



EMPLOYMENT TRIBUNALS

Claimant: Ms Mary-Ann Pearson

Respondent: Greenwood Academies Trust

Heard at: Bury St Edmunds (CVP) **On:** 21-25th October, 21 November 2024
Before: EJ Islam, TM Sarah Blunden and TM Anne Buck

Representation

Claimant: Mr Maini-Thompson (Counsel)

Respondent: Mr Ogunshakin (Counsel)

1. JUDGMENT having been sent to the parties on 31 December 2024 and reasons having been requested in accordance with Rule 60(4) of the Rules of Procedure 2024.

REASONS

Claims and Issues

1. The Claimant brought claims for unfair dismissal contrary to s.98 of the Employment Rights Act 1996, wrongful dismissal, discrimination arising from disability contrary to s15 of the Equality Act 2010 and claims under s20 and s21 of the Equality Act 2010. The s20 and s21 claims were withdrawn during the hearing and dismissed. The issues were identified and agreed at a Preliminary Hearing on 26 March 2024 and confirmed at the outset of the hearing. The List of Issues was contained at pages 76-79 of the hearing bundle.

Procedure

2. The parties provided the Tribunal with an updated hearing bundle of 637 pages.
3. The Tribunal heard evidence from:

- a) The Claimant – Mary Ann Pearson
- b) Sarah Lightbody (Head of Safeguarding), Lisa Hedges (Head of School), Todd Johnson (Principal) and Claire Leitheiser (Appeal Officer) for the Respondent.

4. Counsel for both parties provided written closing submissions to the Tribunal.

Findings of Fact

- 5. The Claimant had been a teacher for 31 years, starting her career in Jamaica. She was employed by the Respondent from 1 June 2005 until her dismissal on 27 April 2023. The Claimant was dismissed for failing to report safeguarding concerns. Since being in the UK, the Claimant had only been employed with the Respondent. During her career, the Claimant had never been subject to any disciplinary processes. There was one occasion where she received ‘management advice’ but nothing further flowed from that. As such, she had a clean disciplinary record throughout her teaching career.
- 6. The Claimant has Multiple Sclerosis (MS) having been diagnosed in 2011 and therefore she was disabled for the purposes of the Equality Act 2010. Disability was not in dispute.
- 7. The Claimant was initially employed by the Respondent as a PE teacher but subsequently moved into a teaching role for Business, Computing and Social Sciences from 23 November 2015, due to her disability and needing a classroom-based role. At the time of her dismissal, this was the role she was working in.

Safeguarding duties

- 8. The Claimant, as with all teachers, was subject to safeguarding duties. The Tribunal was taken to various documents relating to the Claimant’s safeguarding duties summarised below:
 - a) Clause 23 of the Claimant’s Written Statement of Employment Particulars [98]:
‘This appointment is subject to any policies and procedures on Health and Safety which have been adopted by the Governing Body of the School’.
 - b) Greenwood Academies Trust Staff Code of Conduct [142-152]: Clause 6.1 relates to an individual's responsibilities and states that:

‘Everyone in the education service shares an objective to help keep children and young people safe. All staff play an important part in safeguarding children... all staff have three main areas of responsibility:

- Understanding procedures and protocols for promoting and safeguarding the welfare of children*
- Providing a safe environment in which children can learn 3 – identifying children and young people who are suffering or likely to suffer significant harm and taking appropriate action with the aim of making sure they are kept safe both at home and in the academy.*

The overriding principle of these policies is that the welfare of the child is paramount.’

- c) Trust’s Safeguarding Policy 2022 and 2024 [638-637]: The Tribunal were provided with both versions and were satisfied that in effect, they were the same. The policy sets out the overarching context. In particular, section 3 deals with roles and responsibilities. Section 3.1 lists several bullet points applying to all staff:
- i) The first bullet point requires all staff to have undertaken appropriate training for their role.
 - ii) The second bullet point requires *‘taking responsibility to report any concerns, no matter what their role’*. The Tribunal noted there is no detail expanding upon this responsibility, for instance, there is no definition of a concern, no detail about the timing within which a concern should be raised or the process of how it should be raised.
 - iii) Section 7 of the policy deals with managing allegations against adults working within the trust and acknowledges that *‘if concerns are not addressed as early as possible, they can create unsafe environments and leave staff and children increasingly vulnerable’*. It goes onto explain that there is a specific trust policy on this topic, however the Tribunal was not provided with this. This section also states that *‘all low-level concerns must be reported to the Principal and recorded appropriately and that best practice is to discuss any concern with the LADO to ensure appropriate*

action is taken in a timely manner'. There is no further definition in the policy of what constitutes a 'timely manner'.

- d) Department for Education Teachers' Standards [584]: this document contains a single reference to staff needing to safeguard pupils' wellbeing in accordance with statutory provisions.
 - e) Department for Education's Keeping Children Safe in Education Statutory Guidance 2023 [498-513]: The Tribunal was only provided with an extract from this Guidance.
 - i) Paragraph 3 states that *'no single practitioner can have a full practitioner of a child's needs and circumstances....everyone who comes into contact with them has a role to play in identifying concerns, sharing information and taking prompt action'*. No definition is provided about what constitutes 'prompt'.
 - ii) Paragraph 52 states that *'if staff have any concerns about a child's welfare, they should act on them immediately. See page 22 for a flow chart setting out the process for staff when they have concerns about a child'*. The Tribunal was not provided with the flow chart in the bundle.
 - iii) Paragraph 53 states *'if staff have a concern, they should follow their own organisation's child protection policy and speak to the designated safeguarding lead (or deputy).'* No definition is provided of concern. The Tribunal was not provided with a Child Protection Policy for the Respondent.
9. No further documentary evidence was provided about the nature of teachers' safeguarding duties at the Respondent School. In particular, there was no information about how teachers were expected to operationalise their safeguarding duties including what amounted to a 'concern' for the purposes of safeguarding, what the specific timescales were for reporting, how the online system for reporting safeguarding issues CPOMs was to be used.
10. The school delivered training in relation to safeguarding and the Claimant had attended relevant safeguarding training. The Claimant was compliant with her

safeguarding training requirements. The Tribunal heard oral evidence that teachers were required to use the online CPOMs system to log concerns about students, however big or small those concerns were.

Incident 1 – Child A

Background

11. In September 2022, the Claimant became the form tutor for pupil **A**. **A** was 12 years old. The Claimant had no previous interaction or knowledge of this pupil. By this point, **A** was approximately 3-4 months pregnant as she had been a victim of serious sexual abuse. However, at this point, staff at school, including the Claimant, were not aware of this fact.
12. **A** was known to be a vulnerable student by the safeguarding team and relevant members of staff for various reasons including:
 - a) She was on Pupil Premium.
 - b) **A's** former form tutor and other staff had raised concerns about **A** between September 2021 and March 2022 about her mental health, including her self-harming.
 - c) In June 2022, **A** was subject to a Multi-agency Safeguarding Hub (MASH) referral relating to an allegation that she was being met after school by a convicted sex offender. This MASH referral was triggered following an anonymous call to school. However, the police considered that this call was malicious.
13. Following concerns about self-harming and the MASH referral in June 2022, **A** was monitored by the safeguarding team in June 2022 until term ended for the summer holidays in July. The limited oversight did not continue into the next academic year because as Sarah Lightbody told the Tribunal, *'no concerns were raised'* and there were *'no further concerns'*. **A** was not put on an additional plan. Sarah Lightbody's evidence was that *'200 concerns were received a day'* and it would be *'unreasonable to have regular meetings with every student'*. If concerns had have been raised, she said *'we would have explored it further'*.

