



EMPLOYMENT TRIBUNALS

Claimant: Mr Adam Hatch

Respondent: Gloucestershire County Council

Heard at: Exeter by Cloud Video Platform on 25 and 26 June 2025

Before: Employment Judge Elizabeth Gibson

Representation:

Claimant: In person

Respondent: Ms Amy Rumble of Counsel

RESERVED JUDGMENT ON LIABILITY

1. The Claimant's claim for unfair dismissal is well-founded. The Claimant was unfairly dismissed by the Respondent.
2. The Tribunal will determine remedies in respect of the successful claim at a further hearing on 4 and 5 December 2025.

REASONS

Introduction

1. By way of background, Mr Hatch worked as a firefighter for Gloucestershire Fire and Rescue Service ("GFRS") from 22 March 2004 to 21 February 2024.
2. He was summarily dismissed for gross misconduct by GFRS, which is a part of Gloucestershire County Council following a disciplinary process consisting of the three stages – an investigation, a disciplinary hearing and an appeal.

3. The Claimant claims he was unfairly dismissed and is seeking reinstatement. The Respondent denies the Claimant's claim.
4. The Claimant has largely been out of work since his dismissal.
5. The hearing of the Claimant's claims took place over two days, 26 and 27 June 2025, on a Cloud Video Platform.
6. Mr Hatch appeared in person and was supported by his friend Mike Ynell. The Respondent was represented by Ms Amy Rumble of Counsel.

Procedure and Evidence

7. The Claimant gave evidence himself and called one further witness, Naomi Purvis, a former colleague Mr Hatch worked with for nearly five years. Three witnesses gave evidence for the Respondent, James Waldron a GFRS Watch Manager; who was the Claimant's manager and who conducted the investigation into the alleged gross misconduct; Mike Hammond, GFRS Head of Logistics and Resources who conducted the disciplinary hearing; and Nathaniel Hooton Deputy Chief Fire Officer for GFRS who chaired the appeal.
8. I had before me a paginated bundle of documents consisting of 312 pages of documentary evidence. Page numbers referenced in these reasons are the page numbers of the bundle.

Preliminary Matters

Late Evidence

9. At the start of the hearing Ms Rumble applied for late evidence to be admitted to the Tribunal consisting of a supplementary bundle of 14 pages and a one-page email dated 16 August 2024 (the "Additional Disclosure"). The documents related to complaints made by the Claimant at his appeal hearing in respect of his colleagues' behaviour.
10. I read the Additional Disclosure and gave the Claimant time to do the same. On reading the Additional Disclosure the Claimant said it was relevant to his case and therefore he did not object to the Respondent's application.
11. On this basis and in accordance with the overriding objective set out in Rule 3 of the Employment Tribunal Procedure Rules 2024, I allowed the Respondent's Additional Disclosure to be admitted as late evidence to the hearing. It consequently transpired that the Additional Disclosure was not relevant to the issues I had to decide.

Issues

12. Prior to the commencement of the hearing the Respondent submitted a draft list of issues which the Claimant agreed could form the basis of the issues which I needed to decide. I set out below a precis of the issues that I needed to determine:
- 12.1. Was the Claimant dismissed? Both parties agreed the Claimant was dismissed on 21 February 2024.
 - 12.2. What was the reason for the dismissal? The Respondent maintained that the Claimant's dismissal was a reason related to conduct, and in this case gross misconduct, which is a potentially fair reason for dismissal under s98(2) of the Employment Rights Act 1996 (the "ERA 1996"). This was not disputed by the Claimant.
 - 12.3. Did the Respondent hold a genuine belief in the Claimant's gross misconduct on reasonable grounds and following a reasonable investigation as was warranted in the circumstances?
 - 12.4. Was the Respondent's decision to dismiss the Claimant a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with the same facts the Respondent was faced with? and
 - 12.5. Did the Respondent adopt and follow a fair procedure when dismissing the Claimant and did the GFRS follow the ACAS Code on Disciplinary and Grievance Procedures 2015 (the "ACAS Code")?
 - 12.6. If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when (the "Polkey Issue")?
 - 12.7. If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct? This requires the Respondent to prove, on the balance of probability, that the Claimant committed the misconduct alleged (the "Contribution Issue").
13. In relation to the latter two issues, these questions go to remedy in the event of a finding of unfair dismissal.
14. Neither the Polkey Issue nor the Contribution Issue was ventilated in the hearing other than in respect of the Respondent's closing

submissions which addressed the fact that these questions needed to be answered.

15. I have made no detailed findings on these questions at this time but they will be fully addressed at a remedies hearing.
16. In respect of the Polkey Issue and the Contribution Issue I do not envisage there will be a need for further evidence and these matters, assuming the parties agree, will be determined by submissions.

Applicable Law

17. The right of an employee not to be unfairly dismissed is set out in s94(1) of the ERA 1996.
18. By s98 of the ERA 1996, an employer must show a fair reason for a dismissal, in this case conduct. If that is shown, then by s.98(4) of the ERA 1996:

"...the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) -

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

19. In assessing the reasonableness of the Claimant's dismissal, I am not permitted to substitute my view as to whether I consider the Claimant's actions constituted gross misconduct or what I would have done in the circumstances had I been the employer. Employment judges and tribunals are cautioned very strictly against substituting their own views for that of the decision maker. Different approaches apply in different industries and in different types of workplaces.
20. In this matter, the Respondent is a large public sector organisation with significant human resources and legal departments and access to third party experts. In addition GFRS has a comprehensive disciplinary procedure.

21. Consequently in considering the reasonableness of the Claimant's dismissal, I must take account of such resources in respect of the standard of fairness reasonably expected of it.
22. The question I must ask myself is not whether the Claimant was guilty of gross misconduct but whether it was reasonable of GFRS to conclude that he was and therefore should have been summarily dismissed.
23. This reflects the fact that unfair dismissal is a statutory concept which considers the reasonableness of an employer's belief (and actions) whereas gross misconduct is a contractual concept depending on a finding of fact about what happened as referred to in the case of *West v Percy Community Centre EAT 0101/15* ("*West v Percy*").
24. This case also highlights the "employer-centric" nature of the law relating to unfair dismissal in that a decision for the purposes of s98 ERA 1996 depends not on what happened but upon what the employer thought had happened (my emphasis).
25. It also found that the dismissal of a teacher on child safeguarding issues was a very serious event which would end a teacher's career and it was therefore incumbent on the employer, when categorising the conduct as misconduct or gross misconduct, to carefully scrutinise the circumstances of the events.
26. I must consider the process adopted by GFRS (along with the resources behind it) and the reasoning it used in coming to the decision it did. This is akin to a judicial review of administrative decision-making.
27. The case of *Iceland Frozen Foods v Jones [1982] IRLR 439* held that my job is to:

"...determine whether, in the particular circumstances of each case, the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band, it is unfair."
28. The correct approach to fairness is set out in the seminal case of *British Home Stores v Burchell [1978] IRLR 379* which sets out the tests to be considered when dealing with conduct dismissals (there is a neutral burden of proof for these tests) in determining whether what occurred with respect to the dismissal fell within the range of reasonable responses of a reasonable employer (the "Burchell Test"). These are:

- 28.1. As a question of fact did GFRS genuinely believe in the misconduct of the Claimant?
- 28.2. If yes, was this belief based on reasonable grounds? This test considers the information available to GFRS at the time of Mr Hatch's dismissal and the appeal decision and whether GRFS' view that there was gross misconduct was within the band of reasonable responses;
- 28.3. Was a reasonable investigation undertaken in the circumstances? For this test, the case of *J. Sainsbury plc v Hitt [2003] ICR 111 CA* ("*Sainsbury v Hitt*") is relevant as it held the range of reasonable responses test applies in a conduct case both to the decision to dismiss and to the procedure by which that decision was reached. This case also referred to the link between the band of reasonable responses and the nature of the allegations and their consequence as well as the size and resources of the employer. It is however wrong to expect a meticulous investigation of the kind expected of criminal enquiries;
- 28.4. In *A v B [2003] IRLR 405*, ("*A v B*") the Employment Appeal Tribunal (the "EAT") held that the relevant circumstances include the gravity of the misconduct alleged and their potential effect upon the employee. Although the misconduct in this case involved alleged criminal behaviour, the EAT held that serious allegations at least when disputed must always be the subject of the most careful investigation. Although it is unrealistic and inappropriate to require the standards of a criminal trial:

"...a careful and conscientious investigation of the facts is necessary and the investigator charged with carrying out the enquiries should focus no less on evidence that may exculpate or at least point to the innocence of the employee as he should on the evidence directed towards proving the charges against him."

- 28.5. In *Sneddon v Carr-Gomm Scotland Limited 2012 IRLR 820 Ct Sess (Inner House)* ("*Sneddon*") where the Claimant strongly contested the allegations, the Court of Session held the tribunal had been entitled to find that a reasonable employer would have gone back to a witness to explore matters more fully and double check on the detail, the reliability and the credibility of her account, rather than relying on her initial conversation with the investigator which

took place at a preliminary stage of the investigation and that therefore the dismissal was unfair.

28.6. The very recent *Scottish EAT case of Andrew and Kerr v The Scottish Ministers* [2025] EAT 117 is also relevant to my deliberations. The EAT held a tribunal did not err in law in forming the view that matters that were not put for consideration during disciplinary proceedings could not be material to the reasonableness if the employee's decision to dismiss.

