Case Number: 6006213/2024

EMPLOYMENT TRIBUNALS

Claimant: **Mr D Stockton**

Respondent: **Threemilestone Education Ltd**

Heard at: **Manchester (by CVP)**

On: **14-17 April 2025 and 28 & 29 July 2025 (and in chambers on 14 & 15 August 2025)**

Before: **Employment Judge Eeley (sitting alone)**

Representation
Claimant: **Ms A Meredith, counsel**
Respondent: **Mr R Quickfall, counsel**

RESERVED JUDGMENT

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

REASONS

Background

1. By a claim form dated 19 July 2024, the claimant brought a claim of unfair dismissal against the respondent arising out of his employment with them, latterly as the headteacher of an independent special school for children with special educational needs.

2. For the purposes of determining the case I received written and oral evidence from the following witnesses:

    1. The claimant, Daniel Stockton, former Headteacher of Oak Tree School.
    2. Craig Ribbons, Regional Director at the respondent, responsible for a portfolio of the respondent's schools.
    3. Gemma Mann, Operations Director for the respondent's Blenheim Division.

Unfortunately, it became necessary to recall the claimant and Ms Mann to give further witness evidence at the second tranche of hearings. As a result, by the end of the hearing, Ms Mann had produced two witness statements and the claimant had produced a total of three witness statements.

3. The parties produced a hearing bundle consisting of 1355 electronic pages. During the course of the first tranche of hearing days a supplemental bundle was produced which contained 35 electronic pages. Prior to the second tranche of hearing days there was further disclosure between the parties. The legal representatives engaged in a protracted period of further disclosure which resulted in various iterations of an additional bundle. Those additional documents were collated into a consolidated additional bundle, which contained 639 pages. This was apparently still not a complete bundle as I was directed to consider a separate three page letter from Browne Jacobson to the claimant dated 12 September 2024. Page references in the reasons which follow are references to the electronic or PDF page numbers (rather than to the pagination on the face of the document) because the electronic and 'paper' pagination did not correspond within the final versions of the bundles. Numbers in square brackets after "MB" are page references to the main hearing bundle. Numbers in square brackets after "SB" are page references in the 35 page supplemental bundle produced during the first tranche of hearings. Numbers in square brackets after "CB" are references to pages in the consolidated version of the 639 page bundle which was produced at the second tranche of hearing days.

4. In addition to the above, I had the benefit of an agreed cast list, a chronology from the claimant, and written and oral closing submissions on behalf of both parties.

5. At the start of the final hearing some hearing time was lost to a renewed application by the claimant for a witness order for Mr Deacey. This had previously been considered at an earlier hearing and was renewed before me by claimant's counsel. Shortly before midday on day 2 of the hearing I refused that application for a witness order, for the reasons which I gave orally at the time. In the interests of proportionality I do not propose to set out those reasons herein. There has been no request for written reasons in relation to that application.

6. At the outset of the hearing respondent's counsel indicated that the name of the respondent needed to be formally amended to Threemilestone Education Ltd (Company number 07490653) as it had formally changed since the proceedings were issued. I therefore issue this judgment with the updated name for the respondent. Reference in these reasons to Outcomes First Group or OFG are references to the respondent as it was named during the events under consideration in these proceedings.

Facts

The parties

7. The respondent is a provider of specialist education for young people with special educational needs. It owns and operates over 70 specialist schools around the country. One of those schools is Oak Tree School ("The School"). The School is an independent specialist school for students aged 7 to 16 who experience social, emotional, mental health, and communication difficulties and other associated challenging behaviours. All of the students at the school are under the care/direction of the relevant Local Authority. They are vulnerable young people. Although it is an independent school, the School is funded by the Local Authority.

8. Amongst the staff at the School there is an Assistant Headteacher and a Headteacher. The respondent has Regional Directors who have responsibility for a portfolio of schools within the respondent's business. The Regional Director's role includes line management of the Headteacher at each of the schools in the portfolio. Within the respondent's business, the Regional Director is also the Chair of Governors for each school.

9. The claimant started out as a PE teacher and moved to the School as a PE teacher. He started working at the school on 21 April 2014. He was promoted to Assistant Headteacher and then became Headteacher at the School. He was dismissed from his post on 21 May 2024.

10. Mr Ribbons was initially employed by the respondent as a headteacher at a school in Kent. From 1 April 2018 he worked as a Regional Director at the respondent and was responsible for a portfolio of schools. He retired from full time employment in September 2023 and now works as an Operational Consultant for the respondent.

11. Ms Mann has been employed by the respondent since 6 January 2015. Since January 2025 she has been employed as Operations Director for the respondent's Blenheim Division. She is also a member of the respondent's Executive Team. She has held various positions including as a headteacher and Regional Director. She is also a trained Lead Inspector for schools for Ofsted.

Regulatory background

12. Safeguarding is a critical issue in education generally and in the SEN sector particularly. It is of central importance that vulnerable young people are educated within a system which has adequate safeguarding measures in place. The headteacher in such schools has an important set of safeguarding responsibilities. Some of these responsibilities are set out in statutory provisions and guidance. Others will be imposed by the respondent as an individual employer and SEN education provider. It is self-evident that the headteacher within a school has a core leadership role and has line management responsibilities for the other staff within the school. The role of headteacher is a position of trust and responsibility.

13. Headteachers must uphold the Headteacher Standards 2020 [MB1056]

which require headteachers to uphold public trust in the profession and maintain high standards of ethics and behaviour within and outside the school. The Standards also refer to the Nolan Principles for Standards in Public Life.

14. At the time the claimant was employed by the respondent, the School was required to comply with "Keeping Children Safe in Education 2023" [MB1070] (hereafter referred to as "KCSIE"). This is statutory guidance which sets out the legal duties that all schools and colleges in England should have regard to in order to safeguard children.

15. The School was also required to comply with "Independent Schools Guidance" [MB1007] (hereafter referred to as "ISG".) Part 4 of that guidance [MB1040-1043] is titled "Suitability of staff, supply staff and proprietors." It includes the obligations imposed on schools in relation to recruiting staff from agencies. It summarises the requirements of the Standards. The following paragraphs are of particular relevance in this case (with emphasis added.):

> "Paragraph 19 (supply staff – staff supplied by employment businesses)
>
> 5.5 This paragraph sets out, amongst other things, information which must be supplied by an employment business which provides supply staff, (including supply staff who work in the boarding or residential provision), who replace school staff and are under the direction of the school's management. **The proprietor must obtain evidence that the employment business has undertaken the necessary checks on each named individual. The evidence must be specific to each individual, not simply a general statement that checks have been carried out on staff supplied by the employment business. Until such time as this information is received by the proprietor and any required DBS certificate, then the relevant person must not be allowed to start work**. The requirements here mean that any enhanced criminal record certificate which is supplied must (subject to certain exceptions), when a person starts work, be no more than 3 months old. Paragraph 19 was amended in 2018 to require that staff (teaching or non-teaching staff) supplied by employment businesses to independent schools have additional checks undertaken if they are living or have lived outside the UK. Such staff that are employed directly by schools were already required to have further checks if the independent school standards are to be met. Now, when supply staff are living or have lived abroad, if an enhanced criminal record certificate is not sufficient to establish a person's suitability, that person cannot start work at a school unless the proprietor has received written notification from the employment business that appropriate checks have been made, having regard to any guidance on such checks issued by the Secretary of State (that guidance being 'Keeping Children Safe in Education').
>
> Paragraph 21 (single central register)
>
> 5.10 **Every school is required to collate into a register information recording the checks made on staff, supply staff, and members of proprietor bodies as listed in paragraph 21**. Some of the requirements only apply to persons appointed or in post on or after specified dates. Again, guidance on detailed requirements is available from the enquiry email address given at the end of this document, and 'Keeping Children Safe in Education' contains a section on the keeping of the single central register."

The “Single Central Register” will be referred to as the “SCR” hereafter.

16. The respondent had its own safeguarding policy which set out the detailed requirements for pre-employment checks to be carried out on all staff (including those supplied by agencies.) It was titled the *“Safer Recruitment and Selection Policy”* [MB466]. The following paragraphs are of particular relevance to this case (emphasis added):

> “6.0 PRE-EMPLOYMENT CHECKS
>
> 6.1 All pre-employment checks are the responsibility of the divisional recruitment lead, and **the accountable individual is accountable for ensuring each new employee has complete and satisfactory pre-employment checks for their division. This also includes temporary workers and contractors.**
>
> 6.2 Unless stated otherwise all pre-employment checks listed below must be completed for all areas of the UK across all divisions. Any offer of appointment made to a successful candidate must be conditional on satisfactory completion of the necessary pre-employment checks, **it is unacceptable for any candidate to start without all pre-employment checks completed** (see following paragraphs for further detail and clarification):
>
> ….
>
> All new starter files need to be signed off by the **accountable individual** to confirm pre-employment checks are complete and satisfactory.
>
> • **Children’s Education- Headteachers/Principals**
> • Children’s Residential- Registered Managers
> • Adult’s Education- Headteachers/Principals
> • Adult’s Residential- Registered Managers
> • Central- Head of Department
>
> 6.3 **The Group will adhere to its mandatory responsibility to secure a certificate from DBS (England & Wales), Disclosure Scotland, or Access NI (Northern Ireland) for all new employees before their appointment**. It is our policy that these checks will be renewed every three years. If a candidate is on the update service it is their own responsibility to ensure this is renewed annually. It is the responsibility of individual responsible for personnel files to check every three years that the employee holds a valid DBS. It is the responsibility of the employee to alert their divisional recruitment lead or line manager if there should be any changes with the status of their DBS. **The Accountable Individual is accountable for ensuring all DBS checks are valid.**
>
> **[**MB 484]
> 9.6 In respect of contractors or agency workers supplied by a third party, **the recruiting manager must obtain written notification from the third-party confirming they have carried out all the pre-employment checks that would normally be conducted internally (as set out in this policy). On the temporary worker’s start date the manager must check that the person presenting themselves for work is the same person on whom the checks have been made by checking their proof of photo ID on their first day, as well as proof of their DBS check**. In addition, for any residential temporary agency workers who have been supplied by a third party, the divisional recruitment lead must obtain their full recruitment file

from the third party (e.g. recruitment agency). The accountable individual must review and sign the file off as compliant before the agency worker's first day. This includes adult residential homes and any residential homes based at a school site. A safer recruitment checklist is available from the resourcing team, which can be used by manager to check the file."

17. The claimant was the "Accountable Individual" within the meaning of the respondent's safeguarding policy as set out above. The headteacher has the overarching responsibility to ensure that all statutory and group requirements are met. As part of the governance process the headteacher is responsible for submitting compliance against the Independent School Standards. The headteacher is also responsible during inspection for presenting accurate information demonstrating compliance with all statutory guidance, including KCSIE. The headteacher also has overall responsibility for ensuring that all staff complete statutory training. This includes annual safeguarding training, reading Part 1 of KCSIE and ensuring that all appropriate staff are trained in Safer Recruitment.

Chronology of events

18. The claimant started employment as a PE teacher at the School on 22 April 2014. He was Assistant Headteacher from 2018. Mike Deacey was the Headteacher at the School at this time. The claimant was promoted to the post of Headteacher in July 2020. Mr Deacey became the Regional Director for the portfolio in question. Consequently, for a period of time Mr Deacey was the claimant's line manager as he was the relevant Regional Director. He had previously been the headteacher at the School. Mr Deacey was charged with undertaking checks of the SCR held by the School. (He undertook one such check on 21 January 2024.)

19. On 17 November 2023 one "AT" was supplied to the school by an agency without relevant recruitment checks. The requirement for references and DBS checks were waived by the School [MB 105]. This later became known as a system of 'waivers' at the School. It was operated by the Assistant Headteacher. On 27 February 2024 AT stopped working for the agency as he was due to start work as a permanent employee of the school [MB185]

20. The claimant decided to tender his resignation from his post as Headteacher and he did so on 25 January 2024 [MB688]. He intended his last working day to be 31 August 2024. He had reconsidered his work-life balance and wanted to prioritise spending more time with his family. He was also considering moving away from teaching altogether.

21. On the same day there was an email exchange between Mr Deacey and Dan Cooke (Managing Director of the respondent) [MB690] where Mr Deacey informed Mr Cooke of the claimant's resignation and indicated that the claimant felt that the job was having too much impact on his life. The emails were partially redacted by the respondent.

22. On 26 January Mr Deacey emailed the claimant to suggest that he might not want to leave the respondent fully and that he could consider a change in role, a reduction in hours, part time work etc.

23. There was a Teaching Assistant at the School named "RC." The claimant's

position is that he had been informed that RC was subject to a police investigation in relation to an allegation of domestic violence made by his partner and that RC had denied the allegation and made a counter allegation against his partner. On 26 February 2024 the claimant informed HR of his concerns about the risk of reputational damage if RC returned to school [MB138]

24. On 28 February 2024 the claimant completed Safer Recruitment Refresher Training [MB 515].

25. On 1 March 2024 there was an incident relating to AT and a student. On 4 March 2024 the claimant suspended AT [MB 149]. That decision was reversed by the claimant on 5 March 2024 when it became apparent that AT was not an employee but was still engaged via the agency [MB149.]

26. The claimant also became aware of the use of waivers in the school when it became apparent that there was an unchecked agency colleague ("LP") working in the school. LP was supplied by Zen Educate. On 6 March 2024 the claimant sent LP home. On the same day, the claimant attended a job interview at a new independent special school for a role as a teacher (for a better work/life balance.)