14. The reality of the situation is that tragically, the concerns raised in the June 2022 MASH referral was in fact true. **A** was revealed to be 33 weeks pregnant on 1 February 2023, therefore by the end of June 2022 going into July 2022 when she was subject to this limited safeguarding supervision, she was already pregnant, unbeknown to those in the safeguarding team.
15. The Claimant was never made aware of any of the context relating to **A** when she became **A's** form tutor in September 2022. Sarah Lightbody, head of safeguarding told the Tribunal that sensitive information around safeguarding is tightly governed and is only shared with necessary members of staff. She said that because concerns had '*died down*' and '*tailed off*' in the summer, they were not considered to be current concerns to be passed onto the Claimant as the new form tutor.

A's Poor Attendance

16. Between September 2022 and January 2023, A had poor levels of attendance. A copy of **A's** attendance record was provided for this period [438-439]. Attendance was recorded and monitored by a specific attendance team within school and recorded on the School Information Management System (SIMs). The Deputy Head is responsible for the attendance team, and it consists of an attendance officer, education officer and five other members of staff. The Claimant as Form Tutor was not responsible for and did not have a role in recording entries on SIMs about non-attendance. She only used SIMs for taking the register. **A's** attendance record notes as early as 8th September 2022 absence due to '*dizzy and sick*'. Absences relating to sickness and dizziness continued throughout September. After a period of absence due to tonsillitis towards the end of September, absences continued into October 2022 and November 2022 for reasons including '*still ill, going GP*', '*covid*', '*bad stomach*' and '*sick all night*'. There are references to going to the Doctor and having a nurse's appointment for tests.
17. Notably, there is an entry for 24 January 2023 which states '*This is [redacted] mum from year 8, [redacted] will not be able to come in today she been up all night being sick and she has stomach cramps again she got appointment at the hospital at 9 tomorrow morni*'.

Claimant's Call to A's Mother on 25 January 2023

18. The Claimant is not required to call home as part of her role. If calls are made, it is suggested to record calls on a system called Class Charts, but this is not mandatory. The Claimant sometimes called home during her lunch breaks if she wanted to touch base about a student. On 25 January 2023, the Claimant observed changes in **A's** behaviour, namely, **A** was swearing at a teacher. The Claimant also observed that **A** had put on weight but did not consider that appropriate to comment on. The Claimant called **A's** mother due to **A** swearing at a teacher. In this conversation, the Claimant and **A's** mother also ended up discussing **A's** health as **A's** mother was concerned about **A's** stomach cramps. In this conversation, the Claimant observed that the bloating may be linked to a health condition such as endometriosis which is something she had observed with a previous student and that after a scan, this was revealed to be the case. **A's** mother informed the Claimant that **A** already had an appointment for a scan booked the next day.
19. The Claimant did not consider there was anything to report on CPOMs at this stage. She said that the information available to her on SIMs about ongoing health issues accorded with what **A's** mother was telling her, and therefore also known to the attendance team. The Claimant did not suspect or know that **A** was pregnant at this stage, just that there may be a health issue. Given the attendance team's role and the fact that the school were aware of ongoing health issues as recorded in **A's** attendance record, it is understandable that the Claimant did not think this call needed to be recorded on CPOMs given issues with health and attendance were already known. The Claimant also gave specific evidence, which is accepted, that staff received training that they should ensure they are not duplicating information across the various school information systems. She explained that you would log first-hand information that was seen or heard for the first time on CPOMs if there was a concern.
20. The Claimant had previously been reprimanded for logging incorrect things on CPOMs. One example she provided was logging a child stealing blazers and taking them home. She logged another issue about a student's trousers and was told that these was a behavioral issues and not safeguarding. Ever since these occasions, the Claimant decided to speak to Sarah Lightbody to establish if it was something that needing logging as she seemed a '*bother to log it*'. The Claimant had previously understood that everything should be logged, big or small, which is what her previous practice was, but she said, in reality, it came down to how it was interpreted which was different for different people and she was told otherwise.

21. Sarah Lightbody, whilst not being aware of the Claimant previously being pulled up on inputting the wrong types of issues on CPOMs, could not exclude the possibility that this had occurred in the past and the Tribunal accepts the Claimant's evidence in this respect. The Claimant appeared to us to be diligent, and in some respects deferential, not wanting to make mistakes, whilst trying to do the right thing. In our view, this background is important, when considering her decision not to log the call with **A's** mother on CPOMs.

Interaction between Claimant and Sarah Lightbody

22. The Claimant continued to reflect on the call with **A's** mother and had considered emailing Sarah Lightbody but decided not to at that stage. This was because the information was already known to other teams such as the attendance team and she thought it made sense for **A's** mum to update the school, following the outcome of **A's** appointment the next day. The Claimant was also hesitant due to what had happened previously about logging incorrect matters on CPOMs. The Claimant decided that she would try and speak to Sarah Lightbody about it in person and planned to speak to her on Friday (27th January 2023), but due to a full timetable of teaching, she was unable to during the day.
23. Before the Claimant was able to contact Sarah Lightbody on Friday 27th January, Sarah Lightbody sent an email that afternoon at 17.17 [620]. The email was sent to some staff including the Claimant, urging them not to contact **A's** mother to enquire about attendance, without giving a reason why. The Claimant replied to Sarah Lightbody's email, she believes on the Friday, however the email itself suggests it was sent on Saturday 28 January at 14.45 [620]. In any event, the Claimant responded promptly to Sarah Lightbody's email and said '*I had a long conversation with mum about it last week, can we catch up about it*'. The Claimant was concerned that she had done something wrong by calling home. Sarah Lightbody replied later that afternoon and said '*I will come and find you next week*' [619].
24. The Claimant was not aware at this stage, but the reason for Sarah Lightbody's email on Friday afternoon was because Sarah Lightbody became aware through a MASH referral, that **A** had been the victim of severe sexual abuse and was approximately 33 weeks pregnant, the father of the baby being a family member.
25. Sarah Lightbody did not go and find the Claimant the following week as indicated in her email response to the Claimant on Saturday 28th January. Instead, the Claimant

actively followed up with her after an unrelated meeting the following Wednesday 1st February and asked to discuss her email. Sarah Lightbody had to be reminded what email the Claimant was referring to. There is a factual dispute about the conversation that took place on 1 February 2023 between the Claimant and Sarah Lightbody. It is agreed that the Claimant was told that **A** had been the victim of sexual abuse. However, Sarah Lightbody insists that she did not tell the Claimant that **A** was pregnant.

26. The Claimant maintains that this is when she first became aware that **A** was pregnant. Sarah Lightbody's evidence is that the Claimant made various references indicating pre-existing knowledge of **A's** pregnancy in this conversation, including comments that **A** was '*sexually active*' and '*your stomach only swells like that when you're pregnant*'. Sarah Lightbody says that she asked the Claimant when she had suspicions about **A** being a victim of abuse and that the Claimant said, since September 2022. The Claimant categorically denies this and pre-existing suspicion or knowledge about **A** experiencing abuse and/or pregnancy. She states that it was only after having been told of **A's** pregnancy by Sarah Lightbody that she looked back in retrospect and started to piece together the information about poor attendance, sickness and weight gain – but only after being told of the pregnancy. She asserts that Sarah Lightbody has misrepresented these retrospective comments that the Claimant made during this discussion, whilst she was in an extremely emotional state. The Tribunal accepts the Claimant's account over Sarah Lightbody's for several reasons which are explored further in the 'Conclusions' section below.
27. Following this meeting, Sarah Lightbody informed Lisa Hedges about the discussion with the Claimant and then emailed Todd Johnson (Principal) on 1st February 2023 [102-103].
28. An internal investigation was initiated, and Lisa Hedges was appointed as the investigating officer. The Claimant was not suspended pending the investigation despite the Trust's Disciplinary Procedure stating that suspension may be appropriate in situations where the allegation if proved may amount to gross misconduct [307].
29. Sarah Lightbody was asked to complete regular check-in with the Claimant as part of a risk assessment that was completed and signed on 3 February 2023 by Todd Johnson [183-188]. In this document, in response to the question '*Is the allegation or concern so serious that there is no alternative but for the member of staff to be suspended?*' Todd Johnson answered '*No*'. This document also includes reference to a second

concern about non-reporting in relation to a supply teacher, where the Claimant verbally raised issues and belatedly accessed CPOMs. The risk assessment and decision not to suspend was based on both incidents in relation to **A** and RS. The incident in relation to RS is discussed below. The Tribunal noted that the risk assessment is dated 3 February 2023 which pre-dates when the incident with RS is said to have happened, which may be as a result of an error in the date on the document. In any event, given the document's specific reference to the second incident, we are satisfied that the risk assessment, decision not to suspend and daily check-ins, was put in place by the school, with knowledge of both incidents and that is supported by oral evidence given by the Respondent witnesses.