28.7. The EAT said the correct approach was set out by the Court of Appeal in *Shrestha v Genesis Housing Association Limited* [2015] EWCA Civ 94 ("*Shrestha*") at paragraph 23:

"To say that each line of a defence must be investigated unless it is manifestly false or unarguable is to adopt too narrow an approach and to add an unwarranted gloss to the Burchell test. The investigation should be looked at as a whole when assessing the question of reasonableness. As part of the process of investigation, the employer must of course consider any defences advanced by the employee, but whether or to what extent it is necessary to carry out specific inquiry into them in order to meet the Burchell Test will depend on the circumstances as a whole...What mattered was the reasonableness of the overall investigation into the issue."

28.8. Did GFRS follow a reasonably fair procedure? The ACAS Code is relevant here as is the Respondent's Disciplinary and Dismissal Procedure (the "DDP").

28.9. Was the Claimant's dismissal within the band of reasonable responses open to a reasonable employer in the same circumstances? This test seeks to elucidate whether the decision to dismiss the employee rather than impose any other disciplinary sanction was within the range of reasonable responses;

28.10. In applying this test, I must not fall into the trap of substituting my own view for that of GFRS. The DDP is important to consider in this respect. I have to be satisfied that GFRS acted reasonably in characterising the Claimant's behaviour as gross misconduct and that his dismissal was the appropriate punishment;

28.11. The case of *Brito-Babapulle v Ealing Hospital NHS Trust* [2013] IRLR 854 ("*Brito-Babapulle*") is relevant to this question because the EAT made clear that the consideration of mitigating factors could render a dismissal unfair notwithstanding the gross misconduct. Such factors may include long service, the consequence of the dismissal and any previous unblemished record. The original tribunal had erred in suggesting that the existence of gross misconduct is determinative of whether a dismissal is unfair whereas the dismissal depends on the separate considerations set out in s98 of the ERA 1996;

28.12. The ACAS Code (which I must have regard to) sets out the fundamental principles for disciplinary and grievance procedures and provides the standard for procedural fairness. Where procedural failings constitute breaches of the ACAS Code, that has weight of itself in relation to the question of liability (*Lock v Cardiff Railway Company Ltd* 1998 IRLR 358, EAT)

28.13. The following elements of the ACAS Code are relevant to this case:

28.13.1. The introduction states that employers should carry out any necessary investigations to establish the facts of the case (my emphasis);

28.13.2. Paragraph 9 sets out that where it is decided there is a disciplinary case to answer it would normally be appropriate to provide copies of any written evidence which may include witness statements to the employee in the notification of the disciplinary hearing; and

28.13.3. Paragraph 12 provides that employees should be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given the opportunity to raise points about any information provided by witnesses;

28.14. ACAS also provides a guide (Discipline and Grievances at Work –The ACAS guide, July 2020) which supplements the ACAS Code. Although it has no statutory force and is non-binding it expands upon the ACAC Code and in relation to investigations it provides:

"The nature and extent of the investigation will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee's case as well as evidence against."

29. As the DDP (see from paragraph 54 (below)) refers to "natural justice", I also set out the principles that this phrase enshrines. These principles of fairness provide that people accused of something must know what they are accused of and they must be allowed to put their case which includes the questioning of witnesses where appropriate.

Evidence and Findings of Fact

30. There was substantial conflict between the parties on the evidence. I considered the whole of the evidence including the documentary evidence in the bundle, the Additional Disclosure, and the oral evidence of the witnesses. I also listened to the submissions made by both parties.
31. Where I have had to resolve any conflict of evidence this is referred in these reasons.
32. While many of the facts in this case were in dispute, the essence of the Claimant's case was that GFRS did not act reasonably and fairly in respect of the processes and procedures it adopted for its investigation, the subsequent disciplinary hearing and Mr Hatch's appeal against his dismissal without notice because he was guilty of gross misconduct.
33. The Claimant was an experienced firefighter for GFRS and as such he "acted up" or was temporarily promoted on several occasions at most of the stations he served at. At the time of his dismissal he was a firefighter on white watch at Uckington in Cheltenham.
34. Prior to his dismissal the Claimant had been the subject of two informal disciplinary actions, called "notes to file", which were relevant to the issues I had to determine. These were in early 2022 and 14 April 2023 and related to how Mr Hatch greeted colleagues and showed he was warned that his use of the term "Doris" in referring to female colleagues was inappropriate.
35. Following a number of serious allegations from two female fighters the Claimant was suspended by Nick Ashcroft, (Group Manager - Response Team) on 11 September 2023 pending a formal disciplinary investigation.

36. The Claimant's notice of suspension and of the investigation (at page 60 of the bundle) confirmed that Mr Ashcroft would be carrying out the investigation. A former fire officer, Mr Ashcroft had been trained in advanced interviewing techniques, law and best practice in investigations
37. Mr Hatch was invited on 06 November 2023 to a fact-finding meeting to be held on 13 November 2023 (at page 62 of the bundle). This letter from Mr Ashcroft stated:

"This meeting is designed for me as a Senior Officer to interview you and get a clear understanding of your position in relation to the allegations raised against you in areas including:-

- *Sexual Harassment in the workplace*
- *Breach of GFRS core values."*

38. The Claimant said he was not given any more information about the details of the allegations until his fact-finding interview on 13 November 2023.
39. As part of the suspension process GFRS had undertaken a risk assessment of the Claimant and appointed a welfare officer to provide him with support.
40. The record of contact document (at pages 309 to 312 of the bundle) produced by the welfare officer showed Mr Hatch repeatedly said he was concerned he did not know the details of why he had been suspended (the "Contact Log").
41. The Contact Log shows he raised this concerns on 11, 12, 13, 18, 25 September and 02, 11 and 25 October 2023. It was clear from this log that the Claimant was becoming increasingly anxious and frustrated about not knowing the details of what he was accused.
42. The welfare officer referred the Claimant for an occupational health assessment which took place on 30 October 23. This reported that Mr Hatch had severe low mood and anxiety since his suspension and that he required additional support and flexibility from his workplace (the "OH Report") (at pages 296 to 299 of the bundle)
43. On 18 September 2024 the welfare officer reported to Mr Hatch that Mr Ashcroft would be contacting him to share more details of the allegation to enable him to prepare. There was no evidence to show this happened.

44. Following a disciplinary hearing on 15 February 2024, the Claimant was dismissed on 21 February 2024 for gross misconduct on the basis of allegations he had:

- 44.1. Initiated inappropriate physical conduct with a female colleague in the breathing apparatus ("BA" room);
- 44.2. Initiated inappropriate physical contact with female colleagues included the slapping of bottoms, pulling of hair and grabbing of thighs and waist;
- 44.3. Used inappropriate language and comments at work; and
- 44.4. Used inappropriate greetings including hugging and kissing at work.

45. The most serious allegations were made by two female fighters referred to as Firefighter A and Firefighter B in these reasons. Paragraphs 46 to 51 (below) are extracts from the typewritten notes taken by Mr Ashcroft (see pages 112 to 115 of the bundle) which were appended to his investigation report (the "Investigation Report").

46. It was apparent that these notes did not include the original emails that Mr Ashcroft considered during his investigation, instead they appeared to be extracts from emails which had been cut and pasted into the Investigation Report.

47. Firefighter A alleged that:

- 47.1. On 15 June 2023 the Claimant went into the Breathing Apparatus room when she was alone *"...and proceeded to put his finger through the hole in my station wear shirt, asking if I had a t-shirt on underneath. This was just under my breasts and I immediately flinched...leaving me thinking that I need to try and avoid my colleague in the future..."* (the "Alleged Shirt Incident"); and
- 47.2. On "26/6/23 - start of shift he [the Claimant] *went to give me a friendly hug hello as this was the first day of shift. He put his arm around my shoulder then proceeded to move his right arm down to my left buttock and squeeze it. I deemed this inappropriate and believed he had exploited a moment that was just supposed to be a friendly hello..."*

48. Firefighter B alleged that:

- 48.1. In September 2023 the Claimant had knocked on the female changing room door at the end of a shift to find her and give her a kiss; and
- 48.2. Since joining white watch in April 2022 there had been occasions when she had been on the receiving end of physical contact from the Claimant including slapping her bottom, grabbing her thighs and waist, kissing her on the cheek and giving her hugs at the start and end of most shifts and pulling her hair (the "Alleged Physical Contacts").
49. Following the Alleged Shirt Incident and the Alleged Physical Contacts Firefighters A and B decided Firefighter B would speak to the Claimant.
50. Firefighter B said that on 26 June 2023:
- "I spoke to Adam Hatch alone in the drying room at station 13. I explained that Firefighter B and myself wanted to keep things professional at work and we did not want any physical contact from him again. He went red and, in that moment he agreed that this was the right thing to do. I explained that I didn't want anyone getting into trouble, meaning himself, and this would keep all our relationships professional. I pointed out the two occasions I felt he had made me feel uncomfortable so it was clear it was not acceptable."*
51. Despite this conversation both Firefighter A and B said the Claimant continued his inappropriate behaviour a few weeks later.
52. Firefighter A said in an email to Huz Patel, crew manager on 10 September 2023:

"I am now feeling extremely worried about coming into my workplace on Monday. This unwanted sexual behaviour HAS NOT STOPPED. The date is now 10/9/23...I am now at a point where I do not feel safe to come to work. The most recent occasion was at the start of the tour 26/8/2... Suddenly, Adam Hatch walked over from the locker section grabbed by head and placed an unwanted kiss on my right cheek. In the next moment he grabbed Firefighter B's head and did the same on her left cheek...We stood and stared at each other for a few moments in disbelief. Wiping our faces, I had the realisation that despite the conversation we had, HE WILL NOT STOP THIS BEHAVIOUR...This leave me fearful of being around him."

