EMPLOYMENT TRIBUNALS

Claimant: **Mr M Tariq**

Respondent: **Partnership Learning Trust**

Heard at: **East London Hearing Centre**

On: **14, 15, 16 May and 20 June 2025**

Before: **EJ J Feeny**
Members: **Ms S Harwood**
Mr M Rowe

Representation
Claimant: In person
Respondent: Mr A Cullen, counsel

JUDGMENT

The claim for unfair dismissal is not well-founded and is dismissed.

REASONS

Introduction

1. This has been a hearing of the Claimant's claim for unfair dismissal.

2. Although the Claimant had sought to revive his claim for race discrimination for the purposes of this hearing, this claim had been withdrawn by him at a hearing on 25 July 2024, and subsequently dismissed upon withdrawal by EJ Howden-Evans. After hearing submissions on the point, we determined that we had no power to go behind this withdrawal (see further below).

3. We heard evidence from Matthew Gillham, Richard Paul, and Alan Lazell for the Respondent. The Claimant gave evidence on his own account. All witnesses provided witness statements and were cross-examined.

4. As evidence did not conclude until the end of the third day, it was agreed that the parties would send written submissions. These were received from both parties within the timescale set (i.e. by 6 June 2025). In its written submissions, the Respondent applied to strike out the claim due to alleged

unreasonable conduct on the part of the Claimant. For reasons which will become clear, we have not felt it necessary to determine this application.

5. The Claimant represented himself throughout. The Respondent was represented by Mr Cullen, counsel.

Reasonable adjustments for the hearing

6. The Claimant has been diagnosed with severe PTSD and a severe depressive episode without psychotic symptoms. He is under the care of Dr Buttan, consultant psychiatrist. Various reports from Dr Buttan were before the Tribunal.

7. On 21 January 2025 the Claimant wrote to the Tribunal to request reasonable adjustments, with a letter from Dr Buttan dated 20 January 2025 in support. Dr Buttan said that it was important that the Claimant not have direct contact with the people involved in the disciplinary process.

8. As a result, on 11 February 2025 the Tribunal confirmed that it would make reasonable adjustments for the Claimant by making a separate room available so that he could participate via video link.

9. This room was made available to the Claimant for the three days of the hearing. The camera was positioned in the hearing room, and the witness table moved, so that the Claimant would not see either the observers at the back of the hearing room or the witnesses when giving evidence (although he could hear them). We are satisfied that at no point during the hearing did the Claimant see on camera any of the Respondent's witnesses.

10. The Claimant cross-examined Mr Gillham on the first day of trial, and Mr Paul and Mr Lazell on the second day. As indicated, he did so through a CVP link, with the witnesses present in the Tribunal room but the Claimant in a separate room. We were satisfied that there was no material disadvantage to either party in proceeding in this way.

11. On the third day, none of the Respondent witnesses attended the Tribunal (their evidence having concluded). The only person physically present for the Respondent was its representative, Mr Cullen. At the Tribunal's suggestion, the Claimant agreed that he would be able to participate in the hearing without needing to be in a separate room. On the third day, therefore, the Claimant sat in the Tribunal room and gave evidence in the room.

Privacy application

12. Prior to the hearing, on 9 April 2025, the Claimant applied for a privacy order, including anonymisation of his name, redaction of his address, and holding part of the hearing in private. It transpired that the reason for the application (which it is not necessary to repeat in this judgment and does not relate to the subject matter of this claim) was that the Claimant was concerned about his address coming into the public domain.

13. On the basis that neither party nor the Tribunal would refer to the Claimant's address in the hearing (so that it would not appear in any transcript or in the judgment) the Claimant was content to withdraw his application for anonymity. In answer to a question from the Tribunal the Claimant confirmed that he was not seeking anonymity for any other reason and he was aware that his name would appear on the public register.

Reasons for decision that race discrimination complaint could not be revived

14. On the morning of the first day, we decided that the Claimant could not revive his complaint of race discrimination. The reasons we gave were as follows.

