



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8003054/2025

Held in Inverness 7, 8 & 9 July and (via CVP) 28 August 2026

**Employment Judge R McPherson
Tribunal Member S Larkin
Tribunal Member K Pirie**

Ms A Smart

**Claimant
Represented by:
D Smart,
Lay Rep/Partner**

Drumduan School Limited

**Respondent
Represented by:
Mr E Stafford
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claimant's claim for unfair dismissal does not succeed and is dismissed.

REASONS

Introduction

Preliminary Procedure

1. The claimant presented her ET1 on 15 December 2025, following provision of the ET3 on 13 January 2026 and attendance at the case management preliminary hearing on 9 March 2026 claimant provided an amended ET1 dated 25 March 2026 extending to 33 paragraphs, giving notice of the basis of the claim, in response to which the respondent provided an amended paper part to the ET3.
2. The claim for Unfair Dismissal.
3. The Tribunal heard evidence over the 3 days allocated days, from 7 July to 9 July 2026. A Joint Bundle was provided (Bundle for Hearing).
4. The respondent witnesses were Rosemary (Rosie) Tait and Martin Kutternik.

5. The claimant, in addition to her own evidence, called three witnesses, Rebecca Mitchell, Catherine Fenton and Mona Zaidan, each of whom attended remotely.
6. Following the conclusion of the evidential element of the hearing on 9 July 2026, written submissions were provided as directed after the exchange of draft submissions; for the respondent this included written submission together with a proposed chronology, with the claimant providing written submission and proposed chronology, and both were supplemented by oral submissions on Friday 28 August 2026.

Unfair Dismissal

7. The claim is one of Unfair Dismissal; the respondent admits the dismissal and pleads that the claimant was dismissed for a fair reason, namely conduct; further, or in the alternative, the claimant was dismissed for some other substantial reason. The issues for the Tribunal include:
 - a. What was the principal reason for dismissal and was it a potentially fair one in accordance with Sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The respondent asserts that it was a conduct dismissal.
 - b. Was the dismissal fair or unfair in accordance with Section 98(4) ERA? Was the decision to dismiss a sanction within the "*band of reasonable responses*" for a reasonable employer?
 - c. If the claimant was dismissed: what was the principal reason for dismissal and was it a potentially fair one in accordance with Sections 98(1) and (2) of the Employment Rights Act 1996 (ERA 1996); and, if so, was the dismissal fair or unfair in accordance with Section 98(4) ERA 1996, and, in particular, did the respondent act within the "*band of reasonable responses*"?
 - d. Was the principal reason for the claimant's dismissal a potentially fair reason in accordance with section 98(1) (b) of the Employment Rights Act 1996 (ERA 1996)? It was asserted (but disputed by the claimant) by the respondent that it was a reason relating to the claimant's conduct and capability, or in the alternative for some other substantial reason of a kind such as to justify dismissal (SOSR).
 - e. If so, did the respondent act reasonably in treating that reason as sufficient for dismissing the claimant within the meaning of section 98(4) of ERA 1996?
 - f. If not, what is the appropriate remedy, including having regard to the claimant's assertion that the dismissal was not for conduct or for SOSR, the extent to which the Tribunal considers there were any procedural defects in the process followed by the respondent, and the dismissal was procedurally unfair would the claimant have been

dismissed in any event? Whether it would be just and equitable for there to be a reduction to compensation to reflect any blameworthy conduct on the part of the claimant contributing to dismissal. Whether there should be an increase in compensation to reflect an unreasonable failure to follow the ACAS Code of Practice on Disciplinary and Grievances?

Remedy for unfair dismissal

8. If the claimant was unfairly dismissed and the remedy sought is compensation:
 - a. If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would have been dismissed had a fair and reasonable procedure been followed? **Polkey v AE Dayton Services Ltd** [1987] UKHL 8 (**Polkey**).
 - b. Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to Section 122(2) ERA 1996; and if so to what extent?
 - c. Did the claimant, by blameworthy or culpable actions, cause or contribute to the dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to Section 123(6) ERA 1996?
9. If the claimant was unfairly dismissed, issues in relation to remedy would include, what loss is attributable, did the claimant minimise her loss; whether it be just and equitable to reduce the amount of the claimant's award because of any blameworthy or culpable conduct before the dismissal, under Section 122(2) and 123(6) ERA 1996, and if so, to what extent?

