prided himself of the rapport generated with the students he taught which including getting them onside with class room games and humour.
17. On the 8 March 2022 a female student referred to as "S" for the purpose of this litigation raised a student incident report complaining that the claimant had said to her "in 10 years' time when we meet again your gonna have 9 kids to 9 different Dads, I had my brace in and he called me Jaws and the class was laughing and then he said 'I'm only joking Jaws your beautiful.'" The complaint was supported by three female pupils who completed a student incident report also.
18. On the 9 March 2022 a female student referred to as "E" for the purpose of this litigation complained the claimant "make inappropriate comments and make me feel very uncomfortable. He says things like "Bet you have loads of boyfriends with your looks...you'll have 7 kids with 10 baby dads...always calling me beautiful and is always talking about my looks."

19. The claimant was spoken to informally by Rebecca Holroyd, who made some short notes recording the conversation that took place including a reference to there “could be a full investigation - however on this occasion it is not- spoken to MHL about **mindful of comments keep professional and especially because they did not know how it could be interpreted. Both girls were moved...**” [my emphasis]. No action was taken against the claimant and the complaints were not investigated further.
20. On the 9 June 2022 the claimant was sent an email about student S marked “IMPORTANT CONFIDENTIAL INFORMATION. **The content of this email is only for the eyes of the recipient and S [name of the pupil] MUST remain totally oblivious of its content and existence. This email must not be discussed with colleagues internally or externally under any circumstances. Please kindly ensure S is not photographed, filmed...S is to appear invisible to the world...but have no knowledge of what school have put in place...NO INFORMATION IS TO BE SHARED BY THE SCHOOL WITH ANYONE REGARDING S...**” [my emphasis]. The claimant received this email and would have understood its contents to mean that S had no idea she was not photographed or knew about the safeguarding steps taken. The claimant forgot about the email and the instructions.
21. Four months later on the 8 July 2022 a male student referred to as “D” for the purpose of this litigation completed a student incident report complaining about the claimant’s comment made to the student D’s girlfriend when the claimant was driving out of the school gates. “He stopped and said ‘is this your girlfriend and pointing at a girl. ‘I said ‘no’ and pointed at [the girlfriend] and said ‘that’s my girlfriend’ Mr Holland looked [at the girlfriend] and said ‘you could do better.’ He is also very sarcastic in lessons and I hate it.” A note was taken by Gillian Baines, staff member, of the conversation. The respondent made contact with D’s mother who discussed D trying to take his own life and said “when kids feel like D staff saying stuff like this does not help them.”
22. Four days later on 12 July 2022 male student D raised a second complaint by completing a student incident report complaining about the claimant making an identical comment” in the “out of office area.” The note recorded “This is the second time – D only reported this via Mum” and dated 14 July 2022. Rebecca Holroyd prepared a note titled “RE: complaint” of her discussion with D’s mother who was “very angry and is not sending D back to GAA. I explained it will be fully investigated, she asked why the teacher is still teaching...I have asked what we can do to support Dylan coming back to school, she said he is never coming back, she does not want to discuss any strategies.” There was a discussion about A&E and D’s GP “Mum said this is an ongoing thing as D suffers from depression and anxiety.”
23. On the 14 July 2022 Gillian Baines emailed Rebecca Holroyd about D in year 9 “I know you were dealing with this on Friday re Mark holland and D Mum rang this morning extremely upset and cross as MH has said something similar again (see attached) Mum and D had an argument this morning and D told Mum it had happened again. Mum said D put a knife to this throat (I believe this to be

historical)...mum does not feel D is safe in school with 'staff bullying him' especially whilst he has such low mood...she is trying to get him into the GP . Please can you see what you can do to support D and his family."

24. On the 14 July 2022 the claimant completed a Staff Incident Report about D; "D made a comment about MHL hair – they had a conversation – he said this is my girlfriend joking. I said you can do better than that. D said it was rude. D gave his girlfriend a cuddle laugh d was laughing. Not said to upset him. Apologise if taken the wrong way."
25. On the 15 July 2022 two female students confirmed D's second complaint. One of them was D's girlfriend who recorded both complaints had taken place including the comment to her "you can do better."
26. On the 19 July 2022 the claimant completed a Staff Incident Report about D first incident involving him stopping the car at the gates; "don't remember it – it didn't happen."
27. Four months later on 8 November 2022 a further complaint was made about the claimant. A female student referred to as "H" for the purpose of this litigation raised a student incident report on 8 November 2022 complaining "A couple of weeks ago Mr Holland called me hideous he said that's what he thought my name was and little things like that started to carry on....sometimes he would write my name on the board as hideous and then other people started to call it me, even my friends, and I know he was joking when he said these things but it started something big quite a few people were calling it me and...word got around very quickly. Mr Holland...said he didn't mean to upset me, it was only a joke because it was so close to Halloween and he said he would stop people from calling it me...most of the people...have stopped now because they saw I was getting upset about it but the odd people still call it me." H's report was confirmed by another two female students on the 8 November 2022 who completed student incident reports. Another student did not hear the description given to H, and reported other descriptions given to other students "The Liar" and "Football girl."
28. A parent of the year 7 female student referred to above, raised a complaint that the claimant had been calling the student "Hideous H and has even wrote this name on the board...now other kids in the class are calling it her the teacher started this off and my daughter comes out of school crying her eyes out..."
29. On the 10 November 2022 David Waugh, the principal, invited the claimant to what he described as a "management meeting" to discuss an "official complaint" and student witness statements explaining "I will seek your views and responses to various aspects of the investigation. This meeting is not a disciplinary meeting, rather an investigation meeting." The claimant was informed of his right to be accompanied and that "the complaint surrounds possible breach of the following teaching standards..." The claimant was offered health support. He did not attend the meeting due to being absent.