53.I set out below a chronology of the events (some of which the Claimant denied had happened or that he had a different recollection of) leading to the Claimant's dismissal and his subsequent appeal.

Date	Event
14 April 2022	Note to file in respect of the Claimant's use of the term "Doris" when referring to female firefighters.
23 June 2023	The date Firefighter A said the "Alleged Shirt Incident" took place.
26 June 2023	Firefighter A spoke to the Claimant saying she and Firefighter B did not want any physical contact from him.
05 September 2023	Firefighter A received a call from Firefighter B who said the Claimant was continuing unwanted physical contact.
06 September 2023	Watch Manager James Waldron contacted by Crew Manager Huz Patel following allegations from Firefighter B in respect of overly physical greetings by the Claimant.
07 September 2023	Email from Firefighter A to Mr Patel alleging the Claimant had made her feel uncomfortable by inappropriate touching on two occasions
10 September 2023	Email from Firefighter A to Mr Waldron confirming she had received a call from Firefighter B alleging the Claimant had continued his inappropriate behaviour despite the conversation on June 26 telling him to stop. She also said she did not feel safe at work and that the Claimant gave her an unwanted kiss on the cheek on 26 August.
10 September 2023	Email from Firefighter B to Mr Waldron giving examples of the Alleged Physical Contacts prior to the conversation of 26 June.
10 September 2023	Mr Waldron informed Nathaniel Hooton, the Duty Principal Officer Deputy Chief Fire Officer of Firefighter A and B's allegations.
11 September 2023	The Respondent initiates investigation into the allegations and Mr Ashcroft personally informed the Claimant he was subject to a workplace investigation and he was to be suspended forthwith. The

	Claimant was handed a letter from Mr Ashcroft confirming this. The letter said the investigation was regarding "an allegation of Sexual Harassment in the workplace".
11 September to 12 December 2023	Mr Ashcroft conducted his investigations.
19 September 2023	Firefighter B interviewed by Mr Ashcroft.
20 September 2023	Firefighter A interviewed by Mr Ashcroft.
30 October 2023	The Claimant underwent an occupational health assessment following a referral from his welfare officer. He raised his concerns that he did not know the substance of the allegations against him.
30 October 2023	Firefighter Mike Stevens interviewed by Mr Ashcroft.
30 October 2023	Firefighter Tim Davies interviewed by Mr Ashcroft.
30 October 2023	Mr Waldron interviewed by Mr Ashcroft.
30 October 2023	Mr Patel interviewed by Mr Ashcroft.
30 October 2023	Firefighter A interviewed by Mr Ashcroft for a second time.
30 October 2023	Firefighter B interviewed by Mr Ashcroft for a second time.
02 November 2023	Station manager Neil Scott interviewed by Mr Ashcroft.
06 November 2023	Claimant invited to a fact-finding (investigation) meeting with Mr Ashcroft.
13 November 2023	Fact-finding (investigation) meeting between the Claimant and Mr Ashcroft.
20 November 2023	Learning and development officer Jim Harley interviewed by Mr Ashcroft.
12 December 2023	Mr Ashcroft released the Investigation Report.
15 January 2024	The Claimant invited to a disciplinary hearing by letter from Mike Hammond, head of logistics and resources at GFRS.
15 February 2024	The Claimant's disciplinary hearing which was chaired by Mr Hammond and attended by Mr Ashcroft.
21 February 2024	The Claimant was summarily dismissed for gross misconduct.
18 April 2024	The Claimant's appeal hearing chaired by Mr Hooton.

24 April 2024

The Claimant was informed by letter from Mr Hooton that his appeal was unsuccessful.

GFRS' Disciplinary and Dismissal Procedure

54. GFRS has a comprehensive DDP for uniformed employees and this is the policy document that the Respondent said it used to regulate and inform the Claimant's dismissal process.

55. The DDP contains the following relevant provisions:

General

55.1. *"The basis of this procedure is that the principle of natural justice applies at every stage in a framework which also ensures fairness for both employees and managers.";*

55.2. Gross misconduct is defined as: *"...an employee's act or failure to act that is so far from the expected standards of conduct that the employee simply cannot be trusted or allowed to remain an employee of the service.";*

Investigations

55.3. *"In cases where the misconduct is in dispute the management decision should be on the balance of probabilities that is if the convening manager thinks the circumstances suggest it is more likely that the events occurred than they did not, they will proceed on the assumption they did.";*

55.4. The purpose of an investigation (where employees are required to cooperate) is to establish:

55.4.1. The nature of the alleged misconduct;

- The employee's response;

55.4.2. Any supporting evidence; and

55.4.3. Any other relevant circumstances.

55.5. *"The investigating officer will make a recommendation either that the specific allegations should be dealt with at a formal hearing (disciplinary hearing) or that there should be no disciplinary action.";*

Disciplinary Hearings

55.6. *"The disciplinary hearing will enable the employee to have the allegations restated, hear the evidence against them, present their own evidence and make representations to management. The manager considering the matter should carefully consider all they have been told and seen during the hearing and reach a decision about whether the allegation(s) have substance and weight. If they do, the manager hearing the case may impose a disciplinary sanction as described in this procedure."; and*

Appeals

55.7. *"An employee may appeal against the reasonableness of a formal disciplinary warning imposed on them as the result of a disciplinary hearing.".*

56. There is a management guidance note in the DPP (pages 273 to 288 of the bundle) and the following relevant extracts are set out below:

General

56.1. *"Common forms of misconduct include...failure to abide by codes of practice or other occupational work standards...Breach of the Services Code of Conduct.";*

56.2. *"Misconduct may be regarded as 'gross misconduct' where serious misconduct goes to the root of the employment contract and undermines the bonds of trust and confidence between the employer and the employee";*

56.3. *"The term gross misconduct refers to the most serious forms of misconduct. This is the type of behaviour that causes considerable risk of damage to the organisation if not effectively dealt with.... Examples of such potentially gross misconduct include but are not limited to significant acts of discrimination, bullying, or harassment...serious failure to comply with or operate the Service's Core Values e.g. holding unauthorised paid employment during paid Service time, conducting inappropriate relationships with vulnerable clients, not declaring a personal interest which may infringe the employee's impartiality.";*

Investigations

56.4. *"If they are considering the matter as potential gross misconduct.... and may, therefore, be dismissed, the fact*

finding (investigation) is more thorough than for minor conduct issues";

- 56.5. *"Where the employee is to be interviewed as part of an investigation they should be advised of the purpose of the meeting in advance..."*;
- 56.6. *"The purpose of fact finding is to establish a fair and balanced view of the facts relating to any disciplinary allegations before deciding whether to proceed with a disciplinary hearing. The fact-finding (investigation) does not require the line manager to prove beyond reasonable doubt that an employee is guilty of misconduct. It requires the line manager to establish if they believe that there is a case to answer on the balance of probability."*;
- 56.7. *"It would be expected that the manager would meet with the employee to hear their side of the case in most cases of alleged misconduct. Where formal action under the disciplinary procedure is contemplated, the employee should be notified in writing that there will be a formal interview...The nature and formality of the meeting will be dependent on the level of severity of the accusation and what action has been taken previously."*;
- 56.8. *"Taking into account the circumstances and the employees possible emotional state, the manager may wish at first to just inform the employee of the allegations and set a date to meet again in the near future."*;
- 56.9. *"In the most serious cases, particularly where an employee has been suspended and/or is facing allegations of gross misconduct, they should be notified in writing of the fact-finding (investigation) meeting giving them reasonable notice to prepare themselves."*;
- 56.10. *"Witnesses...should be informed that they may be called to a hearing as the matter progresses."*;
- 56.11. *"...depending on the seriousness of the alleged misconduct and the outcome being considered, i.e. formal investigation the manager will need the witness meetings to be written up and produced as signed documents providing a formal record of the witness evidence. This will avoid any disagreement by the witness at a later date about whether the statement is a true reflection of their evidence. (Which do not need to be verbatim)."*;

56.12. *"Once the manager has completed the fact-finding (investigation) and if the manager believes that there is a case to be considered at a formal hearing, then they should write a report to be presented at a hearing. This report will summarise the relevant details and set out the findings and the conclusions that have been reached. It should include as appendices the supporting evidence (e.g. witness statements and other relevant documents)...The manager should demonstrate how their findings and conclusions are based on the evidence obtained.";*

Disciplinary Hearings

56.13. *"Dismissal without notice or summary dismissal - the allegations are considered to be gross misconduct and are upheld. In these cases, any mitigation is not considered to outweigh the severity of the misconduct and the breakdown of trust and confidence that results from this.";*

56.14. The features of a formal disciplinary hearing include:

56.14.1. The manager (or the independent investigator if appropriate) will present their report, explaining the rationale for their findings and conclusions.

56.14.2. The manager may arrange for people who have provided witness evidence to attend the hearing to confirm their evidence and answer any questions.

