



EMPLOYMENT TRIBUNALS

Claimant: Mr James Lascelles

Respondent: King Edward VI Education Trust

Heard at: Nottingham via CvP

On: 5 May 2026 (Tribunal reading day)
6, 7, 8, 11, 12 May 2026
13 May 2026 (Tribunal deliberations)

Before: Employment Judge McTigue sitting alone

Representation

Claimant: Mr D Patel of Counsel

Respondent: Mr R Dalal of Counsel

RESERVED JUDGMENT

1. The complaint of unfair dismissal is not well-founded and is dismissed.
2. The complaint of wrongful dismissal is not well-founded and is dismissed.

REASONS

Introduction

1. The Claimant was a headteacher employed by the Respondent. His employment commenced on 1 January 2009. He was dismissed for gross misconduct on 16 July 2024. He presented a claim to the Tribunal for both unfair and wrongful dismissal on 11 October 2024. He approached ACAS for the purposes of early conciliation on 11 September 2024 and the certificate was issued on 13 September 2024.

Procedure and evidence

2. The hearing took place via CvP. I had before me a bundle of 1361 pages and an

agreed chronology and cast list from the parties.

3. For the Claimant I heard evidence from:
 - 3.1. The Claimant;
 - 3.2. Sean Chesman –former Chair of Governors for Respondent (2020-December 2023) and currently a teacher for the Respondent;
 - 3.3. David Subden - HR adviser and Director of HR solutions;
 - 3.4. Helen Dunning - Former Governor for Respondent and a member of the disciplinary panel for the Claimant's disciplinary process.
4. For the Respondent I heard evidence from:
 - 4.1. Robert Reeve - Director of Welfare for the Priority Federation of Academies and Investigating officer for Claimant's disciplinary process;
 - 4.2. Michael Heatlie - Former Vice-Chair of Governors for the Respondent, Chair of disciplinary panel for Claimant's disciplinary process;
 - 4.3. Sarah Bailey - Governor of the Respondent and member of the appeal panel for the Claimant's disciplinary process;
 - 4.4. Robert Maltman - Chair of Governors of the Respondent.
5. It was originally intended that the hearing would start at 2pm on day one. However, that was not possible due to the amount of reading required. By way of example, the witness statement bundle ran to 128 pages and in addition the Claimant had made two applications to the Tribunal at late notice which necessitated further reading. Those applications were made on last working day before the start of the hearing and the morning of day one. The consequence of this was that I took the entirety of day one to read the documents and informed the parties of such.
6. On day two, the Claimant disclosed a number of additional documents. By consent, those were added to the bundle which now ran to 1371 pages. The Claimant also made an application for a number of documents in the bundle to be either redacted or removed from the bundle. That application was made on the basis that the documents in question were privileged and/or showed information relating to protected conversations for the purposes of section 111A Employment Rights Act 1996. I expressed my concern to the Claimant that this application should have been made at a much earlier stage in proceedings. The Claimant's representative apologised and stated that the Claimant was content for me to have sight of the documents in question, hear the application and proceed to hear the final hearing whatever decision I reached in respect of the application. On that basis, the application was heard and I determined that the fourth sentence of paragraph 1 on page 582 of the bundle should be redacted. All other requests for redaction/removal were refused and oral reasons were provided to the parties at the time.
7. An issue arose on day two of the hearing when the Claimant was taken to a document on pages 283 to 284 of the bundle. In that document, he stated that he trained and qualified as a solicitor prior to becoming a Headteacher. He admitted that statement was false to Mr Dalal under cross examination. Mr Dalal put to the Claimant that pretending to be a solicitor was a criminal offence due to section 21 of the Solicitors Act 1974. I determined that we should have an immediate break so that the Claimant could seek advice from his legal representatives. On returning

form the break, the Claimant informed me that he had been able to seek advice from his legal representatives and that he was content to continue. I also advised the Claimant of his right not to self-incriminate himself when answering questions from the respondent and he exercised that right on a number of occasions on the afternoon of day two.

8. This was a case where, given the passage of time since the events in question and the significant amount of contemporaneous documentation, I had regard to the principles enunciated in ***Gestmin SGPS S.A. v Credit Suisse [2013] EWCA 3560***. At paragraphs 15 to 22. Leggatt J, as he then was, stated:

“...the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.”

9. This was also a case in which the credibility of the Claimant, was put centre stage. In light of that, I reminded myself that in making findings of fact this is not just a question of witness demeanour or questions of plausibility and honesty. The modern judicial approach to the task of assessing witness evidence and finding facts is set out in extra-judicial writings and reflective judgments in the higher courts (in cases such as ***Gestmin*** and other similar authorities).
10. I have carefully examined whether each party has presented a consistent or inconsistent pleaded case – in the original particulars of claim or grounds of resistance; in any further and better particulars or additional information; in the amended particulars or grounds; in witness statements; and in response to questions in cross-examination or from the Tribunal.
11. When considering an individual's witness statement, I have considered whether it is consistent with their pleaded case? Is the witness statement itself internally consistent or is it contradictory of and within itself? Is it consistent with or corroborated by other witness evidence? Perhaps crucially, is it supported by (or indeed, contradicted by) the contemporaneous documentary evidence? The record of events, recorded at the time or as close in time as possible, as contained in contemporary documents, is likely to be the strongest possible indicator of probability and a positive finding. In a case such as this, the proximate evidence of conversations, meetings, phone calls, text messages, and primary documents such as contracts, letters, minutes and so on are likely to be the most helpful and compelling indicators of reliable evidence leading to confident findings of fact.

12. I have also reminded myself that a witness's demeanour is not to be discounted. So, how confidently a witness gives their evidence and how well it survives contact with cross-examination by the other party and testing by the Tribunal are factors to be weighed in the balance when assessing the evidence and drawing factual conclusions before it. However, I have been alert to the risk that an apparently honest witness may be capable of giving dishonest or untruthful evidence, in whole or in part – and that the reverse proposition is also possible.
13. I have also been alert to the unreliability of memory and the risk of unconscious bias – a product of litigation where a witness persuades themselves of the veracity of their position and is prepared to embellish or exaggerate their evidence (perhaps unknowingly). The litmus test remains whether the witness evidence is corroborated by the documentary evidence.
14. With the above in mind, I find that the Claimant was neither a credible or reliable witness. In my opinion, the fact that he was prepared to mislead a public body, the Education and Skills Funding Agency, by falsely stating that he trained and qualified as a solicitor prior to becoming a Headteacher severely undermines his credibility. I also did not find the Claimant credible or reliable on the following issues:
- 14.1. His assertion that he sought appropriate advice from David Subden regarding Teacher A. I set my reasoning out in relation to that matter at paragraph 29.
 - 14.2. His assertion that he sought appropriate advice from David Subden regarding Teacher B. I set my reasoning out in relation to that matter at paragraph 44.
 - 14.3. His assertion that staff member C did not receive a severance payment. I set my reasoning out in relation to that matter at paragraph 65.
 - 14.4. His assertion that he attempted to contact the LADO regarding Teacher D. I set my reasoning out in relation to that matter at paragraph 82.
15. The net result is that, while I do not reject the claimant's evidence in its entirety, I do not feel at all confident in being able to rely solely upon the Claimant's pleaded case or his witness evidence. I have therefore carefully considered whether his case is supported by contemporaneous documentary evidence when making findings of fact.

Issues

16. The issues were agreed before Employment Judge Singh at the preliminary hearing on 12 February 2025. They were as follows:

1. Unfair dismissal

- 1.1 What was the reason or principal reason for dismissal? The respondent says the reason was conduct.¹ The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
- 1.2 If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:
 - 1.2.1 there were reasonable grounds for that belief;
 - 1.2.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
 - 1.2.3 the respondent otherwise acted in a procedurally fair manner;
 - 1.2.4 dismissal was within the range of reasonable responses.
2. **Remedy for unfair dismissal**
 - 2.1 Does the claimant wish to be reinstated to their previous employment?
 - 2.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?
 - 2.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
 - 2.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
 - 2.5 What should the terms of the re-engagement order be?
 - 2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 2.6.1 What financial losses has the dismissal caused the claimant?
 - 2.6.2 Has the respondent proven that the claimant failed to take reasonable steps to replace their lost earnings, for example by looking for another job?

¹ I note that the word “conduct” was omitted from the agreed List of Issues (45). That was clearly an error and so it has been added in here.

- 2.6.3 For what period of loss should the claimant be compensated?
- 2.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- 2.6.5 If so, should the claimant's compensation be reduced? By how much?
- 2.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 2.6.7 Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?
- 2.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 2.6.9 If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
- 2.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- 2.6.11 Does the statutory cap apply?
- 2.7 What basic award is payable to the claimant, if any?
- 2.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?
- 3. **Wrongful dismissal / Notice pay**
 - 3.1 What was the claimant's notice period?
 - 3.2 Was the claimant paid for that notice period?
 - 3.3 If not, was the claimant guilty of gross misconduct?

Findings of Fact

- 17. I have not sought to set out every detail of the evidence which we heard, nor to resolve every difference between the parties, but only those which appear to us to be material. Our material findings are set out below in a way that is proportionate to the complexity and importance of the relevant issues before the Tribunal. References to page numbers are to the main hearing bundle.
- 18. The Claimant commenced employment as Headteacher of King Edward VI Grammar School ("the School") on 1 January 2009 (pages 53-58). On 30 January 2024 his notice period was increased to six months (59). The School is part of what is known as an empty Multi-Academy Trust in that the Trust only has one school. i.e. King Edward VI Grammar School. The Trust is the Respondent in these

proceedings. In September 2022 Robert Maltman was elected as Chair of Trustees. From 2018 until September 2022 Sean Chesman was the Chair of Trustees.