30. On 22 February 2023, the Claimant made an entry onto CPOMs in respect of **A** as she had heard some students talking about **A** being pregnant [429].

Incident 2 - Pupil RS

31. On 6 February 2023, another student. RS came to see the Claimant. RS told the Claimant that people had been messing around in a class she was in. The Claimant told RS to go back to the class and apologise for leaving the classroom. RS told the Claimant that she thought the teacher was '*creepy*' and '*weird*'. RS made derogatory comments about the teacher, who was a black man from a different country. The Claimant said that she got the impression that RS was trying to avoid going back to class and getting a detention. RS then said '*and he looked at my bum as I walked out*'. The Claimant did not consider RS to be truthful in what she was saying and therefore did not consider that she should log this as a concern.
32. On 23 February, Jo Watson, Deputy Principal emailed the Claimant informing her that RS had made an allegation against a cover teacher and that she had told the Claimant about it. The allegation was made on 20 February [563] and there was a parental complaint. The Claimant was asked to write a statement via email about what happened [565]. On 27 February, the Claimant raised this incident with Sarah Lightbody during their daily check in [567]. On 28 February 2023, Jo Watson sent a further email to the Claimant asking for the details about this incident [564]. The Claimant replied on the same day stating '*thanks for the reminder*' [564]. The Claimant sent an email to Jo Watson and Todd Johnson on 28 February explaining what had happened [569]. The Claimant logged this incident on CPOMs on 1 March 2023 [571]. The Claimant was late in doing so and this was because there was half term in the intervening period, with no access to CPOMs at home and because she forgot. The

Claimant gave unchallenged evidence that she experiences brain fog and forgetfulness as a result of her MS. The email from Jo Watson reminding the Claimant to provide the details and the Claimant's response, thanking her for the reminder, supports this.

Investigation Meeting

33. Lisa Hedges was the first person to receive Sarah Lightbody's account about her discussion with the Claimant on 1 February 2023. She was also involved in reports relating to the second incident with RS. Despite this, she was appointed by Todd Johnson as the investigating officer, although initially, it was supposed to be a different member of staff. Lisa Hedges had conducted six investigations in ten years. None concerned safeguarding in relation to a child. No consideration was given to appointing an independent investigator. Trust policy was that Todd Johnson would appoint he considered to be most appropriate.
34. The investigation meeting took place on 21 February 2023 by Lisa Hedges. The Claimant attended without a representative or someone present with her. There was another attendee to take notes. The Claimant was asked a series of questions which had been prepared by Lisa Hedges with advice from the school's People Adviser [116-117]. These questions were based on the report that Sarah Lightbody had made, giving her account of what the Claimant had said in the 1 February meeting.
35. Lisa Hedges did not read the ACAS Code of Practice on disciplinary and grievance procedures or ACAS guide on Discipline and Grievances at Work prior to commencing the investigation. She said that she followed Trust policy, which followed ACAS guidelines, but she did not check to make sure this was the case. Lisa Hedges accepted that if an investigation did not follow the ACAS guidelines then it would not be ACAS compliant.
36. In preparing for the investigation, Lisa Hedges worked with a People Adviser, pulled together Trust Guidelines, reviewed Trust policies, KSCIE, teacher's standards and code of conduct. She was not given a set of Terms of Reference by Todd Johnson as to the questions of what needed to be investigated or how it should be investigated. Nor did she develop this herself at the outset of the investigation to define the parameters.
37. The notes of the meeting record the Claimant as saying:

- a) *'There was a conversation related to a 12-year-old child who had not yet started her periods...'*
 - b) *'Her attendance is awful: PP, Safeguarding and Attendance are all involved, my role is solely as Form Tutor and there were 3 other people checking on her'*
 - c) *'I told her I had my suspicions but not facts...I thought about putting it on CPOMs but had nothing concrete to put on...'*
 - d) *'I had suspicions but not enough information for me to base anything on'*
 - e) *'As Safeguarding, PP and Attendance were also in touch, they were getting the same information as me'*
 - f) In response to the question 'When mum took her to the doctors, did you suspect that she was pregnant?' *'Yes, I was in denial. I did not have any basis for the allegation. It rested on my mind every time I saw her. She is too young, had not started her periods, and there was no way boys were messing with her. There's no maturity to her for a man or boy to look at her. She has not started to develop yet; she has no definition. She is a little child but at the same time, I was concerned about her'.*
38. Following the investigation meeting, Lisa Hedges prepared an Investigation Report dated 10 March 2023 [108-115]. The Investigation Report did not mention any background information or broader context about **A** including the June 2022 MASH referral and previous concerns about mental health and self-harming. Lisa Hedges did not consider this to be relevant to the investigation. She said that the investigation was about the Claimant as the teacher, not the child. Lisa Hedges said that the Claimant had already told Sarah Lightbody that she had failed to report and the investigation was to ascertain whether there was a reason for her failure to report concerns.
39. The chronological starting point in the Investigation Report was 1 February 2023. There was no consideration of matters that occurred prior to then and the Claimant's explanation for them, for example her call to **A's** mother on 25 January 2023 or her email to Sarah Lightbody on Saturday 28 January.
40. The Investigation Report did not mention any mitigating factors such as the Claimant's previous compliance with her obligations and no previous disciplinary action. It did however mention the single time she received management advice. Lisa Hedge's view was that information was already known by Todd Johnson and therefore did not need to be included. Lisa Hedges did not consider that any matters had been raised relevant to mitigating factors.

41. The analysis section of the report is limited. It does not explore in any detail what a teacher is required to do to comply with the various safeguarding obligations and policies. It does not provide or define a standard as to what constitutes a failure, against which the Claimant's actions were assessed against. It does not provide any analysis as to the Claimant's account of her state of mind at the relevant points in time, in order to objectively assess her actions.
42. The report also did not consider the role or actions of other relevant teams such as the attendance team, safeguarding team, educational welfare or pupil premium. It made no reference to the availability of relevant information to **A** in other systems which other staff members were responsible for e.g. **A's** poor attendance record.
43. Lisa Hedges had not planned to interview any other witnesses as part of the investigation until the meeting with the Claimant, who referred to other staff teams who may be relevant to speak to in respect of **A**. Consequently, Lisa Hedges spoke with:
- a) Claire Forrester (attendance team) [208] She was asked three brief questions:
 - i) *From September 2022 to February 2023 did you have any suspicions about **A**? CFO – no concerns.*
 - ii) *Did mum allude anything to you? CFO – no, the one time i did a home visit with Helen Delaney, it was just sickness related.*
 - iii) *Did you have any concerns pregnancy related? CFO – no concerns whatsoever.*
 - b) Amy Harriman (safeguarding team) [209] She was asked three brief questions:
 - i) *From September 2022 to February 2023 did you have any suspicions about **A**? AHN: nothing at all, first I knew was when this came up.*
 - ii) *You are the Year Team link – did you meet with her regularly? AHN – I would pass her and would say 'hi' but did not see her regularly.*
 - iii) *Did anyone raise any concerns with you? AHN – no.*
 - c) Interview with Jade Stevens (safeguarding team) [210] She was asked two brief questions:

- i) From September 2022 (or prior to September) to February 2023, did you have any suspicions about A? JBO – no, not aware of anything, only MASH referral from Sarah in June 2022.*
- ii) Have you had any contact with mum? JBO – no, no contact with mum at all.*

d) Lee Berill (pupil premium) [212] was asked one question.