56.14.3. The employee or their representative may ask the witnesses questions. The employee or their representative can ask the manager questions about the case presented. The chairperson might also ask the manager some questions; and

56.14.4. The employee or their representative will present their response to the management case. They may bring witnesses to provide supporting information. The manager and the chairperson may ask these witnesses any questions. Witnesses. about the information they provide. The manager can also ask the employee questions.";

Appeals

56.15. *"The following are grounds for appeal:*

- *There was a defect in the process;*
- *The disciplinary warning was not appropriate and/or reasonable in all the circumstances and/or*
- *New evidence has come to light, which, if it had been available at the original hearing, may have resulted in the Hearing Officer reaching a different conclusion;*
- *The issue is not proven on the balance of probabilities.";*

55.16 The potential outcomes from an appeal hearing following dismissal are:

- *"An adjournment to allow for additional evidence and/or witnesses and/or information to be made available;*
- *A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser sanction;*
- *To make an appropriate recommendation;*
- *Any combination of the above or;*
- *To submit the case back [hearing] [sic] (in the event that the appeal officer believes that a [performance hearing] (sic) was so flawed as to render the decision unsafe OR that important evidence was either not available or not appropriately considered at the original hearing AND feel unable to hear the case and/or substitute a new decision for the original that the case may be remitted for a new hearing, subject to the agreement of all parties to cooperate or;*
- *to deny the appeal and confirm the demotion/dismissal."*

Mr Ashcroft's Investigation

57. Mr Ashcroft, who did not give oral evidence at the Tribunal hearing, produced a report dated 12 December 2023 following his investigation (at pages 64 to 122 of the bundle)

58. He interviewed eight people including Mr Waldon, Mr Patel, Tim Davies, the two female firefighters and the Claimant. He included in the Investigation Report descriptions and notes of his interviews as appendices. There were no witness statements (i.e. signed and dated documents with the confirmation that the contents were true to the best of the witness's knowledge and belief).

59. Mr Ashcroft's Investigation Report included a summary of the written statements he had considered. He also made a number of general comments including:

59.1. *"Overall, within the interviews it became apparent Adam is an experienced member of the watch, whose performance can be relied upon, however, some of his behaviours and comments whilst at work appear to be "old school" and perhaps he has not moved forwards at the same pace as the Service in regards to its core values and expectations of personnel while at work.";*

59.2. *"In conclusion I believe both inappropriate language and comments have been continually used by Adam Hatch within the working environment.";*

59.3. Firefighters A and B wanted to deal with the Claimant's behaviour informally at first but said the situation intensified. Mr Ashcroft reported: *"following her discussion with Adam on 26th June if he would have apologised and ceased the actions that would have been enough for her.";*

59.4. *"Within this report, three firefighters, Firefighter B, FF Davies and Firefighter A from white watch Cheltenham West, have provided clear evidence and statements which have all supported the allegations regarding inappropriate behaviour and comments made by FF Hatch. I have not received any firm evidence in regard to individuals contradicting these statements, one firefighter FF Stephens stated he did not witness these events, but it may have been because he was a strong character and firefighter Hatch would not do this in front of him."; and*

59.5. *"I believe the allowing of such banter and physical contact between individuals has allowed professional boundaries within the workplace to be compromised and as such may have led FF Hatch conducting himself inappropriately at work, both physically and verbally. However, the conduct of this nature falls outside of GFRS's expected values and behaviours."*

60. The Investigation Report stated:

"The process of the investigation was to ensure a comprehensive evaluation of the evidence in the forms of both written and physical evidence and also to include statements/interviews to provide a holistic picture of the alleged incidents..."

61. In an interview with crew manager Mr Patel, Mr Ashcroft asked about the Claimant's demeanour to which Mr Patel replied:

"It is difficult, but AH is someone who is not fitting of what the fire service should be. I don't think he fits with the vision of what the national fire service is looking for. AH is old school firefighter mentality in the fire service values. Some of the things AH comes out with I don't agree with."

62. Mr Ashcroft noted that Mr Patel said that when he first joined the watch, he was taken aback at the *"touchy, feely side"* of the Claimant but considered this behaviour to be the norm.

63. In response to another question about inappropriate behaviour Mr Patel said this was a harsh term and Mr Hatch gave the impression of *"raping with eyes"*.

64. I find as a matter of fact that Mr Hatch's interview on 13 November 2023 was the first time he was told of the substance of the allegations against him, although Mr Ashcroft had claimed at the time of the suspension that there was a brief conversation with Mr Hatch where he stated *"...within this discussion areas were highlighted within the letter were expanded on."*

65. The reason for this finding is that the Claimant consistently said throughout the disciplinary process that he did not know the extent of the allegations against him prior to his interview with Mr Ashcroft, he reiterated this during the Tribunal hearing and the Claimant's version of events was corroborated by the documentary evidence in the Contact Log and the OH Report.

66. Mr Ashcroft acknowledged in the Investigation Report that the Claimant was shocked and disappointed at the allegations. He recorded that Mr Hatch admitted hugging and kissing his colleagues irrespective of their gender or their seniority and that he said this behaviour was mutual by all concerned.

67. He also set out that

67.1. The Claimant disputed the content of the conversation with Firefighter A on 26 June 2023 had no recollection of bum

slapping, stroking of thighs, hair pulling or grabbing of throats and in any event this not something Mr Hatch would do; and

67.2. Mr Hatch adamantly denied the Alleged Shirt Incident and queried why if it had happened was it not reported immediately (I noted that Mr Ashcroft did address this with Firefighter A who told him this was because she initially thought she could deal with Claimant's behaviour informally between themselves.

67.3. Mr Hatch continually referred to how, *"the banter and interactions with the girls on the watch were mutual and provided counter allegations on how Firefighter A and Firefighter B would participate in inappropriate banter with other members of the watch..."*; and

67.4. The Claimant said he had only been supportive to the female firefighters including in personal training, kick boxing and fitness sessions at the gym.

68. The notes of Mr Hatch's interview (as pages 115 to 122 of the bundle) show:

68.1. He denied that he treated male and female colleagues differently when he greeted them, although a kiss on the cheek *"would be more females"*;

68.2. When he was told the allegations had come from Firefighters A and B he said: *"Wow, I say wow, I had no clue whatsoever until I thought about why they were not there that morning...I am absolutely devastated."*;

68.3. In relation to the conversation on 26 June 2023:

"The only discussion I have had with Firefighter A, this was months ago, she said that she was worried that our greeting of one another was inappropriate or too close. This wasn't just our greeting, Firefighter A said how the whole watch greeted each other with big hugs could look inappropriate to other watches.";

68.4. Mr Hatch stated that the two of them agreed that Firefighter B may not enjoy a hug from him or her and that from this time onwards the Claimant stopped big hugs;

68.5. The Claimant said the allegations in respect of the hair pulling element of the Alleged Physical Contacts were

bizarre and he was perplexed as to why nothing was said to him by the Crew Manager or the Watch Manager;

68.6. He said:

"This behaviour works both ways. I could be working on an appliance and Firefighter B could come around the corner and say do you want to fight, messing around. This is unbelievable, if you are talking about inappropriate touch, Firefighter A has come up to me when I am getting changed and grabbed my right chest and gone. "Whoa look at the size of them. He has got bigger tits than me.";

68.7. Mr Hatch questioned how a female colleague who was upset about his behaviour could have gone round to his house, asked him to help with their fitness training and asked for advice. He said:

"Would you be asking me for help if you thought I was harassing you? This was just before I finished. Firefighter A went on holiday just before I got suspended. Firefighter A offered to sit by me and show me her holiday photos. Would you do that if you felt you were being harassed?";

68.8. And continued:

"There are comments Firefighter A have [sic] made that made me go wooh. She said I have got the wrong leggings on I have a massive camel toe...";

68.9. At the end of the interview Mr Hatch recalled that Firefighter A had talked about a teaching job she had been offered and that she had said she would have to remember she could not walk into class and say: *"Hello you cunts, I am your new teacher."*; and

68.10. In respect of Firefighter B, he said:

"She has told me about sleeping with [someone's partner] and she used to call him "two pump Dan".

69. Mr Ashcroft did not put the Claimant's denials or allegations to the two female fighters (even though he had interviewed them twice albeit before the Claimant's interview) and recommended that the matter should be considered at a formal stage 3 disciplinary hearing.

70. His Investigation Report also stated:

"...it appears that the hugging and kissing and at the start and end of shift has become almost a custom [sic] practice for Adam and this has not been intervened at any stage by his immediate line management, however, it seems that it had been brought to his attention by Firefighter A that herself and Firefighter B were not happy with hugging and kissing and it appears Adam has not taken their concerns seriously."

71. The Claimant rejected this conclusion and said hugging and kissing was common practice by all members of the watch and alleged he was being singled out. He also denied pulling ponytails and slapping bums but that play fighting between him and members of the watch including the two female firefighters was also part of its culture.

72. Mr Ashcroft appeared to acknowledge there were issues with the watch's culture in respect of the use of inappropriate language, he also said in the Investigation Report:

"...have been several indications that line management has been present for some of the alleged conversations. It is my opinion that banter has been allowed to be carried out within the watch and this is something that will need to be addressed with the line management following this investigation."

73. This statement supports the Claimant's version of events in respect of the watch's culture.

74. My findings in relation to the investigation are that Mr Ashcroft did not apply his mind properly or proportionately to the principles of natural justice as provided for in the DDP in the following ways:

74.1. The Claimant did not know the details of the allegations until his interview – given the seriousness of the allegations and the Claimant's emotional state it would have been reasonable to expect him to exercise his discretion to have met Mr Hatch prior to the interview to outline the case against him;

74.2. He did not put the Claimant's case to the two female firefighters after the Claimant's interview;

74.3. He did not address the inconsistency in Mr Patel's statements (see paragraphs 93 and 94 (below));

74.4. He did not provide witness statements to the Claimant; and

74.5. He did not appear to question the female firefighters' version of events.

75. In coming to these findings, I reminded myself of the case of *A v B* where it was held the fact that the employee would never work again in his chosen profession was relevant to the standard of the investigation and was one of the many circumstances which go to the question of reasonableness and that:

"...the standard of reasonableness required will always be high where the employee faces loss of his employment."