30. On the 2 November 2022 the claimant was sent a letter by Rebecca Holroyd inviting him to an investigation meeting setting out the allegations raised by H and D stating with reference to H “the complaint we have received is due to peer on peer bullying, and belittling the student in question, and D “ is due to the mental health of the student in question.” A parent of a year 7 female student referred to as “H” for the purpose of this litigation raised a complaint that the claimant had been calling the student “Hideous H and has even wrote this name on the board...now other kids in the class are calling it her the teacher started this off and my daughter comes out of school crying her eyes out...” The claimant was informed of his right to be accompanied and of available health support.
31. The investigation meeting took place on 9 December 2022, and the notes signed by the claimant and dated 15 December 2022 record the claimant’s explanation of why he called H “hideous H” as a joke when the class were involved in a game and he had apologised to her, accepting she “felt belittled, embarrassed and that her peers had started calling H this name because they hear a teacher using this terminology then they may feel it is acceptable for them to use it.” The claimant explained he had used “hideous H” on one occasions only.
32. The claimant was asked about male student D and his comment on two occasions ‘you could have done better’ referring to student D’s girlfriend. The claimant explained D “was starting to come out of his shell...I didn’t realise how fragile he was. **I went a bit too far with him, but had no intention of upsetting him...**trying to build up relationships...build their confidence up...**I know sometimes I put my foot in my mouth**” [my emphasis]. When asked “are you aware that this has caused undue stress to D, he felt unworthy, his self -esteem at the time was very low and you only exacerbated his feelings and made him feel that you agreed with how he was personally feeling” the claimant responded “I didn’t think he was feeling low...he didn’t strike me as being on a downer...wasn’t meant to embarrass or put down.” The claimant remembered the corridor incident but not stopping the car incident. He was asked if there were other potential witnesses and the claimant said there were none.
33. On the 12 December 2022 a number of students complained the claimant had told Muslim students that there was no such thing “as the Kuran” and “being gay or trans is not allowed in our religion but Mr Holland said it doesn’t say it in the Quran and it’s not true...he’s saying the Quran is wrong.”
34. On the 13 December 2022 a female student referred to as “Z” for the purpose of this litigation complained in a Student Incident Report the claimant “has been making comments about my hijab since he started teaching me in year 10 calling nun all the time for the way I wear my hijab...he also once touched my hijab and asked me if I have a bomb in my hijab...he came to my table and asked me...stuff like if we find any teacher attractive and started naming some teacher...he also made a comment about black people don’t remember what the comment was but it was about suncreams and black people. He used the word ‘nun’ a lot. On the

same date Z's friend who sat at the same table confirmed in a Student Incident Report the allegations raised by Z including "titled her 'Z[full name given] the nun'...he also called...a student in his class 'a young dumb attractive woman.' Also right after this statement he asked ' what teacher do you guys find attractive in the school...naming teachers...I blame my mock results on him.'" A second student from the same table confirmed the claimant had referred to Z asking "'do you have a bomb in there' to my friend Z because she had a bun... as a nun and that she looks weird because of the fabric colour under her scarf to cover her head...he said that the Quran wasn't real and tried telling us how what we believe in is fake...This racism has been going on since year 10 but we let it slide we felt bad because he was old we were finding excuses for him like he probably doesn't know or he wasn't educated about it, but it seems he does and we have had enough..."

35. Rebecca Holroyd spoke with a number of pupils including Z, her friends T and B, and a female pupil M making notes on a paper headed "questions for witnesses" which she then put into a more coherent form which was not checked by the students or signed off as a proper record/statement. Their responses were largely reflected in the Student Incident Reports each had completed, save for M who confirmed she could only recall the claimant referring to her as a "dumb blond" and not "young dumb and attractive." M confirmed it was "just banter" and the claimant had asked "us what teachers you'd date. Tells you everything." When asked about arguments over the Quran M said "I'm on a different table. He said hijabs as nuns, he uses nun's a lot and finds it funny as he giggles as he said it."
36. On the 13 December 2022 a "teacher issue" was raised concerning a female student S when the claimant "asked us in front of the whole class why she has no picture on her school profile which put us in a very awkward position to which she just answered 'I'm not allowed.' She got questioned by someone else in the class about it in front of everyone...he then said out loud 'is that you parents don't want you to have one' and she replied 'yes.' I feel it is unprofessional and awkward for S for him to ask especially in front of everyone since it's relating to safeguarding...it's bothered us and it's bothering her that she was asked about it." The claimant had been made aware of the fact that there were serious safeguarding issues relating to S in 9 June 2022 an email about student S marked "IMPORTANT CONFIDENTIAL INFORMATION" referenced above.
37. As a result of the complaints, David Wright was concerned and spoke with the claimant instructing him to work from home and not attend the school site. The position was confirmed in a letter dated 14 December 2022 that referenced "further allegations have come to light, specifically related to overtly sexualised comments, inappropriate adult level comments with children, comments related to Islam, religious related comments and potentially implicit racist comments. The claimant's access rights to internal and external IT network was suspended.
38. An investigation meeting took place on 15 December 2022 with the investigating officer, Rebecca Holroyd, and claimant, who was accompanied by a NASUWT representative. Notes were taken which record the claimant denying he had

referred to the Quran as “fake” putting into context the discussion that had taken place with students about religion, the claimant explaining that “I don’t believe in all three books...the bible, quran and tourer.” The claimant accepted “I can see how they would perceive it as being racist...I don’t say they are wrong and I am right, just that I disagree.”

39. The claimant admitted referring to Z as a nun, ““she has a white band on her forehead (as part of her hijab)...she looks like a nun sometimes” and denying he had ever asked ‘do you have a bomb under there.’ The claimant explained he taught “7 Muslims, 1 black and 9 white students” denying he gave the white students preferential treatment. The claimant denied all the other allegations including the comment about a student being “young dumb and attractive”, with the exception of S and safeguarding stating he was unaware that S cannot have her photo taken because of safeguarding issues.” The claimant suggested the students complained “to get me back about the comments I made about the Quran...”
40. The claimant admitted he had used the term “Hideous H” on one occasion only when playing a game before Halloween in class, and when the complaint about D was raised the claimant commented “I thought that was all dealt with that year...**you said that I need to be careful about what I say as people take it the wrong way so I thought it had been dealt with. Now it looks like you are building a case against me to dismiss**” [my emphasis]. Rebecca Holroyd explained “I had a conversation with you to say that David Waugh had handed over the complaint to me as it was at the end of term and I would be picking it up in the new academic year...I will need to read through everything and decide what to do next...it may entail speaking to the students”.
41. The claimant was aware of the seriousness of the allegations, and said “if you don’t dismiss me I don’t see how I can carry on with that Class. I feel like its time for me to hand me notice in...I don’t feel safe in school now...I have had 4 complaints in 6 months...I would rather hand in my notice and go.”
42. In a letter dated 3 January 2023 from David Waugh the claimant was informed “the purpose of this letter is to confirm for you that I’m now putting myself alongside Becky Holroyd at the investigator stage. This means that I will act as an additional investigating officer in this case. The implications of this are that I would therefore not be able to hear and conclude any future process if that is the conclusion, for example, if we move to a disciplinary process I would not be able therefore have to be hierarchically above me... **I am making this decision to be a part of the investigation process due to the severity, scope and nature of the emerging allegations. If substantiated, the allegations are extremely sensitive and of a significant nature and therefore it is only right that an experienced head teacher and HR investigator that I now put myself into the position at that level.** This to confirm currently required to work from home as an alternative to possible suspension” [my emphasis].