- i) Lee was asked if he had ever had any contact with A in his capacity as Pupil Premium Lead. LBE- No, I do not know who she is.*
- ii) LBE then checked his intervention record for PP students and confirmed that A had not had any specific interventions; therefore he would have never had any reason to be in contact with her.*

e) Helen Delaney (educational welfare) [214] was asked two brief questions:

- i) From the period Sept 2022 to now, did you have any concerns about A? HDE – only the state of her home when i visited in September. It was very smoky and I had to use my inhaler when I left. A was in the lounge asleep in the sofa, mum just pulled the duvet down to shoe her head. Concerns were logged onto CPOMs after the visit.*
- ii) Was there further contact after the visit? No further contact after the visit. Mum did not particularly want to let me in but I insisted.*

44. The questions Lisa Hedges asked these staff members were exceptionally narrow and limited, resulting in scant responses. The way the question was phrased about whether the staff member had concerns about A, was unsophisticated and created an easy opportunity for staff members to simply say 'no' with no further query or investigation. Lisa Hedges accepted that phrasing a question in this way, enabled staff members to emancipate themselves from blame. She did not consider asking staff members any follow up questions such as why didn't they have concerns, given their respective roles or why there had not been any closer interaction with A, especially in light of earlier concerns including the June 2022 MASH referral.

Disciplinary Hearing

45. A disciplinary hearing took place on 24 April 2023, chaired by Todd Johnson [120-127]. Lisa Hedges was present, a HR Adviser and a note taker. The Claimant attended with a supporter but not a Union representative. She was not aware of her rights to delay the meeting until Union representative was available.

46. The second incident relating to RS is dealt with in a single paragraph on page 2 of the minutes of the hearing. The remainder of the document relates to the incident relating to **A**.
47. A summary of the investigation was provided by Lisa Hedges. In response, the minutes from the disciplinary hearing, record the following of note in respect of **A**:
- a) *'MPE stated she did not suspect pregnancy but she suspected something was wrong as she is always vigilant with these concerns'*
 - b) In respect of the meeting with Sarah Lightbody *'MPE stated that nothing was outlined about pregnancy and it was not the first thing that came into her head as the student had not started her periods yet'*
 - c) *'MPE stated that she was in this position because she was vigilant, and that she could not report something she did not know...'*
 - d) *'MPE explained that the child was off but it could have been cancer as she had previously had 2 instances of students with cancer'*
 - e) *'There were 3 other designated teams of people who were paid to focus on these areas'*
 - f) *'MPE queried what should have been logged when she called home to discuss with mum the child feeling bloated, but she was getting to that age of starting her periods. MPE queried why Attendance would not be picking up a child who had been off for 2 weeks'*
 - g) *'MPE stated that if she sees a concern, she reports it. MPE made reference to 2 other students and pregnancy.'*
 - h) *'MPE explained that the things she would log would be language, behaviour, the look of a child, mannerism. MPE stated that she did not see any of that with this child'*
 - i) *'MPE stated that she cannot log what she does not see'*
 - j) When Sarah Lightbody's email to Todd Jones and Lisa Hedges was put to the Claimant, the minutes state:
 - i) *'MPE said she knew something was wrong. A child being absent from school like that, something must be wrong. MPE stated she was not the person monitoring the attendance but she naturally thought something must be wrong'*
 - ii) The comment that SL made 'your stomach only swells like that when you're pregnant' was put to the Claimant. In response *'MPE stated it could*

have been a tumor...MPE referenced again the 2 students again she had in the past who have had cancer'

- iii) When asked about her alleged comment that **A** was 'sexually active' the Claimant responded '*MPE was watching this child and by the third week of having the form described her as a little baby*'. It was clarified by C's supporter that '*MPE witnesses naivety and immaturity in the child and would keep an eye on her*'. '*MPE stated she was a little baby and there was no way possible this was happening*'

- k) '*MPE suspected something was wrong but she did not know what*'

48. In respect of RH, the following is recorded of note:

- a) '*MPE stated that SLI had been in that evening for a regular check and then with half term in between, she had forgotten about it and logged it after half term again. MPE stated again that she did not see it as a safeguarding concern.*'

49. The Claimant's supporter made some remarks in summing up during the disciplinary hearing and the minutes record:

- a) '*SMB queried the training received and questioned failure in training*'
b) '*SMB referred to previous interviews and conversations and stated that sometimes when trying to listen to MPE, it is difficult to get what she is saying and there could have been misinterpretation that should be looked at again*' (emphasis added)
c) '*MPE added she was not concerned about the child's health but her attendance. TJO stated that even this concern should have been reported. ME replied that someone else should have been picking this up.*'
d) '*SMB added that this brings up wider issue and demarcation of duties.*'

50. There are inconsistencies between what the Claimant is reported to have said in her meeting with Sarah Lightbody on 1 February 2023 and in the Investigation Meeting with Lisa Hedges. In the Disciplinary Hearing, the Claimant clarified these points and maintained that she did not know or suspect that **A** was pregnant, just that she was concerned due to her poor attendance. She believed that other teams in the school with responsibility for these issues were aware and acting accordingly. She did not have a specific additional concern about **A** to log. For reasons that are explained further in the 'Conclusions' section below, the Tribunal did not accept the proposition

that the Claimant knew or suspected **A** was pregnant until being told by Sarah Lightbody on 1 February 2023. The Claimant did not suspect pregnancy, she felt something was not quite right but only had the same information everyone else had as logged on SIMs with regard to **A's** health and poor attendance.

Outcome Letter & Appeal

51. The Claimant was sent an outcome letter by Todd Jones following the Disciplinary Hearing on 27 April 2023 [136-137]. The letter states that *'the initial allegation of the non-reporting of safeguarding concerns did happen and amounted to gross misconduct'*. The entirety of the letter deals with the incident with **A** and does not reference the second incident with RH, despite Todd Johnson in his oral evidence, saying the second incident also formed part of the evidence in support of his decision to dismiss. The letter contained four bullet points purporting to be mitigating factors, that are phrased as failures. There was a failure to consider the Claimant's immaculate 31 year teaching career as mitigation. Todd Johnson said that this *'did not matter'* when evaluating the evidence.
52. Todd Johnson accepted that his decision to dismiss the Claimant was *'career ending'*. However, the outcome letter failed to explain why summary dismissal was chosen as the appropriate sanction. There was no explanation as to why another lesser sanction was not appropriate. Todd Johnson accepted that he summarily dismissed the Claimant, despite not having suspended her in the intervening period, even though all the same information was known at the relevant time.
53. The Claimant lodged her appeal on 15 May 2023 [153-154]. In her appeal she raised several points including:
 - a) *'As a Form Tutor I make standard calls to parents first to introduce myself at the start of the year...I also check if the child has access to technology. If the student is off for four or more days I make a cursory call to check on them.'*
 - b) *'I take responsibility for failing to record some of my phone calls with to parents on Class Charts for reasons of forgetfulness as a result of my health condition'. (emphasis added)*
 - c) *'I had concerns about **A's** attendance the same way I felt concern for 30% of my group and telephoned home to parents to express the same. I am not responsible for student attendance'*.