15. In his ET1 the Claimant ticked the boxes for unfair dismissal, race discrimination, and sex discrimination.

16. There was a case management PH in front of EJ Howden-Evans on 25 July 2024. The Claimant represented himself. At that PH, the Claimant withdrew his complaints of sex discrimination and race discrimination. Unfortunately, due to administrative issues at the Tribunal, the written order was not sent to the parties.

17. There was then a PH in front of EJ Scott on 7 November 2024. EJ Scott heard and determined a strike out application from the Respondent. The sex discrimination complaint was struck out. At that point the parties thought that the race discrimination complaint was still continuing.

18. There was a PH in front of EJ Gardiner on 7 January 2025. At that hearing the list of issues was finalised. Both parties agreed that the issues included the complaint of race discrimination.

19. On 13 January 2025 the Howden-Evans order was sent to the parties along with a judgment dismissing the race discrimination complaint upon withdrawal.

20. The Respondent now takes the position that the race complaint should not be included in the list of issues, given that it appears that there is no dispute that the Claimant withdrew the discrimination complaints in the face of the court at the hearing in July 2024.

21. It is not clear why the Respondent did not raise this issue earlier, instead of proceeding to make an academic application for strike out of the race discrimination complaint and agreeing a list of issues that included it.

22. In any event, it is a matter of record that the claimant has withdrawn the race discrimination complaint and it has been dismissed upon withdrawal. The Claimant seeks to argue that the list of issues agreed in the Gardiner hearing revived the race discrimination complaint. The Claimant was asked by the Tribunal to identify any authority for this proposition. He was unable to do so. This is not a criticism of the Claimant - this is a complicated issue and he is a litigant in person.

23. Our view of the relevant law is as follows.

24. Rule 50 of the 2024 Rules of Procedure is in the following terms:

> "Where a party advancing a claim informs the Tribunal, either in writing or in the course of a hearing, that their claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the party responding or replying to the claim they make for a costs order, preparation time order or wasted costs order."

25. It has been long established since the case of **Khan v Heywood and Middleton Primary Care Trust** [2007] ICR 24 that a withdrawn claim cannot be revived. This has remained the case even as the Tribunal Rules of Procedure have changed since.

26. In **Campbell v OCS Group UK limited** UKEAT/0188/16/DA the EAT said (paragraph 13):

> "Accordingly, Rule 51 makes clear that a withdrawal may be notified orally at a hearing and takes effect upon the tribunal being informed by the claimant either in writing or in the course of the hearing of withdrawal. The effect of withdrawal, as before, is to bring the proceedings to an end subject only to any application that might be made by the respondent for costs. The claim cannot be revived, but that does not mean that absent dismissal a fresh claim on the same facts cannot be made."

27. Both parties in their oral submissions addressed us on the power of reconsideration. However, that is not relevant here. We have no power to reconsider a judgment made by a different Employment Judge. Even if EJ Howden-Evans did rescind the judgment, as **Campbell** makes clear, all the Claimant can do is issue a fresh claim based on the same facts. He cannot revive an existing claim.

28. As was said in **Khan**, withdrawal is not a judicial act. The Tribunal cannot intervene.

29. During submissions the Claimant appeared to suggest that his withdrawal was not valid because he was unwell when he did it. As a matter of law, if a step in litigation is taken by a party who lacks capacity as defined in the Mental Capacity Act 2005, then that step will not be valid.

30. We have considered the medical evidence. The psychiatrist's report dated 5 July 2024 is contemporaneous with the decision to withdraw. It states:

> "He has got a preliminary hearing on 25 of July 2024 at 2pm for 1 hour and he would be looking forward to that.
>
> […]
>
> He presents as anxious, fidgety and restless. He was well kempt and engaged and he tended to speak fast, but not in a pressured manner. He reported his mood running low and anxious and objectively he came across as depressed and very anxious. He was preoccupied with the trauma and traumatic memories around his unfair dismissal.