19. Prior to 2023 the Trust had three sub-committees: Curriculum and Standards; Every Child Matters and Finance; and Audit and Estates.
20. Since 2023 the Trust has had four committees: Curriculum and Standards; Every Child Matters; Finance, Risk and Audit; and Premises and Health and Safety.
21. At the material time, annex A of the Trust Scheme of Delegation outlined which individuals or committees could undertake specific decision-making functions (272-275).
22. The following policies were in force and applicable to the Claimant at the material time:
 - The School's Disciplinary Procedures & Staff Code of Conduct (60-80)
 - The School's 2023/2024 Child Protection & Safeguarding Policy (81-131)
 - The Academies Financial Handbook (an extract of which appeared in the bundle at pages 132-135)
 - The Keeping Children Safe in Education - Statutory Guidance for Schools and Colleges ("KCSIE") (an extract of which appeared in the bundle at pages 136-153).

23. The relevant sections of KCSIE read as follows:

"Section one: Concerns or allegations that may meet the harm threshold

356. This part of the guidance is about managing cases of concerns/allegations. that might indicate a person would pose a risk of harm if they continue to work in their present position, or in any capacity with children in a school or college. In this part (section one) of the guidance reference is made to 'allegation' for ease. This part of the guidance should be followed where it is alleged that anyone working in the school or a college that provides education for persons under 18 years of age, including supply teachers, volunteers and contractors has:

- behaved in a way that has harmed a child, or may have harmed a child and/or*
- possibly committed a criminal offence against or related to a child, and/or*
- behaved towards a child or children in a way that indicates he or she may pose a risk of harm to children, and/or*
- behaved or may have behaved in a way that indicates they may not be suitable to work with children.*

357. The last bullet point above includes behaviour that may have happened outside of school or college, that might make an individual unsuitable to work with children, this is known as transferable risk.

358. Where appropriate, an assessment of transferable risk to children with whom the person works should be undertaken. If in doubt seek advice from the local authority designated officer (LADO).

359. It is important that policies and procedures make clear to whom allegations should be reported (as set out at paragraph 72) and that this should be done without delay. A "case manager" will lead any investigation. This will be either, the headteacher or principal, or, where the headteacher is the subject of an allegation, the chair of governors or chair of the management committee and in an independent school it will be the proprietor.

...

410. 'Settlement agreements' (sometimes referred to as compromise agreements), by which a person agrees to resign if the employer agrees not to pursue disciplinary action and both parties agree a form of words to be used in any future reference, should not be used where there are allegations that indicate the person is a risk or poses a risk of harm to children or deemed not suitable to work with children. Such an agreement will not prevent a thorough police and/or school or college investigation where that is appropriate.

411. Schools and colleges should not cease their investigations if the person leaves, resigns or ceases to provide their services. It is important that every effort is made to reach a conclusion in all cases of allegations with a bearing on the safety or welfare of children, including any in which the person concerned refuses to cooperate.

...

420. Cases in which an allegation was found to be false, unfounded, unsubstantiated or malicious should not be included in employer references. Any repeated concerns or allegations which have all been found to be false, unfounded, unsubstantiated or malicious should also not be included in any reference. See paragraph 224 for further information on references. Substantiated safeguarding allegations that meet the harm threshold should be included in references, provided that the information is factual and does not include opinions.

Section Two: Concerns or allegations that do not meet the harm threshold

424. Governing bodies and proprietors should have policies and processes to deal with **any** concerns or allegations which **do not** meet the harm threshold, referred to in this guidance as 'low-level' concerns. It is important that schools and colleges have appropriate policies and processes in place

to manage and record any such concerns and take appropriate action to safeguard children.

What is a low-level concern?

427. The term 'low-level' concern does not mean that it is insignificant. A low-level concern is any concern - no matter how small, and even if no more than causing a sense of unease or a 'nagging doubt' - that an adult working in or on behalf of the school or college may have acted in a way that:

- is inconsistent with the staff code of conduct, including inappropriate conduct outside of work, and*
- does not meet the harm threshold or is otherwise not serious enough to consider a referral to the LADO.*

...

Sharing low-level concerns

434. Schools and colleges should ensure that their low-level concerns policy contains a procedure for sharing confidentially such concerns which is clear, easy to understand and implement. Whether all low-level concerns are shared initially with the DSL (or a nominated person (such as a values champion)), or with the headteacher/principal is a matter for the school or college to decide. If the former, then the DSL should inform the headteacher/principal of all the low-level concerns and in a timely fashion according to the nature of each particular low-level concern. The headteacher/principal, should be the ultimate decision maker in respect of all low-level concerns, although it is recognised that depending on the nature of some low-level concerns and/or the role of the DSL in some schools/colleges, the headteacher/principal may wish to consult with the DSL and take a more collaborative decision-making approach.

...

436. If schools and colleges are in any doubt as to whether the information which has been shared about a member of staff as a low-level concern in fact meets the harm threshold, they should consult with their LADO.

...

Recording low-level concerns

438. All low-level concerns should be recorded in writing. The record should include details of the concern, the context in which the concern arose, and action taken. The name of the individual sharing their concerns should also be noted, if the individual wishes to remain anonymous then that should be respected as far as reasonably possible.

439. Schools and colleges can decide where these records are kept, but they must be kept confidential, held securely and comply with the Data

Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR).

References

442. Part three of this guidance is clear that schools and colleges should only provide substantiated safeguarding concerns/allegations (including a group of low-level concerns about the same individual) that meet the harm threshold in references. Low-level concerns should not be included in references unless they relate to issues which would normally be included in a reference, for example, misconduct or poor performance; It follows that a low-level concern which relates exclusively to safeguarding (and not to misconduct or poor performance) should not be referred to in a reference."

Teacher A

24. During the first COVID19 lockdown period on 4 June 2020, teacher A delivered an online lesson to two pupils. The lesson was audio recorded. Teacher A swore during the course of that lesson and their behaviour resulted in concerns that they were drunk whilst delivering the lesson. One of the concerns came from a parent of a child in the lesson, who was also a teacher at the school (158).

25. On 5 June 2020 the Claimant wrote to the students who attended the relevant lesson together with their parents. The purpose of the letter was to record their concerns, if any, in relation to A's conduct (159). Pupils later responded confirming that A had sworn and was slurring her words throughout the lesson (162-164 and 168-170).

26. On 5 June 2020 the Claimant suspended A from their duties with immediate effect. The reason for the suspension was given as, *"your apparent intoxication during your...lesson...; the use of profanities; the overall quality of the lesson being delivered to them and your overall conduct."* (160-161).

27. On 12 June 2020 the Claimant invited A to a investigation hearing that was scheduled to take place on 18 June 2020 (180-181). The Claimant stated:

"In particular at the investigatory interview, I will discuss with you matters associated with the following allegations:-

- 1. Apparent intoxication during your...lesson...;*
- 2. The use of profanities;*
- 3. The overall quality of the lesson being delivered to them and your overall conduct.*

Please also note that following further information coming to my attention there are now two additional allegations that will also form part of my ongoing Investigation and investigatory interview, this being:-

- 4. Breach of the School Code of Conduct;*
- 5. Breach of the National Teaching Standards."*

28. Instead of proceeding to that disciplinary hearing, the Claimant decided to propose and enter into settlement agreement negotiations with A. At that point in time, there was no indication that A was proposing to commence any form of litigation against the School. In addition, prior to entering into that settlement agreement the Claimant sought no legal advice. Instead, he had general discussions with David Subden, a HR adviser, regarding A. David Subden had no formal legal qualifications. The Claimant outlined his thoughts to David Subden in an email of 17 June 2020 sent at 12.31. In that email the Claimant stated:

“Just having reviewed the legislation in this area my additional thoughts are:

i) By the book and the policy is facing summary dismissal on the grounds of Gross Misconduct.

ii) IF we were to go ahead with that then- could be dismissed without pay or notice from the end of June.

iii) We could therefore agree NOT to go ahead accepting her immediate and late resignation from 31st May instead with her employment ending on 31st August.

iv) We would then under a separate settlement agreement agree a tax free 'ex-gratia' payment to her issued in September in recognition of the personal difficulties her situation has caused her this would be a payment of £6000.” (208).

29. I find that David Subden did not provide any advice to the Claimant regarding A's departure or that indeed any advice that A represented no risk of harm to children. I reach that finding as:

29.1. David Subden gave no evidence that advice was offered to the Claimant by him in respect of A's departure or the possibility of A representing a risk of harm to children.

29.2. No record of any advice given by Mr Subden exists in respect of advice provided by him regarding A's departure or that A might represent a risk of harm

29.3. Given the claimant's later false statement to the Education and Skills Funding Agency (“EFSA”) regarding this payment to A, I find him not credible on this point as he is willing to construct a version of events regarding A's departure which paints a more favourable version for his case.

30. On 17 June 2020 at 16.08 Rachel Mowbray, a Finance & Business Development Director and member of the Senior Leadership Team at the School, emailed the Claimant to express her concerns about the proposed severance payment to A (182-185). She stated that an ex-gratia payment for A was not an option and drew the Claimant's attention to a number of relevant sections of the Academies Financial Handbook including:

“Special staff severance payments

...

5.10 Staff severance payments should not be made where they could be seen as a reward for failure, such as gross misconduct or poor performance. The only acceptable rationale in the case of gross misconduct would be where legal advice is that the claimant is likely to succeed in an employment tribunal because of employment law procedural errors. In the case of poor performance, an acceptable, comparison would be the time and cost of taking someone through performance management and capability procedures.

...

Ex gratia payments

...