43. The claimant was signed off with low mood and stress and remained absent until dismissal.

#### The Investigative Report

44. David Waugh and Becky Holroyd produced jointly an Investigative Report that set out five allegations in total and attached minutes of various investigative meetings, the parental complaints, the Staff Code of Conduct and the student incident reports. Four of the five allegations reached the threshold of gross misconduct and allegation 2 misconduct “in the opinion of the investigatory officers.”

44.1 Reference was made to the claimant’s admissions made in relation to allegation 1, the “hideous H and the “able to do better” comments. With reference to the “able to do better comment” the report referred to CCTV footage that the claimant stopped at the roundabout and spoke with D and a note “CCTV has not been shown to Mark for verification purpose.” It is undisputed the claimant was never shown the CCTV. No explanation has been given for this other than the CCTV footage was “lost.” The CCTV footage formed part of the conclusion; “On the balance of evidence, i.e. multiple parental complaints, Mark’s statements, investigation meeting notes, student incident reports and CCTV, it is more than reasonable to conclude that Mark Holland did indeed refer to H as hideous H... And this had a negative impact on H. In addition, it is also more than reasonable to conclude that Mark Holland did indeed inappropriately make comments regarding D as a boyfriend. It is also reasonable to conclude that both of these incidents had a negative impact on the student’s mental health, well-being, safety and self-worth.”

44.2 In relation to allegation 2 the report included the meeting held between the claimant and Becky Holroyd in March 2022, the student reports referred to above and the “management conversation” which the respondent believed “would suffice in order to bring about a correction in behaviours.” It is undisputed the meeting took place and the claimant was advised by Becky Holroyd to be **“mindful of his comments keeping interactions professional”** [my emphasis].

44.3 In relation to allegation 3, the referral of a student of Islamic Faith as “Z [name of child] the Nun; the term “Nun” being one which is most exclusively Christian in its usage, and consistent use of “this nickname” and saying “...have you got a bomb under there” to Z when physically touching the bun under the hijab, reference was made to a number of lines ceasing at investigative stage (the discussion on religion and religious views on homosexuality). The claimant’s admission that he “commonly referred” to Z as “Z the Nun” was set out, and in the conclusion it was described as “a racist comment.”

44.4 In the summary findings the claimant was given the benefit of the doubt; “even though it may be inappropriate that such a conversation is happening within a maths lesson, upon investigation, the balance of probabilities suggest that Mark’s fuller account of the conversation against the students more succinct account

indicates that it is inappropriate discussion rather than a misconduct action. Mark admits that he commonly referred to Z as quote Z the “Nun.” This is triangulated with his own admission in the meeting on 15 December 2022 and student incident report. Mark does not seem to understand the severity and racist aspects of this comment. A nun being of traditional Catholic Christian use. Z highlights a culture within the classroom of inappropriate conversation which is fundamentally racist... One student refers to quote quotes... Unnecessary and hurtful words to us particularly to the hijabi’s.” This is unlawful and discriminatory harassment attributed to religious belief. This would be classed as gross misconduct ‘unlawful discrimination or harassment’ within the GAET Disciplinary Policy...The student incident reports indicate a culture of inappropriate interaction with fundamentally racist connotations. The statements... indicate a measured and honest response.

- 44.5 On the balance of probabilities, with all aspects of this investigation, we believe that it is more likely than not, that Mark Holland used the phrase “have you got a bomb under there.” The severity of the use of such statements cannot be underestimated. This is a serious and grievance breach of the teaching standards, staff code of conduct, Nolan’s principles of public life and presents a real and present risk to the well-being of the young person and the reputation of the school. If such a story were to be made public, it would potentially be a narrative of national publicity levels. Given that, as investigating officers we feel it is more likely than not to have been said, this represents a serious breach of trust ...The use of such a phrase directed towards the students of Islamic faith indicates institutional racism on Mark’s part. Mark’s account within his investigation meeting indicates that he does not seem to understand the severity of the level of fundamental racism within the use of such a nickname. This in itself is of serious concern. Mark admits its use and therefore this is a serious breach of trust and confidence between employer and employee. This allegation is considered to be harassment of the student due to a protected characteristic as defined by the Equality Act 2010 and therefore considered discrimination due to race, religion or belief stop
- 44.6 In relation to allegation 4 “inappropriate comments of a sexual and personal nature... Referral to student, repeatedly, as a “dumb blonde”... Referral to a student as “young attractive student” and discussion within your mathematics classroom regarding who the best looking teachers where and which staff students thought where attractive.
- 44.7 In the summary findings reference was made to the notes taken from meetings between Rebecca Holroyd and the students “within the safeguarding conversations” and the conclusion was “the range of student responses within the following notes it extensive. On the balance of evidence, it is highly likely that the conversations within the classroom were highly inappropriate... This allegation is considered to be harassment of a student due to a protected characteristic as defined by the Equality Act 2010 and therefore is discrimination based on sex.”
- 44.8 With reference to allegation five “failure to follow safeguarding procedures breach of confidentiality and safeguarding protection regarding the lack of a student’s photograph on the Sims system and the referral to that in lesson in front

of other students despite you being made aware of the confidential safeguarding reasons behind that and the potential risk to the safety and welfare of that students.” The summary findings were that the claimant received the 6 September 2022 email “said that he did not remember receiving the email, spite it being clearly labelled... Email is such that it would be a significant one to receive which would reasonably be understood and retained... Mark Holland received the confidential email and on the balance of probabilities did indeed inappropriately breach the safeguarding instruction within it openly in front of a class... The breach of the safeguarding instruction led to the emotional anguish of the vulnerable student who is not aware of the safeguarding support around her stop this has had a negative impact on her mental health. Such a breach of safeguarding instructions is potentially gross misconduct.”