> No evidence of delusional belief or hallucinations. He had pessimistic ideas about the future and feels that that hope is dimming and he is feeling demoralised. His experiences flashbacks and nightmares of the disciplinary hearing, as mentioned before, but he had good insight into his difficulties."

31. We note that this is similar to comments made by the Claimant's treating psychiatrist in other reports around the same time.

32. We are satisfied that there is no evidence to suggest that the Claimant lacked capacity at the time that he withdrew his complaints. The withdrawals are therefore valid. They cannot be revoked.

33. The Claimant also sought to rely on - what he said were - admissions of discrimination by the Respondent in witness statements and in the bundle. It was not immediately clear to us how the Claimant perceived the relevant passages to amount to admissions. But, in any event, it is not a relevant factor in our decision. We simply have no power to intervene, given that the claim has been unambiguously withdrawn.

Applications to admit documents

34. On the morning of the second day the Respondent applied to adduce further documents, which were the Claimant's probation review forms from when he started at the School. The documents were disclosed to the Claimant and he was given time to consider them before we heard the application.

35. The application was allowed for the following reasons, given orally at the time.

36. In considering the Respondent's application we have had in mind Rules 3 and 41 of the Tribunal rules of procedure. Rule 41(1) is as follows:

> The Tribunal may regulate its own procedure and must conduct any hearing in the manner it considers fair, having regard to the overriding objective.

37. Rule 3 is the overriding objective. This requires us to deal with cases fairly and justly.

38. It would have been preferable had the documents been disclosed earlier. The Respondent had seen the Claimant's section Z document in November 2024. However, it was not clear until yesterday the significance the Claimant placed on that document. It was not referred to in the ET1. We accept that the Respondent was not aware until yesterday of its significance. We are satisfied that the Respondent's application is not an ambush of the Claimant.

39. These are documents that the Claimant has seen before. They are not voluminous. They address an important factual dispute.

40. It is in the interests of justice to admit the documents. It is better to have the documents in evidence so that they can be tested in cross examination.

41. On that basis we admitted the documents.

42. On the morning of the third day the Claimant applied to adduce into evidence his own set of documents. He had not disclosed these documents before. On providing copies to the Respondent, and after the Respondent's counsel had taken instructions, it became apparent that the Respondent did not accept that the documents were genuine.

43. The Claimant said that the documents had appeared the previous night in a Dropbox link that he shared with the Respondent. The documents were described as being letters from the Respondent whilst the claimant was still employed purporting to give him permission to contact students out of hours.

44. The Claimant claimed that he had included these documents in his bundle of documents provided at the appeal. He said that explained why he had not previously been able to provide them. He suggested that some unidentified person at the School must have found the documents and uploaded them to his Dropbox file.

45. It appeared to us that this explanation meant that these documents should still be retained in file of documents kept in the Respondent's safe. The Respondent arranged for the envelope to be delivered to the Tribunal. The contents of the envelope were inspected by both the Claimant and Respondent's counsel in the Tribunal room. Both confirmed the documents were not included in that envelope.

46. We were concerned that if we admitted the documents, given the doubts about their provenance, the Respondent would need to recall witnesses to address this new evidence. This would significantly impact on the progress of the hearing.

47. As a result, we decided to permit the Respondent's counsel to cross-examine the Claimant about the documents but without having them formally admitted into evidence. If at the conclusion of the Claimant's evidence we were satisfied that the documents were genuine then we would proceed to determine the Claimant's application at that point (and recall witnesses if necessary).

48. Having heard the Claimant's evidence we were not satisfied that the documents were genuine. This was for the following reasons, given orally at the time.

49. Although we have not seen the documents on the face of it as described they give rise to obvious doubts about authenticity, e.g. there are two warning letters said to be issued to the Claimant by two different people two days apart. The documents appear to contain instructions that would prima facie breach safeguarding rules, such as unrestricted contact with children at all hours of the day and night.