27. On 25 March 2024, RC (who was still off work sick and facing a court hearing in April 2024 in relation to allegations of domestic violence against his partner [MB 329]) asked the claimant and any of the SLT if they would be willing to provide a character reference for him within the next 14 days and, if possible, a breakdown of the injuries he had sustained at school. The subject line of the email stated: Character References [MB145]. A further copy of the email was at [MB 266-267]. It stated:

"Hi, Dan, further to our previous conversations concerning matters at hand, would you, and any of the other senior management team, be willing to provide a character reference for me please?
Within the next 14 days if possible, furthermore, concerning the claim that it was the pupils at school that caused all of my injuries, would it again be possible for me to receive a breakdown of my school records (Injuries incurred) I believe it is only one (1) , (LW and my tooth) This is of an urgent concern,(See Below).It would be paramount in my claim against N…, as she has sworn in her court statements, it was not her, but it was the children of Oaktree School, a despicable claim. Please could you advice me at your very earliest convenience, so that I can prepare for court in early April.
Thanks Dan Rob"

The claimant forwarded that email to Grace Russell at 12.06pm the same day. The forwarding email simply read "FYI."

Grace Russell's response was at 12.34pm and stated:

"Hi Dan,

Please can you go back to advise that it is a police investigation and we wouldn't be able to send to him directly.

Thanks,
Grace"

The subject line of the email was "RE: Character References." [MB145/266]

28. The claimant maintains that he understood Ms Russell's email to refer only to sending out the school records and not to refer to the reference. Hence, he says, he did not send out the school records but he *did* send a reference. On 25 March 2024 the claimant wrote to RC stating that he was happy to write a reference and would do so that week. The claimant also stated: "*HR have advised that I may not be able to share details/records of school injuries as it is a police matter, I imagine the police could request this information on your behalf?*" [MB 283]. The claimant says that this email reflected the claimant's interpretation of Ms Russell's email (above.) On the face of it, that email made no explicit distinction between the request for the reference and the request for the injury records.

29. Although there is some suggestion in Ms Russell's investigation transcript that she was not aware of the reference issue until Tuesday/26 March (and the dates of the email suggest that she was informed of it on 25 March), this cannot reasonably be found to undermine the substance of her evidence. The crucial evidence is the email exchange itself which shows what the claimant told her and what her reply was. The claimant's case at the hearing seemed to be that Mr Ribbons should have asked Ms Russell about *her* interpretation of the emails and whether she intended her email to respond about the character reference or just about the other document. However, in looking at the claimant's conduct, the material matter is to assess the way the claimant read and interpreted what he received from Ms Russell and whether he acted reasonably based on the advice that he had received. How Ms Russell intended or interpreted her own email was, in that sense, irrelevant to the disciplinary investigation. It was the reasonableness and correctness of claimant's own actions that were in question, based on the information he had at that time.

30. In a letter dated 25 February 2024 (which must have been written on or about 25 March 2024) the claimant wrote a character reference for RC [MB 137, 887]. It is likely that the date is an error and that it should be dated in March 2024, after the claimant received the reference request. The reference was written on headed notepaper and was an open reference insofar as it was not addressed to any particular recipient. RC was a Teaching Assistant at the school. It is fair to say that the claimant wrote of RC in fairly glowing terms.

31. Whilst the claimant understood the reference to be for the purposes of the police investigation, it is fair to say that it was an open reference which could have been forwarded by RC to anyone, including potential future employers. It was not, on the face of it, specifically for a police investigation. The claimant signed the letter as Headteacher and the headed notepaper and contents of the reference made the link between the claimant and the respondent entirely clear to the objective reader. Whether a potential new employer would have accepted the contents of the reference supplied via

RC (without contacting the claimant directly to verify it) is another matter.

Disciplinary investigation

32. A disciplinary investigation in relation to the claimant was undertaken by Louise Hernon. This started around 20 March 2024. This investigation was triggered by concerns being raised that a number of agency staff were working in the School without having all the necessary safer recruitment checks in place. Staff were found to be working under a 'waiver', which was an alleged breach of the respondent's Safer Recruitment policy and practice. During the course of the investigation further issues came to light.

33. The disciplinary investigation report was compiled by Louise Hernon, Quality Assurance Consultant. It was dated 18 April 2024 [MB 237]. The document indicates that the scope of the investigation was to establish whether the claimant had had sufficient oversight of the recruitment of agency workers to ensure that pupils were safeguarded; whether he had approved medical expenses outside of organisation processes; and whether he had given a character reference to a colleague under police investigation. Ms Hernon obtained evidence from Lauren Wright (Operations Director), Grace Russell (People Adviser) and the claimant. There were 15 appendices to the report (which included various pieces of email correspondence.)

34. On 28 March 2024, Louise Hernon interviewed Grace Russell (People Advisor) about the reference allegation and the waiver allegation. Justine Langford (HR) also contributed information about the medical expenses allegation. Lauren Wright (Operations Director) was interviewed about the waiver allegation, the medical expenses allegation and the character reference allegation.

35. Ms Hernon set out the findings of her investigation at [MB239] onwards. In relation to allegation number 1 (that waivers had been signed off for agency colleagues without appropriate checks being completed) Ms Hernon noted that the claimant had explained that his Assistant Headteacher was responsible for agency staff recruitment and the Assistant Head had signed off the timesheets. The claimant said that he was not aware of any waivers being in place and that in his previous experience an assurance was sought from the agency and the agency then issued an assurance form that all checks had been completed. He said that when he was made aware in February of agency staff being on site without the necessary checks, he removed them from the school staff. Ms Hernon found that there was an Office Manager who entered staff onto the SCR. The claimant had said that temporary agency staff were used very rarely. Agency staff were 'temporary to permanent' staff who would be entered onto the SCR. The claimant had said that he checked and signed off the SCR at least half termly. He had agreed that he did not check the SCR against the list of agency staff in the school, although he would do so going forward. The claimant confirmed that he had redone the Safer Recruitment training since this incident.

36. In relation to allegation 1, Ms Hernon concluded that, although the Assistant Head had the active role of recruiting agency staff, the claimant supervised

and managed the Assistant Head. The claimant should, therefore, have ensured that recruitment procedures were being followed and the Assistant Head understood and fulfilled his role. The claimant had also failed to diligently check the SCR before signing it as compliant because he had not checked it against the list of agency staff being used. Had either of those duties been performed then the use of waivers would have been identified. She stated that the Headteacher has responsibility for ensuring that the school is a safe place for pupils and, whilst some of those duties had been delegated, there should be sufficient oversight of those performing the delegated duties. She concluded that allegation number 1 was substantiated.

37. Allegation 2 related to medical expenses. Although it was investigated it did not form part of the material disciplinary case against the claimant which resulted in his dismissal. I have therefore omitted the conclusions and evidence in relation to this part of the allegations. Allegation 3 was found to be unsubstantiated.

38. Allegation 4 was that the claimant gave a personal character reference to a colleague under police investigation. The claimant had agreed that he had given a character reference for the colleague, that he was aware that the colleague was under police investigation, and that the reference had been written on OFGL headed notepaper with the Oak Tree School logo. The claimant had said that he thought the reference was for use in court. He referred to having informed Grace Russell in the HR department about the request and the request by the colleague for behaviour policies. The claimant had said that he believed the reply that he received from Ms Russell (saying that it was a police investigation and so it should not be given directly to the colleague) referred to the *policies* requested, and *not* the *reference*. Ms Hernon noted that the email to Ms Russell was headed "character references." She concluded that the reply saying that it could not be given directly to the colleague because it was a police investigation would, in her opinion, be taken as meaning either the character reference (because that was the title of the email) or any of the information requested including the reference. She concluded that there was no indication in the reply email that it only referred to the other information requested and not the reference.

39. The claimant had said that he could not see how there could be reputational damage to the respondent through him providing the reference. He had also said that, in cases of this complexity, Heads should be taken away from the communication. Ms Hernon found this to be contradictory because the claimant had been advised by HR not to give the reference directly to the colleague but had still done so and had voluntarily become involved in the communication when the process was (in Ms Hernon's view) for all reference requests to be sent to HR. When asked if he thought there was a safeguarding risk from giving a character reference, the claimant had said that he did not think so. Although he then said that he was surprised that the LADO had said there was not a risk to children. When asked why he was surprised he said, 'because of the nature of the allegation.'

40. Ms Hernon concluded that the reference was provided without going through the proper procedure of submission to HR. It was provided on

headed notepaper and this represented a reputational risk as the subject was being criminally investigated. She concluded that giving a character reference when someone is under police investigation is also a potential safeguarding risk as the information available to (and outcome of) any potential criminal case is not known. She concluded that this allegation was substantiated.

41. Ms Hernon recommended that these allegations should proceed to a formal disciplinary process. She was of the view that an informal process was not appropriate as the allegations involved breaches which could pose a safeguarding risk to children and pose a risk of reputational damage to the organisation. She also included a paragraph titled "Organisational Learning" which recommended ensuring that there was a clear guide as to best practice when checking the SCR, including cross referencing against agency staff lists and timesheets.

42. The transcript from the investigation meeting with Lauren Wright was available to the Tribunal at [MB161]. She confirmed that a member of staff had been allowed to come onto the premises with a missing DBS and a missing reference. By that stage Ms Wright had found 15 waivers in place at the School. They had been in place since at least the previous September. Ms Wright assumed that all the agency people without the necessary paperwork had not been put on the SCR or else the claimant would have known that there were gaps and questions in relation to them. She stated that there had clearly been a system in place that the claimant had not had oversight of. Either way, she noted that the claimant had people on site with missing documentation who had not been recorded on his register. Ms Wright indicated that the expectation was that a headteacher would sign off the SCR about once a month. The expectation would be for the Regional Director to check it once a term.

43. During the course of the meeting with Ms Wright there was an exchange where Ms Hernon stated: *"Right. So it should be evident to a head teacher, one of either two things. If they're signing off the SCR every month, they should either be aware that…"* and Ms Wright picks up, *"should know that everybody on there, their documentation is correct and in place, but equally they should be aware if there were people missing from that SCR because you'd expect them to know what staff are in the school, not necessarily the regional director wouldn't necessarily know that, but the teacher would expect to know who's in the in school, wouldn't you?.... No, that's that's why I was thinking it's a slightly lesser. Yeah. Yeah. Because you you fill in your agency tracker as well to send off each month to show who, who you're claiming for. So you should surely….Yeah. So the to me, the head teacher is the ultimately responsible person, aren't they? As much as Mike maybe could have done some, you know, slightly more rigorous check in. I think that's an organisational learning piece to check that all the RDs are thoroughly checking agency you know because you can see how maybe one would get missed if you didn't have the right you know information about who should and shouldn't be on it. But to have 15 / a period of time that's a it's a clear concern isn't it."* The record of the conversation also indicates that the agency trackers show at any point in time who would have been in the school that month. This should tally up with the SCR.

44. The transcript of the meeting between Grace Russell and Louise Hernon was also in the hearing bundle at [MB180]. Justine Langford was also present at that meeting. During that meeting Ms Russell confirmed her expectation of the usual process when a member of staff is asked to provide a character reference for another member of staff. She said*, "So the usual process is that they send it to the HR admin team to complete. So that's kind of that's been kind of the process for as far as as I've been here, I've been here three years and HR have always completed them. So I think there's kind of a thing in terms of kind of customer practise [sic] and I'm sure he's forwarded them before because that that is the process. And he also didn't let us know that Rob requested a character reference as well, and I would have expected Dan to have flagged it because especially the fact that he's under a police investigation."* (emphasis added.) She also confirmed her understanding in relation to waivers that there was a total of 18 found since September 2023.

45. During the course of the conversation it is right to say that Justine Langford chipped in with a contribution in relation to the issue of medical expenses. However, her contribution cannot reasonably, in my view, be seen to undermine the legitimacy or relevance of the evidence provided to the disciplinary investigation by Ms Russell.

46. On 5 April 2024, the claimant was invited to an investigation meeting to explore the following allegations [MB195]:

> "1. It is alleged that waivers have been signed off for agency colleagues without the appropriate checks being completed." *[Hereafter referred to in these reasons as "the waiver allegation"].*
> "2. It is alleged that you have approved medical expenses for colleagues relating to injuries which have occurred in the workplace which have not been reported to the Health & Safety/Legal Team or HR." *[Hereafter referred to in these reasons as "the expenses allegation"].*
> "3. It is alleged that an agency colleague became permanently employed by us and worked even though safer recruitment checks had not been signed off." *[Hereafter referred to in these reasons as "the AT allegation"].*
> "4. It is alleged that you have given a personal character reference to a colleague under a police investigation." *[Hereafter referred to in these reasons as "the reference allegation"].*

47. The transcript of the claimant's investigation interview was also in the bundle [MB200-236]. The claimant confirmed that he had no idea that waivers were being used at the time. He confirmed that as soon as he was made aware that a member of staff was on the school site without a DBS, he had that staff member removed from site. He confirmed that following the issue coming to light, he had redone the safer recruitment training as directed by the respondent. During the discussion about the character reference, the claimant commented that he still did not fully understand why he wasn't allowed to or where it was stipulated that he wasn't allowed to provide the reference. He confirmed that, in his professional judgment, you can give a character statement to someone as long as it's professional and you are just stating the facts that you know about that person. He suggested

that none of the reference was opinion, it was all very factual. He said that he did not know if there was a policy around managing cases under police investigation or a policy around providing character references for people under police investigation. He said that he did not know and he had not had that information.

48. Ms Hernon referred to the issue going through HR, at least partially because of it being written on headed paper. She asked whether the claimant thought about it being formally written on headed paper from the respondent and whether it was therefore representing the organisation. When asked whether he was concerned about the fact that RC was under police investigation, the claimant said that was why he contacted Ms Russell. He referred to her email that said due to the investigation it could not be sent to him directly. The claimant maintained that he took that to refer to the behaviour reports and not the character reference. The claimant thought that RC was going to use the character reference in court or in relation to the police investigation. When the issue of potential reputational damage was put to the claimant, he did know how it would create reputational damage. The claimant confirmed that the LADO had said that RC did not present a risk to children. This apparently surprised the claimant given the nature of the police investigation.