Findings in Fact

10. The respondent is a company limited by guarantee and a registered charity operating an independent school receiving some local authority funding, operating to what is known as the Waldorf (Steiner) approach to education, providing what was described as a holistic curriculum to children who may attend from age 3 (in what is described as kindergarten), operating two units, Rowan in which the claimant was a kindergarten teacher and Primrose with those children attending broadly between 3 to up to 6 years who would in mainstream be regarded as pre-school, together with Lower Middle School, and Upper School, covering up to 18 years of age. The respondent is not a mainstream, traditional education establishment. It follows an alternative but accepted teaching philosophy and practice: the Waldorf method.

11. At the material time, the respondent employed around 30 employees, the majority of whom were employed in teaching roles.
12. The respondent ceased operating as a school in June 2026 and is not expected to re-open.
13. The respondent at the material time was overseen by a volunteer board of Trustees; membership as Trustee could be achieved through direct approach or through election at an Annual General Meeting with Trustees who had agreed to act as such prior to the AGM being approved at the AGM; there was no required term for volunteer Trustees nor was there any formal recruitment process for those Trustees reflecting formal qualifications or formal experience.
14. On **31 July 2020**, the claimant started in the role of Kindergarten Teacher. In this role, the claimant had overall responsibility for the children (ages 3 to around 5) in her care, including organising and administering her class, communicating with staff and parents, and supporting the respondent's vision and ethos. The claimant was required to behave in a professional manner towards staff, parents, pupils and wider stakeholders.
15. In the summer of 2024, there were a number of resignations, and there was no Kindergarten Manager. The claimant and another staff member, Marianne Lee, took over the role unofficially. During **July-August 2024**, the claimant communicated with HR, raising questions and concerns about staffing matters and recruitment. The role was eventually filled by Sue Carlile, who started in the new school year after the summer vacation.
16. On **Wednesday 14th August 2024** the claimant sent an email to the respondent's generic HR email, teachers in the main school, Catherine Fenton & Rebecca Mitchell and a colleague in Kindergarten with the subject heading "Health" "*I hope it's OK that I share via e-mail I wanted to let my trusted colleagues know what has been going on with my health over the summer I have spent a fair bit of time in hospital and have been diagnosed with Mixed Connective Tissue disease this is a rare autoimmune disease which attacks joints muscles and organs at this stage I don't know what this means for me yet as I'm in the process of having various tests you put in place a treatment plan... CT scan bone density muscle tests etc I'm sharing this as you might find me fatigued or under par occasionally and this is why! I will keep Marianne updated on my condition in her capacity as our wonderful HR lady, and I will share this with Sue once she's settled. I have an appointment in radiology on Monday at 9:00 am I'm sorry I will miss the welcome, but I will join you asap. Please share my apologies with everyone. I hope very much that this disease will not affect my working life, I remain passionate and dedicated to Drumduan, I just may need a moment now and then. I hope everyone has had a good summer, and I hope to see you on Sunday in my garden for a catch up if you are free.*" The claimant had been attending the Rheumatology

Department since **January 2024** in connection with mixed connective tissue disease with inflammatory arthritis. Mixed Connective Tissue Disease is a multisystem connective tissue disease which can affect different organs in the body; a major feature for the claimant has been inflammatory arthritis.