50. If the letters from Ms Darwin had existed we consider that the Claimant would have referred to them before today. They are not mentioned in the investigation meeting, he did not include reference to them in his written submissions for the disciplinary hearing, he did not mention them in the disciplinary hearing, they were not referenced in the grounds of appeal, and he did not mention them in the appeal hearing. They are also not mentioned in the ET1 nor in his witness statements and they were not put to the Respondent's witnesses during cross examination.

51. We cannot accept the Claimant's assertion that every omission can be explained by foul play on the part of the Respondent. This was not an allegation put to the Respondent witnesses when they gave evidence.

52. The file of documents taken from the Claimant at the appeal hearing exists and has been reviewed by the Respondent's counsel and the Claimant at this hearing. The Claimant accepts that these documents are not in that file. He is therefore driven to allege that the Respondent removed them from the envelope before providing them to the tribunal. We cannot accept this.

53. We accept that the claimant had a Dropbox link and that some people at the school may have had access to it at some point. But there was no reason for the school to continue to share this Dropbox link with the Claimant after his dismissal. There is no reason why the documents were put on there the previous night. We cannot accept the Claimant's evidence on this point.

54. Furthermore, the allegation that the Respondent removed the documents from the envelope before delivering them to the Tribunal is inconsistent with the suggestion that they were uploaded to the Dropbox link by the Respondent the previous night.

55. Given that we do not think that the documents are genuine, it follows that it is not appropriate to adduce them into evidence.

56. The Claimant also sought to adduce his first contract of employment with the local authority from 2015. We formed no view on the genuineness of this document. It was not the contract that the Claimant was employed under when the incidents happened and therefore cannot be relevant to the disciplinary issues that arose in 2023. We also refused to admit that document into evidence.

Observations on the Claimant's evidence

57. Before turning to our findings of fact, we wish to make some observations about the Claimant's evidence.

58. The Claimant gave evidence on the third day and in the Tribunal room. He had his aunt with him for support throughout the day.

59. The Claimant gave evidence on the provenance of the disputed documents as well as the claim more generally. His evidence was almost entirely inconsistent with the contemporaneous documentation. Whenever this was pointed out to him, the Claimant would generally claim either that the document was not a genuine document or, in the case of meeting minutes,

allege that the relevant information had been deliberately missed off. None of this had been raised before, nor put to the Respondent's witnesses during cross-examination.

60. As a result, we were not able to accept the Claimant's evidence where it conflicted with a written document or the Respondent's evidence.

61. We are aware that the Claimant suffers from a mental health condition and is undergoing treatment for this. We have read the Claimant's medical evidence. Although Dr Buttan made recommendations for reasonable adjustments – which we are satisfied the Tribunal has implemented – he did not state that the Claimant's ability to give honest and accurate evidence would be adversely affected by his condition.

62. The Claimant was regularly asked by the Tribunal throughout the hearing, including during his evidence, whether he needed breaks. When the Claimant asked for a break, one was taken. The Tribunal also unilaterally took breaks where it appeared to us that the Claimant may benefit from one. The Tribunal asked the Claimant on occasions if he felt well enough to continue. At no point did the Claimant say that he was unable to continue or that he needed an adjournment.

63. Ultimately, we were satisfied that the Claimant was able to give the evidence that he wanted to give in support of his case.

Findings of fact

64. The Claimant was employed by the Respondent, an academy trust, at Greatfields school ("the School"), a mixed secondary school. He commenced employment at the School on 1 May 2021, although prior employment with the local authority meant that he had continuity of service going back to 2015.

65. The Claimant was employed as an academic mentor. His role was to provide additional support to year 10 and 11 students that were struggling at school. He also held the position of Culture and Rewards Coordinator which meant that he was involved in the organisation of school trips.