49. In separate email correspondence, on 5 April 2024, Mr Deacy flagged up that he had received a reference request for the claimant from a new competitor school that the claimant was joining when it opened in September 2024[193]. The indication was that the post was as a teacher rather than as a headteacher. Mr Deacey commented*: "My greatest concern is the potential for staff to move with him- not sure if there is anything we can do or want to do? But I thought I should put it on your radar."* It seems that this email was sent to Mr Cooke and Lauren Wright. Ms Wright commented, *"Strange that he's going to be a teacher again! I thought he was completely coming out of education?!"*

50. On 27 April 2024, RC repeated his request for injury records that related to him [MB142]. Ms Russell (who had been an addressee of the request, replied to the claimant to say, *"Please do not send any record directly to [RC], we can only send this info directly to the CPS. I would respond to acknowledge and advise that we are unable to send however, if he would like to submit a SAR request he has this option."* RC's original email request of 27 April only referred to a request for accident and injury reports relating to RC whilst he was employed the School. He was not repeating the character reference request. The claimant had already provided the reference by this date.

51. In the claimant's first witness statement to the Tribunal, the claimant relied on this email from Ms Russell to justify sending RC the character reference. The claimant states that this email supports his belief that Ms Russell was only referring to injury records and not the character reference when she stated (on 25 March) that he should not respond to RC directly because of the police investigation. However, the email relied on by the claimant to justify sending the reference was sent by Ms Russell more than a month

after the claimant sent the reference and was not a response to the reference request but only to the school accident records request.

Disciplinary stage

52. In April 2024 Mr Ribbons was appointed as a disciplinary manager to consider allegations against the claimant that:

    1. "Waivers" had been signed off for agency staff recruited at the schools without appropriate safer recruitment checks being completed on those staff.
    2. The claimant had approved medical expenses for colleagues relating to injuries which occurred in the workplace which had not been reported to the Health and Safety, legal team or HR.
    3. The claimant gave a character reference to a colleague who, at the time, was under a police investigation.

53. On 29 April 2024, the claimant was invited to a disciplinary hearing to consider the waiver allegation, the expenses allegation and the reference allegation. The invitation was based on the investigation report dated 18 April 2024 [237]. Mr Ribbons was appointed to conduct the disciplinary hearing. On 29 April Mr Ribbons wrote to the claimant to invite him to a disciplinary hearing on 13 May 2024 [MB274]. The information pack and appendices were included with the letter. The letter indicated that, if proven, the allegation could constitute gross misconduct and could result in summary dismissal in accordance with the respondent's disciplinary policy. The claimant was informed of his right to be accompanied. He was told that the outcome would be provided in writing after the hearing rather than during the course of the hearing.

54. On 3 May 2024, the claimant sent Mr Ribbons a document setting out his concerns about the investigation [MB 758-760]. There was no complaint that the investigation had not obtained any evidence from Mr Deacey. Mr Ribbons did not speak to the claimant about the document prior to the disciplinary hearing. It raised a number of issues, some of which were not directly relevant to the fairness of the disciplinary process (e.g. lack of a welfare contact, duplicate copies of documents.) The claimant had the opportunity to refer to this document or raise these issues during the course of the disciplinary hearing.

55. On 8 May 2024, the claimant asked Mr Ribbons whether his line manager Mr Deacey should have been spoken to [MB 282]. This request was made a week after Mr Deacey went on garden leave.

56. On 13 May 2024, the claimant sent Mr Ribbons an updated document setting out his concerns about the investigation [MB 755-757]. He did not add a request that the respondent speak to Mr Deacey into the document.

57. Also on 13 May 2024, the claimant's disciplinary hearing took place, chaired by Mr Ribbons [MB285-346]. An audio recording was made and then

transcribed.

58. During the course of the disciplinary hearing the claimant indicated that he was not aware of the issue of waivers on the system until it came to light just before the February half term. His understanding had been that the school had a “letter of assurance” from the agencies that disclosed that all members of staff coming into the school had passed the safer recruitment checks as carried out by the agency. The claimant said that when he was doing the SCR checks that was what he was looking for- to make sure that the letter of assurance was there. He indicated that the issue came to light when the admin staff were entering details on the SCR and came across a member of staff who had come through the agency and had not got all the relevant checks in place. As soon as the claimant was aware of this, the member of staff was removed from the school.

59. Various terminology was used during the course of the respondent’s processes but the most frequently used was ‘letter of assurance’. Mr Ribbons indicated that, in his experience, what he was looking for was a letter of assurance or a communication of assurance or a checklist from the agency to assure or confirm that the appropriate checks and balances were in place. He had not personally used waivers. The claimant confirmed that that was his understanding too. The staff member who was removed due to the waiver was due to go “temp to perm.”

60. The claimant suggested that he was not told that SCR checks should be done against the agency tracker. He did confirm that he had completed the ‘Safer Recruitment’ refresher training. During the hearing the claimant agreed with Mr Ribbons that his (the claimant’s) expectation was that the letter of assurance would come from the agency and would be the checklist that everything they held on the SCR for a permanent member of staff was in place, via the agency, for the agency worker. The claimant confirmed that there had recently been visits from the school improvement partner and Ofsted (January 2024).

61. In the disciplinary hearing the claimant indicated that the SCR should, on the agency tab, have the letter of assurance to confirm that the checks had been done. The claimant suggested that there wasn’t a standardised practice from school to school. He said that the checking of agency staff against the agency tracker was never something that he had been made aware of.

62. It appeared, during the course of the meeting, that there were agency staff who had come into the school to work who were not on the SCR at all, either with or without proof of DBS and other checks having been completed. They were absent from the SCR.

63. The claimant made the point that he had not been suspended during the course of the disciplinary process and had not been told to stop ‘doing what he was doing’ or to do things differently. The claimant accepted that there was no mention in the respondent’s policy of ‘waivers’ being allowed.

64. In relation to the character reference the claimant indicated that he hadn’t thought it would be an issue. His interpretation of Ms Russell’s email was

that he could send the character reference himself but that the other documents would have to go via HR. The claimant said that he had never been given guidance as to who he could or could not write references for. The claimant said he had not been told that all references had to be approved by HR. There had been further communications about the Safer Recruitment policy since the investigation had started.

65. Towards the end of the disciplinary hearing the claimant suggested that, given that the allegations related to operational procedure and process, it might be worth speaking directly to his line manager, Mr Deacey.

66. Mr Ribbons gave evidence to the Tribunal during the Employment Tribunal hearing. During the course of cross examination Mr Ribbons indicated that there had been communications to headteachers over the years saying that reference requests should go via HR. However, there was no specific evidence available to the Tribunal indicating that this message had previously been communicated to the claimant so that he knew that the general or established process was for reference requests to go through HR. During the course of the hearing, claimant's counsel sought to suggest that it was unfair of the respondent to rely on Mr Ribbons' own personal experience and knowledge that all references should go via HR without specific evidence to show that the claimant had been made aware of this general practice. Whilst that might be a valid criticism, I note that the claimant had in fact forwarded this request to HR (in the form of Ms Russell.) A reasonable reading of her email suggested that the reference should not be sent direct to RC. Further, the respondent might reasonably expect that the claimant, as a senior professional employee, would at least err on the side of caution and not send the reference. If he was in any doubt about what he should do once he received Ms Russell's email, the claimant could have asked HR for further clarification or guidance rather than sending the reference without further recourse to HR.

67. During cross examination Mr Ribbons accepted that the claimant had suggested (during the disciplinary hearing) that the respondent should speak to Mr Deacey. Mr Ribbons' evidence to the Tribunal was that he had contacted HR about this and HR had told him that he could not meet Mr Deacey or speak to him as he was no longer employed by the respondent. Mr Ribbons was not told why Mr Deacey had left the respondent and had felt that it he was not in a position to ask about this.

68. Mr Ribbons was also cross examined about the Ofsted report from the inspection which took place early in 2024. He was asked whether he should have quoted it in his decision letter. Mr Ribbons was clear that it would have been impossible for Ofsted to see that there was a gap on the SCR where the agency staff were not recorded. His view was that only the Senior Leadership Team would know that the SCR was incomplete and did not include all the workers who had been working at the school. The responsibility for oversight lay ultimately with the headteacher. Mr Ribbons confirmed that Ofsted did not discover any problem with the SCR but also confirmed that he would not expect them to be able to discover this given their systems of work and available documents. In such circumstances he did not consider it relevant to refer to Ofsted in his decision letter.

69. Mr Ribbons remained clear in cross examination that he was satisfied that there were workers at the School who were not included in the SCR at all. Such agency workers were only being put onto the SCR when they became permanent member of staff. He was satisfied that that was a clear breach of safeguarding measures, as was the existence of the so-called 'waivers.' The fact that some agency staff were not on the SCR at all was relevant to the disciplinary decision. Furthermore, although the claimant did not introduce the system of waivers himself, the problem was that he did not know that his Assistant Head was using them. Mr Ribbons' view was that, if the claimant had carried out proper oversight, he would have known about the waivers and would have been able to put a stop to the practice. This is what should have happened, in Mr Ribbons' view.

70. Mr Ribbons confirmed that the claimant should have been checking that every member of staff who came to the school had the relevant documents. He should have turned people away from the School if they did not have the documents and should not have delegated this. Mr Ribbons felt that the claimant could delegate communications with the agency but not the ID verification process itself. Mr Ribbons conceded that he did not include this particular point in the outcome letter and had not put this particular point to the claimant. Mr Ribbons explained that if some workers were omitted from the SCR altogether then, unless the person doing the check knows exactly who has been on site, they will not be aware of the discrepancy or the absence of safeguarding checks. The absence of the safeguarding checks will not be apparent to a person checking the SCR because they will not know that the worker was even present at the school by looking at the SCR. The person checking will not be aware of the omission because they do not have the accompanying knowledge or information about everyone who has been on the premises.

71. Mr Ribbons did not conduct the disciplinary procedure for the Assistant Head at the School and, therefore, did not make the disciplinary decision in relation to the Assistant Head who had been using the waiver system. In cross examination Mr Ribbons made the point that the Assistant Head was employed in a less senior post than the claimant and therefore held a different level of responsibility. He did not think that the Assistant Headteacher's case was truly comparable to the claimant's or that the outcome in the Assistant's case should have any impact on the outcome in the claimant's case. Furthermore, Mr Ribbons indicated that he might well have imposed a different and more severe sanction on the Assistant Head if he had been the decision maker. He would seriously have considered dismissing the Assistant Head rather than giving him a disciplinary warning plus retraining.

72. In relation to the 'waivers' allegation, Mr Ribbons found that so-called 'waivers' had been used at the school to recruit agency staff. Waivers were not a routine, acceptable or standard practice. Mr Ribbons had not seen them used before in his (more than) 30 years in senior leadership. The waivers appeared to be statements, signed in the name of the school, which had been sent by the agencies. They stated, in effect, that the School had been made aware that the agency's vetting process was incomplete. Missing elements included DBS checks and former employer references. The waiver indicated that, even though the School had been notified that

the relevant checks had not been completed, the engagement of the agency worker would still proceed. Hence the terminology of 'waiver' in that the normal requirement was for evidence that the relevant checks had been carried out for each member of staff (whether by letter of assurance or otherwise) before the staff member could work for the school. The waiver document apparently 'waived' this requirement so that the staff member could work even though the School had been made aware that the agency had not completed the required checks.

73. Mr Ribbons concluded that it was the responsibility of the Headteacher (in this case the claimant) to ensure that all Safer Recruitment and safeguarding checks had been completed and that the School had seen the necessary evidence of this. He concluded that KCSIE required the School to obtain the written notification of compliance from any agency they used. The requirement for the School to carry out the checks for agency staff was also in ISG. As a result of the waivers, the School was engaging staff to work with pupils without the required safeguarding checks. The 'waivers' were not compliant with legal requirements. By using waivers the school was openly breaching the legal requirements and then documenting the breach. Although the claimant had taken immediate steps once he became aware of the problem, the difficulty was that he was not aware of the waivers at an early stage so that there was a period of time where nothing was done to rectify the situation. The claimant was ultimately responsible for allowing this situation to develop in his school and for not having systems in place to ensure that the problem was picked up immediately. Mr Ribbons concluded that the allegation in relation to waivers was substantiated.

74. In relation to the character reference, Mr Ribbons concluded that the claimant sent the character reference at a time when he knew that RC was involved in a domestic violence investigation. The reference was sent in response to a request from the individual who was under police investigation. The reference provided was open, in that it could be used for any purpose, and was on School letterhead and was signed by the claimant in his capacity as the Headteacher. The reference was effusive and made generalised positive comments which could be relied upon or exploited in unintended ways. Mr Ribbons understood that the respondent's standard practice was to provide fact based references, unless in specific or exceptional circumstances. The claimant did not have approval from the respondent to send this reference. He construed Ms Russell's email as an instruction not to provide the reference. Mr Ribbons further believed that it was the respondent's expectation and practice that all references should go through a submission process managed by HR. This would be particularly important when the reference related to someone who was under investigation for a crime of violence. Mr Ribbons found that the reference allegation was substantiated and that it amounted to a failure to uphold the Headteacher Standards 2020.

75. Mr Ribbons was not involved in the investigation or disciplinary processes for any other staff members who may have been involved in the incidents. He did not speak to the claimant's former line manager (Mike Deacey). He had been told that Mr Deacey had left the business.

76. Mr Ribbons concluded that the claimant's misconduct was very serious. In

particular, children had been exposed to safeguarding risks and there was a risk of significant reputational damage for the respondent. More than 10 staff were found to have incomplete safety checks (including missing DBS checks.) In relation to the reference, the claimant had acted deliberately and without hesitation and in breach of his obligations as Headteacher. It was concluded that this could have had serious consequences for the School and the respondent and could have caused significant reputational damage to the school. Mr Ribbons concluded that this amounted to gross misconduct.

77. Mr Ribbons considered the appropriate sanction and decided that dismissal was appropriate given the seriousness of the conduct and the potential consequences. He had lost complete trust and confidence in the claimant going forwards.