17. From **September 2024**, during the new school year, the claimant was provided with a number of different class assistants.
18. On **Friday 6 September 2026**, the claimant sent a detailed email to Sue Carlile setting out what were the claimant's views on what was appropriate for the kindergarten, describing "*I've been reflecting back on how it was to work with two assistants last year... Although it did work, I think if I'm honest I was really looking forward to working deeply with one person to make the biggest impact pedagogically*" and noting that she did not "*know the details of individuals contracts... So contracts will have to be negotiated somehow whatever we do, and difficult decisions made unfortunately.*"
19. On **Monday 23 September 2024**, the claimant sent a detailed email to the respondent HR, copying in Sue Carlile, asking that decisions regarding staffing be made that week, setting out "*to reiterate*" what were the claimant's views on what was appropriate for the kindergarten
20. On **Monday 29 September 2024**, the claimant sent a detailed email to members of what was the Co-ordinators Group across the whole school, being Sue Carlile, Catherine Fenton and Rebecca Michell, setting out what were the claimant's views on what was appropriate for the kindergarten, describing "*the issue has been in Marianne's hands now many weeks with seemingly no progress. It is causing unrest and anxiety amongst the kindergarten staff. And I think this now needs to move forward into a wider staff body discussion. I understand that there are elements which are confidential (contracts etc.), but if we cannot change contracts in the short term, then staff deployment should be a wider coordinator staff discussion. ... Please can you discuss this openly together and come up with a plan asap. Indecision is not good for the children or staff. As a side note... As you know I'm carrying health challenges at the moment, and it would help me tremendously to have*" 1 assistant Monday to Wednesday rather than 3 .. , "*from what I can gather, Marianne is waiting for some sort of decision from Trustees, but I really think this should have happened by now as I know they meet weekly. I'm aware I'm repeating myself over and over again, but I don't know what else to do. Staff deserve clarity and a clear plan going forward both in the short term leading up to half term, and a permanent plan starting after half term.*" While the claimant referenced health challenges, she did not offer any view as to why having her preferred one assistant would help her in her health challenges.
21. On **Wednesday 2 October 2024**, a meeting was held, which Marianne Lee, as HR, joined, along with Sue Carlile, the claimant, Rebecca, Faye

and Rachel (who joined after an initial apology (that being the whole Kindergarten staff), in relation to a possible restructure of the department for an interim/temporary period, as numbers in the kindergarten were very low, and it was not sustainable. It was not a formal consultation process, and the respondent did not state redundancies would have to take place. During the meeting, the respondent was asked about possible redundancies and said they could not be ruled out but were not expected at that time; matters raised included possible reduced hours and days. The claimant said the children's needs should be met first and foremost, describing the need for two teachers and two assistants. It was described that, as some staff hadn't been informed because they were working and unable to attend, there was a need for confidentiality, and that the early years department was not the only affected department.

22. On **Thursday 3 October 2024**, the claimant sent an email to her colleagues within what was then known as College of Teachers across the school *"College Colleagues. I have recently been informed that my role and contract have now entered a 'consultation period' with a view to possible changes to my role, hours, contract and even possible redundancy. It is with great sadness that I now feel unable to chair College..."* The reference to the College refers to a recently established informal grouping of teachers within the school, chaired by the claimant, known as the College of Teachers; it had no formal recognised status and no formal advisory role within the school.
23. Or about **Friday 1 November 2024**, the claimant met informally with Sue Carlile, her manager. They discussed staffing, and the claimant believed Sue Carlile had agreed to implement a model that followed the claimant's views on limiting assistants.
24. On **Monday 4 November 2024**, in the course of a staff meeting attended by Sue Carlile, the Kindergarten Manager, further information was provided on a new staffing plan. The plan did not reflect what the claimant believed would be adopted; the claimant felt that Carlile had "reneged" on the position set out at the preceding meeting on 1 November 2024.
25. Sue Carlile provided a statement following the meeting, setting out that the claimant exploded in an angry outburst, raising her voice, making accusations. *"She stated that I had 'promised her' that she would have one assistant. I calmly stated that I had not... This was not good enough for Andrea she needed somebody to work five days we repeatedly discussed this issue since the beginning of term in August due to overstaffing she would have two assistants as she has had in previous years Andrea then stated that if Rachel (who was sitting in the meeting) and Faye (another employee away on bereavement leave) don't want the hours that the school requires to meet the needs of kindergarten then they should be given the proper notice period. Implying Rachel and Faye should be dismissed, and the job should be offered to somebody who does want it*

I stated that both employees had contracted hours and they can choose to work those hours only or they can choose to work additional hours if the school can offer those hours

We were all stunned at the outburst. Andrea kept saying she was leaving, but then would start again no one could get a word in edge wise, finally, Beck said 'look Rachel is sitting right here stop...' then Beck started to cry and left the room. Lindzi and Rachel both left. I spoke to Andrea briefly after the meeting Andrea apologised to me for the outburst but I'm not sure she apologised to anyone else

In 40 plus years, I've never witnessed such a display of unbridled professional behaviour from a colleague or from an employee. I reported the incident to HR. The incident was discussed, we spoke to Rachel and HR sent an e-mail to Andrea requesting a meeting.