66. On 22 February 2023 the Claimant was issued with a Letter of Expectation by Deputy Headteacher, Matt Gillham (pg 144). The context to this was that the Claimant had allowed students to access his personal mobile phone. The students had opened up Whatsapp and seen a number of sexually explicit messages sent by the Claimant and taken photographs of them.

67. Mr Gillham met with the Claimant and, after discussing the matter with him, accepted the Claimant's account that it was a genuine accident and that he was remorseful about what had happened. The letter of expectation set out various steps to take to ensure the situation did not happen again.

68. The letter clarified the expectations for staff in the Code of Conduct, namely that staff must avoid putting themselves at risk of allegations of abusive or unprofessional conduct, and concluded that he should be aware that further issues may lead to further action under the formal disciplinary procedure.

69. On 11 May 2023 the Claimant received a first written warning from Richard Paul, Headteacher (pg 240). This warning was issued as a result of further unprofessional conduct on the part of the Claimant including having inappropriate conversations of a personal nature with students at the School. The Claimant had been suspended since 9 March 2023 whilst the allegations were investigated.

70. The warning letter stated that:

> "further misconduct during that time is likely to result in a further disciplinary hearing, which may lead to a final written warning [or, in the case of gross misconduct, to dismissal]."

71. The warning was stated to be live until 11 May 2024. The Claimant was given the opportunity to appeal the warning but he did not do so.

72. On 11 October 2023 the father of a pupil (Pupil A) informed Mr Paul that the Claimant had been acting inappropriately towards his daughter including sending Teams messages late at night. Mr Paul was shown a screenshot of the Teams messages.

73. Mr Paul asked the safeguarding lead, Anne Wright, to speak to Pupil A. As Pupil A left Ms Wright's office, the Claimant approached Pupil A in the corridor and spoke to her again. Pupil A returned to Ms Wright to report this.

74. The following day, 12 October 2023, Mr Paul spoke to the Claimant and told him to have no further contact with Pupil A. Although the Claimant said that he understood the instruction, on reflection, Mr Paul decided that suspension was required and suspended the Claimant in a meeting on 13 October 2023.

75. Mr Paul wrote to the Claimant on 16 October 2023 confirming the suspension and setting out the allegations that would be investigated. He was invited to an investigation meeting with Mr Gillham.

76. Although there had initially been an allegation from Pupil A's father that the Claimant would say "hello" to Pupil A in urdu, it was not included in the terms of reference and Mr Gillham ultimately discounted it from his investigation.

77. The allegations to be investigated were:

    a. On 6 October, the Claimant behaved in an unprofessional manner towards a Year 11 female student by sending Teams messages to the student out of hours.
    b. On 8 October the Claimant invited the same student to come and see him in his office for no legitimate reason and asking if they would like to receive intervention from him (which is not within his remit).
    c. Those allegations together with previous concerns gives cause for concern that there is an emerging pattern of behaviour in breach of various policies including safeguarding policies.

d. The Claimant's conduct taken together or individually undermined trust and confidence and presented a genuine and serious reputational risk.

78. Mr Gillham had a screenshot of the Teams chat between the Claimant and Pupil A (pg 207). This showed that the Claimant contacted the student at 9.40pm to ask if she had found her glasses. She replied "no". The Claimant then sent five further messages to her, to which she did not reply, including asking him to find him in a classroom as there was a resource he could support her with.

79. As part of his investigation, Mr Gillham was granted access to the Claimant's Teams account. He found other instances of the Claimant contacting students out of hours, including a chain of messages with one student (Pupil B) in which he was pressing her to agree to go on a school trip and discussing other students with her. At one point he told her to be "discreet" about his offer to attend the trip.

80. The Claimant attended an investigation meeting with Mr Gillham on 1 November 2023. Prior to the meeting, on 17 and 18 October 2023, the Claimant had sent lengthy emails to Mr Gillham attempting to explain himself. Upon reading these messages, Mr Gillham was concerned about the Claimant's state of mind.