- d) *The safeguarding training I received covered all the different types of abuse and at no time did I identify any abuse in relation to the subject of A's attendance'*
- e) *'The reason for which I made different telephone calls to A's mum was surely to do with attendance, access to Class Charts for her to access school work and to check on well-being'*
- f) *On 25/1/23 'I managed to call home at lunchtime to inform home of her behaviour to which the mother disclosed that an appointment was booked for the following day for a scan as standard procedure as mom said she was concerned about cramps'*
- g) *'My conversation was purely out of care for a tutees health as a mother speaking to another mother rather than an assumption that a child who was yet to start her period was pregnant'.*
- h) *'I did not have an interview with Sarah Lightbody. We had a conversation where I mentioned that things did not seem to fit together after Sarah told me about A being pregnant. I mentioned her poor attendance, being sick and grown stomach after Sarah disclosed to me that A was pregnant'*
- i) *'If I put the pieces together before the conversation with Sarah, that would have been a safeguarding issue worth entering onto CPOMs'*
- j) *'The same guilt I felt in not putting all the pieces together could well and rightly be felt by all adults who had interaction with A either as core subject teachers who may have taught her at least three hours or more weekly, or the attendance team as A's attendance had been below 90% since September'*
- k) *'Reflecting on the conversations held during the different meetings and informal conversations I had wherein I was repeatedly assured that I had not done anything wrong, I now realise these were a coordinated attempted to make me culpable for what the school failed to discover and manage in its duty of care for A'*
- l) *'I am shocked that the failure to record communications on Class Charts is being manipulated along with falsified claims from my conversations are now being misrepresented as a safeguarding concern which was not entered onto CPOMs. At no time did I make the claim that this was a safeguarding concern and being accused of not entering information on CPOMs is an attempt to frame me for the failings of the school, a responsibility I refuse to bear because this is grossly untrue and unfair'.*
- m) *'Weston Favell Academy were officially informed of the health challenges I have experienced neurological problems with MS and they are also aware of challenges this presents with remembering things. The problems I have*

experienced have increased significantly as a result of having Covid-19. One such example is when I forgot to record RS's complaint.' (emphasis added)

n) 'The details of my conversations and meetings with different person have been misrepresented...'

54. An appeal hearing took place on 14 June 2023 conducted by Claire Leitheiser (Education Director) [272-278] and three other people. In preparation of the appeal, the appeal members met in the morning of the appeal to consider the questions to be asked and how to approach the appeal. There are no notes from these discussions.

55. In the appeal hearing, the Claimant reiterated the following points:

- a) 'When SLI advised MPE that Pupil X was pregnant, that is when MPE put it all together'
- b) 'it was only when SLI told MPE about the pregnancy that she started to put everything together, but before that, she did not know'
- c) 'MPE stated that she failed to record it on Class Charts but still would not have put it on CPOMs. MPE stated that she struggles with her memory, she tries to focus on lessons during the day and did not remember to record it'
- d) 'CLE referenced about MPE's memory in terms of support from the Academy. MPE stated that since returning back from COVID, there has been no conversations with anyone regarding her health '
- e) 'TJO stated that the Academy was aware of MPE's health condition, and this was managed through line management as MPE had experienced some falls'
- f) 'MPE stated that Pupil X was a 'little baby' who had the physical appearance of being under-developed'
- g) 'MPE stated that SLI disclosed Pupil X was pregnant. MPE stated that everyone failed the child; everyone missed the signs'
- h) In relation to RH 'MPE stated that she did not feel it was serious and went straight to tutor time. It was on her to do list to complete but when JWA asked her about it, it was at that point MPE recorded it on CPOMs'.
- i) 'In terms of the investigation, MPE raised concern as to procedure....MPE feels she was not treated fairly and a lot of what she said was misquoted'
- j) 'CLE asked if the first time MPE thought Pupil X looked bloated on the Thursday. MPE confirmed 'yes', 26 January'.

56. Throughout her appeal, the Claimant continued to maintain her position and raised the fact that she experienced forgetfulness as a result of her disability which explained her delay in reporting the second incident in respect of RH and not always recording calls on Class Charts, which was not a mandatory requirement in any event. Despite raising issues relating to her disability in her written grounds of appeal and the appeal hearing, the Respondent did not pause the proceedings to enquire further into what the impact of the Claimant's disability may have been on her ability to perform her safeguarding and associated reporting duties, for example by way of an Occupational Health referral when this issue was raised. This would have been a reasonable step for the Respondent to take, given there had been occupational health involvement in the past in respect of the Claimant and they said she had previously been offered this support. Clearly, this was an avenue available to them.
57. Todd Johnson's evidence was that the brain fog came up for the first time in the appeal, it was '*not a relevant thing*'. He questioned whether brain fog could mitigate against two failures to report and said that he still would have formed grounds for dismissal. He referred to steps the school had taken to support the Claimant with her disability, prior to these issues, namely moving her classroom and other forms of pastoral and occupational health support. When asked about pausing proceedings for information about the impact of the Claimant's disability, he said '*I am not sure of the relevance, at that stage, it wouldn't have changed anything, it wouldn't make a difference*'.
58. Claire Leitheiser's evidence was that Claimant received regular support from her pastoral support and line manager in relation to her disability. She said that brain fog was raised for the first time during the appeal and she came to the conclusion '*that was not an ample reason not to report*'. She said that it was '*not my position to consult occupational health*' and that as she was not the Claimant's employer it was not her '*responsibility to ask for that to happen*'.
59. The Claimant received written confirmation from Claire Leitheiser that her dismissal had been upheld on 19 June 2023 [155-156]. It stated that '*the decision has been taken because there were a number of occasions in which you missed the opportunity to report or record the facts about the child in question on the internal management systems which could have alerted the safeguarding team to investigate further*'. The letter was limited in its detail about the process and analysis of the findings against the Claimant's grounds of appeal. There was no mention of RS in the appeal outcome letter. In respect of the procedural issues the Claimant had raised, the letter said '*You*

provided no evidence to support in the appeal hearing that the investigation was not conducted correctly and there were no procedural errors on the part of the academy’. There is no analysis about the procedural concerns the Claimant raised. There is no consideration of mitigating factors. There is no consideration of the proportionality of the sanction.

60. In respect of the issues the Claimant raised about her disability, the letter said ‘...you received regular support from the academy and were offered an occupation health referral and no point was this raised as an issue until the appeal and in other circumstances, you recorded information. The need to record promptly and accurately on the systems for safeguarding is even more paramount given the assertion you made to the panel about your illness and the impact on your memory’.
61. There were several procedural failings with the investigation process, disciplinary hearing, appeal process, for reasons explored below in ‘Conclusions’.

Other Matters

62. At some point during the course of the investigation and disciplinary process, the Respondent published a job advert [119] for a ‘Teacher of Business and/or Health and Social Care’ which was the same role held by the Claimant. Todd Johnson said that the school had additional capacity and needed new teachers. He accepted that this was the first time he had mentioned this, and he had not included this explanation in his witness statement.
63. The Respondent reported the Claimant for failure to report safeguarding concerns to the Teacher Regulation Authority (TRA) [163-166] and the Disclosure and Barring Service (DBS) [159-161]. The TRA outcome letter said that the ‘TRA will only consider allegations of the most serious cases of misconduct, in order to make a decision about whether a teacher should be prohibited from teacher work...the Decision Maker has determined that these were managed at a local level and the conduct described is unlikely to result in a professional conduct panel making a recommendation of prohibition...therefore, there is no case to answer and the case is closed’. The DBS concluded that the allegations were not proven on the balance of probabilities.