45. David Waugh wrote to the claimant on the 13 January 2023 setting out four allegations, the likely date of a disciplinary hearing, Phil Smith, the director of education for the respondent, named as the person chairing the hearing, and asking the claimant to send through any documents and names of witness “you will be calling.” The claimant responded in an email of the same date “thank you for moving this matter on. Would it be possible to arrange to pick up personal belongings...before I am dismissed.” The claimant did not provide any names of witnesses.
46. In a letter dated 1 February 2023 the claimant was provided with meeting notes for him to review, sign and return which he did from memory.
47. In a letter dated 2 March 2023 the claimant was invited to a disciplinary hearing to be held on 10 March 2023. Five allegations were set out as follows –
  1. “Inappropriate interaction between Holland and students with regard to inappropriate informality and nicknaming leading to significant negative impact on the welfare and when well-being of young people... The use of the nickname “hideous H” inappropriate comments to a student’s girlfriend that ‘... she could do better’” and wider cultural climate within lessons is inappropriate through non-professional discussions and focus.  
”
  2. “Inappropriate language and behaviours which have not been corrected following a previous management meeting discussion.”
  3. Inappropriate interaction between Mr M Holland and students with regard to race and religion... The referral to a student, of Islamic faith, as “Z the Nun” the term “Nun” being one which is most exclusively Christian in its usage, consistent use of nickname “Z the Nun over a sustained period of time. The saying of “have you were born under there?” to a female student wearing a hijab and hair under a bun and then physical touching of the hair bun.”
  4. Inappropriate comments of the sexual and personal nature “referral to a student, repeatedly as a ‘dumb blonde’ and joking with them in that regard,

referring to a student as 'young attractive student' and discussion within your mathematics classroom regarding who the best looking teachers were and which staff students thought were attractive.

5. Failing to follow safeguarding procedures... regarding the lack of the student's photograph the Sims system and the referral to that in lesson in front of other students despite you being made aware of the confidential safeguarding reasons behind that and the potential risk to the safety and welfare of that student."
48. The claimant was informed "the enclosed pack details each individual standard and how it may have been breached under each allegation. As such, you are advised that these allegations constitute gross misconduct and if proven could lead to your summary dismissal". The claimant was informed that Phil Smith was to be the hearing officer and David Waugh the presenting officer at the disciplinary hearing. He was informed "I do not intend to call any witnesses at the hearing stop if you intend to call witnesses please submit their names and written statements..." The claimant was provided with a copy of the evidence bundle. The hearing was rearranged for 20 September 2023 following the respondent receiving emails from the claimant's trade union representative. The new date for the disciplinary hearing was 20 September 2023.
49. The claimant did not call witnesses and nor did he ask David Waugh to bring witnesses to the disciplinary hearing.

Disciplinary Hearing held on 20 September 2023

50. The disciplinary hearing took place on 20 September 2023 before Phil Smith. David Waugh and Becky Holroyd attended, the claimant was in attendance with his trade union representative. The claimant did not produce any additional documents and nor did he call any witnesses or ask for any to be called. The individual allegations, the investigating report and summary of findings were read out, including the conclusions in that report and the claimant was given an opportunity to question both investigators, which he did. The claimant was informed that the touching of a female pupil's knee was not presented as an allegation in the presentation. The claimant questioned the touching of Z's head and queried why there was no investigation into whether the additional 13 other students had been spoken to, through his trade union representative querying how the respondent did not know that those students alleging the claimant had referred to a bomb under the hijab were not lying.
51. The claimant admitted saying to A "you look like a Nun" referring to one incident only when the white band on her head slipped and the claimant invited her to go and change it.
52. The claimant was given the opportunity to ask as many questions as he wanted, which he together his union representative who took an active part. The claimant maintained that at the March 2022 meeting he did not get warning and there was

no follow-up letter. There was confusion as to whether the claimant had been given a management instruction or not and it was clarified that it was a management meeting not a management instruction by David Waugh.

53. The claimant's union representative asked for an explanation why the CCTV was not shown to the claimant and was not in the bundle to which David Wall responded that "what I would normally do is write a descriptive statement of the CCTV and what could be seen, signing its, rather than put in the actual footage, for example when I have done this to view anything which is been done by students."
54. The claimant confirmed he had used the description "Hideous H" only once, had asked students not to use the term again and try to remedy this by contacting the parents, and spoke to the student. With reference to the "dumb blonde" and teacher attractive comments, the claimant through his trade union representative clarified that **"this is the jocular approach he takes to build relationships with students"** [my emphasis]. The claimant was informed that LADO had not been contacted. David Waugh explained "my course of action was that it needed a normal management discussion to bring about a change of behaviour."
55. The meeting started at 2 PM, it adjourned for a few minutes at 1527 when the claimant put forward his case and mitigating circumstances. The claimant accepted he had made the comments to D and H, explaining the context in which those comments were made, for example the reference to quote "Hideous H" was made not in a "derogatory way", he admitted receiving and reading the email relating to safeguarding and denied the allegations that he had touched Z's hair and said anything about a bomb or touched her knee, and accepted he had said to M, "you don't want to go through life being judged as a dumb long blonde, gives you choices and confidence." The claimant alleged three of the female students had lied.
56. The claimant on being questioned accepted he had said to D and his girlfriend that she could do better, he had received the email about child regarding safeguarding but said that by December he would have forgotten about it. The claimant confirmed that that was the case in relation to those allegations. The claimant denied the allegations amounted to gross misconduct maintaining the investigation had been "cherry picked to get rid of me." Mitigation was put forward on his behalf by the claimant's union representative including his clean record over a period of five years, maintaining allegations have been exaggerated and taken out of context and as the issues have not been referred to LADO they cannot be used as safeguarding concerns and should be dealt with at school level. The claimant's trade union suggested, **"you can work with MH on understanding of equality and diversity with training to deal with the question students ask. Sometimes they are provocative inflammatory. MH has mis-stepped and taken things in the wrong direction... Don't believe that this is all gross misconduct, there are issues of concern and MH feels that the way to resolve that without destroying MH's career, through advice, guidance training and support"** (my emphasis).



57. With the exception of a failure to produce the CCTV evidence, the disciplinary process up to and concluding the hearing complied with the principles set out ACAS Code of Practice, and so I found on the balance of probabilities. .