81. At the investigation meeting the Claimant admitted that he knew he should not message staff or students after 6pm. He said he had "accidently breached the rule with students" (pg 228). He confirmed he did not have the authority to decide who he could mentor, although he could make recommendations.

82. During his investigation, Mr Gillham also spoke to Pupil A and a friend of hers.

83. Mr Gillham completed his report in early November (pg 160). Although additional evidence of inappropriate contact with students had come to light since the initial terms of reference had been agreed (primarily the chat with Pupil B), Mr Gillham did not add any new allegations but instead included those Teams chats as additional evidence to support allegation 3.

84. Mr Gillham recommended that all four allegations be considered at a disciplinary hearing.

85. On 27 November 2023 the Claimant was invited to attend a disciplinary hearing (pg 442). A copy of the report with its appendices was attached to the letter. The letter informed the Claimant that if the allegations of gross misconduct were proven he could be dismissed without notice.

86. On 7 December 2023 the Claimant sent to Mr Paul 72 pages of written submissions in his defence. In the submissions the Claimant did not say that he had been given express/explicit permission to contact pupils out of hours, still less that he had been encouraged or instructed to do this. The highest he put it was to refer to an email he had previously sent to his line manager, Phoebe Darwin, in which he had referred to having a discussion

with a student about a university open day. His point was that it appeared from this email that he had had a discussion with a student out-of-hours and that this had not led to any censure at the time. It should be noted the screenshot of the email did not in fact establish the time that he had spoken to the student.

87. On 13 December 2023 the disciplinary hearing took place (pg 533). The hearing was in front of a panel of three including Mr Paul. It was chaired by a governor, Ashaka Marshall. The Claimant was supported by a colleague. There were questions posed of both Mr Gillham and the Claimant. The Claimant did not say in the hearing that he thought he had permission to contact students out of hours, although he pointed out there was no written policy to this effect (as there was with staff). He said he had contacted students out of hours because he was too busy during working hours. By way of mitigation, the Claimant suggested that the Respondent could remove his access to Teams. For instance, at pg 549 it is recorded that the Claimant said “maybe it is better I don’t use Teams anymore” and “Block Teams, it causes too many problems”.

88. After hearing from all parties, the panel withdrew to deliberate. The hearing reconvened around 40 minutes later. The panel told the Claimant that all allegations were upheld and that they had decided they amounted to gross misconduct. As a result, the Claimant was informed that he was being summarily dismissed. Mr Paul recalled the Claimant appeared shocked at the decision and the notes record that the Claimant’s response was to ask: “no final warning, nothing?” (pg 552).

89. On 21 December 2023 the Respondent wrote to the Claimant to confirm the decision to dismiss him (pg 554) and the reasons for it.

90. The Claimant formally appealed the decision on 28 December 2023 (pg 563). The main point he made in his grounds of appeal was to refer to his poor mental health, with medical evidence provided in support.

91. On 1 February 2024 the Claimant attended the appeal hearing with a trade union representative (pg 609). The appeal panel consisted of Mr Lazell, another governor, and a director of the Respondent. In submissions at the appeal hearing the Claimant said that his anxiety meant that he did not appreciate the time of day that he was contacting the students. When Mr Lazell asked the Claimant how he could be reassured he wouldn’t do the same thing again he said he could have his Teams access taken away.

92. It is again of note that during the appeal hearing the Claimant did not say that he had been encouraged or instructed to contact students out of hours.

93. The Claimant attended the appeal hearing with a file of documents with which he sought to demonstrate the duties that he had been carrying out as part of his role. Mr Lazell was concerned that the file contained sensitive personal data of a number of students. The Claimant agreed to hand over the file and it was kept in a safe by the Respondent, until produced on the third day of this hearing.

94. The appeal hearing was adjourned without a decision being made. The appeal outcome letter was sent to the Claimant on 6 February 2024 (pg 616). The appeal was not upheld. The Claimant's behaviour during the appeal hearing, including not realising the seriousness of retaining students' personal data and suggesting that he would need Teams access removed from him to prevent further inappropriate contact with students, meant that the appeal panel had no faith that the Claimant would not act in a similar way again.