Law

Unfair Dismissal

64. The test for unfair dismissal is set out in section 98 of the Employment Rights Act 1996. Under section 98(1), it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within subsection (2), e.g. conduct, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
65. The reason for dismissal is 'a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee'. (*Abernethy v Mott Hay and Anderson* [1974] ICR 323, CA.)
66. Under s98(4) '... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.'
67. Tribunals must consider the reasonableness of the dismissal in accordance with s98(4). However, tribunals have been given guidance by the EAT in *British Home Stores v Burchell* [1978] IRLR 379; [1980] ICR 303, EAT. There are three stages: (1) did the respondents genuinely believe the claimant was guilty of the alleged misconduct? (2) did they hold that belief on reasonable grounds? (3) did they carry out a proper and adequate investigation?
68. Tribunals must bear in mind that whereas the burden of proving the reason for dismissal lies on the respondents, the second and third stages of Burchell are neutral as to burden of proof and the onus is not on the respondents (*Boys and Girls Welfare Society v McDonald* [1996] IRLR 129, [1997] ICR 693).
69. Finally, tribunals must decide whether it was reasonable for the respondent to dismiss the claimant for that reason.
70. The question is whether dismissal was within the band of reasonable responses open to a reasonable employer. It is not for a tribunal to substitute its own decision.
71. The range of reasonable responses test (or, to put it another way, the need to apply the objective standards of the reasonable employer) applies as much to the question of

whether an investigation into suspected misconduct was reasonable in all the circumstances as it does to other procedural and substantive aspects of the decision to dismiss a person from his employment for a conduct reason. The objective standards of the reasonable employer must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed. (*Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23, CA)

72. In reaching their decision, tribunals must also take into account the ACAS Code on Disciplinary and Grievance Procedures. By virtue of section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992, the Code is admissible in evidence and if any provision of the Code appears to the tribunal to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question. A failure by any person to follow a provision of the Code does not however in itself render him liable to any proceedings.
73. The Code is also relevant to compensation. Under section 207A, if the claim concerns a matter to which the Code applies and there is unreasonable failure by either the employer or the employee to comply with the Code, there can be an increase or reduction in compensation (respectively) according to what is just and equitable of up to 25%.
74. Under s122(2) of the Employment Rights Act 1996, the tribunal shall reduce the basic award where it considers that any conduct of the claimant before dismissal was such that it would be just and equitable to do so. Under s123(6), where the tribunal finds the dismissal was to any extent caused or contributed to by any action of the claimant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable.
75. Where the dismissal is unfair on procedural grounds, the tribunal must also consider whether, by virtue of *Polkey v AE Dayton Services* [1987] IRLR 503, HL, there should be any reduction in compensation to reflect the chance that the claimant would still have been dismissed had fair procedures been followed.

Misconduct

76. The rule that only repudiatory breaches by employees will justify summary dismissal can be traced back to the Court of Appeal's decision in *Laws v London Chronicle*

(Indicator Newspapers) Ltd [1959] 1 WLR 698). The conduct must be “wilful”, which connotes a “deliberate flouting” of the essential contractual conditions.

77. In *Sandwell & West Birmingham Hospitals NHS Trust v Westwood* UKEAT/0032/09 the EAT summarised the case law on what amounts to gross misconduct and found that it either involves deliberate wrongdoing or gross negligence (paragraph 113). The EAT held the Tribunal must consider both the character of the conduct and whether it was reasonable for the employer to regard that conduct as “gross misconduct” on the facts of the case. It held that it would be open to the Tribunal to find that the employee’s serious failure of professional judgement could not reasonably be characterised as deliberate wrongdoing or gross negligence.

Investigation

78. In *A v B [2003] IRLR 405* the EAT stated that the gravity of the charges and the potential effect on the employee will be relevant when considering what is expected of a reasonable investigation. In its view, an investigation leading to a warning need not be as rigorous as one likely to lead to dismissal. In that case, the fact that the employee, if dismissed, would never again be able to work in his chosen field was by no means as irrelevant as the tribunal appeared to think. The Acas guide, ‘Discipline and grievances at work’ (‘the Acas guide’), emphasises that the more serious the allegations against the employee, the more thorough the investigation conducted by the employer ought to be (see page 18).
79. The EAT said at [58] to [63] that particularly serious allegations require particularly careful and conscientious investigation, including in relation to potential exculpatory lines of enquiry. It also noted that the standard of reasonableness required will always be high where the employee faces loss of his employment. The wider effect upon future employment, and the fact that charges which are criminal in nature have been made, all reinforce the need for a careful and conscientious enquiry but in practice they will not be likely to alter that standard.

Mitigation

80. In *Strouthos v London Underground Limited [2004] IRLR 636*, the Court of Appeal held that the employee’s length of service is relevant when deciding the appropriate sanction. In *Arnold Clark Automobiles v Spoor [2017] IRLR 500*, the EAT concluded that the

employer erred in not having regard to all the circumstances including the claimant's "exemplary record".

Ill-Health

81. In *Governing Body of Hastingsbury School v Clarke UKEAT/0373/07 and UKEAT/0374/07* the EAT held that a tribunal had been correct to hold that an employee had been unfairly dismissed when his employer had failed to investigate his apparent ill health before dismissing him for gross misconduct.
82. in *British Telecommunications plc v Daniels UKEAT/0554/11*, the EAT upheld a Tribunal's decision that a reasonable employer would not have dismissed an employee (who committed acts of dishonesty) without first obtaining an occupational health report to see if there were issues relevant to his state of mind and the issue of mitigation. The Tribunal pointed out at [paragraph 96] that "with BT we are dealing with a substantial global concern with substantial facilities and resources at its disposal... the Tribunal would have expected a reasonable employer in this position to have certainty written to occupational health asking for a full report prior to proceedings any further."

S15 Discrimination Arising from Disability

83. Discrimination arising from disability is prohibited by section 15(1) of the Equality Act 2010 ("EqA"), which states:

"A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim."

84. In *Basildon & Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305*, Mr Justice Langstaff, the then President of the EAT, explained that there is a need to identify two separate causative steps for a claim under S.15 EqA to be made out. These are that:

a) the disability had the consequence of 'something', and

- b) the claimant was treated unfavourably because of that ‘something’.
85. According to Langstaff P, it does not matter in which order the tribunal approaches these two steps: ‘It might ask first what the consequence, result or outcome of the disability is, in order to answer the question posed by “in consequence of”, and thus find out what the “something” is, and then proceed to ask if it is “because of” that that A treated B unfavourably. It might equally ask why it was that A treated B unfavourably, and having identified that, ask whether that was something that arose in consequence of B’s disability’.
86. In *Pnaiser v NHS England [2016] IRLR 170, EAT*, Simler J summarised the proper approach to establishing causation under s.15: First, the tribunal must identify whether the claimant was treated unfavourably and by whom. It must then determine what caused that treatment — focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person but keeping in mind that the actual motive of the alleged discriminator in acting as he or she did is irrelevant. (This point is considered in more detail under ‘Enquiring into employer’s thought processes’ below.) The tribunal must then establish whether the reason was ‘something arising in consequence of the claimant’s disability’, which could describe a range of causal links. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.
87. Where a respondent treats a claimant unfavourably because of something arising in consequence of their disability, the respondent will be liable for discrimination arising from disability unless it can show that its actions can be objectively justified as a proportionate means of achieving a legitimate aim. The burden is on the respondent to prove justification, and it is for the court or tribunal to undertake a "fair and detailed analysis of the working practices and business considerations involved" so as to reach its own decision as to whether the treatment was justified. Tribunals should not allow the respondent a "margin of discretion" or apply a "band of reasonable responses" test similar to that found in unfair dismissal cases see *Hardys & Hansons plc v Lax [2005] EWCA Civ 846*.
88. Counsel for the Respondent and Claimant provided comprehensive written submissions including outlining the relevant legal framework and authorities which were also considered.