*5.18 Ex gratia transactions **must** always be referred to ESFA for prior approval. HM Treasury approval may also be needed. If trusts are in doubt about a proposed transaction, they should seek ESFA advice."*

31. The Claimant overruled Rachel Mowbray's concerns and instructed David Subden to enter into a settlement agreement with A. David Subden signed the settlement agreement on behalf of the School on 27 August 2020 (189-198). The settlement agreement meant that the School had to pay £5,500 to A. That sum was described in the agreement as a "Severance Sum" (191). Clause 1.25 of the settlement agreement committed the School to providing an agreed reference to A in the terms as set out in Schedule 2. That reference made no mention of the events which gave the Claimant concern in his letter of 12 June 2020 i.e. A's apparent intoxication during her art lesson, her use of profanities, and the overall quality of the lesson and A's overall conduct.
32. On 16 September 2020 at 13.02 Rachel Mowbray emailed David Subden seeking clarity on the proposed payment to A and whether it was to be classified as a severance payment (205). Later that day at 13.56 the Claimant emailed Rachel Mowbray and instructed her that the payment to A was to be treated as an ex-gratia payment (207). Rachel Mowbray then replied informing the Claimant that EFSA approval was required for ex-gratia payments (209).
33. Despite the Claimant being aware since at least 17 June 2020 that EFSA approval was required for any ex-gratia payment, it was only on 16 September 2020 that he informed Rachel Mowbray to obtain the necessary approval from the EFSA (209). Rachel Mowbray then sought approval from the EFSA on 17 September 2020 (216-217).
34. On 21 September 2020 the School paid £5,500 to A (239).
35. On or around 13 October 2020 the Claimant supplied a reference to another

educational institution for teacher A in which he stated that A had not been subject to any capability or disciplinary procedures in the last two years (219). The Claimant also supplied references to another educational establishment stating that A had not been subject to any capability or disciplinary procedures in the last 12 months of their employment on 3 November 2020 (224-229) and 8 December 2020 (233-238).

36. From 9 November 2020 the EFSA started to raise concerns with the School about the ex-gratia payment made to A. I do not propose to address each email but by way of example on 9 November 2020 the EFSA sought a business case for making the payment to A (243), that was chased on 15 December 2020 (242-243). On 7 January 2021 the EFSA asked for further details of the circumstances surrounding the payment to A (241).

Staff Member C – the 2021 allegations

37. On 20 October 2021, staff member C was first suspended from their duties by the Claimant. The suspension was to enable an investigation to be undertaken into the following allegations:

- “1. That you have attended work under the influence of drugs and/or alcohol*
- 2. That you have had drugs in your possession whilst on duty*
- 3. That you have taken drugs on the school site*
- 4. That you have driven company vehicles whilst under the influence of drugs and/or alcohol.” (246)*

Following an investigation, that suspension was lifted by the Claimant on 5 November 2021 and C returned to their duties at school (252).

38. On 5 November 2022 Sam Chesman, then Chair of Trustees of the Respondent, signed minutes of a meeting of the School's Finance and Estates Committee which took place on 2 July 2020. The minutes of the meeting do not list those present at the meeting but the wording approves the making of a payment of no more than £5,500 for a settlement agreement which *“was currently being negotiated between a staff member, Union and HR Advisor (sic) as a result of an ongoing and sensitive issue”* (276).
39. The EFSA's concerns regarding the payment to A continued into 2022. On 22 February 2022 the EFSA wrote to the Claimant informing him:

“As you are aware, the Trust did not secure approval from the Education and Skills Funding Agency (ESFA) before making an ex-gratia payment to the value of £5,500 in September 2020. This is a requirement of the Academies Financial Handbook 2020 (AFH).

Paragraph 5.17 of the AFH clearly states:

5.17. Ex-gratia transactions must always be referred to ESFA for prior approval. HM Treasury approval may also be needed. If trusts are in doubt about a proposed transaction, they should seek ESFA advice.

In addition, the Trust failed to provide ESFA with further information regarding the ex-gratia payment when it was requested. This is also a requirement of the AFH.

Failure to secure approval for the ex-gratia payment and failure to provide the requested information is therefore a breach of the AFH and the Trust's funding agreement....

We are concerned by the Trust's failure to secure prior approval for the ex-gratia payment and the subsequent failure to provide further information. We are aware that such non-compliance is often indicative of serious financial! and/or governance issues. Where the ESFA has concerns about financial management in an academy trust, it may choose to issue a Notice to Improve (Ntl).” (255-257)

40. No Notice to Improve was ultimately issued by the EFSA but on 7 April 2022 it asked further questions of the Claimant (281). Of particular significance was the EFSA’s question to the Claimant that:

“You previously confirmed that legal advice was received, however this is not evident as per the recent timeline. It would be helpful if you could provide more detail about the legal advice, e.g. what was discussed/advised and the timing? It would also be helpful if you could provide the name of the legal firm that provided the advice.” (281)

41. The Claimant replied on 20 April 2022 (283-284). In respect of the question above concerning legal advice, the Claimant replied:

“Legal advice was received from our governors via our Pay Committee - two of our governors are lawyers on the committee and another a member of the House of Lords: I also trained and qualified as a solicitor prior to becoming a Head. We also received legal advice via the NEU representative and the final settlement agreement was checked over and signed off with their legal department. In addition we receive HR advice and legal HR advice from our HR advisers HR solutions who were involved from our side.”

The Claimant’s statement that, *“I also trained and qualified as a solicitor prior to becoming a Head”* was false. He had not trained or qualified as a solicitor prior to becoming a Head or indeed at any prior point. He admitted under cross-examination that he was not a Solicitor and had not been at prior point.

Teacher B

42. Towards the end of March 2022 members of the teaching team became aware of

concerns amongst students about events that had allegedly taken place in a lesson taught by Teacher B. This resulted in those concerns being escalated to the Claimant and on 28 March 2022 he wrote to Teacher B informing them that allegations had been made against them. Those allegations related to:

- “1. Swearing during lessons.*
- 2. Running down a student in your lesson in front of other students.*
- 3. Discussing your personal views about misogyny with students.*
- 4. Illustrating your point about misogyny by speculating about the likely actions and probable behaviours of the boyfriend of one of your female students.” (277)*

B was informed that, *“If proven these are very serious allegations, and if true, would constitute a serious breach of the national teachers' standards which govern the personal and professional conduct of all teachers.”* The letter also served as notice of the School's intention to undertake a formal investigation into the allegations. The Claimant stated that Gareth Ellershaw would be the Investigating Officer.

43. On 25 April 2022 an investigation meeting took place with B (286-287) and on 4 May 2022 the Claimant wrote to B informing them that they would be required to attend a disciplinary hearing (279-280).
44. That disciplinary hearing never took place as following a letter from B's solicitor on 18 May 2022 (289), the Claimant decided to instruct David Subden to prepare and enter into a Settlement Agreement on behalf of the School. Prior to entering into that settlement agreement, the Claimant did not seek appropriate advice. The Claimant gave evidence that he sought HR advice and that he approached David Subden but I find that Mr Subden did not provide any advice to the Claimant regarding B's departure. I reach that finding as:
 - 44.1. David Subden did not give evidence that advice was offered to the Claimant by him in respect of B's departure or that B might represent a risk of harm to children. His witness statement at paragraphs 21 to 25 lacks meaningful detail on this point.
 - 44.2. As with teacher A no documentary record of any advice given by Mr Subden exists in respect of advice provided regarding B's departure or that B might represent a risk of harm to children. That is surprising given the concerns that the Claimant had expressed about the seriousness of the allegations.
45. In addition, there was no documentary evidence that the Designated Safeguarding Lead or the relevant subject Head concluded that no harm to children had occurred as per the KCSIE definition, despite the Claimant's assertion in paragraph 46 of his witness statement that one had been undertaken. There is also insufficient evidence that the Claimant undertook any real consideration or investigation into whether B's actions could represent a risk of harm to children.

46. On 14 June 2022 the Claimant supplied a positive reference to an educational institution for teacher B in which he stated, *"I can confirm that [B] is a fit and proper person to be working with children and young adults."* (219). That reference made no mention of the events which gave the Claimant cause for concern in his letter of 28 March 2022.
47. The Claimant provided a positive reference for B to another educational organisation on 19 July 2022 (312). That reference also stated that B was a fit and proper person to be working with children and young adults and again made no mention of the events which gave the Claimant cause for concern.
48. On 8 August 2022 David Subden entered into a settlement agreement in respect of Teacher B (313-326). The agreement provided that B's employment would terminate on 31 October 2022 and that she would be paid up until that date. In addition, there was no requirement for B to attend school after 3 June 2022. Obviously, that latter date had already passed by the time the agreement had been signed.
49. Clause 1.25 of the settlement agreement committed the School to providing an agreed reference to B in the terms as set out in Schedule 2. The wording of that agreed reference mirrored that of those already provided in respect of teacher B.

Changes in Leadership, Governance and the Report of Dr Hopkins

50. In September 2022 Laura Reeve became Designated Safeguarding Lead at the School. Prior to this date she had been Deputy Designated Safeguarding Lead and Nick Robertson had been Designated Safeguarding Lead.
51. In September 2022 Robert Maltman was elected as Chair of Trustees. He commissioned Dr Stephen Hopkins of the National Governance Association to conduct a review of governance at the Trust. Dr Hopkins issued his report in January 2023 (328-346). The key message of the report was:

"The trust board is currently not as effective as it need to be in terms of delivering its duties and responsibilities. It is neither undertaking its core governance functions nor ensuring compliance where required. There is currently too much reliance on the school's headmaster to shape and steer the governance processes. This together with the lack of an independent governance professional to support the trust board, and to establish the required systems and processes to facilitate good governance, is resulting in governance which lacks the required robustness and clarity.

The new chair of the trust board is aware of the need to tackle the current deficiencies and is committed to providing the leadership necessary to enable this. However this will need commitment and determination; the support of fellow trustees and the executive along with a skilled

governance professional will be required to ensure the recommendations in this report are tackled.” (330)

52. Until the publication of Dr Hopkins’s report, the Claimant was a Trustee of the Trust. However, following Dr Hopkins’s report, it was felt that there was a potential conflict between the Claimant remaining as a Trustee as he was also acting as the Trust’s Accounting Officer. To counter that, the Claimant resigned following the publication of Dr Hopkins’s report.