Disciplinary outcome letter 27 September 2023

58. The disciplinary outcome letter is dated 27 September 2023. It ran to six pages and went through the allegations individually.. Phil Smith set out the following observations and conclusions which I find reflect his objectivity and critical thinking when considering the entirety of the allegations and discounting a number of them through lack of evidence:

1. "The claimant had created a culture of inappropriate name-calling including terms such as "hideous H" and telling a female pupil that "she could do better quote when referring to a male teacher that you taught.' The claimant had accepted he had made these comments Reference was made to "the impact this had on the pupils given the evidence from the parents and...during the disciplinary hearing you stated that quote it is school everyone has a nickname stop however the role of the teacher as the professional adult within the classroom is clear as stated in both the Teaching Standards... I am convinced by the evidence presented that your actions have had a harmful and negative impact on the pupils... Even when you sought to apologise (despite having already had highlighted to you the importance of being 'mindful' and to 'keep professional") and make amends it shows a continued lack of care and attention to the ways in which you speak to pupils and the potential harm this has/or can cause pupils... I find that you have, over a period, failed to meet the professional standards as outlined in the Teacher Standards and the code of conduct stop I therefore find allegation this allegation to be proven as gross misconduct.
2. With reference to allegation 2, Phil Smith confirmed "I'm satisfied that the response to the original issues raised with you (March 22) led to a management conversation about your inappropriate language and behaviours and at that time the incidents were dealt with in a proportionate and reasonable manner, hence the file was closed and marked confidential in your HR file. I note that during this meeting the discussion included the importance of being careful and cautious in how you to speak to pupils as teacher comments could be misinterpreted...During the disciplinary hearing, no mitigating factors were presented regarding the use of nicknames... I also note there was no rebuttal of the points put to you in the management meeting. This leads me to conclude that you did not refute the points being made to you at the time... Except that such an approach is a 'jocular approach... to build relationships.' This is evidenced by the statements contained within the witness statements. I agree that not correcting the use of inappropriate language and behaviour is misconduct. I therefore find this allegation to be proven as misconduct."
3. With reference to allegation 3, **Phil Smith found that there was "insufficient evidence regarding the allegations over the Quran, racism and**

**homosexuality and therefore these lines of enquiry were dropped. Consequently, I have not considered these within this allegation, nor do I believe that there is sufficient corroborative evidence with regards using the term ‘hijabis’ to describe some pupils...you deny that you inappropriately touched a pupils hijab and that you refer to a pupil as having a bomb under her hijab. You accept that you use the term “Z the Nun” I am persuaded by the triangulation of other witness statements that this was not an isolated incident and that based on the balance of evidence it was more likely than not that you made these inappropriate actions and comments... I do not accept your assertions that the investigation was flawed because the investigating officer did not proactively seek witnesses outside of those who have themselves come forward or be named by others and which were followed up accordingly. I note that the witnesses that voluntarily came forth provided convincing, consistent, and clear evidence that this thoughtless and insensitive language was used”** [my emphasis].

4. Phil Smith concluded “over time, you showed a lack of cultural sensitivity and awareness of how your actions and words might then pupils of faith stop of the view that this is unlawful and discriminatory harassment attributed to religious belief. Whether intentional or not, the use of such language shows poor professional judgement and goes counter to the Teaching Standards... I therefore find this allegation to be proven as gross misconduct.”
5. with reference allegation four, Phil Smith concluded “**I am not convinced that there is sufficient evidence to support claims regarding inappropriate touching... As a result, I have not considered this part of my decision with regards to this allegation (e.g. of the knee). As a result, I have not considered this part of my decision with regards this allegation.** Instead I have focused more on the degree to which there is or is not convincing evidence of other inappropriate language... During the disciplinary hearing you stated that you didn’t use the phrase ‘dumb blonde’ but in a jocular way also described during the hearing as banter...There are several different witnesses witness statements that test the fact that quote dumb blonde” was used on several occasions...I believe that in all probability these allegations founded. Your comments during the disciplinary hearing also suggests that you do not fully appreciate the gravity and potential harm in speaking to a pupil in that way... These allegations are harassment of students due to a protected characteristic... I find this to be a grave and serious breach of both the Teaching Standards and the Code of Conduct. I therefore find this allegation proven as gross misconduct” [my emphasis].
6. With reference to allegation five, Phil Smith concluded at the disciplinary hearing the claimant had accepted that a failure to follow the safeguarding procedures was a breach of confidentiality, he had read the email and put it in the safeguarding file on the computer. “This made it clear that under no

circumstances should the pupil in question be challenged over her lack of photographic identification a lack of photographic identification. However, you accept you did question the pupil over this.” Phil Smith concluded the claimant demonstrated “a lack of understanding regarding the requirements to keep children safe and...I find that considering allegation five, this is a serious grave breach of the Teaching Teacher Standards and Codes of Conduct. It is also a failure in your duty of care, to protect pupils at quote potential or actual” risk... This allegation is proven and is gross misconduct.”

7. With reference to the investigation Phil Smith acknowledged that “lessons were to be learnt by the investigating manager e.g. sharing with you the CCTV evidence and ensuring minutes were agreed and signed off within a timely manner.” However he found that overall quote process has been detailed and thorough” that it was not flawed due to lacking thoroughness or being incomplete. Phil Smith concluded **“when considered in their totality, these actions are of a serious and grave danger. They highlight several occasions when poor professional judgement and behaviour, despite having had a management meeting in March 2022, these behaviours did not change. Rather, you continue to make inappropriate comments of the personal, sexual and/or racial nature towards some pupils. Teaching Standards and the Code of Conduct had been broken several occasions and this behaviour falls far below the expected and reasonable standards expected of the teacher... I find these allegations do confirm the gross misconduct is the most accurate proportionate outcome”** [my emphasis].
8. Phil Smith considered the options available regarding sanctions and concluded summary dismissal should follow given the seriousness of the allegations. The claimant was advised of his right to appeal.
59. The claimant appealed by email dated 10 October 2023 alleging Phil Smith had pre-empted the outcome of the appeal process by updating the principal of Great Academy Ashton “to enable the LADO” to be updated with the outcome” as indicated in the outcome letter. The respondent was provided with Grounds of Appeal and the appeal hearing took place on 15 November 2023 before Harj Kilshaw. The appeal was thorough and complied with the principles of the ACAS Code. The notes taken ran to 19-pages which I do not intend to set out in any great detail.

#### Appeal hearing 15 November 2023

60. In a letter dated the 30 October 2023 the claimant was invited to an appeal hearing on 15<sup>th</sup> November, and informed the officer did not intend to call any witnesses save for the disciplinary officer. The appeal hearing took place on 15 November 2023 and the claimant was represented by his trade union. There were eight grounds of appeal, which I do not intend to set out in full, that included a failure to interview a number of relevant witnesses, failure to provide access to CCTV footage, accepting the evidence given by complainants and witnesses in written evidence and not subject them to cross cross-examination. The claimant also

argued that his dismissal was a “manifestly disproportionate remedy” and the “head had pre-empted the outcome of the appeal by a premature referral to the TRA and DBS.”