95. We find as a fact that no instruction was given to the Claimant at any point that he could or should contact students out of hours. As already noted, on the third day of trial we refused to admit documents from the Claimant which he claimed showed that this instruction was given, as we were not satisfied that those documents were genuine.

96. Prior to trial the Claimant had included in his bundle a probationary review form which appeared to suggest an agreed action was that the Claimant could unilaterally invite students to become his mentees and that he could contact them "at any time" using MS Teams (the "section Z" document).

97. As recorded above, on the second day of the hearing, we permitted the Respondent to admit into evidence what it said were his real probation documents.

98. Having considered the Claimant's document and the documents adduced by the Respondent, we are satisfied that the Claimant's section Z document is not genuine.

99. The document appears to be based on the original probation report form dated 24 June 2021 with new, inserted text. The new inserted text would essentially permit the alleged misconduct on the Claimant's part. Its phrasing appears to be inconsistent with the other action points. The original form was hand-signed whereas an electronic signature appears on the section Z document.

100. For reasons which the Claimant could not explain, it refers to the probation period being from 2015-16 and, inconsistently with this, the document purports to have been signed on 26 September 2022.

101. The Respondent does not conduct 12 month probation reviews, the last probation review is at 18 weeks. The Claimant sought to explain this discrepancy in evidence by claiming that his employment was a unique role that he was designing himself and that, as a result, he was told his probation would be up to 2 years. We were unable to accept this evidence, it was entirely lacking in credibility.

102. The Claimant also sought to rely on a probation review document which purported to have Mr Lazell's signature on it. Although Mr Lazell initially agreed in evidence that it was his signature, he later clarified that he did not sign the document in question. As governor there would be no reason for him to carry out a probation review with the Claimant. We accept that he did not sign that document and the Claimant has, most likely, super-imposed Mr Lazell's signature onto the document from another source.

The Law

103. The right not to be unfairly dismissed is contained in section 94 ERA and the test the Tribunal must apply is in section 98 ERA. It is for the Respondent to prove that it had a fair reason for the dismissal; conduct is a potentially fair reason (s 98(2)(a) ERA).

104. As this is a conduct dismissal the well-established principles of **British Home Stores Limited v Burchell** [1978] IRLR 379 apply. They are:

    a. Did the Respondent genuinely believe that the Claimant was guilty of misconduct?

    b. Did it have reasonable grounds for this belief?

    c. At the time that it formed the belief had it carried out as much investigation as was reasonable in the circumstances?

    d. Was dismissal within the range of reasonable responses?

    e. Was the procedure carried out fair?

105. The Tribunal must not substitute its view for that of the employer: the test is whether the Respondent's conduct in dismissing the Claimant was within the range of reasonable responses open to it (**Iceland Frozen Foods v Jones** [1982] IRLR 439, **London Ambulance Services NHS Trust v Small** [2009] IRLR 563).

106. However, the range of reasonable responses test is not infinitely wide and the Tribunal's consideration of the claim should not be reduced to procedural box-ticking (**Newbound v Thames Water Utilities Limited** [2015] IRLR 734). We must assess the substance of the decision.

107. Where the Claimant has exercised his or her right to appeal the decision to dismiss, the employer's actions at the appeal stage are relevant to the test of fairness. Even if a disciplinary hearing has been defective, if this is remedied at the appeal stage, the overall dismissal will still be fair (**Taylor v OCS Group Ltd** [2006] ICR 1602).

108. Where dismissal comes against the background of previous disciplinary warnings, the Tribunal's ability to review the circumstances leading to those warnings is limited, it is generally only permissible if the warning was given in bad faith or was "manifestly inappropriate": **Davies v Sandwell Metropolitan Borough Council** [2013] IRLR 374, CA. Generally speaking, the employer's actions in the face of previous warnings falls to be considered under the general provision of reasonableness in s 98(4).