The following day Andrea sent a letter to the educational coordinators (one of many) Andrea stated that Rowan kindergarten would have 3 possibly 4 assistants. In the third paragraph she stated again that employees should be given notice so somebody else can be offered the job.

At the end of paragraph one, she states "these are only a few reasons it is imperative to have one or at the very most two assistants in one week In paragraph 3 she states the kindergarten assistant's position is the very minimum of 3 days a week, Monday through Wednesday, with one person doing the other two days

While it has been tradition (20 to 30 years) ago for one assistant support the kindergarten teacher five days a week there is nothing pedagogical constantly wrong with assistance doing job share which is very common today..."

26. Following the meeting, the line manager, Kindergarten Manager Sue Carlile, reported the conduct of the claimant to the HR Manager.
27. On **Tuesday 5 November 2024 at 7.27 am**, the claimant sent an email to Rebecca Mitchell, Catherine Fenton, Marriane Lee, Sue Carlile and Josephine Swab as department co-ordinators across the school (the Dear Co-ordinators November 2024 email) which opened

"Dear Co-ordinators" describing that she was at her wits end "As you know due to a staff hiring error, we are currently overstaffed in kg., and therefore we entered stressful consultation process to resolve the situation.

As a kindergarten Waldorf pedagogue I feel I am the gatekeeper to the children's well-being and as such it is my duty to stand up to anything that moves us away from being healthy, well-functioning Waldorf Kindergarten I was told yesterday in our kindergarten meeting that due to staff not wanting the full hours of the job it's looking like Rowan Kindergarten would have three or even possibly 4 assistants in one week going forward! Once more I feel I need to repeat myself because nothing has changed having three different assistants in one week is not only completely pedagogically unsound it is damaging the well-being and general health of the children

and kindergarten as a whole. Everything we do in a Waldorf kindergarten is based on rhythm and repetition, building trust and being there each day to support the needs of the children through the Waldorf curriculum. As a Waldorf teacher my work at the end of the day is to discuss the children with my assistant and look at how best we can meet their needs the following day. Over the course of the week the assistant builds on these connections with the children, getting to know where each children is at developmentally and emotionally and adjusting their work accordingly. These are only a few reasons it is imperative to have one or at the very most 2 assistants in one week

*With my health condition this makes it even more important for proper support in place I'm utterly flummoxed how we've ended up with exactly the same situation as we did when we started if **Rachel and Faye don't want the hours we are offering and that the job requires then they should be given the proper notice. And the job should be offered to someone who does want it I'm sorry to sound harsh but this is a reality the job is not two days a week!***(emphasis added)

*This ongoing situation is making my job much harder an extremely stressful which is bad for my health. Overnight I became quite ill and I am unable to work today which breaks my heart, please can we do everything we can to change the situation or at least put plan in place to change in the near future. The kindergarten assistant post is the very minimum 3 days a week Monday to Wednesday with one person doing the other 2 days. without **this basic formula in place the strain on me is too great. The stress in my body cannot be underestimated in this situation and overnight I became quite unwell and am unable to work today which breaks my heart*** (emphasis added) *I really don't know where else to turn, and I'm begging you to find a solution to the situation as soon as possible I'm not asking for the earth, but the very basic nuts and bolts of the formula to a healthy Waldorf kindergarten I hope very much you are able to recognise the importance of this issue and offer support.” The claimant was off that day reporting sick.*

28. On **Saturday 9 November 2024**

1. At **10.42 am**, Sue Carlile sent an email to the claimant and others describing planned staffing within kindergarten (Rowan) following the addition of two new children in Primrose, describing that the arrangement would also support the addition of another parent and child group which “*will be instrumental in helping us grow the kindergartens. I appreciate everyone’s ongoing flexibility and collaboration as we work together to implement these changes.*”
2. At **11.03 am**, the claimant responded to Sue Carlile, Marianne Lee and one other at: “*Hi Sue, as I’ve said hundreds of times, 3 assistants across the week is neither pedagogically sound nor supportive. I have*

asked countless times for school to recognise and hear me. The stress of this situation is immense and pushing me to breaking point."