78. On 21 May, the claimant was summarily dismissed as a result of the waiver allegation and the reference allegation. Mr Ribbons wrote to the claimant on 21 May 2024 to set out the disciplinary outcome [MB350]. It set out the claimant's right to appeal the decision.

The appeal stage

79. On 22 May 2024, the claimant appealed the dismissal decision. The grounds of appeal are at [MB354-356]. Some of his grounds of appeal were said to be procedural in nature, others were substantive.

80. Gemma Mann was appointed to hear the appeal. She wrote to the claimant on 28 May to acknowledge receipt of his appeal [MB361]. In her letter she restated the claimant's grounds of appeal and invited the claimant to provide any further information or documentation prior to the appeal hearing.

81. Prior to the appeal hearing Ms Mann reviewed the relevant documents including the appeal letter, the investigation report (and associated appendices) and the disciplinary meeting notes, appendices and outcome letter.

82. There was an appeal hearing on 3 June 2024 [MB365-370.] It was conducted by Ms Mann. The claimant did not exercise his right to have a companion during the hearing. The meeting was audio recorded and a transcript was produced.

83. During the appeal hearing the claimant made it clear that the School relied on the letters of assurance from the agency to verify that they had completed the Safer Recruitment checks. They would then put the agency member on 'temp to perm' and then, at that point, they would enter the details onto the SCR. That was overseen by Jo Goldring. The claimant confirmed that the workers were not entered onto the SCR as agency members of staff. Thus, if they came in to work for a single day they would not be put on the SCR, for example. He said that the admin staff at reception were responsible for checking photo ID on the worker's arrival for the first day of work but that, until it was flagged up, they had not been checking the

DBS on arrival.

84. Ms Mann did refer the claimant across to KCSIE and said it was really clear about the necessary arrangements for agency staff, even if they only work for one day. She asked him why he said that there was a training issue in those circumstances. The claimant said it had not been picked up by anyone above him until now. He made the point that 'you can't know everything' and that if someone had said to him what he needed to do with agency staff, then he would have done it.

85. The claimant also asserted that he felt that the decision to dismiss him was predetermined.

86. In cross examination Ms Mann was asked about Ms Russell's statement that the claimant had not let them know that RC had requested a character reference when the contemporaneous emails show that he did inform HR. Ms Mann's view was that there was a factual inaccuracy in what Ms Russell had said during the meeting but this was human error rather than a lie. In reality, looking at the emails was the best guide to what had happened and so this error was not material to the disciplinary decision. The respondent could read for itself what the claimant had said to Ms Russell and what her responses were. Ms Mann was of the same view as Mr Ribbons, namely that they did not need to speak to Ms Russell in order to check whether their interpretation of her email was what Ms Russell had in fact intended to convey.

87. Ms Mann was taken to the email at [MB828] which was the claimant's response to RC on 25 March 2024 at 3.39pm. This could be interpreted as showing that, at the time, he interpreted Ms Russell's advice not to send something to RC as only relating to the other documents and not to the character reference. However, Ms Mann could not consider this document at the time she made the appeal decision as she did not have access to it. Even so, she felt that it would not have made a material difference to the outcome because the claimant had already made the point that he sent the reference potentially because of a misunderstanding or misinterpretation of Ms Russell's advice, not because of a deliberate choice to go against what he had been instructed by HR.

88. During cross examination, Ms Mann also confirmed that initially the issue being considered in relation to the SCR was the use of waivers and the letters of assurance. The claimant volunteered further information during the meeting. He confirmed that there were people coming into the school who were completely missing from the SCR. When the claimant volunteered this information, it became a legitimate matter of concern for the respondent. It was only at this stage that the claimant had clearly identified that not all workers were included on the SCR. Ms Mann maintained that it was fair to the claimant to address this additional issue because the disciplinary allegation had always included checks not being completed, which would cover this additional problem.

89. Ms Mann confirmed, in cross examination, that the claimant had said that he was not aware of waivers being used and yet she could not see how he would be unaware of them for that length of time if he was doing appropriate

checks. She felt that it was the head teacher's responsibility to know such things. He should have known and this was his responsibility, whether or not he chose to delegate certain tasks to others.

90. Ms Mann also confirmed that, in her view, the reference that the claimant provided for RC went the scope of a character reference. It talked about his professionalism and how he worked with children.

91. Ms Mann sent the appeal outcome to the claimant in a letter dated 12 June 2024 [MB 373]. The appeal did not succeed. Ms Mann concluded that there was no evidence of procedural unfairness or inconsistency in the process. She did not accept that the dismissal was predetermined. She concluded that, as Headteacher, the claimant was ultimately accountable for safeguarding failures. She concluded that there had been a significant breach of safeguarding and safer recruitment processes at the School over a significant period of time. Waivers had been signed and staff were not consistently recorded on the SCR. There were breaches of the respondent's procedure and the statutory requirements. Ms Mann took the view that the claimant had abdicated responsibility for (and knowledge of) safeguarding processes and checks within the school. She noted that the claimant, as Headteacher, had statutory responsibilities. The claimant was responsible for the staff member who had signed the waivers. The claimant was ultimately responsible for ensuring full implementation of safeguarding checks across the school.

92. Ms Mann noted that the claimant had been sent the respondent's updated safeguarding policies in August 2023 and they made it clear that it was the Headteacher's responsibility to ensure that the SCR was compliant with statutory requirements. She concluded that the legislation confirmed that the Headteacher should conduct regular audits to ensure that the correct documents were in place under the recording of information section of KCSIE.

93. Ms Mann concluded that the claimant had been advised not to send the reference. She noted the reference was on a letterhead and went beyond the scope of a character reference in confirming opinions on professionalism and personal attributes that would not form part of a standard reference within the respondent's organisation. She was 'staggered' that someone in the claimant's position of trust and responsibility would think it was appropriate to send such a reference to an individual under police investigation for a violent crime. The fact of the police investigation should have triggered concern about whether they could safely work with children and that should have been the claimant's main concern.

94. Ms Mann's conclusion was that the decision to dismiss the claimant was fair and that the claimant's conduct pointed to a serious lack of leadership and oversight of safer recruitment. As Headteacher he had ultimate responsibility for safeguarding checks in the school. She felt the conduct was serious enough to warrant summary dismissal. She did not believe that the claimant fully understood and appreciated the seriousness of his actions. Consequently, she was not confident that he would fully ensure the protection of children at the school in future. She lost trust in him continuing

in his role.

Claimant's evidence at the Tribunal hearing

95. During the course of the first tranche of hearings:

1. The claimant accepted that the KCSIE guidance was a very important document for Headteachers and that where the document used the word 'must' this was referring to a legal obligation. He accepted that this guidance should be read and followed by him in his role as Headteacher.
2. The claimant was referred to the mandatory pre-employment checks referred to at [MB1126]. He acknowledged that a teacher needed an enhanced DBS check and that this was mandatory.
3. The claimant was taken to paragraph 268, 269 and the following paragraphs in KCSIE [MB1140.] He recognised that it required the SCR to cover all staff including agency staff, even if they work for one day. He indicated that the checks would be done by the agency and they provided a letter of assurance that the checks had been done and it was the letter of assurance that the school held.
4. The claimant asserted that the letter of assurance was a generic document which covered the agency as a whole rather than individual teachers. His evidence was that one document could stand as a letter of assurance for all the staff being supplied by that particular agency. When it was put to him that it had to be a letter of assurance for each individual he then agreed with that interpretation.
5. He was taken to paragraph 286 [MB1144] which addresses letters of assurance and indicates that this written notification is confirmation that the agency has carried out the same checks as the School would otherwise have to perform on any individual who would be working at the School (emphasis added.) The claimant accepted that, as Headteacher, he had a legal obligation to ensure that the SCR record was kept of every single agency teacher in the School alongside proof that the DBS had been checked. He also confirmed that he was aware of this document.
6. The claimant also confirmed that he was aware of the ISG and that it applied to the School.
7. The claimant accepted that some agency staff were not on the SCR at all during the time when he was the Headteacher.
8. He accepted that there was no proof of a DBS check being carried out for some staff before they started work.
9. He accepted that he had received KCSIE training in 2023.
10. The claimant accepted that he was aware of the respondent's safeguarding policy "Safer Recruitment and Selection" and that he, as Headteacher, was the "accountable individual" in this case. He accepted that he was responsible for ensuring that DBS checks were valid.
11. The claimant was taken to paragraph 9.6 in the respondent's policy [MB 484] and accepted that this meant that, not only did they need to get written notification of checks from the agency, but also that on the individual worker's start date there needed to be a physical check of ID as well as the DBS. Then the accountable individual (i.e. the

Headteacher) had to sign this off as compliant before the worker started work at the School. The claimant accepted this.

12. The claimant accepted that the use of a waiver in the School was, in itself, evidence of a breach of the obligations imposed by these policies, albeit he maintained that it was an unknowing breach on his part.
13. The claimant accepted that he ought to have known that every single teacher was on the SCR and he accepted that not all the individuals were. He sought to refer to a lack of training in mitigation for this breach of the obligations. He accepted that he was (unknowingly) in breach of his statutory obligations.
14. When taken to the investigation report the claimant admitted that the paragraphs in relation to allegation 1 (paragraph 239 onwards) were correct save that he believed that the Assistant Head was following the procedure and at the time the claimant believed that the letter of assurance covered matters. He accepted that if individual information (rather than collective information) was on the SCR, then this might have highlighted concerns sooner. Hence, he did not identify that the waivers were being used and had to be told about this by others.

96. During cross examination of the claimant, his counsel intervened to direct the Tribunal and the claimant to [MB516] and suggested that this was a letter of assurance and that this showed that one (generic) letter of assurance covered all the workers supplied by a particular agency and not each individual worker. This was the first time it had been made clear that the claimant was suggesting that that the document at [MB516] was, itself, a letter of assurance.

97. The document at [MB516] indicated that the agency completed 'the following checks' on every candidate provided to the School as part of the candidate on boarding process. It then set out a series of specific checks. The final paragraph stated: *"When you complete a booking with Zen Educate, all relevant information for your required Ofsted Single Central Record will automatically be emailed to the school along with a photo of the candidate."*

98. At this point in the evidence the claimant started to indicate that [MB 516] was, in fact, a letter of assurance. He was taken to [MB1041] which stated (inter alia, re paragraph 19) *"The proprietor must obtain evidence that the employment business has undertaken the necessary checks on each named individual. The evidence must be specific to each individual, not simply a general statement that checks have been carried out on staff supplied by the employment business."* As [MB516] was not specific to each individual it could not be compliant with paragraph 19 of the ISG. The claimant still maintained that his interpretation was that the letter of assurance would cover all the individuals coming from an agency, notwithstanding the contents of this part of the ISG.

99. The claimant was taken to paragraph 271 of KCSIE [MB1140] where it states that the SCR must indicate not only that the checks have been carried out or certificates obtained, but also that it must indicate the date when each

check was completed or the certificate obtained. It was put to the claimant that the only way it is possible to record the date of the checks performed for the individual staff member is if the letter of assurance covers only the individual worker and not all the staff supplied by a particular agency. It was put to him that the document at [MB516] could not provide that information and does not contribute anything useful to the SCR. The claimant could not disagree with this proposition with any enthusiasm. He accepted that if he had checked every member of agency staff and checked that the SCR contained the dates of all the checks, he would have realised that waivers were being used. The claimant accepted that, in hindsight, he would have this picked up sooner.

Evidence at second hearing

100. It was Ms Mann's evidence that the document at [CB33] was an example of a letter of assurance because it set out the vetting information about the individual worker under consideration. That said, in this example the agency was still awaiting the physical DBS certificate as the DBS had been verified digitally. This would be obtained along with photo. Ms Mann confirmed that there was an inconsistency because the School had created a system of waivers and did not have all this information for all staff. In her mind, obtaining such a letter of assurance was step one of a process as it got the relevant information from the agency which should be obtained before the worker started work. Ms Mann was aware that they were not receiving all this information for all staff.

101. In cross examination Ms Mann was taken to various documents which apparently contained 'suspect' DBS certificate numbers. However, Ms Mann made the point that, if there was a document on the record containing this information and it included a dubious DBS certificate number, this should still have been picked up by the claimant when the individual's DBS and ID were checked on arrival for their first day in work. However, much of this evidence was given in response to a series of hypothetical scenarios posited to the witness by claimant's counsel. As a result, this was not discussed with the claimant at the appeal hearing because the claimant had not raised these potential scenarios during the course of the respondent's internal disciplinary process. Ms Mann was asked a series of hypothetical questions about scenarios where it was suggested that the claimant was not at fault and could not have known that there was a problem. However, this Tribunal claim (and the fairness of the respondent's decision to dismiss) has to be decided based on the situation and the evidence as it actually was during the disciplinary and appeal process and not on the basis of a hypothetical scenario which did not play any part in the respondent's considerations in this case and was not raised by the claimant during the disciplinary process. If the claimant did not raise these scenarios at the time (and there was nothing in the information before Ms Mann to alert her to these hypothetical scenarios) Ms Mann cannot be criticised for not foreseeing them and not addressing them. Ms Mann made the point that the claimant knew the allegations that he was facing and if he had evidence to prove that he was not responsible for the misconduct then he should have taken the opportunity to produce it during the respondent's hearing. The claimant was not suspended and so he had access to all the information he needed to defend himself.

102. In relation to paragraphs 269-271 [MB 1140-1141] it was suggested to Ms Mann that a letter of assurance can 'cover' a member of staff without naming the individual member of staff. Ms Mann disagreed. Her understanding was that the letter of assurance would have to name individuals and address an individual's circumstances in order to be a relevant letter of assurance. For example, it is not possible to provide the dates referred to in paragraph 271 if it is a general letter of assurance. She remained steadfast that letters of assurance had to be for individual staff rather than of generic application. She remained steadfast that the claimant admitted that not all of the agency staff at the School were on the SCR, only those who were going 'temp to perm.'