76. Mr Hatch was a firefighter who enjoyed his job and the allegations against him were very serious with the potential to end his career. I find therefore that this is the sort of case that demanded a careful and thorough investigation.

77. Mr Ashcroft's Investigation Report showed little evaluation of the evidence he was presented with; it was more akin to a collection of statements – a collation exercise.

78. I acknowledge this approach can be appropriate in some circumstances but if I apply the approach and guidance in *A v B* the lack of meaningful analysis, questioning or testing of the inculpatory evidence (which undermined the principles of natural justice and did not follow the guidance in the DDP) cannot be said to meet the Burchell Test's requirement for a reasonable investigation in the circumstances.

79. Mr Ashcroft made little mention as to how he applied the evidential standard of the balance of probabilities or how he analysed the weight of the evidence he had collected.

80. In respect of the Alleged Shirt Incident and the Alleged Physical Contacts, he did not explain why he considered the circumstances suggested "*it was more likely that the events occurred than they did not*" other than to state that he had no reason to disbelieve Firefighters A and B.

81. I was also mindful of Mr Ashcroft's statement in the Investigation Report that it was a "*comprehensive evaluation of the evidence...to provide a holistic picture of the alleged incidents...*" and the Claimant's evidence (to the disciplinary hearing, the appeal, in his witness statement and in his final submissions) that the investigation was not holistic and did not put the behaviour he admitted to in the context of the watch's culture.

82. Mr Hatch said:

"The general definition of a holistic approach is one that considers the entire system rather than focusing on a single element. It emphasises the connection and independence of all parts in analysing and solving problems. A holistic perspective means understanding the situation as a whole and how various factors influence one another. This approach was not applied in my case, despite Mr. Ashcroft's initial assertion that it would be. As a result vital context and interconnected issues."

83. In my judgment Mr Ashcroft may have thought he undertook a comprehensive evaluation of the evidence and provided a holistic picture of the alleged incident but the Investigation Report did not demonstrate this was the case in light of the Claimant's evidence.

84. In coming to these conclusions I also revisited the case of *Sainsbury v Hitt* where it was held by the Court of Appeal that a tribunal had substituted its own standards in holding that an investigation was flawed.

85. I reminded myself that I must apply the objective standard of the reasonable employer to determine whether Mr Ashcroft's investigation was reasonable in all the circumstances.

86. This means it is the employer, not the Tribunal which is the proper person to conduct the investigation and the function of the Tribunal is to decide whether that investigation was reasonable in the circumstances.

87. As was held in *Sainsbury v Hitt*:

"The range of reasonable responses applies to the conduct of Investigations, in order to determine whether they are reasonable in all the circumstances, as much as it applies to other procedural and substantive aspects of the decision to dismiss a person from his employment for a conduct reason."

88. In all the circumstances surrounding the investigation and having considered my findings of fact, the only conclusion that I can come to is that investigation was flawed and did not provide reasonable grounds for the GFRS' belief in that the Claimant was guilty of the gross misconduct alleged.

The Disciplinary Hearing

89. Mr Hammond wrote to the Claimant on 15 January 2024 stating the Claimant's disciplinary hearing was in relation to sexual harassment

in the workplace and breaching of GFRS' Core Values and that the hearing would take place on 15 February 2024.

90. The letter stated the findings of the investigation along with witness statements and other documentary evidence were enclosed. I find this was not the case – there were no witness statements or additional documentary evidence provided to the Claimant. Furthermore the Investigation Report had to be resent as the enclosures were incomplete.
91. The Claimant submitted his written submissions to Mr Hammond on 30 January 2024. In summary the Claimant's written submissions were:
- 91.1. That other than "Doris" note to file and an informal conversation in 2022 about the possible negative perceptions from the way he greeted colleagues he had an unblemished employment record;
 - 91.2. The culture of the watch involved a lot of swearing, physical contact and "banter", his behaviour was no different to his colleagues and the two female fighters often instigated physical contact with him;
 - 91.3. Firefighter A on several occasions instigated highly personal conversations and comments with him and other members of the watch, including when they went to the gym together in the summer of 2023, and the examples he had given in the interview with Mr Ashcroft post-dated the Alleged Shirt Incident; and
 - 91.4. He did not understand why other members of the watch were not subject to disciplinary proceedings.
92. In cross examination the Claimant agreed he often used the term "Doris" - but this was part of the watch's banter and that everyone called him "Donc" after a character in the film Crocodile Dundee who he described as stupid but strong.
93. The Claimant also referred to his most recent appraisal (personal development report "PDR" held on 12 August 2023) (at pages 290 to 295 of the bundle) where he was encouraged by Mr Patel to apply for the upcoming CM process and that was inconsistent with Mr Patel's interview evidence.
94. He said the PDR, which was just a few weeks before his suspension, showed he demonstrated the service's Core Values and that he was a valuable member of team – he said:

"I am also very troubled by Mr Patel's comments about "raping with eyes". That is completely disgusting and wholly at odds with the Appraisal..."

95. The Claimant questioned Mr Ashcroft's recommendation to take the matter to a disciplinary hearing in respect of gross misconduct and appealed for his rebuttal of the allegations to be taken into consideration by Mr Hammond.

"In the event that my Written Submission regarding my denials is not accepted, I would respectfully submit that any (mis)-conduct that is found to have taken place on my behalf is viewed within the overall context of the overwhelming culture within the workplace, itself. Put simply: If I am found to have acted in the way that it is alleged that I have acted, then some (if not all) of my colleagues are guilty of the same (mis)-conduct on a daily basis."

96. Mr Hatch also questioned the timing of the allegations given that Alleged Shirt Incident was in June 2023 whereas the complaints were not raised until September 2023.

97. He pointed to inconsistencies in respect of the two female firefighters' attitude to him between June and September 2023 including that:

- 97.1. Firefighter B visited his family home in the summer;
- 97.2. Firefighter A sat with Mr Hatch to show him her holiday photographs;
- 97.3. Firefighter B said she loved him after his wife brought in flapjacks for the watch; and
- 97.4. Firefighter A often asked him to go to the gym with her.

98. He was aggrieved that he had not received witness statements from the firefighters Mr Ashcroft interviewed during his investigation.

99. The Claimant also produced seven character references to the disciplinary hearing including watch manager Nick Chandler and present and former colleagues from white watch. These were not challenged by the Respondent during the Tribunal hearing.

100. The disciplinary hearing lasted less than two hours and none of firefighters interviewed during the investigation attended to give their evidence or to be questioned by the Claimant.

101. Mr Ashcroft was present at the disciplinary hearing and produced a note of his investigations (at pages 148 to 154 of the bundle) which included some further conclusions that were not in his Investigation Report:

101.1. In respect of the Alleged Shirt Incident "*I have no reason to believe either [Firefighter A or Firefighter B] have reason to lie or fabricate the truth.*"

101.2. "*Line management intervention was limited, their first discussions suggested that they had not seen or witnessed any events that were inappropriate...It is my opinion that banter had been allowed to be conducted within the watch and this has become the norm.*"

101.3. In respect of the interview with the Claimant "*...overall he appeared shocked and disappointed that individuals on the watch had said and made allegations...He made numerous allegations about how other members of the watch entered into banter and how he believed some of this was inappropriate.*"

101.4. He acknowledged that Mr Hatch adamantly denied the Alleged Shirt Incident and the Alleged Physical Contacts and there were no witnesses to these events;

101.5. "*I have no reason or grounds to believe [Firefighter A or Firefighter B] are not being honest or accurate with their recollection of this incident.*". and

101.6. In relation to the Alleged Physical Contacts Mr Hatch admitted the three of them had play fights and he said all interactions with the two female fighters were reciprocal.

102. Mr Ashcroft concluded that three firefighters from the watch:

"...have provided clear evidence and statements which have all supported the allegations regarding inappropriate behaviour and comments made by FF Hatch. I have not received any firm evidence in regard to individuals contradicting these statements...I believe the allowing of such banter and physical contact between individuals has allowed professional boundaries within the workplace to be compromised and as such may have led to FF conducting himself inappropriately at work

both physically and verbally. However conduct of this nature falls outside of GFRS's expected values and behaviours."

103. I noted that at the Tribunal hearing the Claimant explained why he was incredulous about the Alleged Shirt Incident:

"It doesn't make sense. All firefighters wear a T-shirt underneath because we sometimes have to take our shirts off at incidents. Why would I even do that."

104. I have already applied the Burchell Test and the guidance in *Sainsbury v Hitt* in respect of the investigation but given the importance of Mr Ashcroft's further report to the disciplinary hearing and for the sake of completeness, I make the following further findings:

104.1. Following the cases of *Sneddon and Shrestha* in respect of Mr Ashcroft's statement that he had no reason to disbelieve Firefighter A's and B's evidence, I find that a reasonable investigator, in light of the Claimant's adamant denials; the very serious nature of the allegations against him; the consequences for Mr Hatch; and the size and resources of the Respondent would have at the least considered going back to the two female firefighters and putting the Claimant's responses to them;

104.2. Mr Ashcroft's statement to the disciplinary hearing that he considered that banter had been allowed to be conducted within the watch and this has become the norm was evidence which supported the Claimant's version of events;

104.3. I find the fact Mr Ashcroft omitted to state at the disciplinary hearing that the Claimant, in his interview, provided a different version of events, in particular to those of the female firefighters at did not fully reflect Mr Hatch's case and that a reasonable investigator would have done so as was proffered in the case of A v B:

"...a careful and conscientious investigation of the facts is necessary and the investigator charged with carrying out the enquiries should focus no less on evidence that may exculpate or at least point to the innocence of the employee as he should on the evidence directed towards proving the charges against him."