61. The appeal started at 11 AM and notes were taken. It was not a rehearing and the claimant was informed that Harj Kilshaw was available to until 2pm. It was confirmed by all that nobody else had time constraints.
62. The claimant was able to freely discuss and elaborate the grounds of his appeal, and provide further information concerning the allegations including alleging an occupational health appointment was “an attempt of bullying.” The claimant also alleged that the sister of a female student was not questioned, a student was not asked a follow-up question, no other pupils were spoken to and when the claimant was asked “did you make it clear you wanted them to be interviewed” he responded “after my meeting that I had, I assumed they would have been.” The claimant’s union representative indicated the “onus” was on the respondent to investigate.” When asked why the claimant had not requested specific pupils to be spoken too, the claimant responded “I would assume when I mentioned other pupils... You would investigate them with the others and speak to them too.” The claimant suggested that the respondent “wanted to get rid of me... I’m over 60,, expensive... I’ve come through industry and had to bite my tongue in class a lot...straight talking... I know I can put my foot in it. David (DW) reference to me that this could be in the media, on TV if this got out. He didn’t want to risk it, I get the impression David (DW), is conscious of his image, he likes his TV appearances. I think let’s get rid...he is old and expensive” The claimant also argued his dismissal was disproportionate.

The appeal outcome letter 27 November 2023

63. The appeal outcome was set out in a letter dated 27 November 2023. Each ground of appeal was dealt with in detail. I have referred to some of the decision making process and conclusions below;
- 63.1 With reference the CCTV footage Harj Kilshaw confirmed as it had not been reviewed by Phil Smith, it did not impact the judgement he made after the disciplinary hearing and was not relied on as evidence. With reference to allegation two Harj Kilshaw was satisfied there was “clearly a lack of clarity around the nature of the meeting. I do believe that the conversation that took place in March 2022 should have been conducted in a more formal manner given the nature of the concerns raised, whereby a comprehensive investigation of the matters should have taken place...It is not disputed however that the conversation did take place, the inappropriate language and behaviours reference during this conversation have not been disputed either.”
- 63.2 With reference to allegation three, Harj Kilshaw noted the claimant had accepted he used the term and other witnesses confirmed this to be the case. It was not an isolated incident and the claimant had not put forward names of any

witnesses “in relation to there is evidence from an additional witness, not just the group of three friends that initially came forward, who you believe may have colluded.” Harj Kilshaw concluded “I cannot see the benefits of interviewing additional witnesses or carrying out further enquiries. It is noted that whilst the pupil has indicated she considered this banter, Mr Smith considered this to be inappropriate language and behaviour of a professional teacher, showing poor judgement did not models pupils appropriate behaviours based on mutual respect.”

58.4 Harj Kilshaw was satisfied with the investigation; “I believe the investigation was comprehensive and complete stop where you believe corroboration may have taken place, if we put the comment in relation to one to one side, you have admitted to using the term ‘nun’, to a pupil...an additional witness (other than the three friends you reference) suggest this term was used more than once. You did have the opportunity to name additional witnesses when you are asked this question directly... And you did not put forward any names.”

58.5 Harj Kilshaw concluded the claimant had the opportunity to state his case, and the sanction was not unduly severe given all the relevant circumstances of the case.

58.6 With reference to pre-empting the outcome of the appeal by way of a premature referral to the TRA and/or DBS Harj Kilshaw had sought clarification and concluded that “there is no reference to awaiting the outcome of any appeal, should an appeal be lodged. As you as you may be aware, the DBS and TRA then carry out their own review as to whether any sanctions are required stop I do not therefore uphold this part of your appeal.”

58.7 In conclusion, she found that the dismissal made at the original hearing should be upheld. This completed the appeal process followed by the Teaching Regulation Agency Mr Mark Holland professional conduct panel outcome dated of March 2025 (which I have not read, with the agreement of the parties on the basis that this information was not before the disciplinary or appeal officer at the time they made their decisions. We agreed the information may be relevant to remedy had this case proceeded to that point.)

59 The effective date of termination was 27 September 2023.

### Law

60 During oral submissions reference was made to a number of legal principles and case law, which I do not intend to repeat in their entirety. A number (not all the cases cited) are referred to below. All have been taken into account.

61 Section 94(1) of the Employment Rights Act 1996 (“the 1996 Act”) provides that an employee has the right not to be unfairly dismissed by her employer.

- 62 Section 94(1) of the Employment Rights Act 1996 (“the 1996 Act”) provides that an employee has the right not to be unfairly dismissed by her employer. Section 98(1) of the 1996 Act provides that in determining whether the dismissal is fair or unfair, it is for the employer to show the reasons for the dismissal, and that it is a reason falling within section 98 (2) of the 1996 Act. Section 98(2) includes conduct of the employee as being a potentially fair reason for dismissal.
- 63 Section 98(4) provides that where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reasons shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the respondent’s undertaking) the employer acted unreasonable or reasonably in treating it as a sufficient reason, and this shall be determined in accordance with equity and the substantial merits of the case.
- 64 Where the reason for dismissal is based upon the employee’s conduct, the employer must show that this conduct was the reason for dismissal. For a dismissal to be procedurally fair in a case where the alleged reason for dismissal is misconduct, Lord Bridge in Polkey –v- A E Dayton Services Limited [1981] ICR (142) HL said that the procedural steps necessary in the great majority of cases of misconduct is a full investigation of the conduct and a fair hearing to hear what the employee has to say in explanation or mitigation. It is the employer who must show that misconduct was the reason for the dismissal, and must establish a genuine belief based upon reasonable grounds after a reasonable investigation that the employee was guilty of misconduct – British Home Stores Ltd v Birchell [1980] CA affirmed in Post Office v Foley [2000] ICR 1283 and J Sainsbury v Hitt [2003] C111. In short, the Tribunal is required to conduct an objective assessment of the entire dismissal process, including the investigation, without substituting itself for the employer.
- 65 The Court of Appeal in British Leyland (UK) Ltd v Swift [1981] IRLR 91 set out the correct approach: “If no reasonable employer would have dismissed him then the dismissal was fair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair...in all these cases there is a band of reasonableness, within which one employer might reasonably take one view and another reasonably take a different view.
- 66 In between extreme cases of misconduct there will be cases where there is room for reasonable disagreement amongst reasonable employers as to whether dismissal for the misconduct is a reasonable or unreasonable response: LJ Mummery in HSBC Bank Plc v Madden [2000] ICT 1283.
- 67 The question for the Tribunal is the reasonableness of the decision to dismiss in the circumstances of the case, having regard to equity and the substantial merits of the case. The Tribunal will not substitute its own view for that of the respondent. In order for the dismissal to be fair, all that is required is that it falls within the band of reasonable responses open to employer. It is necessary to apply the objective

standards of the reasonable employer – the “band of reasonable responses” test – to all aspects of the question of whether the employee had been fairly dismissed, including whether the dismissal of an employee was reasonable in all the circumstances of the case.