Conclusions

Incident 1: A

89. The Tribunal concluded that there had been no misconduct in respect of **A** and that the Claimant had not failed in her safeguarding duties.
90. The Tribunal rejected the suggestion that the Claimant had concerns, suspicions or positive knowledge of **A's** pregnancy from September 2022 or at any point prior to her discussion with Sarah Lightbody on 1 February 2023. Whilst the Claimant did have concerns about the Claimant's poor attendance, this was not uncommon across her students and this was something known, monitored and logged by the school's attendance team. The Tribunal concludes that at the material time, the Claimant did not have any concerns amounting to safeguarding which warranted being logged onto CPOMs or escalated to the safeguarding team.
91. The Tribunal does not accept the assertion that the Claimant ought to have logged her call with **A's** mother on 25th January 2023 on CPOMs. We accept the Claimant's account that in effect, there was nothing new or additional to report beyond what was already logged on SIMs and therefore known to other relevant teams in school.
92. The Tribunal notes that the Claimant did not log this call onto Class Charts, but does not consider this to have any relevance when assessing compliance with safeguarding duties, given making calls home was not a requirement for teachers and recording calls of Class Charts was not mandatory. The Tribunal considers that there has been a dangerous conflation of the Claimant's failure to use Class Charts with her wider safeguarding duties. They are two distinct systems carrying different obligations. This dangerous conflation is evidenced by the appeal outcome letter which refers to failure in logging on multiple 'internal systems'. The only question is whether this call should have been raised as a safeguarding concern and logged on the CPOMs system, and in our view, it did not need to be as the Claimant did not have a specific concern or new or additional information to log.
93. The investigation into the Claimant was initiated as a result of her conversation with Sarah Lightbody on 1 February 2023. As such, the entire investigation and disciplinary process rested on Sarah Lightbody's account of the meeting with the Claimant on 1 February. There is a significant factual dispute about what was said at this meeting. Sarah Lightbody denies telling the Claimant that **A** was pregnant. The Claimant has

maintained throughout the entire process, that this is when she learned of **A's** pregnancy. We reject the evidence of Sarah Lightbody and accept the Claimant's evidence for the following reasons:

- a) The Claimant became extremely distressed in this meeting, which is supported by Sarah Lightbody's evidence who asked whether she wanted to go home and offered her wellbeing support. The Claimant described herself as needing time *'to get myself back together...I could've murdered someone at that point, I was full of emotions.'* She described feeling extremely shocked and upset at the news of a 12-year-old student being pregnant and that *'we as a school had failed her'*. The Claimant's response is indicative in our view of someone who has just come to receive horrifying news about one of their pupils.
- b) Contemporaneous documentary evidence prepared as part of the investigation by Lisa Hedges [116] specifically contains a question which states *'can you please give us a detailed account of the conversation you had with SL when she informed you that **A** was pregnant?'* We did not understand or accept the explanation given by Lisa Hedges about why this question was asked, if that was not in fact the reality. There is also a reference in the notes from the Disciplinary Hearing stating *'MPE leant back in her chair and said 'I knew it' when it was disclosed that the child was pregnant' (emphasis added).* The Tribunal also noted that Counsel for the Respondent in his cross-examination of the Claimant put the proposition *'Sarah Lightbody disclosed **A** was pregnant and this was the first time you knew'* which accords with the documentary evidence.
- c) The Claimant had a good history of reporting concerns. This was supported by Sarah Lightbody's evidence who said the Claimant had a good history of recording concerns and she had recorded a number of concerns whilst Sarah Lightbody had been in the school. The Claimant had also previously recorded a concern about a student who was pregnant. Clearly, the Claimant was aware of her duties to report if she knew or suspected a student was pregnant, evidenced by the fact she had done so before. It is not clear to us and no evidence was provided as to why a teacher known to have a good history of recording concerns would one day just stop doing so, especially after such a long and unblemished career history.
- d) As **A's** Form Tutor, the Claimant saw **A** for a mere 20 minutes a day, as compared to subject teachers and other staff for a longer period of time. Yet, nobody else

that **A** was in contact with suspected pregnancy. That includes the attendance team, who were logging **A's** poor attendance since September 2022 with the reasons for absence including, as outlined above, references to sickness, dizziness and stomach pain. Of note, is that the Claimant was under the supervision of the Safeguarding Team following the MASH referral in June 2022 until the summer break. In this period, **A** would have already fallen pregnant.

- e) The Claimant actively sought out Sarah Lightbody on 1 February 2023 as a follow up from their email correspondence about **A** because Sarah Lightbody did not go and find the Claimant after her email on Saturday 28th January. Ironically, had she have not done so, she would not be in the position she finds herself in now. There is no reasonable explanation of why the Claimant would expose herself to the possibility of investigation for failing to report safeguarding concerns by volunteering to Sarah Lightbody that she knew or suspected her 12-year-old pupil was pregnant and had been for months.
 - f) The rational explanation and the one accepted by the Tribunal is the one advanced by the Claimant. Essentially, this meeting was the 'eureka' moment. Only after being told about **A's** pregnancy did the pieces of the puzzle retrospectively fall into place. Any comments the Claimant made were reflective with the newly acquired knowledge of the pregnancy.
 - g) The Tribunal observed the Claimant throughout her evidence and considered her to be a conscientious, thoughtful and caring teacher who would not have failed to act if she knew or suspected her 12-year-old pupil was pregnant. Or indeed, any other concerns that merited reporting on CPOMs.
94. Additionally, in our view, there were wider systemic failings relating to the safeguarding of **A** dating back to the June 2022 MASH referral and even earlier, given her previous Form Tutor's concerns. Sarah Lightbody in her written evidence said: *'Critically, had the Claimant reported the suspicion that **A** was pregnant in the months after a concern was raised by an anonymous source, we would have been tenacious in gaining as much support as possible for **A** and ultimately it could have been made safer than she was. Without the suspicion of pregnancy being raised, opportunities to do this missed, and in my opinion, as a byproduct of the Claimant's inaction, **A** went on to experience further life-altering sexual abuse and trauma.'* The Tribunal wholly rejects this categorisation of blame on the Claimant. Opportunities were missed, but they were

only missed, because the safeguarding team failed to sufficiently act on what they already knew. They were also missed despite various relevant teams coming together weekly to discuss issues e.g. attendance, welfare, SEND and behaviour teams. However, **A** was not on the radar at these meetings.

95. Despite the severity of the June 2022 MASH referral and being told that **A** was being met at the school gates by a known paedophile, the Respondent's only action was for welfare check-ins between the safeguarding team and **A** until the school closed for the summer break. Thereafter, it was said that concerns tailed off because the '*child didn't raise any concerns*'. She said that children often '*drop breadcrumbs. She didn't drop breadcrumbs*'. Sarah Lightbody said in oral evidence, that with hindsight, she would not have done anything else. Similarly, Todd Johnson said, in hindsight, the actions taken were appropriate. Concerningly, when asked whether a policy or protocol had been put in place since, in light of what had materialised with **A**, the answer was no. The Tribunal rejects the suggestion that concerns about a 12-year-old with a history of mental health issues, including self-harm and concerns about possible interaction with a known paedophile are the types of concerns that evaporate over the summer holiday.
96. The Respondent's approach to safeguarding, was ironically, entirely reactive. If concerns were actively raised, they would act. Yet action appeared to be limited after legitimate and serious concerns had been raised. This reactive approach is demonstrated by Sarah Lightbody's response to the Claimant's email on 28 January where she had said she had been in contact with **A's** mother. Despite Sarah Lightbody saying that the case of **A** was the severest example of child sex abuse in her entire career, she failed to follow up with the Claimant on Monday morning as a matter of urgency, to enquire what the Claimant, as **A's** Form Tutor might have known from **A's** mother. She did not follow up with the Claimant at all. It was the Claimant who followed up with Sarah Lightbody, another demonstration of her conscientious nature. When asked why she did not follow up with the Claimant as a matter of urgency, Sarah Lightbody did not have a satisfactory response. When Todd Johnson was asked about Sarah Lightbody's failure to follow up promptly with the Claimant, he suggested it was because the Claimant wanted to discuss **A's** attendance and therefore not relevant to the issue at hand. However, it was Sarah Lightbody's evidence that poor attendance is often symptomatic of wider issues.