103. During cross examination at the second hearing the claimant sought to assert that he had not previously agreed that a letter of assurance and a waiver were mutually exclusive things. However, my note of the evidence at the first hearing suggested that he agreed that evidence of a waiver was evidence of a breach of the regulations which tends to suggest that a letter of assurance and a waiver are mutually exclusive things.

104. During cross examination at the second hearing the claimant maintained that [CB 192] was an example of a letter of assurance. This does not sit comfortably with the fact that the letter is sent by the School to the agency and requests the information to confirm that checks have been carried out. It sets out the requirements for the checks. The end of the document includes a signature box for the agency to sign to say that they would comply with the contents of the document and confirm that they would complete all the required checks. He then suggested that this was actually an unsigned letter of assurance and once it was signed it would be a letter of assurance.

105. I am not persuaded that this is the correct interpretation of the document. The more natural reading is that it is a document from the respondent to the agency setting out what the respondent required from the agency when it sent workers to the School. By signing in the box at the end of the document the agency was merely confirming that it would (i.e. in the future, when workers were supplied) complete all the checks specified in the document and give the School the required information. It was the agency confirming that it would comply with the School's terms of business for safeguarding issues. The body of the letter even states that the 'agreement' will be renewed on an annual basis. It does not show compliance for any individual or group of workers supplied by the agency to the school. Rather, it implies that further documentation will be provided to show that the checks have been done and to provide the School with the relevant information.

106. The claimant accepted that the document at [CB 96] was a checklist of vetting information and that it was effectively an individual/specific letter of assurance. The claimant was then taken to the SCR at [CB443] and was able to see that in an example from the Zen agency it recorded the DBS certificate number and the date that it was checked by the agency. He was able to accept that this information must have come from looking at the vetting/booking form. He accepted that where there was a booking confirmation form with the individual information on it this was on the SCR

but where there was a 'waiver' it would not/ could not have this information on the SCR. There would have to be a blank where there was a waiver in place because the necessary information would not be available and could not be filled in.

107. The claimant maintained that he did not refer to the issue of dubious DBS numbers during the disciplinary or appeal proceedings because he was just responding to questions which were put to him by the respondent. (This did not take account of the fact that he submitted written documents in advance of both hearings where he gave examples of the problems with the disciplinary case and procedure, as he saw them. I did not have my attention drawn to any contemporaneous *document* where the claimant took the opportunity to refer to dubious DBS numbers either.) The claimant was also unwilling to accept that he had not raised any allegation that there had been a 'secret back channel of communication' between the Assistant Head and the agencies prior to the second tranche of Employment Tribunal hearing days in July 2025. He maintained that his narrative had been consistent throughout. The claimant said that he believed that he was complying with the requirements for the SCR and maintained that the criticisms made of him reflected 'best practice' or were a 'matter of interpretation.' He 'could see why you might want to add more detail.' He had to be pushed and persuaded to accept that saving the document at [MB516] would not render the SCR legally complaint. Even so, he only accepted that with the benefit of hindsight, and not that he would realise this at the time of his dismissal and appeal.

The law

108. Employees with more than two years' service (section 108(1) Employment Rights Act 1996) have the right not to be unfairly dismissed.

109. Section 98 of the Employment Rights Act 1996 states (so far as relevant):

> *(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair it is for the employer to show-*
> *(a) the reason (or if more than one, the principal reason) for the dismissal, and*
> *(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
>
> *(2) A reason falls within this subsection if it-*
> *….*
> *(b) relates to the conduct of the employee,*
> *….*
>
> *(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the 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 sufficient reason for dismissing the employee, and

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

110. In line with the Employment Rights Act it is for the respondent to prove the reason or principal reason for the dismissal. A 'reason for dismissal' has been described as 'a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee' *(*Abernethy v Mott, Hay and Anderson 1974 ICR 323).Thereafter, the burden of proof is neutral as to the fairness of the dismissal *(*Boys and Girls Welfare Society v Macdonald 1997 ICR 693, EAT).

111. In Royal Mail Group Ltd v Jhuti [2019] UKSC 55, in the context of a claim of automatically unfair dismissal by reason of protected disclosure, the Supreme Court held that identification of the reason for a dismissal should be approached in a broad and reasonable way in accordance with industrial realities and common sense. In identifying that reason, a court generally needed to look no further than at the reason given by the appointed decision-maker but, if a person in the hierarchy of responsibility above the employee determined that the employee should be dismissed for one reason but hid it behind another, invented reason which the decision-maker adopted, it was the court's duty to penetrate through the invention and hold that the reason for the dismissal was, in fact, the hidden reason. Lord Wilson, JSC, noted that the facts of that case were extreme in that (paragraph 41 onwards):

"(a) an employee on trial blows the whistle upon improper conduct on the part of her line manager's team;

(b) her line manager responds by deciding to pretend that the employee's performance of her duties is inadequate and to secure a conclusion that she has failed her trial period;

(c) over the next months he bullies and harasses her with targets, meetings and an improvement plan, by which he sets her up to fail;

(d) he succeeds in creating, in e-mails and otherwise, a false picture of her inadequate performance;

(e) the decision to dismiss the employee is made by an officer who, in her review of the evidence, fails to perceive the falsity of the picture which he has created; and

(f) in particular the employee, in no condition to meet the decision-maker or otherwise to present her case clearly to her, fails to help her to understand the falsity of the picture.

Instances of decisions to dismiss taken in good faith, not just for a wrong reason but for a reason which the employee's line manager has dishonestly constructed, will not be common."

He noted that (paragraph 60):
"If limited to a person placed by the employer in the hierarchy of responsibility above the employee, there is no conceptual difficulty about attributing to the employer that person's state of mind rather than that of the deceived decision-maker."

112. In a conduct dismissal case the questions to be addressed by the Tribunal are:
    a. Did the respondent have a genuine belief that the claimant was guilty of the alleged conduct?
    b. Did the respondent carry out a reasonable investigation into the allegations of misconduct?
    c. Following the investigation, did the respondent have reasonable grounds or evidence for concluding that the claimant had committed the alleged misconduct?
    d. Did the respondent follow a fair procedure in relation to the disciplinary allegation? If there is a failure to adopt a fair procedure at the time of the dismissal, whether set out in the ACAS Code or otherwise (for example, in the employer's disciplinary rules), the dismissal will not be rendered fair simply because the unfairness did not affect the end result. However, any compensation is likely to be substantially reduced (Polkey v AE Dayton Services Ltd 1988 ICR 142, HL)
    e. Did the decision to dismiss the claimant fall within the band of reasonable responses which a reasonable employer might have adopted?

    (See British Home Stores Ltd v Burchell 1980 ICR 303, EAT)

113. In considering the so-called 'band of reasonable responses' the Tribunal must not substitute its own view for that of the reasonable employer (Iceland Frozen Foods Ltd v Jones 1983 ICR 17, EAT; Foley v Post Office; HSBC Bank plc (formerly Midland Bank plc) v Madden 2000 ICR 1283, CA). As stated in the Jones case:

    '*We consider that the authorities establish that in law the correct approach for the… tribunal to adopt in answering the question posed by [S.98(4)] is as follows:*
    (1) the starting point should always be the words of [S.98(4)] themselves;
    (2) in applying the section [a] tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the… tribunal) consider the dismissal to be fair;
    (3) in judging the reasonableness of the employer's conduct [a] tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;

(4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;
(5) the function of the… tribunal, as an industrial jury, 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.'

114. The band of reasonable responses applies to the question of the procedural fairness of the dismissal as well as the substantive fairness of the dismissal. *(*J Sainsbury plc v Hitt 2003 ICR 111, CA*;* Whitbread plc (t/a Whitbread Medway Inns) v Hall 2001 ICR 699, CA.*)*

115. The reasonableness test is based on the facts or beliefs known to the employer *at the time of the dismissal*. A dismissal will not be made reasonable by events which occur after the dismissal has taken place *(*W Devis and Sons Ltd v Atkins 1977 ICR 662, HL.*)*

116. The claim of unfair dismissal is a statutory claim and statutory principles and associated case law guidance apply. It is not the same as the common law concept of wrongful dismissal and the same case facts may result in different outcomes under the statutory test as compared to the common law test. The question to be addressed is that posed by section 98(4) Employment Rights Act 1996. This requires the Tribunal to look at the fairness of the dismissal. It does not require the employer to specifically categorise the conduct as gross misconduct entitling the employer to dismiss summarily before it can decide that the dismissal was fair within section 98(4), although the two concepts may well coincide in many cases.

117. Dismissal for a first offence properly categorised as gross misconduct may often be assessed as a fair dismissal within section 98(4). The question for section 98 is whether the decision to dismiss falls within the range of reasonable responses in all the circumstances. Was the conduct itself serious enough? What other relevant factors are there? Generally speaking, dismissal for a first offence will be reserved for acts of gross misconduct but there is no statutory rule to that effect. Dismissal for gross misconduct is not automatically fair (Brito-Babapulle v Ealing Hospital NHS Trust [2013] IRLR 854, EAT). An employer should still consider whether dismissal is reasonable after considering any mitigating circumstances rather than assuming that dismissal for gross misconduct will always be fair. (That said, it is not for the Tribunal to substitute its own view for that of a reasonable employer.) It is relevant to consider whether there are mitigating factors indicating that there should be a lesser sanction. (Indeed, aggravating factors may also be considered and taken into account). What is the attitude of the employee to their own conduct? Is there remorse? Will the conduct be repeated in future? There *may* be factors in any given case which take the decision to dismiss outside the range of reasonable responses even where there is said to be gross misconduct.

118. An employee may argue that he has been unfairly dismissed on the basis that the employer has treated him inconsistently as compared to other employees. Dismissal might be considered an unfair sanction because the

employer has, in the past, treated other employees guilty of similar misconduct more leniently. Such a dismissal may then be unfair because it is not in accordance with equity within the meaning of section 98(4) (see Post Office v Fennell *[1981] IRLR 221*). However, provided the employer has considered previous situations and distinguished them on rational grounds, it will not be possible to say that the sanction of dismissal is inappropriate. In general terms, inconsistent behaviour can arise in one of two ways. First, the employer may treat employees in a similar position differently. Second, he may, in relation to a particular employee, have treated certain conduct leniently in the past and then suddenly treated it as a dismissible offence without any warning of this change in attitude. Both forms of inconsistency may render a dismissal unfair.

119. Although the employer should consider how previous similar situations have been dealt with, the allegedly similar situations must truly be similar (Hadjioannou v Coral Casinos Ltd [1981] 352).This is likely to set significant limitations on the circumstances in which alleged inequitable or disparate treatment can render an otherwise fair dismissal unfair. Second, an employer cannot be considered to have treated other employees differently if he was unaware of their conduct. Third, if an employer consciously distinguishes between two cases, the dismissal can be successfully challenged only if there is no rational basis for the distinction made (Securicor Ltd v Smith *[1989] IRLR 356.*) The question is whether the decision to treat them differently is so irrational that no reasonable employer could have made it. The question of consistency is subject to the band of reasonable responses test so tribunals should not substitute their own view for that of the employer. Provided the assessment of similarities and differences between different cases is one a reasonable employer could have made, the tribunal should not interfere even if its own assessment would have been different.

120. In Hadjioannou the EAT accepted that a complaint of unreasonableness based on inconsistency of treatment would only be relevant in limited circumstances:

    a. Where employees had been led by their employer to believe that certain conduct would not lead to dismissal;

    b. Where others had been dealt with more leniently supported a case that the stated reason for dismissal was not the real reason;

    c. Where decisions made by an employer in ‘truly parallel’ (later held by the EAT in Doy v Clays Ltd EAT 0034/18 to have meant ‘truly or sufficiently similar’) circumstances indicated that it was not reasonable for the employer to dismiss.

121. The claimant relied on the recent decision in Hewston v OFSTED [2025] EWCA Civ 250 in which it is said that the Court of Appeal gave guidance relevant to the determination of unfair dismissal claims. The claimant had brushed water off the head and touched the shoulder of a pupil who had been caught in a rainstorm. It was reported as inappropriate touching. He was dismissed. There was no ‘no touch’ policy in operation. The question

was whether the claimant should have appreciated that acting in the way that he did might have rendered him liable for dismissal. The Court of Appeal confirmed that the issue was whether, in the absence of a no touch policy, it had been reasonable for the appellant to take the view that the claimant's conduct was of a kind which he should have realised would be regarded as warranting dismissal. The Court of Appeal stated that fundamentally, the EAT found that, in the absence of a 'no touch' rule or other explicit guidance covering a situation of the relevant kind, the claimant had had no reason to believe that he was doing anything so seriously wrong as to justify dismissal. The Court of Appeal found that that EAT conclusion was 'plainly right.' Counsel for Mr Stockton asks me to conclude that there was nothing in the documents in this current case which would put the claimant on notice that he was at risk of dismissal. Should Mr Stockton have realised that his conduct would be regarded as warranting dismissal? Was the safeguarding issue apparent enough that the claimant could expect a dismissal?

122. In the event that there is a procedural flaw at the disciplinary stage of a process, is it cured by the appeal? Are the procedural flaws so great that only a complete rehearing at the appeal stage will be properly curative of them? Claimant's counsel referred to Biggin Hill Airport Ltd v Derwich UKEAT/0043/15 in this regard. See also Taylor v OCS Group Ltd [2006] IRLR 613. There is no rule of law that only a rehearing is capable of curing earlier defects and a mere 'review' is never capable of doing this. What matters is not whether the internal appeal was technically a 'rehearing' or a 'review' but whether the disciplinary process as a whole was fair. The task of the tribunal is to apply the statutory test and, in doing so, they should consider the fairness of the whole of the disciplinary process. If the Tribunal finds that an early stage of the process was defective and unfair in some way, it will want to examine any subsequent proceeding with particular care. The Tribunal's purpose in so doing will not be to determine whether it amounted to a rehearing or a review but to determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at the early stage.