29. On **Monday 11 November 2024**;

1. At **11.38 am**, Mariane Lee emailed the claimant, copying in Sue Carlile *"Following the kindergarten department meeting on Monday 4th November. Sue and myself would like to arrange a meeting with you to discuss staffing.*

There are concerns regarding various communications and the impact they are they are having on yourself and other members of staff's well-being please can you advise us about your availability for a meeting at your earliest convenience."

2. At **2.24pm**, the claimant replied *"Yes a good idea I'm quite busy this week but hopefully we can find a time soon."*

3. At **7.54 pm**, the claimant sent an email to the kindergarten Manager email (Sue Carlile) and HR together with Rebecca Mitchell, and Catherine Fenton setting out concerns again *"Following on from my e-mail last week could you let me know what time frame for correcting the KG assistance situation Rowan I'm doing my best to keep calm in this very stressful situation but I need to see some movement on the soon please.*

Sanna spoke to me today, and though she's OK to assist Wednesday and Thursday this week, she cannot do this every week going forward as she's doing aftercare on those days. I would appreciate the timeframe of when a workable solution will be put in place, as I cannot continue with how things are unless I know it's just for a relatively short period

Putting Sanna on a Wednesday and Thursday in kg is not a workable solution, as the assistant position is 2:00 PM and the aftercare starts at 12:45 PM

I'm aware Marianne would like to talk to me but this is a very busy week so please could you write instead of when an assistant will be employed to take the role with the correct hours. Having a reliable consistent assistant is a very bare minimum of what is needed in a Waldorf kindergarten, and we should be moving heaven and earth to make this happen

...

Once I have an assistant we can finally settle and begin to make pedagogical progress as a team in Rowan. So I would be grateful if you could give me a time frame for when this will happen

If the current assistant on Monday and Tuesday doesn't want, or can't do the job in the hours needed then we need to look at hiring someone who wants the job and give notice to those who don't want the role (emphasis added)

...

I look forward to hearing from you with a workable solution so I can finally have the support needed to run a pedagogically sound Waldorf kindergarten.

I cannot continue long term to take up the slack for much of what is supposed to be the assistant's roll as the toll on my health is too high.

I understand you may be becoming frustrated with my persistence in this (believe me my frustration is very real too) but I'm afraid this is something I cannot, and will not be able to drop if I'm to continue being a Waldorf kindergarten teacher of any quality. I look forward to seeing a clear plan going forward with the very maximum of two assistants in one week every week."

30. On **Thursday 14 November 2024**, a meeting took place with the claimant, Sue Carlile and Marianne Lee in attendance. Discussion points raised related to staffing. The claimant was given the opportunity to share her opinion and views and was also asked what she would consider to be the ideal outcome. Sue Carlile raised concerns with the claimant about the impact that her behaviour had on staff at the departmental meeting on 4 November 2024; the claimant acknowledged that she could have handled the situation and behaviour better. It was Sue Carlile's recollection that the claimant described that she had apologised to Rachel but was still very angry toward her for not accommodating the claimant's preference for her to work 3 days a week. The claimant updated the panel on the challenges she faced with her health condition: she was advised that school support would be available if any issues and/or difficulties arose from it, and that she would be given time to attend medical appointments and had the option of reducing working days. The notes record that the option was identified to reduce the claimant's days (i.e., from 5 days to 4 days). The claimant declined the reduced hours offer.
31. On **Monday 16th December 2024 at 1.58 pm**, a written grievance was submitted by Stephen Carlile, husband of Sue Carlile *against* the claimant on behalf of his wife (the **December 2024 Grievance**). The December 2024 Grievance alleged that the claimant had persistently contacted Sue Carlile outside working hours via WhatsApp, including weeks and evenings, to discuss staffing matters and to revisit previously addressed topics, asserting this caused Sue Carlile **significant distress (emphasis added)**, negatively impacting her personal time, sleep, heightened stress, anxiety and physical health issues such as stomach problems. For Sue Carlile it was alleged that this also undermined Sue Carlile's role, as the claimant's actions questioned and challenged Sue Carlile's decision in a way that made it difficult to perform her role effectively. It set out that "*The school has a duty of care to its employees, and this behaviour must be addressed to prevent further harm. I am prepared to escalate this complaint if decisive action is not taken. If this harassment continues, it is likely that Sue will feel compelled to resign- a wholly preventable outcome*", and requested action including ceasing all inappropriate