Conclusions

109. We satisfied that conduct was the reason for the dismissal. There was therefore a fair reason for dismissal.

110. We are satisfied that there were reasonable grounds for the belief that the Claimant was guilty of the misconduct. There was clear evidence from the Teams chats that the Claimant was behaving inappropriately by contacting students out of hours.

111. For reasons already given, we are satisfied that the Claimant was not told that he should contact students out of hours.

112. Although it is correct that there was no written policy that staff should not contact students out of hours, during the disciplinary process including the appeal, the Claimant did not dispute that he had acted inappropriately in doing this.

113. We are satisfied that the investigation carried out was reasonable. Mr Gillham obtained the Teams chats and spoke to relevant witnesses including the Claimant.

114. The key decision is whether dismissal was a reasonable sanction to apply in these particular circumstances.

115. The Respondent's main consideration was that the misconduct showed an emerging pattern of behaviour. The Respondent relied on the previous warning and the letter of expectation to show this.

116. The Respondent's witness evidence conflicted on the letter of expectation. Mr Gillham regarded it as a lack of judgment on the Claimant's part to allow students access to his phone but disregarded the actual content of the messages, as being part of the Claimant's private life. Mr Paul, on the other hand, said that he considered that incident did contribute to concerns about the Claimant's relationship with students.

117. In our judgment, reliance on the letter of expectation does not affect the fairness of the dismissal. By the time the Claimant was dismissed, he had been given a formal warning in respect of similar behaviour. It would be reasonable to rely on this alone in forming the view that there was an emerging pattern of behaviour.

118. We have also considered the point that the allegations were not amended after Mr Gillham found a separate Teams chat that showed inappropriate conduct on the part of the Claimant towards another student. We do not consider that this was unfair. We accept that it was reasonable to use this evidence to support allegation 3, which was that there was an emerging pattern of behaviour.

119. We accept the Claimant's point that allegation 2 as initially framed was not made out on the facts. Mr Paul said in evidence that this allegation was only partially upheld although the outcome letter does not include the word "partially".

120. The panel did not find that the Claimant had invited a student into his room but it was satisfied that he had suggested that she find him in the school to discuss intervention during the Teams chat. We accept that it was

reasonable for the panel to find that this was inappropriate conduct on the part of the Claimant, albeit the outcome letter could have been phrased more accurately.

121. The Claimant's case is that it was wrong for the Respondent to have summarily dismissed him given that he had not yet received a final written warning. We do not accept this. The Claimant had clearly not learnt from the previous warning. His suggestion that to avoid this happening again the Respondent should remove his Teams access was quite reasonably taken by the Respondent as a red flag.

122. Faced with this set of circumstances the Respondent had little choice but to move straight to dismissal. It was reasonable for the Respondent to take the view that it could not be satisfied that a final written warning would prevent similar conduct happening again.

123. As for the appeal, we firstly accept that the Claimant's inability to recognise that he should not have retained personal data about students in breach of GDPR was a further indicator of his lack of judgment.

124. The Claimant's focus at the appeal stage was his state of health. He did not, however, put much information before the appeal panel to demonstrate that his health was the reason why he had acted the way he had. Still less, did he provide reassurance that he would not act this way again in the future. We note he again claimed in the appeal hearing that he should have his Teams access removed.

125. Mr Lazell confirmed in evidence that the appeal panel did not consider that a report from occupational health would assist at that stage. He relied on the fact that the Claimant had already had access to counselling. Whilst this answer did not fully address the Claimant's argument, we accept that it was too late by that point to obtain input from occupational health. If the Claimant had raised this whilst still employed, the position may have been different. But he did not.

126. We consider that the procedure followed – including at the appeal stage – was fair.

127. The claim for unfair dismissal is not well-founded and is dismissed.

Employment Judge J Feeny
Dated: 20 June 2025