Staff Member C – the 2023 allegations

53. On 22 May 2023 the Claimant received reports of a smell of cannabis in one of the School’s toilets. On 23 May 2023 the Claimant spoke with staff member C to inform them that they were suspected of having smoked cannabis in the relevant toilet. The Claimant subsequently wrote to C later that day informing them that:

“We have reviewed the CCTV footage of the corridor and have identified all users of the toilet from 12:30pm onwards. The staff who entered the toilet before you between 12:30 and 13:28 - when you went in have confirmed that there was no smell of cannabis. By comparison those who went to the toilet after you immediately reported the strong smell of Cannabis to Nick Robertson and myself.

At this point it seems, from the evidence that it is more likely than not that:

- 1. There was no smell of Cannabis prior to you using the toilet between 12:33-13:28*
- 2. That the smell of Cannabis occurred from 13:35 onwards after you had used the toilet.” (352)*

54. That same day, 23 May 2023, the Claimant also wrote to C informing them that a formal investigation into the allegation would be undertaken. Amongst other things, the letter stated:

“It is alleged that whilst on the school site, you had in your possession a prohibited class B drug namely cannabis and smoked that drug in a school toilet on the afternoon of 2nd May 2023.

*I view these matters very seriously and wish to conduct a full investigation of all the facts surrounding the allegations. The investigation will be carried out by Nick Robertson, Deputy Headteacher and in particular, the investigation will consider matters surrounding concerns associated with allegations of misconduct, serious misconduct and possible **gross misconduct** specifically in relation to:-*

- 1. Whilst on the school site you had in your possession of a prohibited class B drug namely cannabis on the afternoon of 22nd May 2023.*
- 2. You smoked a prohibited class B drug namely cannabis in a school toilet on the afternoon of 22nd May 2023.*

3. *Breach of the School Code of Conduct.*

4. *Breach of the 7 Principles of Public Life.*

If proved they could also constitute possible:-

5. *Conduct incompatible with our reasonable expectations of a member of staff of the School;*

6. *Behaviour which could bring the School into disrepute;*

7. *Conduct in breach of the normal ethos and expectations of an employee of the School;*

8. *A breach of mutual trust and confidence which needs to exist in the employment relationship between the employer and the employee.*

*The matters to be considered during the investigation are allegations which if proven could amount to misconduct, serious misconduct, or possible **gross misconduct** and in accordance with the School Disciplinary Procedure, there are two possible outcomes available, as follows: -*

(a) it is decided that there is no case for you to answer;

*(b) it is found to be potential misconduct, serious misconduct or possible **gross misconduct** and the case is referred to a disciplinary hearing with the Headteacher.” (353-354*

55. On 24 May 2023 the Claimant wrote to C informing them that they would be suspended from duties on full pay whilst the matter was investigated. The Claimant also stated that it had been decided to, “*Report the matter to the Police so that they may conduct their own independent interviews, investigations, and drug testing to help us establish what happened and who was involved*” (358). That was not true as no decision had been taken to refer C to the Police and the Claimant never, in fact, contacted the Police about this matter.

56. Also, on 24 May 2023 the Claimant spoke with C’s union representative. Following that conversation, he then emailed the union representative in the following terms:

“Thank you for taking the time to talk with today.

A key summary of the points:

1. Prior to Monday's allegations there have been a range of allegations of cannabis use against [C] over the past 24 months.

2. There are ample witnesses amongst the senior staff [SLT] who have smelt cannabis on [C] during the working day: we have probably been too generous in overlooking things.

3. On Monday this week the allegations of cannabis smell were of an overpowering nature - i.e. indicative of someone smoking: the smell lingered for a good two hours+

4. *We know who went in and out of the toilets, the timings and have had initial conversations - this triangulates back to no cannabis smell prior to - entering the toilets at 13:28 and a very powerful, overpowering smell after [they] left. This has been identified by various members of the school staff including members of the science dept, students were also aware of the smell emanating from the toilet and out into the corridor.*

5. *This is a safeguarding issue and significant breach of Trust taking place in a staff toilet located in the centre of the school with students passing the door.*

6. *Under previous allegations and conversations has confirmed to us that he socialises with Cannabis users, and upon appointment he declared a prior conviction for possession of cannabis. This later point only increases the scale of the breach of trust.” (359)*

57. Despite the Claimant's expressed concern that the matter represented a safeguarding issue and significant breach of trust, no referral to the LADO was made. In addition, despite the Claimant giving the impression that there was a strong case against C in relation to the allegation, he attached a without prejudice offer to the correspondence to the union representative (359).

58. On 12 June 2023 the Claimant spoke with C's union representative and then emailed him to indicate that it was his intention to, *“bring thing to a close as proposed previously to help secure [C's] future career prospects (sic)”* (364).

59. On 14 June 2023 at 9.57 C's union representative emailed the Claimant *“checking to see if the offer of original settlement is still on the table”* (369). The Claimant replied immediately to indicate that it was as *“we want to support not punish [C]”* (369). That same day at 13.22 C's union representative emailed the Claimant to state that C wished the matter to proceed to a disciplinary hearing (371).

60. On 16 June 2023 the Claimant wrote to C. Amongst other matters, the Claimant stated:

“I have been advised by our HR Department and our Employment Solicitor that by asking for the investigation to continue you risk the possibility of being found guilty of gross misconduct, and dismissal without pay and any future reference from King Edward's. The legal test simply requires that the employer reaches a 60/40 judgement or better i.e. they believe it probably happened.

*In addition to the above 'You are reminded that **any** information which is gained during the process of the investigation may be presented at any subsequent disciplinary hearing. Should any additional allegations of potential misconduct be identified during the process, these **will** also be investigated as part of this process'. {23rd May 2023}*

I can confirm that during the course of our investigations further allegations have emerged about the possibility that you have smoked cannabis on site, they are:

a) Allegations reported by Jenny Bentley relating to the smell of Cannabis coming from the area outside the same gent's staff toilets on 21st and 22nd October 2021.

b) Allegations reported by Katie Bateson during the same period relating to the smell of Cannabis coming from the area around Q16/17 & Q15 when you had been working in and around science.

c) Previous allegations made by members of the support team relating to you smoking Cannabis in Crowtree House and the Bungalow.

d) Allegations in December 2022 by several members of the SLT that you had an overpowering smell of Cannabis when you entered Rachel's office during an SLT meeting.

All of these allegations point to a pattern of behaviour, and all of these allegations over the past two years have involved you directly, been in close proximity to where you are working, or have been smelt on you and raised suspicions.” (372)

61. Despite the Claimant now referring to C exhibiting a pattern of behaviour dating back to 2021, no referral to the LADO was made in relation to any of the allegations.

62. On 4 July 2023 C's union representative emailed the Claimant stating, “Sorry to be a pain, I have just spoken to [C] and he is more than happy to tender his resignation but would like something in writing from the school confirming the settlement agreement amount and confirmation of employment until the 31st. If possible could you also confirm the settlement amount will be tax free?” (374).

63. On 5 July 2023 the Claimant wrote to C outlining what was now the agreed position between the parties. He stated:

“I am writing to you following conversations with your Union representative to confirm the following arrangements.

Upon receipt of your resignation from the 30th June I can confirm that the school will:

a. Pay your salary up to and including 31st July 2023 as your contractual notice period.

b. Provide a tax-free severance settlement by way of compensation of £5500.

c. Provide a positive written reference for future employers, referring to the hard work, commitment and loyalty you have shown to the school during your time with us: no reference will be made to recent events.” (377)

64. On 20 July 2023 the Claimant provided a reference to an educational establishment for C. When asked in that reference, *“Please detail any disciplinary proceedings/investigations where the employee has resigned before completion of the process”*, the Claimant responded, *“n/a”* (381). The Claimant also confirmed that he was completely satisfied that C was suitable to work with children and/or vulnerable adults (382).
65. There is no evidence that the Claimant considered, or indeed sought advice about, whether making a severance payment to C might contravene paragraph 5.10 of the Academies Financial Handbook. In addition, in paragraph 61 of his witness statement the Claimant has sought to characterise the payment to C as C receiving his taxable statutory notice through payroll in the normal way. That contradicts the evidence contained at page 377 of the bundle. I find that the payment made to C was intended by the Claimant to be a severance payment rather than normal pay. I reach that finding as:
- 65.1. The claimant has classified the payment to C as a “tax-free severance settlement” in the document at page 377 of the bundle. That document was created much closer in time to the event in question rather than the Claimant’s witness statement and so is more likely to be accurate.
- 65.2. The Claimant consistently indicated to both C and his union representative that there were grounds to dismiss for gross misconduct. On that basis, it appears more likely than not that the Claimant did not intend to pay C notice pay.
- 65.3. I do not find the Claimant credible on the matters surrounding C’s departure from the School. The documentary evidence before me demonstrates that the Claimant expressed significant concern that the matter represented a safeguarding issue and significant breach of trust. He also indicated that C would be reported to the Police. Despite that, the Claimant made no referral to the LADO; did not contact the Police; and was happy to provide a reference for C indicating that there were no disciplinary proceedings or investigations and that he was completely satisfied that C was suitable to work with children and/or vulnerable adults.

Teacher D

66. Teacher D started work for the School in December 2022. On 18 September 2023 it was brought to the Claimant’s attention that there was an allegation that during a lesson D had said to a class they dreaded teaching them, that they were all going to fail and that they had told the class to *“f*** off”* (384). The Claimant instructed Adele Teasel to investigate the allegation.
67. Adele Teasel held an investigation meeting with D on 18 September 2023 during which D confirmed that they had shouted at the students in question and said, *“if you all want to fail, you can fuck off”* (393).
68. On 20 September 2023 a parent of one of the students present in the relevant lesson emailed a number of staff at the school including Adele Teasel. The parent stated, *“I feel that [D’s] behaviour is predatory and do not feel [my child], my or other parent’s concerns are being taken seriously.”* (395)

69. The Claimant then met with D on 21 September 2023 ((397-398). In that meeting, the Claimant informed D that he would be suspended whilst the matter was investigated further. There was a discussion of D's personal circumstances and the Claimant indicated that the suspension was also to "*manage D's mental health*" (398).