123. In the event that a claimant establishes that he has been unfairly dismissed, the question of remedy will arise. In most cases the issue is one of compensation rather than reinstatement or re-engagement. The Tribunal will then consider what loss the claimant had sustained in consequence of the dismissal and will then consider making a basic and/or a compensatory award. The Tribunal will consider whether the claimant has taken reasonable steps to mitigate his loss in determining the period/amount of loss to be compensated. The Tribunal may also consider whether the basic or compensatory award should be reduced pursuant to section 122(2) and/or section 123(6) of the Employment Rights Act 1996. A reduction in the basic award may be made where and to the extent that it is just and equitable to do so based on the claimant's conduct prior to the dismissal. A reduction may be made to the compensatory award where it is found that the claimant's blameworthy or culpable conduct contributed to the dismissal.

CONCLUSIONS

Potentially fair reason for dismissal?

124. Based on the evidence presented, I am satisfied that the sole or principal reason for the dismissal was conduct and that this was the respondent's genuine reason for dismissal. The claimant accepted that "waivers" had been signed off for agency staff recruited at the School without appropriate safer recruitment checks being completed on those staff. The inadequate recruitment checks happened during a period when he was ultimately responsible for compliance with safeguarding requirements at the School. The claimant also accepted that he gave a character reference to a colleague who, at the time, was under a police investigation, albeit he submitted in mitigation that he thought he was allowed to do that due to his interpretation of the emails from HR. There was sufficient evidence to demonstrate the misconduct and the claimant also admitted the substance of the misconduct albeit he suggested it did not merit dismissal in all the relevant circumstances.

125. The claimant alleged that the real reason for his dismissal was because he had decided to leave the school to go to another competitor. The claimant alleges that the decision to dismiss him was predetermined. However, the claimant's allegation lacks force partly because the alternative role that the claimant had found was as a teacher (for a better work / life balance) rather than in a leadership position (e.g. Assistant Head or Headteacher) The claimant's theory is that the respondent wanted to avoid his colleagues leaving the School to follow him to a competitor school. This theory is not credible in circumstances where the claimant was not leaving to pursue an alternative leadership role. Colleagues were unlikely to follow the claimant to another school if he was just going to be one of their colleagues and peers rather than their direct line manager or some part of the leadership team within the school. In such circumstances, any colleague who followed him to another school would not be working for the claimant. He would not be leading or managing them.

126. Furthermore, the respondent did not become aware that the claimant was intending to leave for a competitor school until *after* it had started the disciplinary investigation into the claimant's alleged misconduct. The disciplinary investigation started on around 20 March 2024 and the claimant was interviewed on 5 April 2024. The other witnesses were interviewed on 28 March 2024. The reference request from the claimant's potential new employer was not flagged up by Mr Deacey until 5 April 2024.The disciplinary allegations (and much of the disciplinary evidence) had already been identified by the time the respondent became aware of the claimant's intention to go to another school. I am not satisfied that the claimant's intention to go to a competitor school can be found to be either the sole or the principal reason for the dismissal in such circumstances.

127. The Tribunal was asked to consider and apply the principles enunciated in Royal Mail Group Ltd v Jhuti [2019] UKSC 55 that, in a claim for unfair dismissal, the reason for the dismissal could be a reason other than that given to the employee by the decisionmaker. If there is evidence that a person in the hierarchy of responsibility above the employee has

determined that the employee should be dismissed for one reason, but has hidden it behind another, invented reason (which the decisionmaker adopted) it is said to be the Tribunal's duty to penetrate through the invention and hold that the reason for dismissal was, in fact, the hidden reason.

128. Whilst, in theory, such a principle could be applied in the claimant's case, there is no adequate evidential basis for me to do so. The Jhuti case talks of a manipulating decisionmaker (higher up the line of responsibility) who manipulates the innocent decisionmaker into dismissing for an ostensibly genuine reason but does so because they wish to see the claimant dismissed for a hidden reason. The difficulty in Mr Stockton's case is that, when asked, claimant's counsel could not really identify the real decisionmaker who was manipulating the disciplinary procedure for their own ulterior reasons. Reference was made to the Managing Director, Dan Cooke, and Gary McConnell from HR. Whilst there were a number of possibilities, there was no specificity as to what had been done, and by whom, in order to engineer the claimant's dismissal. Rather, there was an attempt to identify individuals who could be said to be above the claimant in the chain of command without addressing *how* they engineered the dismissal or *why* they would wish to do so. The theory was not backed by the necessary evidence. Without clarity as to who was said to have engineered the claimant's dismissal, it is not possible to test the theory to see if such manipulation actually took place.

129. I was directed to MB [906-911] and some redacted emails. However, these are emails which were sent after the decision to dismiss the claimant had been communicated to the claimant. They do not provide any real material from which I can infer that the two individuals had engineered the decision to dismiss because of the claimant's intention to go to another school. At most, the unredacted information might suggest that they agreed with the outcome of the disciplinary process. It does not necessarily follow that they manipulated Mr Ribbons into making the decision for an ulterior motive or hidden reason. I am not satisfied that there is sufficient evidence on which to base the Jhuti-type finding that Ms Meredith seeks.

130. The claimant relies on the email dated 5 April notifying various individuals that the claimant was intending to leave to go to another school as evidence of the predetermined/manipulated reason for the claimant's dismissal. However, the disciplinary investigation which led to the dismissal had already been commissioned before the respondent was aware that the claimant intended to go to another school. If the motivation was to avoid staff leaving to follow the claimant to a competitor, this does not bear real scrutiny when he was not going to a leadership role, for the reasons stated above. It is unclear what benefit there could be to anyone at the respondent in engineering the claimant's dismissal in such circumstances.

131. Having reviewed the totality of the available evidence I am not satisfied that the claimant's allegation is credible. I am unable to find, on the balance of probabilities, that the sole or principal reason for the dismissal was the claimant's intention to resign to go and work for another school as a teacher. Still less am I able to uncover the links between the relevant managers in the organisation to see who would be driving this plot and how they would

have manipulated Mr Ribbons and Ms Mann into making their preferred decision. For the avoidance of doubt, I was satisfied that both Mr Ribbons and Ms Mann were honest witnesses and that they made their decisions for the reasons that they said they had. Whether those decisions were fair or reasonable is a separate matter for me to determine, but I am not satisfied that they were, in truth, deciding to dismiss the claimant because of his intention to go to another school. I am not satisfied that there is evidence to show that they were unwittingly manipulated into dismissing the claimant for this reason. The reason for the dismissal is established as the potentially fair reason: conduct.

Genuine belief in guilt based on reasonable grounds

132. I am satisfied that the disciplinary and appeal decisionmakers had a genuine belief that the claimant was guilty of the alleged conduct and that it was based on reasonable grounds. Furthermore, the claimant made admissions during the course of the procedure and did not raise some of the arguments that he relies upon in these Tribunal proceedings during the currency of the respondent's internal procedures.

133. Allegations 1 and 4 were proved.

134. The claimant has accepted throughout that an unknown number of agency staff worked in his school for an unknown period without the appropriate safeguarding checks (DBS and references) in place. Further, there is evidence to show that the required records were not kept and the relevant documents from the agencies were not obtained. The SCR was incomplete. The claimant also accepted that some agency workers were not on the SCR at all. The unauthorised use of waivers was not implemented by the claimant but by the Assistant Headteacher. However, the absence of proper safeguarding checks and documents meant that this went undiscovered by the claimant. The claimant was the responsible person for the purposes of the legal safeguarding obligation imposed on the School by the various documents such as KCSIE. The claimant's defence to much of this was, essentially, that he was unaware of what had been happening.

135. The claimant accepted throughout that he had provided a colleague under police investigation with a personal character reference. His defence was that he was unaware that he was not allowed to do so.

136. Looking at the statutory guidance it is clear that every agency worker had to be listed on the SCR even if they only worked at the school for one day (paragraph 269 KCSIE). The evidence established that the claimant failed to record all agency workers on the SCR. He accepted during the investigation that there were agency staff in the school who were not on the SCR. The finding in the investigatory report to this effect was not challenged. The claimant did not deny during the disciplinary hearing that he did not record all agency staff on the SCR and that he had not been cross referencing the agency tracker against the SCR to ensure that all agency staff were recorded prior to the waiver issue coming to light. He also admitted that the school was not doing physical DBS checks. He also

admitted at appeal stage that he did not record all agency staff on the SCR. He continued to admit this during cross examination.

137. The assertion that there were fake DBS certificates was only made during the second tranche of Employment Tribunal hearings. If this was a genuine concern on the claimant's part and if he genuinely felt that the misconduct was not proved, one might have expected him to raise this issue at an earlier stage. In any event, if fake DBS certificates were on the SCR but the appropriate checks had been made on the worker's arrival to start work at the School, the existence of the fakes would have been identified. The fact that the claimant did not ensure that appropriate checks were done on day one of the worker's engagement only served to compound the problem.

138. The claimant also admitted the fact that he had provided the character reference directly to RC. The claimant had accepted that it was standard practice to seek HR guidance to deal with reference requests (second paragraph numbered 60 at page 12 of his first witness statement.) Hence, he actually forwarded the request to Ms Russell who treated it as a request for guidance.

139. The claimant asserts that Ms Russell's instruction not to send the document only applied to the other records and not to the character reference. However, Ms Russell did not say this in terms on the face of the email. The more plausible reading of the response is that it applies to both documents. If it did not apply to the reference, one might expect it to say so explicitly. This is particularly so given that the subject line is titled "Character references." Further, if the claimant was genuinely uncertain, he could (and should) have sought further clarification as to which documents he could or could not send to RC.

140. Any reliance on an email which was sent in April 2024, long after the reference was sent (142) cannot be relevant to the claimant's interpretation of the guidance/instructions that he received at the material time when he decided to send the reference. Furthermore, that email from Ms Russell was at the end of an email chain which did not refer to a reference but solely to the other records. So, even if it had been sent at the same time as the other email from Ms Russell, it would not be of assistance in interpreting instructions about the *reference*. It was not dealing with the same issue.

141. I am satisfied that there was no reasonable need to investigate with Ms Russell to explore the way that she herself intended her email to be read or interpreted by its recipient. The material issue was whether the *claimant's* interpretation of what he read was a reasonable one and whether he acted reasonably in the circumstances. Investigating *Ms Russell's' intentions* would not assist. The evidence shows that the claimant's own interpretation of the email had not been overlooked by the respondent. It had been considered by the respondent but found to be unreasonable in all of the circumstances. The respondent's decisionmakers were reasonably entitled to disagree with the claimant's interpretation of the meaning of the email in the circumstances.

142. Even if the respondent wasn't entitled to conclude that Ms Russell instructed the claimant not to send the reference (which I do not accept), the claimant

could be expected to apply some common sense and professional insight to the situation. He knew that he was sending an open reference on headed notepaper in his capacity as the Headteacher of the School. He had, himself, referred to issues of reputational damage [MB138] so it is not clear how he did not see the risk of reputational damage arising from the reference that he sent to RC. Although it is described as a character reference, it is not just factual but gives an effusive and positive opinion about RC. Even without HR guidance, the claimant, as an experienced teacher in a position of responsibility, could be expected to have exercised more caution and to have refused the reference in the absence of explicit authorisation from HR. The reputational risks were obvious and understandable.

143. Mr Ribbons was entitled to conclude that the claimant had sent a reference to his colleague against due process and express instructions not to do so. Mr Ribbons genuinely believed on reasonable grounds (i.e. based on the email exchange) that the claimant had referred the reference request to HR and had been advised not to send a reference directly to his colleague. Contrary to policy and a specific instruction, the claimant had done so anyway. In the circumstances, Mr Ribbons was entitled to reject the claimant's defence that he thought he was permitted to send the reference. Given all the available evidence the respondent was entitled to conclude that this allegation was proven and that the reference was provided without going through the appropriate processes and that it represented reputational and safeguarding risks given the context of the criminal investigation.

Reasonable investigation and procedural matters

144. Much was made of the failure to ask Ms Russell what she intended to convey when she sent the email to the claimant. The claimant said that it was important to understand what Ms Russell's interpretation of her own email was. However, as stated above, I am satisfied that the issue for the disciplining officer was not what Ms Russell meant when she sent the email but how the claimant interpreted it when he received it, whether that was a reasonable or justifiable interpretation and whether that justified him sending the reference to RC. The claimant was concerned that his interpretation of Ms Russell's email had been overlooked. However, this was not the case. The claimant's interpretation is specifically referred to by the investigator in her report. Mr Ribbons recognised that the claimant interpreted Ms Russell's email as referring solely to the request for injury records. However, Mr Ribbons and Ms Mann were reasonably entitled to disagree with the claimant's interpretation for the reasons they gave during the Tribunal hearing and contemporaneously.

145. Mr Ribbons was entitled to conclude that the claimant had sent a reference to his colleague against due process and express instructions not to do so. Mr Ribbons genuinely believed on reasonable grounds (i.e. on the email exchange) that the claimant had referred the reference request to HR and had been advised not to send a reference directly to his colleague. Contrary to policy and a specific instruction, the claimant had done so anyway. In the

circumstances, Mr Ribbons was entitled to reject the claimant's defence that he thought he was permitted to send the reference.