- 68 The test remains whether the dismissal was within the range of reasonable responses and whether a fair procedure was followed. Section 98 (4) provides that where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reasons shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the respondent’s undertaking) the employer acted unreasonable or reasonably in treating it as a sufficient reason, and this shall be determined in accordance with equity and the substantial merits of the case.

#### Conclusion – applying the law to the facts

- 69 Turning to the agreed issues, I have dealt with the list of issues on the balance of probabilities.
- 70 With reference to the first and second issue, namely, can the claimant prove that there was a dismissal, it is accepted the claimant was summarily dismissed for misconduct on 27 September 2023, a potentially fair reason under section 98 Employment Rights Act 1996.
- 71 If so, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant, I found that it did given the seriousness of the allegations and the claimant’s admissions in respect of a number of them, including that he knows he “ puts his foot in his mouth.” Phil Smith held a reasonable belief that the claimant had not corrected his behaviours, and instead committed acts that were fundamentally discriminatory, breaching the Equality Act 2010 and Teaching Standards. Mr Langton submitted the claimant should have been given a copy of the Teaching Standards in order for the claimant to understand the context of the allegations. I found the claimant, had he been unsure as to the seriousness of the allegations against him, could have requested a copy and yet he did not. This is unsurprising given it does not require a written document to inform the claimant that his alleged behaviour could amount to gross misconduct given his duty as a teacher to safeguard and not act in a discriminatory manner. The claimant was well aware of the seriousness of the allegations otherwise he would not have raised the likelihood of him being dismissed and resigning at the outset of the disciplinary process.
- 72 Phil Smith considered mitigation and he formed a reasonable view, taking into account the history from March 2022 and the claimant’s behaviour throughout, that he had no confidence the claimant could correct his behaviour in the future. Mr Langton submitted the claimant should have been given a formal warning on

his record at a proper hearing complying with the ACAS Code of Practice following the allegations made in March 2022, and therefore it should not have been considered at the disciplinary hearing as an allegation. On balance, I found Phil Smith was entitled to take into account what was said and made clear to the claimant about his behaviour by the deputy headmistress in March 2022. Had a disciplinary hearing been convened and the claimant issued with a formal warning, allegation 2 may have become an alleged act of gross misconduct as opposed to misconduct.

- 73 With reference to the third issue, namely, did the respondent genuinely believe the claimant had committed misconduct, I found Phil Smith did, based on the investigation report and what was said at the disciplinary hearing, including the contradictions between the two and the claimant's evidence. It was not outside the band of reasonable responses for Phil Smith to take into account the discussion with the claimant held in March 2022 and the claimant's failure to change his behaviours despite the fact he was an experienced teacher with annual training and experience in safeguarding children described by Mr Mohammed as a "unique role to ensure the safety of his pupils."
- 74 With reference to the fourth issue, namely, were there reasonable grounds for that belief, I found there was, not least as a result of the claimant's admissions, but also within the witness statements provided by the pupils which were far from perfect, but largely formed a coherent version of events that were supported by the claimant's admissions in part, although not in their entirety. I agreed with Mr Mohamed's submission that it is not necessary for the respondent to extensively investigate each line of defence suggested by the claimant, and I should focus on reasonableness of the investigation as a whole.
- 75 Turning to the fifth issue, namely, whether at the time the belief was formed the respondent had carried out a reasonable investigation, I found that Phil Smith had carried out a reasonable investigation, taking into account the fact that the claimant was not only in danger of losing his employment with the respondent but also possibly finding it difficult to obtain alternative employment as a mathematics teacher given the seriousness of the allegations. Mr Langton submitted there was no testing of the student's evidence and yet the claimant was given a "grilling" as the respondent's approach was to assume the student complaints were correct and assume words used were racist even if the student used them herself, for example, the use of "hijabi" when the context in which the words were used are "very important." I concluded Phil Smith took context into account and this included not only the claimant's explanation but also the March 2022 discussion and the claimant's admissions. I do not intend to go through and detail all of Mr Langton's submissions in relation to the allegations, however, it is notable that with reference to the fifth investigation Mr Langton interpreted the claimant's action in asking the pupil why her identity photograph was not available as being entirely proper and it did not breach the safeguarding email as there was nothing to suggest the claimant should not take the action he did. Mr Langton questioned how the claimant asking the student's name on registration and noting she did not have a picture breach the safeguarding provisions. Phil Smith was clear in his evidence; he genuinely believed pointing out and asking the student about her



lack of identification photograph was a breach of the safeguarding provisions because it put the student and other members of the class on notice that there was something different about this particular pupil, so much so the claimant had to ask her about it. Paraphrasing Mr Langton, he argued that no one directing themselves properly could arrive at the conclusion Phil Smith did on reading the email relating to allegation 5. I did not accept Mr Langton's argument and took the view on a common sense interpretation of the email (recorded above in part as set out in the findings of fact above) Phil Smith's interpretation was not outside the band of reasonable responses open to an employer acting reasonably when considering the evidence in relation the safeguarding of a female pupil and keeping the steps taken to protect her confidential from the student, the class and the outside world. The problem for the claimant is that he had forgotten about the email and its contents, which he had received despite Mr Langton's use of the word "probably." To conclude that it was anything other than a serious breach of safeguarding would be fly in the face of a reasonable interpretation of the email and fall into the trap of substituting my decision for that of the respondent.