WhatsApp use, that the claimant be instructed to stop using WhatsApp to discuss staffing issues that extend beyond a 24-hour time line; that the claimant must direct all future questions or comments about long term staffing to email and ensure that HR is cc'd on all correspondence and *"No contact during the Christmas break:"* the claimant *"must refrain from contacting Sue at all during the holiday period to allow Sue an opportunity to recover from this undue stress"*.

32. On **Thursday 19 December 2024**, on the last working day before the end of term, the claimant was suspended from her employment by letter (the December 2024 Suspension Letter handed to her. The respondent cited concerns raised about the claimant's actions in relation to both colleagues and managers. The respondent expressly set out that, before taking this action, they had considered whether they could alter the claimant's role to ask the claimant to work in another part of the school (that is not within kindergarten, which is the area the claimant had worked since July 2020 and had registration for and have *"also considered your health, and the health challenges you have made us aware of"*. Specifically, the respondent was concerned that the claimant may seek to intimidate staff during an investigation. The respondent concluded that there was a need to investigate matters following the December 2024 Grievance. The claimant was suspended by Rosie Tait, who personally delivered the suspension letter to the claimant; there were no pupils present. The claimant was advised of her suspension and told she did not have to read the letter straight away but could do so when she had time. The claimant's contract of employment allowed for suspension. The claimant continued to be paid during the suspension period.
33. The **December 2024 Suspension Letter** set out that the claimant was to be investigated on the basis:
 1. That she had engaged in bullying and harassing behaviour. No specification was provided at this time of who it was alleged the claimant had bullied or harassed and when this was alleged to have occurred, to whom
 2. She had publicly undermined and devalued other members of the Kindergarten team. Although not identified, the claimant knew who those were, although the claimant was not given notice of when those events were said to have occurred.
 3. She had failed to accept decision-making or instruction from her Line Manager (although not named, this was known to the claimant to be Sue Carlile, and while it did not set out when the claimant failed to accept such decision-making, the claimant was aware of same)
 4. She had actively obstructed her Line Manager (although not named, this was known to the claimant to be Sue Carlile, and while it did not

set out when the claimant failed to accept such decision-making, the claimant was aware of same.

5. She has attempted to recruit other staff members and members of the parent body in a deliberate attempt to destabilise and undermine her manager (although not named, that was known to the claimant to be Sue Carlile) and the stability of “*your department*” (that being the Kindergarten Department); no specification was provided of when and what circumstances this was alleged to have occurred.
34. The **December 2024 Suspension Letter**, set out that before taking this action, the respondent had “*have considered whether we can alter your role for example ask you to work in another part of the school. We have also considered your health, and health challenges you have made us aware of. However, given the nature and seriousness of the allegations we feel it would not be appropriate for you to tech in school whilst the investigation is carried out*”. The claimant was advised that the suspension was not punitive and that it was to allow for investigation, she was advised that it will “*continue for up to 10 weeks*” and that during this time, the respondent will review the situation and the “*suspension period may be extended or ended*”. It set out that the claimant may come onto site to drop off or pick up her son from school but otherwise she must not return to her place of work during the suspension without first having approval from the HR Manager (the claimant knew that this was Marriane Lee) It set out “*You are specifically prohibited from discussing this investigation with any employee of the school (other than our Human Resources Manager). You are prohibited from discussing this matter with parents of children in the school. Reference to discussion includes by email or social media.*” **It did not** prohibit the claimant from identifying colleagues within the Kindergarten Department or otherwise to Human Resources who may or would be able to provide supportive and/or contrary positions disputing any of the allegations set out.
35. The **December 2024 Suspension Letter** set out that the respondent would now undertake an investigation into the allegations and that they would appoint an Investigating Officer, the claimant would be entitled to be accompanied, and they would be in touch with a view to arranging a mutually convenient date to have the Investigation meeting. It identified that Marianne Lee, the HR manager, was the claimant's point of contact during the investigation and “*she will be available should you need to speak to anyone. Please contact her using the school reception number*”. The claimant knew, as it was obvious, that it would not be practically possible to make contact during the Christmas period, no undertaking was set out that arrangements were made to allow telephone calls during the Christmas period. The December 2024 Suspension Letter concluded, “*If you have any queries about any of the above, or if you need support, contact Marianne Lee or your trade union representative.*” It did not state

that the respondent knew who any possible trade union representative was and/or had made arrangements to contact them.