146. The claimant referred to the respondent's failure to interview Mr Deacey. Would Mr Ribbons' decision have been different if Mr Deacey had given him evidence that he had never told the claimant not to give a character reference? Mr Ribbons said such evidence would have made no difference because, on this particular occasion, the claimant was instructed by Ms Russell not to send the reference. The claimant did not just rely on his general knowledge of custom and practice within the school without referring it to HR. Further, Mr Ribbons explained that Mr Deacey was unavailable for interview and this is what HR had told him at the time. It might have been preferable for the respondent to chase up access to Mr Deacey so that they could speak to him if at all possible. That might have been a *better* investigation process. However, the applicable test for an unfair dismissal claim in the Tribunal is the range of reasonable responses. I remind myself that I am not to substitute my own view for that of the reasonable employer. I am not to decide the 'best' or 'preferred' method for carrying out the disciplinary procedure. I am required to consider the range of reasonable responses. Furthermore, the respondent never suggested to the claimant that they *had* been able to speak to Mr Deacey. He was not misled about this. In those circumstances, if he felt that further evidence could have been obtained from other sources to make up for the absence of Mr Deacey's evidence, he could have suggested this or provided it as part of his defence. He did not do so.

147. In relation to the suggestion that Mr Ribbons should have spoken to Mr Deacey before deciding on sanction, it was reasonable for Mr Ribbons to await his meeting with the claimant on 13 May 2024 before attempting to contact Mr Deacey in response to the claimant's request that he do so on 8 May 2024. Mr Ribbons wanted to ask the claimant what he wanted Mr Deacey to be asked. In the meeting on 13 May it became clear that Mr Deacey was no longer at work. When Mr Ribbons asked HR whether he could contact Mr Deacey, he was told that he could not. In the circumstances, it was reasonable for Mr Ribbons to decline to interview Mr Deacey on the basis that he considered he was effectively off limits. Even if some reasonable employers might have pursued contacting Mr Deacey further than Mr Ribbons did, this does not mean that Mr Ribbons' approach to the matter was outside the reasonable range of responses, given the circumstances at the time.

148. At the appeal stage, Ms Mann considered that the meaning of Ms Rusell's email was clear on its face. Given its subject title, it could not be referring solely to injury information. That was a reasonable position for her to take. Ms Mann was also clear that, in her opinion, the reference given went beyond the scope of a character reference because it stated how RC worked with children and commented on his professionalism. Again, that was a view which was reasonably open to her in the circumstances.

149. During his oral evidence the claimant seemed to accept that in order for his interpretation of the email to 'work,' extra words would have to be added to it. He seemed to accept that there was nothing unfair about the

investigator's interpretation of the email. In essence the claimant went against what the investigator, disciplinary officer and appeal officer considered to be a direct instruction not to send the reference.

150. The claimant raised procedural concerns with the respondent at various stages of the investigation and disciplinary process. He set them out in writing. I considered the issues raised after the investigation stage. The claimant accepted that his concern about the date of the report was that it was dated 18 April 2024 whereas he received it on 29 April 2024. He was concerned that there were earlier versions which he had not seen. However, the process of drafting the report would not require disclosure of all interim versions to the claimant. The final version is the one which matters for the purposes of the disciplinary procedure in the case. Regardless of whether there were earlier versions, the claimant accepted that there were no factual errors in the investigation report provided on 29 April 2024 and it contained no conclusions that the investigator was not entitled to reach.

151. The claimant also accepted during the hearing that the delay in providing a welfare contact did not affect the fairness of the investigation.

152. As the interview transcripts contained spelling errors (because they were computer transcribed from Teams conversations), the claimant was concerned that they were difficult to understand and that it was hard to tell whether the interviews had been carried out fairly. However, the quality of the interview notes did not affect the factual findings in the report which the claimant accepted were accurate and fair. Having reviewed the transcripts I can see that they do contain some transcription errors (misspellings homophones etc) but it is perfectly possible to understand what has been said when they are read in context. The errors are not material and the transcripts could fairly be used for the purposes of the disciplinary process. It would have been preferable for them to be suitably amended to avoid the computer generated problems but the Tribunal has to apply the range of reasonable responses rather than asking the respondent to do exactly as the Tribunal or the claimant might have preferred.

153. The claimant considered that the fact that he had not been suspended during the investigation undermined the seriousness of the alleged safeguarding risk. This does not follow, as a matter of logic. The decision about whether or not to suspend an individual is not made by the dismissing officer or the appeal officer. Those decisionmakers' hands are not tied by the conclusions of those involved at earlier stage when a decision about suspension is made. Just because an earlier individual concludes that suspension is not required, this does not preclude the decisionmakers from concluding that there has been gross misconduct. Further, there is no absolute requirement to suspend an employee in cases of alleged gross misconduct, although it is permissible and often happens in practice. If all the available evidence suggests that it was reasonable to categorise the conduct as gross misconduct at the disciplinary and appeal stages, then it does not become unreasonable to categorise it as such merely because the employee has not been suspended at an earlier stage in the procedure. Furthermore, the lack of suspension meant that the claimant had fuller access to all the materials that he needed in order to prepare his defence to the charges because he was still at work during that time. It was a matter

for the respondent whether it wished to take the potential risk to the organisation of leaving the claimant in work and in post pending completion of the disciplinary procedure.

154. The claimant lacked confidence in the process because the same emails appeared more than once in the appendices to the report. However, as shown, this was because some pages contained more than one email so such pages appeared more than once. Repetition of emails did not adversely impact the fairness of the investigation or the conclusions reached in the report.

155. The claimant was concerned about the risk of collusion between witnesses because Ms Russell and Ms Langford were interviewed together. However, they were interviewed about separate topics. I am satisfied that there was no material risk of collusion in the circumstances. There is nothing to suggest that the way the interview was conducted affected the substance or veracity of the evidence provided. This choice did not render the procedure unfair.

156. The claimant suggested that the investigator made an unfair assumption that the claimant was aware that his colleague was under a police investigation. However, this was not an unfair assumption because it was true. The claimant never denied being aware that his colleague was under a police investigation and it was also apparent to anyone reading the reference request email. The fact that the investigator mentioned this fact for context when asking questions, did not result in the questions being unfairly loaded and did not unfairly imply blame.

157. The claimant was concerned that he had not been provided with clear guidance on how to check the SCR. However, the legal requirements for a compliant SCR were clear and were repeated in the policy documents as set out above. The claimant ought reasonably to have understood the purpose of the checks and what such checks needed to ensure. It was reasonable to expect him to understand how to check the SCR in all the circumstances. If he genuinely did not know, one would expect to see some evidence that he requested further guidance from the respondent. The claimant's lack of knowledge was not the result of a lack of training but the result of a failure to read and comply with legal documents that he was obliged to read and abide by.

158. The claimant was concerned that the investigator may have overlooked the alleged lie told by Ms Russell during the investigation interview (that the claimant had not flagged the reference request to HR.) However, this error was not overlooked at any stage. The investigator accepted it as an error because she did not find that the claimant had failed to flag the reference with HR. The investigator accepted that the claimant had flagged the reference request with HR because she found that the claimant went against a direct instruction from HR not to send the reference.

159. The claimant acknowledged during cross examination that there was a considerable degree of overlap between the complaints he made to Mr Ribbons about the investigation and his grounds of appeal.

160. The fact that the claimant may have been suffering from stress due to what he perceived as a lack of support during the disciplinary process did not reasonably mean that the respondent was precluded from dismissing him. I am also satisfied that Ms Langford did not have a dual role of interviewer and interviewee during the investigation process. The investigator interviewed Grace Russell and Justine Langford together but they were asked about different matters.

161. The fact that the Managing Director shared the outcome of the disciplinary process with the claimant's companion colleague before the claimant was informed may have been inappropriate but it did not provide a reasonable basis for requiring the appeal officer to overturn the decision to dismiss. It did not render the dismissal unfair.

162. Taking all the evidence into consideration and looking at matters in the round I am satisfied that the procedure used by the respondent in the claimant's case was fair. It was within the range of reasonable responses. The respondent carried out a reasonable investigation and provided the claimant with a fair opportunity to consider the case against him and to prepare his defence to the disciplinary case. The claimant had a fair opportunity to raise any matters in response to the allegation, both in writing and at the disciplinary hearing. The claimant further had a fair opportunity to appeal against the decision to dismiss him. Her could pursue his grounds of appeal in written form and orally at the appeal hearing itself. Whilst the procedure used was not without blemish, it did fall squarely within the range of reasonableness open to a reasonable employer in this case.

163. The claimant has further alleged that the outcome was predetermined. I do not accept that submission. I am satisfied that both Mr Ribbons and Ms Mann genuinely considered all the available evidence and came to their own decisions in relation to the disciplinary stage and the appeal. It is also notable that some of the disciplinary allegations against the claimant were not upheld. Only two of the original four survived through to the dismissal and appeal decisions. Had the respondent as an organisation decided that dismissal was the only appropriate outcome before the process had been completed, one might have expected the respondent to try harder to uphold the other two disciplinary allegations.

164. Looking at the totality of the evidence, I am satisfied that the claimant did know and understand the true nature of the allegations that he was facing during the disciplinary procedure and prior to the dismissal decision being made. Further, the claimant is an experienced teacher and was employed as a Headteacher. He therefore had a background knowledge of standards in education and can be expected to understand the professional context of the disciplinary case. He could reasonably be expected to understand the importance of safeguarding and have some knowledge of safeguarding requirements. He did not come to the process without such background knowledge. In such circumstances, the employer is not required to treat the claimant as though he were a newcomer to the profession when discussing the disciplinary allegations with him. Not everything would have to be spelled out to the claimant in order for him to fairly understand what was going on given his professional background and experience. In all the circumstances the claimant knew what he was alleged to have done wrong

and had a fair opportunity to defend himself. I do not accept that the claimant and the respondent's decision makers were 'talking past' each other when discussing matters such as the SCR. The claimant apparently understood what was being put to him and could have asked questions to obtain clarity if this was required at the time. Insofar as it was suggested that Mr Ribbons and Ms Mann had substantial material in their minds that was not drawn to the claimant's attention during the disciplinary process, I disagree.

165. The claimant sought to suggest in closing that there should have been further and wider investigations into the systems at the school (e.g. the checks for workers on arrival at the school.) It was suggested that the investigations undertaken were inadequate to address all of the allegations which were being made against the claimant. I am not satisfied that this is the case. The allegations were set out within the investigation and disciplinary documents and the investigation was reasonable and proportionate to the issues raised by the allegations. This is not a case where the claimant did not have a fair opportunity to know the case against him or to offer a proper defence to the charges. The evidence obtained by the respondent was reasonable and proportionate to the scope of the charges made against the claimant and for which he was dismissed. It will often be possible to construct extra steps that an employer *could* have taken in the course of a disciplinary procedure but this is not the same as establishing that they were reasonably *required* to take those extra steps.

166. In closing, the claimant referred to the fact that Mr Ribbons said in cross examination that he had searched his emails to find evidence that the claimant would have been informed that all references had to be provided through HR. No such evidence was located or shown to the Tribunal. It was asserted that this was unfair to the claimant and that the claimant had not been made aware of this. However, the respondent's decision to dismiss was not based on the claimant not knowing/ignoring some general policy or practice that references had to be provided through HR. Rather, it was based, amongst other things, on the fact that the claimant had sent the request to HR and then disregarded the instructions that Ms Russell specifically sent to him. Viewed in its proper context, Mr Ribbons' attempts to see if a general policy or practice about references had been communicated to the claimant were not material. This case was not based on reliance on general custom and practice but on the claimant's response to direct HR guidance.

167. I do not accept the claimant's submission that the respondent operated a system of 'general' or 'generic' letters of assurance for agency workers. Such a system makes no sense in the context of the legal requirements set out in the statutory guidance documents referred to above, and given the function of such a letter of assurance. A general/generic letter of assurance cannot perform the function required to fulfil the School's legal obligations, whereas a specific letter of assurance for a particular agency worker can.

168. Furthermore, I note that there is in fact a section in the SCR where individual agency workers are listed with details of the relevant checks completed alongside each individual, including individual dates and details [CB180]. This is to be compared with the section where the agencies themselves are

recorded as providers to the School [CB182]. The latter seems to refer to the generic letters of assurance which confirm how the *agency* will operate in supplying the staff to the School rather than giving any safeguarding assurances about the supplied agency *staff* themselves. To the extent that the latter are referred to as letters of assurance, they are not letters of assurance for the purpose of obtaining the required safeguarding information. In fact, they provide no meaningful assurance or safeguarding information about the staff being supplied to the School. They do not cover the agency workers; they cover the agency itself.

Dismissal within the range of reasonable responses?

169. Both of the proven/admitted allegations are serious misconduct and can reasonably be categorised as gross misconduct when considered individually as well as when taken together.

170. Safeguarding is a critical issue in schools and particularly where pupils are vulnerable. There is a chain of responsibility for safeguarding within a school and the claimant, as Headteacher, was at the top of that chain of responsibility. He was the accountable individual.

171. The respondent's disciplinary procedure gave non-exhaustive examples of gross misconduct at [MB395]. They included:

> "Failure to comply with relevant statutory or regulatory requirements."
> "Any action likely to bring the Company into disrepute."

172. The respondent did not hold the claimant responsible for the creation of the waiver system. That was the responsibility of the Assistant Headteacher, to which the agency liaison seems to have been delegated. The claimant was not dismissed because of the waiver system. However, the fact that the Assistant Headteacher came up with (and implemented) the waiver system does not absolve the claimant of responsibility for the claimant's part in the safeguarding situation at the School. As the accountable individual, the claimant had overall responsibility for the systems in place in the School. He could not delegate matters to others and thereby absolve himself of responsibility. He retained line management responsibility for those individuals and he also retained responsibility for ensuring adequate oversight of the safeguarding systems and procedures at the School. If the system of waivers was created and operated during his tenure but without his knowledge, how did this happen if he had adequate oversight of the safeguarding procedures at the School? One can well imagine that a headteacher could be in ignorance of a system of waivers in his school if there were no opportunities for him to discover what was going on. However, the regulatory framework and the respondent's own internal procedures, if followed, provided the claimant with ample opportunities and 'contact points' to discover what had been going on and put a stop to it.

173. If the claimant had familiarised himself with the contents of the documents (such as KCSIE, the ISG and the school's own policies), he would have realised what information needed to be checked and recorded for each agency worker and where that information needed to be stored. He would

have realised that a so-called general or generic letter of assurance could not be compliant with the safeguarding requirements because it did not provide the necessary individualised details and dates for the workers.