97. Against this background, the Tribunal was concerned that there has been an unfortunate attempt to unilaterally blame the Claimant for what is clearly a systemic failure. Safeguarding is a collective and institutional responsibility. In this case, several pieces of relevant information were known about **A** by other people and not the Claimant. Sarah Lightbody's evidence was that *'concealed or denied pregnancy is by its very nature, secretive and disguised, which would give an explanation as to why A's condition was undetected by the vast majority of people around her and emphasises the point that anybody who has a suspicion that a child is pregnant should have reported it through the appropriate channels as the Claimant had done with a previous student'*. The Respondent was willing to afford others the benefit of an explanation of why they would not know, or suspect **A** was pregnant, but the same was not afforded to the Claimant, even though she had significantly less relevant information about **A** than others.
98. This has been a very concerning case. The Claimant in evidence said *'all of us should have picked up on this...the head of safeguarding, her subject teachers, SLT, MASH hub team...we failed her, we all failed her, everything failed her – it is a system failure'*. We wholly agree with this categorization.
99. The Tribunal was concerned with what appeared to be a total refusal by the Respondent witnesses to consider and reflect upon, what were clearly systemic and institutional safeguarding failures in respect of **A**. The reality is, all staff were oblivious as to what was really going on with **A**. Rather than focus on remedying a collectively made mistake, unfortunately the Respondent has insisted on singularly blaming the failure on the Claimant. Whilst beyond the remit of our jurisdiction, we hope that lessons are learned for the future to ensure the safety of children within the Trust.

Incident 2: RS

100. In respect of RS, the Tribunal disagrees with the Claimant's analysis that what was disclosed to her about the teacher in question, did not need to be reported because she considered it to be a manufactured allegation to avoid detention. In our view, it ought to have been recorded regardless of that being her view. This was an error of judgment, but in and of itself, not misconduct. We note the oral evidence of Todd Johnson who said based on this incident alone, he would not have dismissed the Claimant. We also note that this incident is not mentioned in the Claimant's dismissal letter. It is clear across the documentation relating to the disciplinary process that the focus is almost entirely in relation to the **A** incident.

101. We note that the Claimant did belatedly raise this incident with Sarah Lightbody in one of their daily check-in meetings and also logged the incident on CPOMs on 1 March 2023, after she became aware there had been an allegation made and parental complaint. The delay in logging on CPOMs was because there was half term in the intervening period and because of the Claimant's forgetfulness arising from her disability.
102. The evidence about the Claimant's brain fog and forgetfulness arising from her MS, is unchallenged evidence and as such we accept the C's account in this respect. The Respondent also repeatedly referred to Claimant needing to be reminded to log these incidents on CPOMs. In our view, this supports the Claimant's account of experiencing brain fog and forgetfulness as an explanation for why an otherwise diligent teacher would forget to log after being reminded to do so.

Investigation. Disciplinary and Appeal Process

103. The Tribunal accepted the submissions made on behalf of the Claimant in respect of the procedural fairness of the investigation, disciplinary and appeal process. The conduct of the entire disciplinary process raised several natural justice issues.
104. In our view, the disciplinary process did not comply with ACAS standards or spirit of the Code. Concerns about the investigation process include:
- a) Lisa Hedge's impartiality as investigator, given she was in receipt of both reports;
 - b) The lack of a clear methodology as to how the investigation was being conducted and what standards the Claimant was being assessed against;
 - c) Failure to reference and consider critical contextual information, particularly in relation to **A**;
 - d) Failure to consider relevant incidents and correspondence given the chronology only started on 1 February 2023;
 - e) Failure to properly and adequately examine the actions and inactions of other relevant people and teams including the attendance team and safeguarding team;
 - f) A woefully inadequate interview process with witnesses being only asked 2-3 narrowly defined questions with no further examination;
 - g) Failure to identify and appropriately consider relevant mitigating factors despite a 31-year career history and clean disciplinary record; and

- h) Failure to consider any potential impact of the Claimant's health.
105. The investigation process lacked the rigour required, given the severity of the issues being examined and the potential consequences on the Claimant's career. The failures of the initial investigation process polluted the fairness of the proceedings that followed.
106. The disciplinary hearing held by Mr Johnson did not consider exculpatory factors, explore all lines of enquiry with the Claimant or have sufficient regard to her account. It failed to consider mitigating factors including consideration of the Claimant's long teaching history and exemplary record. We accept the assertion by the Claimant that this led to an outcome that was imbalanced and disproportionate.
107. The Claimant asserts that the decision to dismiss her was predetermined as evidenced by the job advert for her role, that went live during the disciplinary process. Although, we do not consider this to be material to our conclusions, we note that Todd Johnson only provided an explanation for this for the first time in oral evidence, and not in his witness statement or the grounds of resistance submitted in defence of this claim.
108. The decision letter also failed to comply with the relevant standards of the ACAS code and general principles of natural justice and procedural fairness, including for the following reasons:
- a) The incident with RS was not mentioned in the letter, yet in oral evidence Todd Johnson asserted that both incidents formed part of his consideration;
 - b) No mitigation was properly identified or considered in reaching the decision – in fact Todd Johnson said, in effect, that mitigating factors did not matter;
 - c) There was no explanation of the standards of gross misconduct that the Claimant was being assessed against or proper analysis of the relevant policies and codes; and
 - d) No consideration was given to whether dismissal was the only lawful and proportionate sanction. No consideration was given to other sanctions.
109. In a similar vein, the Tribunal concludes that there were several procedural issues with the appeal process including:

- a) A failure to properly examine the Claimant's grounds of appeal including her concerns about the procedural fairness of the disciplinary process;
- b) A failure to engage with the Claimant's account of how brain fog and forgetfulness, as a result of her disability, impacted her;
- c) A failure to consider mitigating factors; and
- d) A failure to consider the proportionality of the sanction.

Communication

110. Another area of concern across all aspects of the disciplinary process and indeed in the 1 February meeting between Sarah Lightbody and the Claimant, which set all these events in train, is communication and understanding. We consider that there were issues with understanding the Claimant's account creating ambiguity at times and scope for her comments to be misrepresented. These ambiguities were not clarified or explored, despite it specifically being raised by the Claimant's supporter in the disciplinary hearing. With absolutely no disrespect intended to the Claimant, having heard her give her evidence over the course of the hearing, we observed first-hand how sometimes Counsel or the Tribunal needed to rephrase or put questions again to ensure clarity of understanding. We also noted that often cultural differences mean that we communicate differently, and clarification is required to ensure understanding, however this did not happen.
111. We were also concerned about the quality of notes that were taken throughout the disciplinary process. The Respondent in large part relies on things that Claimant is alleged to have said in various meetings, however in our view, the notes do not appear to be a clear and comprehensive record of the totality of discussions. In some instances, they disclose significant discrepancies that are wholly inconsistent. For instance, the Claimant is said to have referred to **A** as 'sexually active' whilst also referring to her being 'immature' and 'like a baby'.

Unfair Dismissal and Wrongful Dismissal

112. For all the reasons outlined above, the Tribunal concluded that the principal reason for the Claimant's dismissal was misconduct. The Respondent believed the Claimant to be guilty of misconduct however we conclude it did not have reasonable grounds to believe the Claimant was guilty of misconduct. The Respondent failed to carry out a reasonable investigation in all the circumstances and in any event, the dismissal was not within the range of reasonable responses as it was a disproportionate sanction.

113. Accordingly, the Claimant was unfairly and wrongfully dismissed as there was no fundamental breach of contract which warranted immediate termination.

S15 Discrimination Arising from Disability

114. Disability was not in dispute and the Respondent was aware of the Claimant suffering from MS. The Respondent treated the Claimant unfavorably by dismissing her. The Claimant suffered with forgetfulness and brain fog, as a result of her MS which was unchallenged evidence. The dismissal was because of her failure to record concerns, which in substantial part, arose because of her forgetfulness and brain fog arising from her MS. The decision to summarily dismiss, was not a proportionate means of achieving a legitimate aim.

115. A remedy hearing in this matter took place on 4 February 2025 and judgment was reserved.

Approved By:

Employment Judge Islam

Date: 21 February 2025

JUDGMENT SENT TO THE PARTIES ON

25/2/2025

N Gotecha
FOR THE TRIBUNAL OFFICE