104.4. Mr Ashcroft did not explain why he had concluded that in essence he preferred the evidence of the two female firefighters to that of the Claimant. He did not address the

question of weight of evidence which reinforces my earlier finding that the Investigation Report was more a collation of information than a thorough investigation, analysis and evaluation of the evidence in its context.

105. Mr Ashcroft's conclusion did not specifically address the Alleged Shirt Incident or the Alleged Physical Contacts. I find therefore the question whether his approach was a reasonable one based on a genuine belief held on reasonable grounds in all the circumstances, has to answered in the negative.
106. Overall and in terms of the issues identified in paragraph 12 (above), I am unable to conclude that Mr Ashcroft's investigation was a reasonable investigation as was warranted in the circumstances. This finding is important in the context of the question whether the Respondent held a genuine belief in the Claimant's misconduct on reasonable grounds.
107. At the disciplinary hearing the Claimant reiterated his written submissions. He said he had not been supplied with any witness statements and that he was not given any opportunity to question Mr Ashcroft or ask any questions in respect of the firefighters he interviewed whether directly at the hearing or indirectly by submitting written questions. In response to a question from me, Ms Gumble in her closing submissions said that in respect of the two female firefighters this was due to "safeguarding" concerns.
108. Notwithstanding that closing submissions are not evidence this was the first time "safeguarding" had been mentioned in relation to the two female firefighters. I noted that (other than in respect of the Claimant's suspension) there was no evidence showing that any informal or formal safeguarding inquiries had been made by GFRS in respect of the female firefighters.
109. When questioned by Mr Hammond (at page 162 of the bundle), the Claimant's evidence was consistent with his interview by Mr Ashcroft.
110. Mr Hammond summarily dismissed the Claimant on 21 February 2024 stating the disciplinary sanction was "awarded" for:
 - 110.1. The Alleged Shirt Incident - he said while there were no witnesses there was no evidence to suggest Firefighter A was untruthful and that she has consequently stated this incident made her feel unsafe in the workplace. In conclusion Mr Hammond said: *"After reviewing the evidence within the disciplinary bundle and due to the other concerns that GFRS have been able to corroborate, on the balance of probability, it is my view that inappropriate*

behaviour is more likely to have taken place than not." He did not state *"what the other concerns GFRS have been able to corroborate"* were;

110.2. The Alleged Physical Contacts – he did not accept the Claimant's play fighting assertion and said that evidence of his inappropriate behaviour was supported by witnesses (he did not refer to which witnesses). He said: *"It is my view that, in relation to this allegation, considering all the evidence in the bundle, including witness testimony that on the balance of probability, inappropriate behaviour did take place."*;

110.3. Inappropriate language or comments at work, referring to the Claimant's note to file regarding the use of the term "Doris" there was evidence to suggest the Claimant continued to use the expression when supervisory officers were not present. Mr Hammond also referred to the allegations made by Mr Patel and by Mr Davies and concluded: *"It is my view that, when taking account of all the evidence presented to me and on the balance of probability, it is more likely than not that you have used inappropriate language, not keeping with GFRS values, on many occasions whilst on duty, in the company of and directed at other GFRS staff."*; and

110.4. Inappropriate greetings including hugging and kissing he said: *"In my view, when taking account of all the evidence in the bundle and interpreting the Equalities Act 2010 [sic] , your conduct has fallen short of what we would expect from a Firefighter, and your behaviours of greeting people by kissing and hugging is another example of this. Your behaviour was challenged by Firefighter A, but despite this challenge, you continued to greet people in this manner. Being mindful of the core values of Gloucestershire Fire and Rescue Service, it is my view that you were encouraged to reflect on and change this behaviour on more than one occasion but you seemingly failed to do so. On the balance of probabilities it is therefore my view that your behaviour in regard of allegation 4 was inappropriate."*

111. In respect of his conclusions, I find that Mr Hammond did not demonstrate how he had come to them - there was no analysis or evaluation of the evidence; he appeared to take all the inculpatory evidence at face value and did not refer to the Claimant's evidence and submissions. I am at loss as to his reference to the Equality Act 2010.

112. He also appeared to accept the proposition that the Claimant would act differently and temper his behaviour in front of his managers.
113. I asked myself whether there was a difference between the evidence Mr Hammond took into account at the disciplinary hearing and the evidence Mr Ashcroft took into account during his investigation and it appeared there was not, other than the Claimant's evidence and submissions.
114. This raises the question of whether there was a difference between the conclusions of Mr Ashcroft that there was a case for the Claimant to answer and the conclusions of Mr Hammond that Mr Hatch was guilty of gross misconduct and therefore should be dismissed.
115. There is no evidence to suggest Mr Hammond considered there was a difference between how the evidence was evaluated during the investigation and how it could have been evaluated at the disciplinary hearing.
116. In evidence to the Tribunal, Mr Hammond confirmed he was familiar with the DDP and GFRS' workplace charter (at page 289 of the bundle and where the reference to the core values comes from) and had been trained on the ACAS Code.
117. The workplace charter, a single page document, includes a section entitled "Our Core Code of Ethics" which then lists dignity and respect; integrity; equality, diversity and inclusion; leadership and putting communities first. I noted that none of documentary evidence nor any of the oral evidence referred to which of these elements of the Core Code of Ethics the Claimant breached.
118. Mr Hammond said:
- "I concluded that, on the balance of probabilities, Adam had displayed the inappropriate conduct and behaviours complained of in all four allegations. Having arrived at the conclusion that, on the balance of probabilities, Adam had displayed the inappropriate conduct and behaviours complained of, breaching the core behaviours, ethics and values contained within GRFS Charter, I was satisfied that those behaviours constituted gross misconduct. I found that the appropriate sanction was summary dismissal without notice."*
119. In cross examination Mr Hammond said on reading the Investigation Report there was enough evidence to proceed to a disciplinary hearing; that the whole process was fair in his professional opinion;

there was substantial evidence against the Claimant; and he did not think the DDP had been breached.

120. When questioned about the ACAS Code in respect of the investigation he said the investigation was thorough and that if he thought there was any unfairness, he was duty-bound to raise it outside of the hearing.
121. I find that in relation to this specific assertion Mr Hammond had misunderstood his role as the chair and the decision maker in the disciplinary hearing.
122. If he had thought there was unfairness, the objectively reasonable approach, in accordance with the principles of natural justice as set out in the DDP, would have been to consider adjourning the hearing to further consider the Claimant's representations and/or for Mr Hatch's version of events to be put to the two female firefighters, or to consider an alternative sanction to that of summary dismissal such as demotion, giving a formal warning or dismissal of the case with no further action.
123. He said he was unaware the Claimant had made a request for the recordings of the interviews Mr Ashcroft had conducted or that the Claimant had asked for CCTV footage in respect of the Alleged Shirt Incident.
124. I find this troubling, even if he was unaware of these requests, Mr Hammond as a person who had received substantial training in the DDP and the ACAS Code's disciplinary procedures and who knew of the imperative for fairness (both substantive and procedural) it would have been reasonable for him to have asked the Claimant at the disciplinary hearing whether he had concerns about the evidence against him and the opportunities he was given to rebut it.
125. It was plain to me from the minutes of the disciplinary meeting (at pages 158 to 163 of the bundle) that Mr Hatch struggled emotionally during his submissions and when he was questioned by Mr Hammond (there were references to short breaks from which I have inferred were for the Claimant to recover his composure).
126. In all these circumstances there was every opportunity for Mr Hammond to consider the question of the fairness of the investigation, especially as he later confirmed he had "fed back" the Claimant's concerns about the disciplinary process and the culture of the watch to more senior officers.
127. In oral evidence Mr Hammond also confirmed that he never asked why the people who had provided witness evidence (as part of the

investigation) were not asked to attend the disciplinary hearing for the Claimant to ask questions of them. He said:

"This matter had not been raised previously. I did the hearing on the facts and that's the information I went by. I had also taken advice from human resources and that was sufficient."

128. In considering whether Mr Hammond's lack of questioning of the witness evidence from the Investigation Report was unreasonable in the context of the Burchell Test, the ACAS Code and the DDP, I find it was in all the circumstances and in light of the unambiguous nature of Mr Hammond's oral evidence.
129. In coming to this finding, I particularly noted the DDP has extensive guidance in respect of witness statements and witnesses, and therefore I also find that Mr Hammond did not have proper regard to the DDP in this respect.
130. Mr Hammond agreed that it was *"very strange"* that Mr Patal had given the Claimant a glowing reference in his PDR of 12 August 2023 but that a few weeks later he said Mr Hatch was not the type of firefighter that GFRS wanted.
131. He confirmed that the volte face was *"strange enough"* to subsequently raise with the Assistant Chief Fire Officer (the "ACFO").
132. Bearing in mind the Claimant was never given the opportunity to directly question Mr Patel's evidence and despite the fact Claimant's referred to Mr Patel's inconsistencies and his reference to *"raping eyes"* at the disciplinary hearing (as recorded in the minutes at pages 161 of the bundle), I find that it would have been reasonable to expect Mr Hammond to take into account these inconsistencies relation to his decision to dismiss Mr Hatch and that this was potentially new exculpatory evidence .which he should reasonably have considered.
133. When asked (in re-examination) what weight he gave to Mr Patel's account, Mr Hammond said

"It was on the balance of probabilities; I had a duty to pass this to the ACFO to improve the culture and management of the service. Going from the facts in front of me, my point of view was that I should not go beyond the facts which the investigating officer had found. The probability showing from the investigation was well over 50 per cent. I don't understand the question fully. I understand weight and

balance of probability and what I had to go on and that was what I was doing."