70. On 21 September 2023 the Claimant wrote to D informing them that a formal investigation would be carried out by Adele Teasel into the following allegations:

*"1. Entering into an altercation with your...class during which you were:
a) Verbally abusive towards the class, and allegedly not fully in control of your anger and emotions.*

b) Told them to 'fuck off' and informed that that they would all fail their GCSE or other such words to the same effect.

c) Explained to them that you were done with the school and intended/wanted to leave and that they should never have chosen GCSE [X] or been put on the course or other such words to the same effect.

2. It is further alleged that you then raised your voice in aggressive tone and manner with one of the same students when they came to the music practice rooms with some friends which led to the student departing the music department and feeling fearful about a second altercation with you.

3. Later on the same day you spoke with the same student to discuss the situation which then led to a second altercation between you both and led to the student becoming fearful for her own safety; so much so that she contacted her parents in floods of tears and was hysterical."
(399-401)

The Claimant also informed D that if the allegations were proven they could amount to misconduct, serious misconduct, or possible gross misconduct.

71. On 25 September 2023 a cleaner at the school alleged that D had been masturbating in a music practice room. The cleaner was interviewed by Adele Teasel that same day (403-404).

72. On 27 September 2023 the Claimant wrote to D's union representative informing them about the original allegations of swearing at a class. The Claimant also stated:

"Our investigations continue and have broadened as a pattern of behaviour is beginning to emerge.

However, matters took a turn for the worse yesterday when we had a report from a cleaner of an incident that occurred in the second week of term. [D] was in a locked store/music practice room hidden from view, the cleaner returned to unlock the door to find a flustered [D] coming out of the room, he explained he was sleeping and hiding from the students: she noted that his trouser zip was undone and open. On inspecting the

room a cupboard had been moved to obscure the view into the room and a chair placed behind the cupboard. N.B. we haven't spoken to [D] about this recent allegation yet but wanted you to be aware.

We continue to investigate but it is looking increasingly likely that next steps will be a disciplinary hearing next week so that [D] can give his version of events etc.

For reference [D's] contract is attached and you will note that he has a 12-month probationary period that finishes in January.” (407)

73. On 29 September 2023 the Claimant emailed D stating:

“I am writing to you to confirm that we have concluded our investigations today and we do believe that there is evidence that requires you to attend a disciplinary hearing with myself so that you may give your version of events to the allegations raised against you as detailed in my letter, that this type of behaviour is supported by a pattern of other emotional outbursts and/or anger towards both students and staff.

As part of our investigations, we have also received a safeguarding disclosure from a member of staff. She has alleged that during her cleaning routine she attempted to unlock the door of the music practice room located at the top of the steps, she then returned with her keys to find you coming out of the door looking flustered, and embarrassed, and claiming that you had been sleeping: she noted that the zip on your trousers was down. From your flushed and embarrassed appearance, she believes that it is more likely than not that you were locked in the room pleasuring yourself.

Apparently, you confirmed that you were hiding from the students and were going to go back to sleep. However, when she did enter the room she noted that sofa in the room was covered in books and other junk and thus impossible to sleep on and that the large cupboard in the room had been moved and angled to obscure the view from the doorway and that a chair had a piano stool had been placed behind the cupboard.

All of the above are very serious allegations that if proven at the disciplinary hearing could lead to your dismissal and also to the school having to report these incidents to the Teacher Regulation Agency's misconduct panel: if proven the TRA has the power to bar you from the profession.” (412-413)

The Claimant also informed D that they were suspended from duties on full pay.

74. Despite the severity of the allegations against D, the Claimant wrote to D's trade union representatives on 9 October 2023 stating, “I can confirm that we are content

to issue a written reference without reference to the allegations, and in the light of the difficult family position, timing of events and situation he finds himself in we are also happy to agree a sensible settlement figure. We are equally content to move to the disciplinary hearing, and appeal process if necessary.” (414).

75. In October 2023 Jane Mason was appointed by the Respondent to act as Clerk to the Trustees.
76. On 30 October 2023 the Claimant emailed a reference for D to David Subden. The reference stated, *“It was then with great sadness that tragic, and complex family circumstances led to the school reluctantly having to accept [D’s] resignation from his position with effect from 31st December 2023. I can confirm that I know of no reason why [D] cannot work with young people and confirm that [they are] not subject to nor has been subject to any disciplinary proceedings.” (417-418)*
77. On 1 November 2023 a meeting of the School’s Senior Leadership team took place (419-422). The Claimant was present and it was agreed that he would contact the LADO regarding teacher D (421). That same day David Subden emailed D’s trade union representative and stated, *“I can confirm that if [D] does decide to resign he will continue to be paid as an employee up to 31st December 2023 and not be required to return to school” (423).*
78. On 3 November 2023 teacher D emailed the Claimant at 11.44 and stated that he was resigning with effect from 31 December 2023 (426). The Claimant emailed back at 12.29 refusing to accept D’s resignation and requested that D seek advice before he made a final decision (426 and 427). D repeated his intention to resign with effect from 31 December 2023 at 14.21 that day, and the Claimant then accepted D’s resignation at 14.39 (428).
79. On 8 November 2023 a meeting of the School’s Senior Leadership team took place (430-433). The Claimant was present and it was noted one of the actions still requiring action was for the Claimant to contact the LADO regarding teacher D (431).
80. On 5 December 2023 the Claimant provided a reference for teacher D to an educational organisation, The Claimant answered no to all of the following questions when asked about teacher D:

“Do you have any concerns about the candidate working with children and/or vulnerable adults?

Has the candidate been subject to any disciplinary procedures whether completed or still in process?

Has the candidate been subject to any safeguarding investigations, whether completed or still in process?

Are you aware of any material reason why the candidate is unsuitable to work with children and/or vulnerable adults?” (446)

81. On 6 December 2023 a further meeting of the School's Senior Leadership team took place (448-451). The Claimant was present and it was again noted one of the actions still requiring completion was for the Claimant to contact the LADO regarding teacher D (449).
82. The Claimant never contacted the LADO regarding teacher D. The Claimant's explanation for not doing so, as set out in paragraph 69 of his witness statement, was that following discussions with Adele Teasel, the Designated Safeguarding Lead², and HR solutions it was concluded that no harm to a child as defined by KCSIE had occurred and so no LADO referral was necessary. I do not find the Claimant credible on that point for the following reasons:
- 82.1. He led no evidence from Adele Teasel on that point.
- 82.2. He led no evidence for the Designated Safeguarding Lead, Laura Reeve, on that point.
- 82.3. The evidence of David Subden is vague as to what, if any, advice was offered to the Claimant. By way of example at paragraph 31 of his witness statement, David Subden states, "After a review, it was deemed that no harm came to student(s) of the school and also the LADO was not contacted as it was deemed a low-level concern." That does not state who undertook the review or that David Subden provided any advice to the Claimant reading teacher D at this point in time.
- 82.4. No documentary record of any discussions relating to the relevant conversation with Adele Teasel, Laura Reeve or David Subden exist. On that basis I find that the Claimant failed to contact the LADO without reasonable explanation.
83. Towards the end of 2023 a number of teaching unions balloted their members and elected to take strike action commencing on 31 January 2024. The unions dispute concerned various matters including displeasure with pay scales, directed time, timetabling and IT issues.
84. On 28 January 2024 the Claimant contacted his GP to inform them that he had chest pain consistent with angina. On 29 January 2024 his GP made an urgent referral to the Rapid Access Chest Pain Clinic at Boston Hospital (1271A).
85. On 31 January 2024 the teaching unions associated with the School took part in a first day of strike action. The Claimant attended the School premises on that day as did Robert Maltman, the Chair of Trustees. The Claimant informed Robert Maltman on that day that he had experienced a cardiac incident on 28 January 2024, that he expected to be signed off work imminently and that he intended on leaving his role with the Respondent. Later that day it was decided that Sam Herridge would be Acting Headteacher in the Claimant's absence.
86. The Claimant commenced sickness absence on 1 February 2024.
87. Between 1 and 4 February 2024 members of the Senior Leadership Team mentioned potential issues to Robert Maltman regarding staff who had been allowed to leave their employment with payments and/or positive references where

² At the time Laura Reeve was the Designated Safeguarding Lead.

there may have been safeguarding issues. Concerns were also expressed about the need to discuss the case of teacher D with the LADO. On this point, I accept the evidence of Robert Maltman as contained in paragraph 56 of his witness statement. I found him credible on this point and his explanation ties in the concerns he later expressed to Jane Mason on 4 February 2024.

88. On 4 February 2024 at 11.16 Robert Maltman emailed Jane Mason, the Clerk to the Trustees. He stated:

“Final bit - have you heard any issues wrt (sic) [the Claimant] and Safeguarding? I haven't and am not suggesting that there are any- maybe the one bit he didn't mess up in some manner. The only words from Heather still ringing in my ears, and I knew this but hadn't consciously dismissed it, is we do not give good references to staff for whom we have safeguarding concerns. With Laura in her current head space, I can't ask her quite yet - maybe post the weekend when she's reflected on this a little more...We need to be sure.” (459-460)

Following two emails received back from the Clerk, later day at 19.52 Robert Maltman emailed her back. His email included the following sentence, *“I actually think we have grounds to sack him, but a lack of procedure may be the issue.”* (458)

89. On 23 February 2024 a call took place between Robert Maltman, Rachel Mowbray, Sam Herridge, Laura Reeve and Adele Teasel. The call was arranged at the request of Rachel Mowbray, Finance Director of the Respondent. In that call, Robert Maltman was further informed about concerns individuals had about settlement or exit arrangements that had been offered to staff members where they felt the harm threshold had been met. Staff members A, B, C and D were specially mentioned by name to Robert Maltman during this call.
90. Following that call, at 17.12 that same day, Sam Herridge sent Robert Maltman an email where she set out the concerns that members of the Senior Leadership Team regarding the conduct of the Claimant and individuals A, B, C and D (463F to 463H).