36. On **Friday 3 January 2025**, the Trustees met and discussed wellbeing checks being provided for the claimant and concluded neither Marianne Lee as HR Manager nor the claimant's Line Manager would be appropriate in all the circumstances and did not identify an alternate contact.
37. On **Monday 6 January 2025**, the first day of the new school term after the seasonal break, the claimant raised a grievance by email (the **January 2025 Grievance**), to the Board and 7 individual members of the Board being Jim Hall, Martin Kutternik, Rosie Tait, Andy Slater, Kevin Robertson & Pamela Cooney;

"With regard to the suspension that you've imposed on me that commenced Noon 19th of December 2024 I want you to know that I completely refute all accusations of wrongdoing.

This suspension came as a complete shock to me and was out of the blue and has been a struggle for me to understand what has happened. Still just under 3 weeks later, I am none the wiser with further details. Despite this I've fully complied with your instructions but my mental health and subsequently my physical health has taken a turn for the worse, caused by the suspension you're handling of it so far.

I wish to raise a formal grievance with some urgency I'm assuming this will be against Marianne as she is the HR person, but if it's not to her then to whoever is responsible for the following

- *Since my suspension almost 3 weeks ago not one person is called to check on my well-being. I have been completely abandoned.*
- *Following the guidance you laid out in my suspension letter I've tried telephoning Marianne numerous times but my calls were never answered and every time it has gone to answering machine, so I have been unable to contact her per your instructions in the suspension letter.*
- *Your suspension letter also stated I could receive help from my union but my union offices have been closed over Christmas. You failed with due diligence regarding whether they were actually available to support me during this time.*

So as a result I've been left completely alone with no support at this difficult time which made even more difficult due to it being over Christmas. I have had panic attacks, severe anxiety, high pulse rates and severe lack of sleep due to worrying, this in turn has aggravated my existing medical condition too.

*As an employer, you have a **legal** 'duty of care', to support me during suspension and look out for my wellbeing. Someone at the school has severely failed over this, and it has caused me and continues to cause me great distress.*

I would like to know which individual is responsible for this, and why these failing and breaking of employment law is acceptable to you as my employer. I would also like them to explain to me why they don't care about me. Going forward I would like you to make more suitable arrangements to support my mental health and well-being than you have done until now. I am interested to see if you will treat this obvious breach of the law with the same intensity as you have decided that an allegation against me needs to be treated as if I'm certain there's not a level playing field here.

38. However, the claimant's **January 2025 Grievance** went into the respondent spam filter, and Board members, as volunteers, did not routinely check their respondent emails.
39. Also on **Monday 6 January 2025**, Marianne Lee was on annual leave and Monday 6 and Tuesday 7 January were in-service training days.
40. From **Wednesday 8 January 2025 to Friday 10 January 2025**, the school was closed due to adverse weather conditions.
41. Although the school itself was closed on **Wednesday 8 January 2025** on the return of the HR manager, Marianne Lee, the Board decided to appoint an external consultant to "*lead main investigation*", at this point, the Board were still unaware of the claimant's January 2026 Grievance, as this had gone into the general Trustee email address spam filter. That external consultant was Renzo Consulting . The Board also resolved to seek advice from the external consultant on who to appoint for claimant well-being checks, but in any event some of the Trustees between 8 and 10 January discussed possible options to offer the claimant well-being support.
42. On **Wednesday 15 January 2025** Renzo Consulting were formally appointed to conduct an investigation into the December 2024 Grievance. Renzo was not instructed to investigate matters beyond what was expressed in the December 2024 Grievance and, in particular, did not include the claimant's comments repeated on **5 November 2024** that if *Rachel and Faye don't want the hours we are offering and that the job requires then they should be given the proper notice. And the job should be offered to someone who does want it. I'm sorry to sound harsh, but this is a reality: the job is not two days a week*, and which statement had been made previously by the claimant in the presence of Rachel.
43. On **Friday 17 January 2025**,
 1. The Board identified "*Wellbeing support person*" who made contact with the claimant for the first time, having been appointed that day. The respondent, having explored options seeking to identify a neutral member of the Board, identified Hannah Wallis, who was a nurse with an understanding of the respondent school and claimant ethos.