134. On the basis of these comments, I find it was objectively reasonable to conclude that Mr Hammond had little understanding of the concept of weight in terms of the assessment of evidence in spite of this being expressly referred to in the DDP and his training.
135. As a consequence of this finding, I am entitled to draw adverse inferences in respect of Mr Hammond's general competence to evaluate evidence and this goes to the question of the fairness of the disciplinary hearing and the application of the Burchell Test as set out in my final conclusions (below).

The Appeal

136. In respect of the appeal on 18 April 2024, Mr Hooton said the purpose of the hearing was to review the reasonableness of the disciplinary hearing and the fairness of the procedure followed. He confirmed the options available to him were to uphold the appeal, dismiss the appeal or substitute a lesser penalty.
137. Mr Hooton did not refer to the DDP and did not mention that it was also open to him to adjourn or remit the hearing. He specifically said the appeal was not a re-hearing of the evidence.
138. The Claimant said he was seeking reinstatement and if there was to be any disciplinary action he considered at most this should be a warning.
139. The Claimant provided written submissions to the appeal (at pages 191 to 199 of the bundle) where he questioned:
 - 139.1. The fact that he did not know the substance of the allegations against him until he was interviewed by Mr Ashcroft which disadvantaged him from the outset of the disciplinary process;
 - 139.2. The reasonableness and thoroughness of the investigation particularly in the way evidence was evaluated including inconsistencies in Firefighter A's accounts of the Alleged Shirt Incident and Mr Patel's contradictory statements;
 - 139.3. The objectivity of the disciplinary hearing; and
 - 139.4. Why his requests for interview notes and/or recordings had been effectively ignored.

140. He said:

"In the absence of the ability to cross examine witnesses, I have had to rely on the investigating officer to act upon the disclosures and revelations I have detailed to him. This [has] [sic] singularly failed to do, not one of the points I have raised has been put to any witness. They have not had the opportunity to refute or concur with my disclosures. There has been a deafening silence in response to my revelations and complaints."

141. In cross examination Mr Hooton said he had read and listened to everything before him and went on:

"I made my decision based on that. It was not down to comparing A with B. It was on a 51/49 basis. There were four clear areas of complaint and they were all upheld. I am confident in the investigation and evidence. My decision was based on the evidence I was presented with."

142. I find that objectively Mr Hooton's evidence displays the same lack of understanding of how evidence should be evaluated in terms of its probative value as that of Mr Ashcroft and Mr Hammond. It seems to me if I consider this finding in the context of the Burchell Test and that of a reasonable person in the same position of Mr Hooton that he took the evidence in the Investigation Report at face value and did not show that he had taken into account the Claimant's evidence and representations in his decision making.

143. In re-examination Mr Hooton said that the Claimant had every opportunity to put his side of events, that the investigation had "*called witnesses from both sides*" and that the information was fact-checked through to the appeal. I find that in respect of the latter assertion that there was little evidence of any fact-checking by GFRS.

144. In coming to his decision to uphold the outcome of the disciplinary hearing Mr Hooton said he was satisfied that the disciplinary process was undertaken in a fair and robust manner and in accordance with the DDP.

145. He confirmed he was satisfied that there was sufficient evidence to establish on the balance of probabilities the alleged incidents had happened and they were so serious as to amount to gross misconduct and that notwithstanding his long service and dedication the Claimant's summary dismissal was the only feasible sanction.

146. I find Mr Hooton unreasonably relied on the conclusions of Mr Ashcroft and Mr Hammond without any meaningful interrogation of their analysis of the evidence behind such conclusions.
147. To that end I can draw adverse inferences in respect of Mr Hooton's application of the DDP to his decision making.
148. I find that Mr Hooton's lack of inquiry about the quality and probative value of the inculpatory evidence against the Claimant was a serious failing in his remit to objectively review the reasonableness of the disciplinary hearing and the fairness of the procedure followed.
149. In coming to my conclusions in respect of the appeal, I also reminded myself of the case of *Brito-Babapulle*, where the EAT made clear that the consideration of mitigating factors could render a dismissal unfair notwithstanding the gross misconduct.
150. Whilst Mr Hooton acknowledged the Claimant's long service, the consequence of the dismissal and his prior unblemished formal record, he did not address how or why these mitigating factors did not influence his decision to uphold Mr Hatch's dismissal. I construed this lack of clarity as suggesting Mr Hooton considered the existence of gross misconduct was determinative of whether a dismissal was unfair whereas a fair or unfair dismissal depends on the separate considerations set out in s98 of the ERA 1996.

Further Findings, Assessment and Conclusions

151. In reaching my decision I considered all the evidence I was directed to and when I was directed to part of a document, I read the whole of it along with the witness statements. Not every matter is referred to in these reasons, only those necessary to deal with the issues set out in paragraph 12 above. These reasons are provided to assist the parties in understanding why I came to my decision.
152. The Claimant was a firefighter who I accept loved his job – indeed his focus throughout the disciplinary process and his claim to the Tribunal was that he wanted to be reinstated.

The Disciplinary Process

153. The extent and form of an investigation as part of a disciplinary process will vary according to the particular circumstances of a case.
154. The allegations against the Claimant were so serious they had the potential to end his career. I find therefore that in light of the case

law in *West v Perry, A v B and Sneddon* this was the type of case that demanded a very careful and thorough investigation.

155. I reminded myself of the principle set out in s98(4)(b) of the ERA 1996 which provides expressly that the determination of the question whether a dismissal is fair or unfair shall be determined in accordance with "*equity and the substantial merits of the case*".
156. As can be seen from my findings of fact, I have determined there were fundamental failings in the way the Claimant's disciplinary process and in particular the investigation was conducted. This gives rise to the question of natural justice and equity.
157. Throughout the disciplinary process, GFRS relied largely on the untested evidence of the two female firefighters to find that the Claimant on balance committed gross misconduct for which he should be summarily dismissed.
158. In my determination and in accordance with the principles set out in s98(4)(b) of the ERA 1996 (as expanded upon in the paragraphs below and applying the Burchell Test) the Claimant's dismissal was unfair.

The Investigation

159. I found the Claimant was not notified (in writing or otherwise) as to the substance of the allegations against him prior to his interview with Mr Ashcroft and this caused him considerable distress as set in the OH Report.
160. The DDP stated that it was underpinned by the principles of natural justice and an important element in respect of investigations of the allegations against anyone is that they have the right to know the case against them.
161. The Claimant discovered the substance of the allegations at the interview on 13 November 2023. His reaction, in particular, to the two female firefighters' claims was of incredulity, disbelief and devastation – as was clear in the transcript of his interview on pages 115 to 122 of the bundle.
162. His interview was compromised and, in my determination, was not conducted in accordance with the DDP's fundamental principle of natural justice. This is because the Claimant effectively went into his interview blind – he had no time to consider his response to the most serious allegations and no time to collate his own evidence to respond to them.

163. I find that in this respect Mr Ashcroft did not exercise the discretion he had to consider the Claimant's mental health state as was recorded in the OH Report and this was unreasonable and potentially unfair.
164. The DDP specifically provides that in taking into account of an employee's emotional state "*the manager may wish at first to just inform the employee of the allegations and set a date to meet again in the near future.*"
165. Mr Ashcroft provided no evidence that he considered this approach and I find this added to the overall unfairness of his investigation.
166. The DDP also provides that in the most serious cases an employee should be notified in writing of the investigation meeting giving them reasonable notice to prepare themselves.
167. I find that in merely notifying Mr Hatch of the date of the investigatory meeting and failing to expand on the allegations did not give the Claimant reasonable notice to prepare himself was not in accordance with the principles of natural justice and was objectively unfair in all the circumstances.
168. It was only after the interview that the Claimant was able to start to build his case and to question the evidence against him. This is a critical finding because the Investigation Report containing the notes of all the witness interviews and those of the Claimant became the evidential foundation stone of the disciplinary hearing and the appeal which Mr Hammond and Mr Hooton said they had relied upon.
169. The Investigation Report did not demonstrate a comprehensive evaluation of the evidence— as I found, the investigation was more of a collation of information and not a thorough exploration and analysis of the evidence which would have been reasonable in all the circumstances.
170. I appreciate there is no hard and fast rule as to the level of inquiry an employer should undertake when investigating an employee's alleged misconduct in order to satisfy the Burchell Test.
171. However, the level of investigation will very much depend on the circumstances including the nature and gravity of the case, the state of the evidence and the potential consequences of an adverse finding to the employee. In *ILEA v Gravett 1998 IRLR 497 EAT* the then President of the EAT, Mr Justice Wood offered the following advice:

"...at one extreme, there will be cases where the employee is virtually caught in the act, and at the other there will be situations where the issue is one of pure inference. As the scale moves towards the latter end, so the amount of inquiry and investigation which may be required,..is likely to increase."