The Claimant's suspension and investigation

91. On 26 February 2024 the Claimant was suspended by Robert Maltman in order to allow matters to be investigated (464-465). The Claimant was informed that the matters to be investigated were:

*“1. Serious safeguarding issues regarding your management of safeguarding concerns within the school.
2. Serious breaches of Health and Safety policy and your accountabilities in respect to this.
3. Unacceptable conduct and/or conduct that may bring the profession and school into disrepute.”* (465).

92. On 1 March 2024 Laura Reeve, the Designated Safeguarding Lead, completed LADO referral forms for individuals A, B, C and D (467c to 467u).
93. On 5 March 2024 Robert Reeve was appointed to be Investigating Officer into the allegations against the Claimant. After discussions with Robert Maltman it was decided that there was no need to examine alleged breaches of the Health and Safety policy and so these were not pursued.
94. On 8 March 2024 the Claimant wrote to Robert Maltman querying the allegations made against him and also asking for access to any relevant documentation. He also stated that it was his intention to start an *“online Law Masters Degree commences on the 28th April, and I am currently seeking employment/pupillage as a Trainee Employment Law Barrister/Solicitor.”* (469)
95. On 20 March 2024 Robert Reeve interviewed Laura Reeve as part of his investigation (471-473). He also interviewed Rachel Mowbray that same day (474-477).
96. On 21 March 2024 Robert Reeve wrote to the Claimant inviting him to attend an interview on 28 March 2024. He was informed that the *“issues of concern surround the use of settlement arrangements to facilitate the exit of former employees of the Trust and where proper safeguarding procedures may not have been followed and/or the provisions of the Academies Financial Handbook may not have been adhered to.”* (482)
97. On 22 March 2024 the Claimant emailed Kate Hindmarch asking further questions about the investigation (480). Kate Hindmarch was, at that point, a senior solicitor at Nicholsons Chartered Accountants who was advising the Respondent. Kate Hindmarch addressed those questions on 25 March 2024 (478-480).
98. The Claimant’s investigation meeting took place with Robert Reeve on 28 March 2024 as planned. Clare Clark was present to take notes on behalf of the Respondent. Those notes appear at pages 512 to 530. The Claimant attended together with his trade union representative. Following the meeting, the Claimant sent two emails for the attention of Robert Reeve where he provided additional information and also asked for further checks to be undertaken into one of the settlement agreements (493-496).
99. On 12 April 2024 Robert Reeve finalised his investigation report (547-562) which concluded as follows:

“In summary, [the Claimant] has, in my view, entered into exit arrangements with staff members which have not always been value for money. He has not followed the Trust's own policies on occasion, nor KCSiE or the Academy's Financial Handbook. At the time the various allegations have come to light, James has initially treated them as serious allegations and referenced safeguarding/gross misconduct, and on one occasion told the employee he was referring the matter

to the police. But then appears not to have taken matters to a conclusion as per KCSiE.

My recommendation is that a disciplinary hearing should follow.” (562)

100. On 15 April 2024 Robert Maltman emailed Rachel Mowbray and another Trustee, Andrew Major, to outline potential costs savings to address the Respondent’s budget challenges (568-570). His proposal included the following:

“Labour Savings Opportunities

Head Teacher: salary saving (notwithstanding any additional cost incurred by the departure of [the Claimant]). Assume perm HT starts on L23/24 - salary saving. approx. £50k/year initially. Saving reduces as incumbent moves up HT Leadership Scale, but even at top of scale for school (approx. £100k), the saving remains at approx. £25k/year.” (569)

101. Following the receipt of the Investigation Report Robert Maltman met with one of the other Trustees, Andrew Major. Both were in agreement that the matter should proceed to a disciplinary hearing and that fact was communicated to the remaining Trustees on 18 April 2024 (572).

The Claimant’s invitation to a disciplinary hearing

102. On 24 April 2024 Robert Maltman wrote to the Claimant inviting him to a disciplinary hearing scheduled for 9 May 2024. The Claimant was informed that:

“At the hearing the Trustees Disciplinary Committee will consider the following allegations as regards your conduct:

- *Improper practice relating to your management of serious staff misconduct allegations.*

Specifically:

- o *The process followed, decision making, and agreements reached relating to the allegations of misconduct against, and subsequent exits from the Trust of: [A, B, C, D]*
- o *Your failure to reasonably follow the statutory guidance/guidance given in the:*
 - *DfE Academy Trust Handbook*
 - *Keeping Children Safe in Education statutory guidance*
 - *The Trust’s safeguarding, disciplinary and other HR policies .*
- *The falsification of records, examples of which are:*
 - o *The agreed reference for [A]*
 - o *The communication to the ESFA justifying an ex-gratia payment for [A]*

- o The agreed reference for [B]*
- o . The agreed reference for [C]*
- o The agreed reference for [D]*

• The loss of trust and confidence in your ability to lead and manage the school in an effective and compliant manner because of the above allegations.”

103. The Claimant was referred to Occupational Health by Robert Maltman on 30 April 2024 (579-580)

104. On 2 May 2024 the Claimant's trade union representative emailed Robert Maltman raising a number of concerns including that there had been no attempt to refer the Claimant to Occupational Health or any health monitoring (577-578).

105. The disciplinary hearing scheduled for 9 May 2024 was then postponed.

106. On 16 May 2024 an Occupational Health report was produced by Dr Robert Hampton in respect of the Claimant (581-585). He concluded:

“...in my opinion it would be wise to defer any disciplinary meetings until the CT coronary angiogram has taken place, and the presence or nature of any underlying cardiac problem is more certain. In the meantime, the Trust should consider whether correspondence with [the Claimant] should be through a named person agreed to by both parties.

If a serious cardiac condition is excluded, or the overall symptoms stabilise, there is no reason not to proceed with the process...

I have advised [the Claimant] that, in my opinion, providing that the outcome of the cardiac investigations is known, it would be reasonable to plan a meeting in the next 4-8 weeks, but that it is appropriate for correspondence between the Trust and [the Claimant] to continue.”
(584)

107. There then followed correspondence on 31 May 2024 between Robert Maltman and the Claimant's trade union representative in which the Claimant was offered the opportunity to attend a private cardiologist appointment. That offer was declined by the claimant's trade union representative (587-590).

108. On 26 June 2024 the Claimant was invited to a rescheduled disciplinary hearing by Robert Maltman (602-603). The allegations put to the Claimant remained the same as those previously communicated to him on 24 April 2024. The meeting was scheduled for 11 July 2024 and the Claimant was informed of his right to be accompanied.

109. In advance of his disciplinary hearing, on 4 July 2024, the Claimant's trade union representative sent his 'Defence Statement' and a Witness Statement for David Subden to Robert Maltman (607-656).

The disciplinary hearing

110. The Claimant's disciplinary hearing took place on 11 July 2024. Notes of that meeting appear at pages 682 to 688. The panel comprised three Governors, Mick Heatlie, Helen Dunning and Charlotte Lauriston-Norris. The Claimant's trade union representative attended on his behalf. Robert Maltman attended to present the management case alongside Robert Reeve as Investigating Officer. Clare Clark attended to provide HR support and Barbara Long was in attendance to take minutes.

111. The disciplinary panel had access to a number of documents including:

- Robert Reeve's Investigation Report
- The Respondent's Disciplinary Procedures & Staff Code of Conduct
- The Child Protection & Safeguarding Policy
- An extract from the Academies Financial Handbook
- Extracts from KCSIE
- Evidence regarding the cases of A, B, C and D,
- Correspondence with the Claimant relating to the period post suspension (657).

112. The Claimant's trade union representative had a pre-prepared statement from the Claimant (658-668) and played a PowerPoint presentation given by the Claimant with a voice-over from him (669-681). That was in addition to the documentation that he had already sent to Robert Maltman on 4 July 2024.

113. On 16 July 2024 the chair of the disciplinary panel wrote to the Claimant to inform him of its outcome (689-698). The Claimant was informed that it was the unanimous decision of the panel that the Claimant should be dismissed for gross misconduct. The conclusion of the panel was:

"The first allegation concerns improper practice relating to your management of serious staff misconduct allegations. We find this allegation proven. There is clear contemporaneous evidence that, at the time each allegation came to light, you viewed it seriously. This should have resulted in thorough, formal investigations and recorded outcomes. We can see no justification for halting procedures and negotiating exits which put the public purse to cost.

There is overlap with the second allegation. We also find this proven. It is clear that the Trust's own policies have not been followed and we have concerns that LADO was not notified of matters. Even if you genuinely thought the concerns were low-level, you should in our view have sought LADO advice and in circumstances where the harm test was met on the

face of the allegations referrals should have been made. We also find you have not followed the KCSiE and Financial Handbook when agreeing exits.

As to falsification of records, we find you committed the Trust to giving references which did not provide the receiving party with an honest picture. This could leave the Trust open to future claims if behaviours are repeated at another educational setting.

You say you were able to give these positive references as allegations were either unfounded or low-level, however had matters properly proceeded to a disciplinary hearing this may not have been the case.

On the information you provided to the ESFA, it is clear to us that you did not give an honest account of what the ex-gratia payment was for. We find these allegations proven.

On the balance of probabilities and taking all of the above into account; we find your behaviours amount to improper practice and gross misconduct.

The Trust can no longer have the trust and confidence it requires of you to lead the school.” (698)

The Claimant was informed that his employment would terminate with immediate effect and that his last day of employment was 16 July 2024. He was also informed of his right to appeal.