- 76 With reference to the sixth issue, namely, had the respondent followed a reasonably fair procedure, I found that there was and did not agree with the claimant that there was no proper fair transparent investigation. Mr Langton submitted that the respondent had not called the investigation officers to give evidence dealing with the investigation, and Ms Holroyd and Mr Waugh had not carried out a reasonable investigation, leading questions were asked, students were not available for cross-examination at the disciplinary hearing and insufficient statements were obtained from the students, particularly those who sat on other tables. I did not agree and found on the evidence before me, including the reports completed by a number of children, that the investigation was reasonable and proportionate in the circumstances. I did not entirely accept Mr Mohamed's submission that the investigators were under a duty to protect the claimant's reputation as a teacher and the school's reputation and I have little doubt that when the headmaster decided to become involved as a named investigator it was the reputation of the school (and not the claimant) he had in mind. I did not need to hear oral evidence from David Waugh to raise this inference, it was sufficient that he became involved, set out his name in the investigation report and presented the joint findings at the disciplinary hearing, to infer that once to allegations that could amount to sex and race discrimination came to light it was a damage limitation exercise for the headmaster. David Waugh's involvement as investigator before the investigation report was issued, caused me concern given the tone of the investigation that the headmaster had found the claimant guilty of gross misconduct and sought his dismissal. I considered carefully whether the part played by David Waugh resulted in a skewed biased investigation report dealing with matters best left to the disciplinary officer, affected unfairly the outcome of this case. I found Phil Smith's oral evidence when dealing with this issue credible, cogent and supported by the contemporaneous documentation. He looked at the evidence objectively, and took into account the reports gathered from the children. A number of the reports were direct complaints about the claimant's behaviour towards them and others, there was a substantial amount of corroboration which rang true as far as Phil

Smith was concerned, and not all the students complained, for example, the female student who took the comment “dumb blond” in good part.

- 77 The claimant has made much about the respondent's failure to present the children for cross-examination at the disciplinary hearing and this causes me concern for a number of reasons, not least safeguarding issues including the possible effect on D's mental health, when the claimant's own trade union representative confirmed it was not appropriate to cross-examine the students. The students have corroborated each other in written statements. Rebecca Holroyd held individual meetings with a number of the students and tested their evidence, I did not accept she asked leading questions and put words in their mouth taking into account the different language used in the reports. A number of the allegations were collaborated, for example, allegations 1, 3 and 4 in Rebecca Holroyd's interviews with students. Most importantly, the claimant made a number of admissions that brought his behaviour into question and it was not outside the band of reasonable responses for the respondent, following the investigation, disciplinary and appeal stage, to conclude the claimant guilty of the allegation 1, 3, 4 and 5, and not guilty of allegation 2. The fact the respondent did not arrange for the students or any other witnesses to be present at the disciplinary or appeal hearing was not unreasonable. It is notable the claimant was given the opportunity to refer the respondent to witnesses and call witnesses himself, and he did not offer any names to Phil Smith to widen the scope of the investigation. Given the specific circumstances of this case, I found a reasonable employer acting within the band of reasonable responses, would not have gone round the class asking students if they had seen or heard anything. The allegations were very serious and it was reasonable for the respondent to follow up on those students whose names came up in the investigation either as complainants or corroborating the complaints. It is against this background and Phil Smith's oral evidence that I concluded as a senior member of the executive team, David Waugh had no or little influence on his decision making process when it came to objectively accessing whether the claimant had committed the acts of conduct.
- 78 Turning to the lost CCTV footage seen by Rebecca Holroyd and David Waugh but nobody else, including the claimant, I found that whilst David Waugh can be criticised for not keeping the evidence safe, the evidence was not determinative as to whether the claimant had stopped the car and spoken to D and his girlfriend. It was open to Phil Smith to find that this incident took place based on D's evidence and the claimant's admission that the incident had taken place in the corridor on one occasion and not the second occasion when he stopped the car. I accepted Phil Smith's evidence that the CCTV footage was not a significant factor in his investigation, the claimant's admission and the evidence of D and others were the key to his findings. Had Phil Smith taken into account David Waugh's description of the CCTV evidence without the claimant been given the opportunity to view and comment on the footage, this may have resulted in a finding of a procedurally unfair dismissal.
- 79 I found the dismissal was within the band of reasonable responses.

- 80 With reference to the next issue, there is no requirement for me to make findings on the application of the Polkey “no difference rule,” however, had the claimant been unfairly dismissed I would have gone on to find that the claimant would have been fairly dismissed anyway if a fair procedure had been followed given the factual matrix in this case, including the seriousness of the allegations the claimant had admitted to and his behaviour despite being told by the deputy head to be careful what he said to children because it could be taken the wrong way and yet the claimant continued with his behaviour causing upset and angst for religious students, young girls where looks are important and the claimant’s comments resulted in a young girl being tagged “hideous” by other children. I did not accept Mr Langton’s submission that had a fair investigation taken place it is impossible to say whether the claimant would have been dismissed or not. Given the claimant’s admissions and the evidence that was not disputed, such as the safeguarding email, on the balance of probabilities I find the claimant would still have been dismissed as at the effective date of termination.
- 81 With reference to the final issue, there is no requirement for me to make findings on contributory conduct, however, given my comments above it follows as a matter of logic that the claimant, by his own admission, caused or contribute to dismissal by blameworthy conduct. The claimant sought to persuade me, through submissions made by Mr Langton and in oral evidence on cross-examination, that his behaviour should be viewed in context and he did not intend to cause offence but sought to introduce humour into teaching the subject of mathematics which his students appreciated and responded well to. The problem for the claimant is that as a teacher with power over students he is bound by a code of professional behaviour and this was breached with the result that a number of children were adversely affected, including a young boy with mental health issues and a young religious Muslim girl and her Muslim friend. Had the claimant been unfairly dismissed (which he was not) I would have found unusually, given the seriousness of the allegations and taking all the evidence into account, it be just and equitable to reduce the claimant’s compensatory award by one hundred percent. In arriving at this decision, which was not an easy one to make, I set aside my sympathy for the claimant, whose motivation was to banter with the children, and looked objectively at all the circumstances surrounding the claimant’s ill-advised behaviour. The claimant seemed to be incapable of recognising the seriousness of his actions, despite being told to be careful in March 2022 and yet continued with his behaviours unchecked knowing they could be misinterpreted by the children who looked up to him and trusted his judgment. Finally, no basic award would have been payable to the claimant on a just and equitable basis because of conduct of the claimant before the dismissal for the reasons already set out. In conclusion, the claimant was not unfairly dismissed and is claim for unfair dismissal is not well founded.

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Employment Judge Shotter  
Date: 4<sup>th</sup> June 2025

RESERVED JUDGEMENT & REASONS SENT TO THE PARTIES ON

Date: 4th July 2025

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FOR THE SECRETARY OF THE TRIBUNALS

**Notes**

**Public access to employment tribunal decisions**

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