172. In my determination Mr Hatch's case is towards the latter end of the scale and in light of my findings it cannot be said objectively that Mr Ashcroft's investigations were sufficiently thorough, particularly because the consequences of the Claimant's dismissal for gross misconduct would likely mean he could never work for a fire service again.
173. This finding is relevant to the question of the reasonableness of the investigation. In *A v B* it was found that the gravity of the claims and the potential effect on the employee would be relevant when considering what is expected of a reasonable investigation. The EAT held that the fact the employee, if dismissed, would never again work in his chosen field was by no means irrelevant to the reasonableness of the investigation.
174. On the balance of probabilities, the evidence shows that Mr Ashcroft (and subsequently Mr Hammond and Mr Hooton in their respective roles) did not balance of the gravity and consequence of the claims and the thoroughness of the investigation - the Claimant's evidence in respect of the allegations made against him was largely exculpatory but it appeared from the Investigation Report, which the disciplinary hearing substantially relied upon, and Mr Ashcroft's submissions to this hearing that the Claimant's evidence carried very little weight.
175. I acknowledge that GFRS was at heart of the investigation, disciplinary hearing and the appeal and that in particular Mr Hammond and Mr Hooton came to their conclusions that the Claimant should be dismissed for gross misconduct which Ms Rumble argued was within in the range of reasonable responses.
176. However, if the foundation stones of the evidence they relied upon to come to their conclusions did not provide a strong and stable base to support their findings then it follows that their conclusions were objectively compromised.
177. To put it another way and using the words of LJ Mummery in *Sainsbury v Hitt* in terms of the range of reasonable responses test:

"...(the need to apply the objective standards of the reasonable employer) applies as much to the question whether the investigation into the suspected misconduct was

reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss for the conduct reason."

178. In Mr Hatch's case I consider the investigation fell short of the even-handed, careful enquiry that was reasonably required and as such did not establish whether there were reasonable grounds in the circumstances for the belief Mr Hammond and Mr Hooton formed that there was gross misconduct by the Claimant to which a reasonable response would be summary dismissal.
179. Notwithstanding my findings in respect of the evaluation of the evidence before him, I also considered Mr Ashcroft's decision not re-interview either Firefighter A or B after he had interviewed the Claimant. Mr Hatch provided new information in respect of these most serious allegations and in respect of the conversation between him and Firefighter A on 26 June 2023 - putting this new information could have been determinative in Mr Ashcroft's overall conclusions.
180. In coming to my conclusion in this respect I rely again on the case of *Sneddon* where it was held that a tribunal had been entitled to find that a reasonable employer would have gone back to a witness to explore matters more fully or double check on the detail, the reliability and the credibility of a witness' account rather than relying on the initial account and the dismissal was therefore unfair.
181. My findings in this respect are important to the question of reasonableness because the Investigation Report became the evidential basis of the disciplinary hearing and the appeal which Mr Hammond and Mr Hooton said they had relied upon.

The Disciplinary Hearing

182. I find that the deficiencies in the investigation were not acted upon by Mr Hammond in the disciplinary hearing such that the inherent unfairness and unreasonableness of the investigation leached into the disciplinary hearing.
183. There is no doubt Mr Hammond was very concerned about Mr Patel's evidence and the culture of the watch but instead of applying these concerns to the credibility and weight of the evidence against the Claimant he decided to raise the matters with senior officers.
184. I have set out my earlier findings in respect of the disciplinary hearing and Mr Hammond's oral evidence and consider these coupled with compromised investigation mean I must find that his decision at that time and that place and in those circumstances was not within the range of reasonable responses.

The Appeal

185. I find that the flaws in the investigation and the disciplinary hearing also made their way into Mr Hammond's conduct of the Claimant's appeal.
186. My earlier findings in respect of Mr Hooton's broad brush understanding of how to make findings on the balance of probabilities and his lack of questioning of the probative value of the evidence in the Investigation Report and the minutes from the disciplinary hearing add to the flaws I have already identified.
187. Mr Hooton's oral evidence in my view "magnified" the unreasonableness of the disciplinary procedure – and he could have put it right by using his discretion to adjourn or remit the hearing.

Final Conclusions

188. I reminded myself that the Respondent was an employer with a dedicated HR infrastructure and significant resources to be able to carry out a fair and thorough disciplinary process and to comply with its own policies as well as the ACAS Code.
189. The key issue I had to consider in determining the fairness of Mr Hatch's dismissal was not whether the alleged gross misconduct was committed but the reasonableness of GFRS in reaching that decision on the evidence.
190. Applying the Burchell Test and for the sake of completeness, I set out the conclusions I have come to.

As a question of fact did GFRS genuinely believe in the misconduct of the Claimant?

191. Yes, my finding is that on balance Mr Ashcroft, Mr Hammond and Mr Hooton did genuinely believe the Claimant was guilty of gross misconduct, although I noted this was not put to them during the Tribunal hearing. I also find that the allegations against the Claimant were capable of being gross misconduct as set out in the DDP.

If yes, was this belief based on reasonable grounds?

192. Considering the information available to GFRS at the time of Mr Hatch's dismissal and at the later appeal the answer is no, GFRS did not have reasonable grounds for its belief. I come to this

conclusion in light of my reasoning and findings of fact set out above and particularly because of the lack of scrutiny by Mr Ashcroft, Mr Hammond and Mr Hooton into the evidence implicating the Claimant and their apparent acceptance of it at face value. Their belief in the circumstances was not based on an investigation which fell within the range of reasonable responses.

193. I find all three arrived at this belief because they accepted, without reasonable question, the inculpatory evidence of the two female firefighters and the other members of the watch. The evidence also showed that on balance they did properly consider the Claimant's exculpatory evidence or his explanations for what went on at the watch.

Was a reasonable investigation undertaken in the circumstances?

194. No, the investigation was fundamentally flawed for the reasons I have set out in detail above. In coming to this conclusion I have taken into account the considerable resources GFRS had at its disposal, the experience and qualifications of Mr Ashcroft and Mr Hammond and the findings I have made particularly in respect of the Claimant being unaware of the allegations against him until his interview, that he was not given the opportunity to question, in any form, the witnesses and that Mr Ashcroft failed to put the Claimant's version of events to the two female firefighters.
195. I was unable to conclude objectively that the investigation was reasonable in all the circumstances.

Did GFRS follow a reasonably fair procedure?

196. No, for the reasons set out in my findings above. There were breaches of the DDP throughout the process including the principles of natural justice which would apply at every stage. Examples include:
- 196.1. That the investigation was not sufficiently thorough for potential gross misconduct;
- 196.2. It did not establish a fair and balanced view of the facts;
- 196.3. The Claimant, who was in an emotional state, was not told of the allegations against him prior his interview;
- 196.4. Witnesses were not informed of or invited to the disciplinary hearing to be questioned;

- 196.5. In respect of both Firefighter A and B, given the language the Claimant said they used (as set out in paragraphs 68.6 68 8 and 68.9 (above) and the apparently friendly interactions with him in the summer of 2023, I was not persuaded by Ms Rumble's safeguarding submission to explain their absence from the latter stages of the investigation and the disciplinary hearing;
- 196.6. Given the seriousness of the allegations against Mr Hatch, no witness statements were produced to provide a formal and proper record of witness evidence; and
- 196.7. The Investigation Report was a collation of the allegations - there was little attempt to set out its findings, reasons or overall conclusions in respect of the evidence.
- 196.8. In respect of the disciplinary hearing there was no evidence Mr Hammond considered the question of asking witnesses to attend;
- 196.9. The Claimant was not given the opportunity to ask questions of the witnesses or Mr Ashcroft;
- 196.10. In respect of the appeal there was little evidence that Mr Hooton considered at the time there was any defect in the disciplinary process as whole despite the Claimant's submissions; and
- 196.11. Under cross-examination, Mr Hooton was unable to demonstrate a thorough understanding of the term balance of probabilities. Whilst I accept this standard of proof can be binary to an extent, the decision maker should have in mind that the more serious the allegation the less likely it is that the event occurred and therefore the stronger should be the evidence before the decision-making body concludes that the allegation is established on the balance of probability (as per Lord Nicholls in *In re H (Minors)* [1996] AC 563). This means it was reasonable to expect that Mr Hooton considered the quality as well as the quantity and sufficiency of the evidence against the Claimant in light of the Investigation Report and the disciplinary hearing.
197. There were also serious failings in GFRS' application of the ACAS Code for example:
- 197.1. It did not supply written evidence in the form of witness statements to the Claimant, and given the seriousness of

the allegations such witness statements would have been appropriate;

197.2. It did not provide the Claimant with any opportunity to ask questions of the witnesses; and

197.3. It did not properly take into account the seriousness of the allegations against Mr Hatch to inform the thoroughness of the investigation and I found little evidence that any of Mr Ashcroft, Mr Hammond or Mr Hooton kept open minds and looked for evidence which supported the Claimant's case.

Was the Claimant's dismissal within the band of reasonable responses open to a reasonable employer in the circumstances?

198. No, given that I have found substantive deficiencies in each of the elements of the investigation and the resulting disciplinary process (and such deficiencies could well have been rectified in the disciplinary hearing and/or the appeal) and that such failings were not merely minor procedural irregularities.

199. I therefore find that the Claimant's dismissal was unfair and his claim succeeds.

Employment Judge Elizabeth Gibson

Date 12 September 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

29 September 2025

FOR THE TRIBUNAL OFFICE