The Claimant's appeal

114. On 30 July 2024 the Claimant appealed the decision to dismiss him (700-702). His appeal was based on the following grounds:
- (a) The procedure
 - (b) The decision
 - (c) Evidence
 - (d) New Evidence
 - (e) The Penalty

The Claimant was then informed on 30 August 2024 that his appeal hearing would be held on 12 September 2024 (705).

115. Following a number of requests from the Claimant's trade union representative (713, 710, 706-707) it was agreed that the appeal hearing would take place on 17 October 2024.
116. In advance of the hearing the Claimant submitted a substantial amount of documentation (744-1159). Part of that documentation included legal advice that the Claimant had received from Farrer & Co Solicitors (761-771) regarding the issue of whether, in Farrer & Co's opinion, individuals A, B, C and D necessitated

referral to the LADO.³ He also provided a statement (1163-1191). The appeal panel had access to those documents as well as his appeal letter. The panel also had access to the documents before the disciplinary panel, the minutes of the disciplinary hearing, and the disciplinary outcome letter.

117. The appeal panel comprised Tony Beardlsey (Chair), Sarah Bailey and Justin Bateman. The Claimant attended as did his trade union representative. Helen Dunning attended to explain the decision of the disciplinary panel. Clare Clark attended to provide the panel with advice and Barabara Long was present to take note. The notes of the hearing appear at pages 1192-1215. Helen Dunning's notes appear at pages 1219 to 1226.

118. Following the conclusion of the hearing there was a difference of opinion amongst the panel as Tony Beardsley wanted to reinterview potential witnesses. Sarah Bailey and Justin Bateman declined to adopt that approach as the appeal was a review not a rehearing, The difference in opinion ultimately led to Tony Beardsley resigning.

119. On 19 November 2024 Sarah Bailey and Justin Bateman wrote to the Claimant to inform him that his appeal had been dismissed (1232-1235). The appeal letter dealt with all of the Claimant's grounds of appeal and provided sufficient reasoning for rejecting his grounds of appeal.⁴

120. On 10 December 2024 a board meeting of the Respondent was held in order to discuss the issue of appointing a new headteacher. By that stage it was apparent that the Senior Leadership Team of the Respondent wished to appoint Sam Herridge as Headteacher. Helen Dunning was not happy with that possible approach as she had previously expressed concerns about Sam Herridge's decision making. In anticipation of Sam Herridge's possible appointment as Headteacher Helen Dunning resigned as a Trustee just after 4pm on 10 December 2024. Shortly after Sam Herridge was indeed appointed as Headteacher.

Law

121. In respect of the unfair dismissal complaint, where the dismissal is admitted, the respondent has the burden of establishing that it dismissed the claimant for an admissible reason in accordance with section 98 (1) of the Employment Rights Act 1996. Misconduct is an admissible reason.

122. In a misconduct dismissal the Tribunal in determining the fairness of the dismissal considers the following factors in accordance with **BHS v Burchell**

³ The Claimant's representative confirmed that the Claimant has waived privilege in respect of this document.

⁴ The appeal letter in fact responded to six grounds of appeal even though the Claimant only raised five in his appeal letter. It adopted this approach as the Claimant's appeal ground 'Procedure' was dealt with the outcome letter under the headings 'Procedural 1' and 'Procedural 2'.

(1978) IRLR 379 namely whether (a) the employer believed that the employee was guilty of misconduct; (b) the employer had reasonable grounds for believing that the employee was guilty of misconduct; and (c) at the time it held that belief it had carried out a reasonable investigation.

123. In terms of investigations into possible misconduct, there is no set rule as to the level of inquiry the employer should conduct into the employee's (suspected) misconduct in order to satisfy the test in **BHS v Burchell (1978) IRLR 379**. Thus, in **Miller v William Hill Organisation Ltd EAT 0336/12** the Employment Appeal Tribunal acknowledged that there is a limit to the steps an employer should be expected to take to investigate an employee's alleged misconduct. How far an employer should go will depend on the circumstances of the case, including the amount of time involved, the expense and the consequences for the employee being dismissed. Similarly, **A v B 2003 IRLR 405** and **Salford Royal NHS Foundation Trust v Roldan 2010 ICR 1457** demonstrate that it is particularly important to conduct a most careful investigation where the employee's reputation or ability to work in their chosen field is at risk.

124. In terms of the decision to dismiss, the Tribunal must consider whether the employer's decision to dismiss fell within the band of reasonable responses that a reasonable employer in those circumstances might have adopted. In **Iceland Frozen Foods Limited v Jones (1982) IRLR 439** Mr Justice Browne-Wilkinson summarised as follows:

"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."*

125. The range of reasonable responses test applies not only to the decision to dismiss but also to the investigation, meaning that the Tribunal must decide whether the investigation was reasonable and not whether it would have investigated things differently (**Sainsbury's Supermarket Limited v Hitt (2003) IRLR 23**). Thus, when assessing whether the employer adopted a reasonable procedure, tribunals will use the range of reasonable responses test that applies

to substantive unfair dismissal claims. In **Sainsbury's Supermarket Limited v Hitt (2003) IRLR 23** Lord Justice Mummery stated:

"The range of reasonable responses test (or, to put it another way, the need to apply the objective standards of the reasonable employer) applies as much to the question whether the investigation into the suspected misconduct was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss for the conduct reason."

126. In **Taylor v OCS Group Ltd 2006 ICR 1602** the Court of Appeal stressed that a tribunal's task under s.98(4) of the Employment Rights Act 1996 (ERA) is not simply to assess the fairness of the disciplinary process as a whole but also to consider the employer's reason for the dismissal, as the two impact on each other. It stated that where an employee is dismissed for serious misconduct, a tribunal might well decide that, notwithstanding some procedural imperfections, the employer acted reasonably in treating the reason as sufficient to dismiss the employee. Conversely, where the misconduct is of a less serious nature, so that the decision to dismiss is nearer the borderline, the tribunal might well conclude that a procedural deficiency had such impact that the employer did not act reasonably in dismissing the employee. Further, the Tribunal must not substitute its own decision for that of the relevant decision-maker and decide how it would have responded had it been the employer (see **Foley v Post Office; HSBC Bank plc v Madden (2000) IRLR 82**).
127. In the case of **Hadjionannous v Coral Casinos (1981) IRLR 352** it was held that evidence of inconsistent treatment between employees is relevant in limited circumstances because two cases had to be truly parallel to compare (namely similar or sufficiently similar).
128. In respect of the wrongful dismissal complaint, in **Laws v London Chronicle (Indicator Newspapers) Ltd 1959 1 WLR 698**, Lord Justice Evershed, then Master of the Rolls, thought that in order to amount to a repudiatory breach, the employee's behaviour must disclose a deliberate intention to disregard the essential requirements of the contract. More recent cases have expressed the threshold for repudiation by reference to the implied term of mutual trust and confidence. In **Briscoe v Lubrizol Ltd 2002 IRLR 607** the Court of Appeal approved the test set out in **Neary and anor v Dean of Westminster 1999 IRLR 288**, where Lord Jauncey asserted that the conduct '*must so undermine the trust and confidence which is inherent in the particular contract of employment that the [employer] should no longer be required to retain the [employee] in his employment*'. The Court of Appeal in **Briscoe** stressed that the employee's conduct should be viewed objectively, and so an employee can repudiate the contract even without an intention to do so."
129. If the employer finds out after the employee has been dismissed that the employee was guilty of a fundamental breach of contract which would have justified summary dismissal, the employer can rely on this to rebut a claim of wrongful dismissal (**Boston Deep Sea Fishing and Ice Co v Ansell 1888 39 ChD 339**).

This is different to the position under unfair dismissal law, whereby an employer can only rely on facts known or honestly believed at the time of dismissal.

Submissions

130. Both parties provided written submissions to the Tribunal, and I incorporate those by reference here. In addition, both parties addressed the Tribunal orally regarding the submissions they had made in writing. Those oral submissions were limited to 45 minutes each. I carefully considered both sets of submissions before reaching my decision.

Conclusion

131. In order to reach my conclusions, I return to the agreed list of issues.

Unfair Dismissal

What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

132. The first question is the reason for dismissal. I find that the reason for dismissal was misconduct. It is clear to me that conduct was the reason for dismissal, that is clear from the letter of 16 July 2024 where the Claimant was informed that that the unanimous decision of the panel that he should be dismissed for gross misconduct (689-698).

133. The Claimant submitted that the real reason for dismissal was capability and/or the costs savings to be made on dismissal of the Claimant. I do not accept that submission and now address the key issues raised in the Claimant's submissions.

134. The Claimant submitted that 3 days after the investigation report into the Claimant was drafted, Robert Maltman was discussing with Trustees the fact that the Claimant's dismissal would result in savings to the School and that it is inconceivable that this would not have been discussed with Mick Heatlie. In terms of that email, it appears on pages 568 to 570 of the bundle. First, it was not sent to all Trustees of the School, merely Rachel Mowbray and Andrew Major. Neither of those individuals was on the disciplinary panel. Second, there was no evidence that those concerns were discussed with Michael Heatlie, that was pure speculation. Third, it was not surprising that potential costs savings were being discussed as, by this point in time, the Claimant had indicated to Robert Maltman that he would not be returning to work at the School. Mr Maltman gave credible evidence on that point which I accept.

135. The Claimant also drew my attention to Robert Maltman's email to Rachel Mason of 4 February 2024 where he emailed Ms Mason asking if she was aware of any safeguarding issues regarding the Claimant and stated in the same email chain that 'I actually think we have grounds to sack him, but a lack of procedure may be the issue' (458-459). It was stated that the latter reference was likely due to the fact that no appraisals or performance management process had taken

place. I am unable to accept that submission. Looking at the evidence, it was apparent that between 1 and 4 February 2024 members of the Senior Leadership Team mentioned potential issues to Robert Maltman regarding staff who had been allowed to leave their employment with payments and/or positive references where there may have been safeguarding issues. Concerns were also expressed about the need to discuss the case of teacher D with the LADO. Consequently, the latter reference was due to the fact that it appeared, to Mr Maltman at least, that these conduct concerns could amount to grounds on which to dismiss the Claimant.