174. If the claimant had carried out adequate checks of the SCR he would have realised (or at least had the opportunity to note) that waivers were being used because the SCR record would not include the relevant information for the individual worker. If he had checked the SCR alongside his records of the agency workers engaged by the School, he would have realised that some agency workers were being omitted from the SCR altogether. Any concerns about the quality or reliability of the information provided the agency (e.g. dubious DBS numbers) would have been more likely to be discovered if he had ensured that adequate checks were being done on the worker's first day at the school (e.g. photos and DBS certificates could be inspected.)

175. Thus, the fact that the Assistant Headteacher came up with the waiver system does not mean that the claimant was not also, separately guilty of gross misconduct in relation to safeguarding. His responsibilities were commensurate with his seniority as the Headteacher. By failing to implement and properly oversee the appropriate safeguarding checks and records he had not availed himself of a reasonable opportunity to see and understand what was going on in his school regarding recruitment and safeguarding. Whilst he was not the individual who had operated the waiver system, if he had properly checked that the SCR was complete and compliant he would have been alerted to the waiver problem. The fact that some members of staff were absent from the SCR meant that it was not legally compliant, notwithstanding the claimant's position that, at the time, he thought that it was. The reality is that by failing to check, he could not be reasonably satisfied that it was compliant. He was not entitled to rely on this ignorance as a defence to the disciplinary charges.

176. The claimant's evidence to the Tribunal was unimpressive on this point. He repeatedly skirted round the issue of whether the SCR was compliant and only admitted that it was not when he was left with no other real option. This was concerning given the responsibilities entrusted to the Headteacher in terms of safeguarding.

177. The way the claimant responded to the respondent's disciplinary procedure and his general lack of insight or self-awareness were material matters for the respondent to consider in deciding whether he could be allowed to continue in his post.

178. If the claimant had been compliant with all his obligations, unchecked agency workers would not have been able to work in the school. They were able to do so, even if only for a short time. This created an unnecessary and unacceptable safeguarding risk to vulnerable children. Given the importance of safeguarding compliance and the claimant's seniority, the respondent was entitled to view this as an established and proven act of gross misconduct. Whilst the documents (such as KCSIE) make it possible to operate a system of 'letters of assurance' (i.e. documents from the agency confirming that they had carried out the necessary pre-employment checks), such a system could not reasonably be interpreted as being without limits.

In order for a letter of assurance to provide any meaningful assurance to the School that the agency had carried out the checks that the school would otherwise have to do for itself, it had to be specific to the individual agency worker. A generic or general letter of assurance could provide no meaningful assurance. It would not stand up to any level of scrutiny if there was a problem in an individual's case. Only if the letter of assurance provided details as to when the checks had been made for the individual worker would it be possible to be reassured that safeguarding checks had in fact been done to address the safeguarding risks.

179. This is also clear from any reasonable objective reading of the relevant paragraphs in KCSIE and ISG. In such circumstances the document at MB 516 cannot have been seen as a letter of assurance and cannot reasonably have been seen as compliant. It does not meet the requirements for the purpose of a letter of assurance either as a matter of common sense or by reference to the statutory guidance and ISG. Indeed the claimant eventually accepted that saving a generic letter of assurance on the SCR did not render it legally compliant.

180. During the course of the proceedings the claimant sought to suggest that he had not had relevant matters specifically pointed out to him or that his training on this was inadequate. However, the claimant had undergone safeguarding training and this had been refreshed. The claimant struggled to justify his own interpretation of the statutory requirements in the face of the plain wording of the documents. It was, or ought reasonably to have been, apparent to him what the statutory and procedural requirements necessitated. The claimant did undergo training on KCSIE and Safer Recruitment Refresher training. This should arguably have told him what he needed to know. If he was unsure, as a responsible professional, one would expect him to take responsibility for checking with someone in authority. Furthermore, he had a duty to familiarise himself with the source documents (KCSIE etc). A reasonable person reading such documents would have realised, without specific training, that the SCR and letters of assurance, in order to be meaningful, needed to be individual and specific to the individual workers in the school, not just a bland and generic assertion that checks had been made for all people in a certain category. It was the claimant's personal and professional responsibility make sure he was familiar with such key documents which detailed his legal obligations. I am satisfied that the respondent was entitled to conclude that the claimant should not rely on being 'spoon-fed' all of the details.

181. I am persuaded that there was no real basis for the claimant's allegation that Mr Ribbons failed to consider alternatives to dismissal and/or the claimant's 10 year service history and blemish-free record. Mr Ribbons made it clear in his witness statement that he considered these matters. Orally, he stated that he did not want to dismiss the claimant but he could find no mitigation in this case.

182. The claimant sought to argue that his dismissal was unfair based on inconsistency arguments. However, I am not satisfied that the claimant's case was truly comparable with any of the others he referred to. None of the

comparators were facing two allegations of gross misconduct. Whilst there may have been safeguarding issues in the other cases, none of them had written a character reference for someone who was known to be under police investigation. This alone would merit the claimant receiving a different disciplinary sanction to the others.

183. Furthermore, the claimant was not at a comparable level of seniority to the Assistant Headteacher. He was legitimately subject to different expectations and standards. He was senior to the Assistant Headteacher. Furthermore, the nature of the safeguarding misconduct was different in each case. The respondent acted reasonably in applying different sanctions in the two cases. Furthermore, the decision makers in the two cases were different people. It is by no means certain that Mr Ribbons would not have dismissed the Assistant Headteacher as well as the claimant if he had been charged with making the decision.

184. The claimant accepted that he did not know enough about Mr Deacey for the claimant to rely on him as a comparator.

185. During the course of the hearing it became apparent that another headteacher had done a reference for RC. However, it appeared that this headteacher was not employed by the respondent and so the respondent was not required to consider whether it had treated the claimant consistently with this other headteacher. This was something of a red herring.

186. I am satisfied that there was no inconsistent treatment in this case because the claimant was not in sufficiently similar circumstances to his alleged comparators. The claimant was legally responsible for the SCR whereas they were not. The claimant faced two distinct allegations whereas they did not. The claimant held a different position from his two comparators in the management hierarchy. The claimant was ultimately responsible for the school, whereas they were not. Further, I am not satisfied that any difference in treatment was outside the band of reasonable responses.

187. Contrary to the claimant's assertions he was not held solely accountable. The claimant was aware that his Assistant Head (who signed the waivers) received a written warning. The claimant was also aware that his line manager left before the claimant's disciplinary hearing.

188. Taking into account all the relevant information, such as mitigation, I remain satisfied that the decision to dismiss the claimant would have been within the range of reasonable responses even if he was only facing the disciplinary charge relating to the safeguarding checks.

189. I have also considered whether dismissal would be within the range of reasonable responses in relation to the reference allegation as a separate matter. I am satisfied that the respondent reasonably concluded that the sending of the reference was in breach of express HR advice and custom and practice and that it also risked reputational damage. This concern was expressed to the investigator when Lauren Wright stated her concerns about the reputational risk of the school in giving a positive reference to someone who may be convicted of a serious criminal offence. I am

persuaded that the reputational risks were obvious and understandable and ought reasonably to have been recognised by the claimant at the time. The claimant had expressed similar reputational concerns a month earlier when the LADO recommended that RC return to the school with a risk assessment. The claimant was apparently reluctant for this to happen because of the risk of local reputational damage. The investigator was entitled to find that not only was the reference provided without going through the proper HR procedure but it also represented reputational and safeguarding risks as the subject was going through a criminal investigation, the outcome of which was unknown. The disciplinary and appeal officers were entitled to agree. Such action with such safeguarding and reputation risks is reasonably to be characterised as gross misconduct, particularly when it relates to the actions of the Headteacher. The investigator, disciplinary officer and appeal officer were entitled to conclude that in sending the reference, the claimant went against a direct instruction from HR not to do so and that, in doing so, he created reputational and safeguarding risks. There was the risk that the claimant's colleague could use the reference to get a job working with children when he was at risk of being convicted of a violent offence.

190. I am satisfied that dismissal would have been within the range of reasonable responses in response to the reference allegation if that had been considered as the sole act of misconduct. None of the mitigation relied on would be sufficient to take the decision to dismiss for this conduct outside the range of reasonable responses.

191. It follows, that when the two disciplinary charges are taken together, I am satisfied that the decision to dismissal was within the range of reasonable responses. The claimant was guilty of gross misconduct and/or gross negligence which may itself be capable of amounting to gross misconduct. Mr Ribbons and Ms Mann were entitled, based on a reasonable investigation, to genuinely believe that the claimant was guilty of gross misconduct in relation to having unchecked staff working in his school. They were also entitled to conclude that the claimant was guilty of gross misconduct in relation to the reference issue also. Certainly, both incidents of misconduct together were sufficiently serious to render dismissal an appropriate sanction.

192. The claimant admitted to allegations 1 and 4. His only real mitigation was alleged ignorance. However, if the claimant had familiarised himself with and followed the regulatory and policy documents of which he was aware, he would have identified the use of waivers and unchecked staff could not have worked in his school. If he had interpreted Miss Russell's email in the only way it could reasonably be interpreted, he would not have sent the reference. Safeguarding vulnerable children in a school is the most important duty of a headteacher. The mitigation was not such that no reasonable employer would dismiss in the circumstances. Dismissal for gross misconduct was within the band of reasonable responses.

193. There was nothing about the investigation, disciplinary procedure and appeal procedure which was sufficient to take the procedure outside the range of reasonable responses. There was no proper support for any allegation that the respondent failed to comply with the ACAS Code and no specific breaches have been identified.

194. The claimant drew my attention to the fact that, although he had been referred to the Teachers Registration Agency as a result of the conduct allegations, the TRA had decided not to take any action against him. This was said to suggest that the conduct was not serious enough to merit dismissal. However, that does not necessarily follow. A professional regulator applies its own rules of professional behaviour to an individual using its own procedures. I do not have any way of knowing precisely what standards of conduct the TRA enforces and whether they are comparable to the application of the 'range of reasonable responses' test to a dismissal decision. Unfortunately, the TRA's decision provides no guidance to the Tribunal in determining whether the decision to dismiss was fair or unfair within the meaning of section 98(4) Employment Rights Act 1996.

Procedural observation.

195. The written closing submissions for the claimant made much of the respondent's failure to comply with its disclosure obligations. I was invited to re-read the claimant's previous disclosure application which was to be heard and determined at an earlier hearing in February 2025 before a different judge. However, that application was withdrawn by the claimant and was not determined by the Tribunal. The application was not renewed before me. I do not know the extent to which the respondent concedes that the requested documents either exist or are disclosable. I cannot assume either to be the case when I have not decided the application or heard submissions from both parties in relation to it.

196. In such circumstances I am not in a position to trawl through an application which I have not determined (and which the claimant chose to withdraw for practical reasons) and draw specific inferences from the evidence which the claimant says is missing. I would be entering into the realms of speculation. At most, I can observe that the claimant was dissatisfied with the disclosure provided by the respondent in this case and has made that dissatisfaction clear. I can note the absence of specific pieces of evidence where this has been addressed in the witness evidence at the hearing. However, I can only hear and determine the case on the basis of the evidence that was actually before the Tribunal. If the claimant did not want to have a further postponement in order to get further disclosure and therefore chose to 'bat on' with the evidence which was available, he cannot then also expect the Tribunal to assume the existence of documents which would have supported his case even though they have not been obtained or produced to the Tribunal. I can, of course, draw the conclusion that the piecemeal and incomplete disclosure by the respondent may undermine the respondent's credibility. However, this is not a 'knock out blow' if the evidence which is available, when taken with credible witness evidence, is sufficient to establish that the decision to dismiss which was fair and within the range of reasonable responses.

197. Likewise in relation to any witness evidence which might have been given by Mr Deacey at the April 2025 hearing, the Tribunal refused the application due to the fact that it could not be granted without requiring a postponement of the hearing. This would have been necessary to ensure a fair hearing and fairness to both parties. The claimant was specifically asked whether, if put to his election, he would choose to obtain a witness order with an adjournment of the hearing, or to carry on with the hearing but without the benefit of the witness order. The claimant confirmed that he wished the hearing to proceed rather than be adjourned to start on a date in 2026. He could have made the alternative choice. I cannot make presumptions about the evidence which Mr Deacey would have given or read that into the conclusions in this judgment. I have just had to note the gaps in the evidence. I cannot accede to the claimant's request to presume that the missing evidence would have favoured the claimant and to find accordingly. Furthermore, to say that it is a binary choice to assume that the evidence either favoured the claimant or favoured the respondent is to ignore the experience of this Tribunal that evidence is seldom entirely favourable to either party. The evidence could demonstrate any one of a myriad of different possibilities.

Contributory fault and Polkey

198. If I had concluded that the dismissal was unfair for procedural reasons, I would also have concluded that the decision to dismiss was substantively fair. I would have concluded that if the alleged procedural flaws were remedied, the respondent would still have been able to make a substantively fair decision to dismiss the claimant. There would have been a 100% Polkey reduction in compensation.

199. Likewise, if the claimant's dismissal had been substantively unfair, I would have made a significant deduction from compensation for contributory fault to reflect the claimant's culpable or blameworthy conduct. The claimant signing off the SCR as legally compliant without properly checking and also sending a reference against an express instruction not to do so would have merited a significant and substantial reduction for contributory fault.

200. In light of the above I have concluded that the sole or principal reason for the dismissal was conduct. The respondent had a genuine belief in the claimant's guilt which was based on reasonable grounds following a reasonable investigation. The procedure used was within the range of reasonable responses and the decision to dismiss him also fell within the range of reasonable responses. As a consequence, the claimant's claim does not succeed.

Approved by:

Employment Judge Eeley

Date: 27 September 2025

JUDGMENT SENT TO THE PARTIES ON

31 October 2025

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/