136. The Claimant also submitted that various other employees were guilty of the same or similar conduct to that which the Claimant was accused of, with no apparent consequences. I am however not persuaded that any of the individuals cited by the Claimant at paragraph 6f of his submissions had the same or sufficiently similar circumstances. For the Claimant, concerns were raised about his conduct in relation to the manner in which he handled the departures of A, B, C and D i.e. 4 members of staff. The individuals cited at paragraph 6f only dealt with either A, B, C, or D. None of them dealt with more than one of the individuals in question. The staff members cited by the Claimant also lack the Claimant's level of seniority within the School. Their circumstances are not similar or sufficiently similar.

If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

- there were reasonable grounds for that belief;
- at the time the belief was formed the respondent had carried out a reasonable investigation;
- the respondent otherwise acted in a procedurally fair manner;
- dismissal was within the range of reasonable responses.

137. I find that the respondent reasonably believed that the claimant committed the misconduct relied on its dismissal letter of 16 July 2024. The disciplinary panel consisted of Mick Heatlie, Helen Dunning and Charlotte Lauriston-Norris. They reached a unanimous decision. The Tribunal notes that Helen Dunning is now a witness for the Claimant but I have no evidence that at the time of dismissal Helen Dunning did not reasonably believe he had committed misconduct. Indeed, Helen Dunning later attended the appeal hearing to explain the decision of the disciplinary panel. Helen Dunning's notes in relation to that meeting appear at pages 1219 to 1226 and there is nothing in them to suggest that the disciplinary panel did not, at the time, reasonably believe that the Claimant had committed misconduct.

138. That belief was also held on reasonable grounds. I reach that conclusion as the disciplinary panel had access to documentation including the following:

- Robert Reeve's Investigation Report
- The Respondent's Disciplinary Procedures & Staff Code of Conduct
- The Child Protection & Safeguarding Policy
- An extract from the Academies Financial Handbook

- Extracts from KCSIE
- Evidence regarding the cases of A, B, C and D,
- Correspondence with the Claimant relating to the period post suspension.

In addition, at the disciplinary hearing the Claimant's trade union representative submitted pre-prepared statement from the Claimant (658-668) and played a PowerPoint presentation given by the Claimant with a voice-over from him (669-681). That was in addition to the documentation that he had already sent to Robert Maltman on 4 July 2024 which was available to the panel.

139. The Panel therefore reasonably found that, amongst other matters, the Claimant:

- 139.1. Put the Trust at risk by not obtaining the requisite prior approval from the EFSA before the payment to teacher A was made.
- 139.2. Provided positive references to external organisations regarding teacher B's fitness to work with children without completing the investigation into the current concerns about their behaviour.
- 139.3. Entered into a settlement agreement with staff member C despite the claimant having registered concerns that C had been smoking cannabis on the School's premises.
- 139.4. Failed to refer staff member C to the LADO despite indicating that the allegations were very serious and that the Police were to be involved.
- 139.5. Provided a positive reference for staff member C which made no reference to the fact that disciplinary proceedings had been commenced.
- 139.6. Provided a reference for C which stated they were fit to work with children.
- 139.7. Failed to refer teacher D to LADO despite the harm test being met.
- 139.8. Indicated to external organisations in references that teacher D was fit to work with children without completing the investigation into current concerns about their behaviour and despite previously indicating that the allegations against D constituted a safeguarding incident.

Those were reasonable findings for the panel to reach based upon the extensive documentation it had before it. The panel's conclusion that the Claimant had committed gross misconduct was therefore reasonable.

140. I also find that at the time the belief was formed the respondent had carried out a reasonable investigation. On 5 March 2024 Robert Reeve was appointed to be Investigating Officer into the allegations against the Claimant. On 20 March 2024 Robert Reeve interviewed Laura Reeve as part of his investigation (471-473). He also interviewed Rachel Mowbray that same day (474-477). The Claimant's investigation meeting took place with Robert Reeve on 28 March 2024 (512 to 530). The Claimant attended together with his trade union representative.

141. The Claimant has submitted that Robert Reeve failed to interview those individuals who investigated the allegations against B, C and D. Based on the extensive documentation available to Mr Reeve regarding those cases of those individuals, I do not conclude that it was necessary to interview them. The

Claimant has also submitted that Sean Chesman should have been interviewed but has led no evidence as to how Mr Chesman's evidence would have changed the decision to dismiss the Claimant. I note that Mr Chesman states he was present at the Finance and Estates meeting where the payment for A was ratified and that he was made aware of details of the incident at the time. However, it was clear from the findings of the disciplinary panel that their concern related to their concern that the Claimant had not obtained the requisite prior approval from the EFSA before the payment to teacher A was made. The disciplinary panel was therefore not primarily concerned with whether or not the payment had been approved by the Finance and Estates Committee.

142. I find the respondent acted in a procedurally fair manner. The claimant was notified in a letter in advance of the disciplinary hearing of the allegations against him; he was advised he could bring a companion; a hearing was held at which he was able to put his case. I note the Claimant did not attend that hearing but his trade union representative attended on his behalf. In addition, the disciplinary panel had a pre-prepared statement from the Claimant (658-668) and access to the Claimant's PowerPoint presentation (669-681). That was in addition to the documentation that he had already sent to Robert Maltman on 4 July 2024. The Claimant was therefore able to fairly participate in that process. The Claimant was then informed of the outcome and his right of appeal, he was advised he could bring a companion to the appeal (689-698). The Claimant was then informed of the outcome of his appeal promptly and in writing (1232-1235).
143. The Claimant submitted that the decision makers in the disciplinary and appeal panels were not independent and unbiased. There is insufficient evidence for me to conclude that. Indeed, the Claimant's evidence on this point at paragraph 199 of his witness statement is a bare assertion which is not supported by any credible evidence. I fully accept the evidence of Robert Maltman and Sarah Baily that they are not close friends. I found both credible on that point.
144. The Claimant has also submitted that the appeal panel was inquorate following Antony Beardsley's resignation. I reject that submission for the following reason. The relevant section of the disciplinary procedure is on page 63. It states, "The [appeals] committee will normally be made up of three governors, one of whom will be nominated as Chairman." The key word there is 'normally', thus the procedure does not mandate that an appeal panel must comprise three governors. The policy is worded in that way to allow for appeals panels to comprise of two governors if circumstances dictate. As the appeal panel had heard the Claimant's extensive appeal by the point of Mr Beardsley's resignation, it was eminently sensible for Sarah Bailey and Justin Bateman to continue with the appeal process.
145. I cannot identify any procedural error which had any bearing on the outcome or the fairness of the dismissal. However, If I am wrong on that and the procedure followed by the Respondent was not fair, I consider the issue of a Polkey deduction. The key question for the Tribunal to determine in making a Polkey deduction under s.123(1) of the Employment Rights Act 1996 is the chance that the Claimant would have been fairly dismissed in any event. The leading cases being **Software 2000 Ltd v Andrews and ors 2007 ICR 825**,

EAT; Contract Bottling Ltd v Cave and anor 2015 ICR 146, EAT. Given the extensive documentation that disciplinary had regarding the Claimant's misconduct, I consider this to be a case where a 100% Polkey deduction would be appropriate.

146. Finally, I conclude that dismissal was within the range of reasonable responses. I acknowledge that the Claimant had long service with a clean record but the disciplinary panel reasonably concluded that the Claimant's actions breached trust and confidence and amounted to gross misconduct. It follows that the decision to dismiss fell within the range reasonably open to the respondent and his claim for unfair dismissal must be dismissed.

What was the claimant's notice period?

147. The Claimant's notice period was 6 months (59). He was not paid for that notice period. The reason he was not paid was because he was guilty of gross misconduct. Dealing with that issue briefly, I find that the fact that the Claimant neglected to refer teacher D to the LADO and then proceeded to provide a reference that indicated teacher D was fit to work with children amounted to gross misconduct. That, in and of itself alone, entitled the Respondent to terminate the Claimant's contract without notice.

148. At the hearing the Claimant sought to argue that the case of teacher D was a matter of low-level concern which did not necessitate a referral to the LADO. I do not find the Claimant credible on that issue as it is clear from the correspondence he sent to teacher D on 29 September 2023, he considered the matter to be a very serious one. By way of example, he stated to teacher D that, "*All of the above are very serious allegations that if proven at the disciplinary hearing could lead to your dismissal and also to the school having to report these incidents to the Teacher Regulation Agency's misconduct panel: if proven the TRA has the power to bar you from the profession.*" (412-413) For the Claimant to now argue that this represented a low-level concern is not plausible.

149. In addition, I am satisfied that the Claimant committed the following acts which also amounted to gross misconduct:

- 149.1. Overriding the concerns of Rachel Mowbray and failing to obtain the requisite prior approval from the EFSA before making a payment to teacher A.
- 149.2. Providing positive references to external organisations regarding teacher B's fitness to work with children without completing investigations into concerns about teacher B's behaviour.
- 149.3. Entering into a settlement agreement with staff member C despite having concerns that C had been smoking cannabis on the School's premises.
- 149.4. Failing to refer staff member C to the LADO despite indicating that the allegations against C were very serious and that the Police were to be involved.
- 149.5. Providing a reference for C which stated they were fit to work with children positive despite having concerns that C had been smoking cannabis on the School's premises.

149.6. Providing a reference for C which incorrectly stated that no disciplinary investigations or proceedings had been commenced against C prior to their departure from the School.

150. For those reasons the Claimant's claim of wrongful dismissal is not well founded and is dismissed.

Approved by:

Employment Judge McTigue

Dated: 28 May 2026

Sent to the parties on

...31 May 2026.....

For the Employment Tribunal

...Elliot Barker.....

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/