2. The claimant's trade union representative intimated to the claimant that he had emailed one of the Trustees, Mr Jim Hall, and would let the claimant know when he received a response.
3. At **3.01 pm**, the respondent Board, via their generic email address, emailed the claimant stating that the Board wanted to provide meaningful support, identified a named individual, Hanah Spreadborough, although noting the claimant had a period of ill -health over the festive period and asked if the claimant would like to have her contact details and advised that with regard to *"the Investigation itself, the Board has decided to appoint an external lead investigator to support the next steps in the investigation process. Given the small size of our staff, we believe this will ensure the matter is progressed as quickly as possible."* The claimant was provided with contact information for Renzo Consultancy and was advised that they proposed to invite her to an investigation meeting the week beginning 27 January 2025.
44. On **Monday 20 January 2025**, the claimant emailed the Board intimating that she had not received acknowledgement of her January 2026 Grievance sent on 6 January 2025.
45. On **Tuesday 21 January 2025**, Rosie Tait emailed the claimant confirming that, as requested by the claimant, her details were now passed to Hannah Spreadborough and indicated that, having checked the Trustee inbox, the Grievance could not be located. The claimant's **January 2026 Grievance** email was located later that day, having gone into the junk email because it had been sent from an external email.
46. On **Tuesday 28 January 2025** the claimant attended a meeting with Renzo Consulting, accompanied by her trade union representative towards the conclusion of the meeting Renzo interviewer noted *" I know you've got a lot of paperwork in front of you, which is great, because it's good to see things in terms of building a time line of what's happened an understanding the communication that you've had and you, know, what's been said by partes"* and asked the claimant to share those documents, and claimant asked, *"Will you speak to the people that I've cited, the kindergarten staff?"*. The claimant did not share that with the respondent after being notified of the Disciplinary Hearing or for her Appeal.
47. On **Thursday 30 January 2025**, the respondent appointed Renzo Consultancy to *additionally* progress the claimant's grievance.
48. On **Friday 31 January 2025**, Renzo Consulting wrote to the claimant inviting her to attend a remote meeting on Monday 3 or Tuesday 4 February 2025, setting out that she had *"been appointed to investigate the grievance you recently raised"* (that is the claimant's January 2025 Grievance).

49. On **Sunday 2 February 2025**, the claimant received contact from Hannah Wallis
50. On **Monday 3 February 2025**, the claimant emailed Renzo Consulting with email headed *Evidence* “*I've been thinking about your e-mail re evidence, and I remember Sanna telling me that she and Sue exchanged WhatsApp messages around 2am one night re sick cover for kindergarten obviously I can't talk to Sanna about this but if you are able to speak with her, I think this proves that out of hours texting was commonplace amongst kindergarten staff.*”. **(The claimant's email of 3 February 2025 to Renzo)**
The Tribunal notes the claimant understood that, while she was restricted from speaking to colleagues, that restriction did not prevent her from providing names and other details in support of her position to either Renzo or the respondent throughout her suspension; however, the claimant elected not to provide them to the respondent.
51. In the week commencing **Monday 3 February 2025**, and while Renzo was initially appointed, the respondent Board concluded that, as it considered the claimant's January 2025 Grievance was a straightforward factual matter (relating to timings), it was more appropriate for the investigation to be handled by a Trustee and Sarah- Jane Mills, a volunteer (Trustee and Clerk to Trustees) as a former solicitor with experience in workplace investigations, who took over that role.
52. On **Wednesday 5 February 2025**
 1. The claimant responded to the Renzo invite issued 31 January 2025, proposing a meeting on 17 February 2025.
 2. Renzo met with Rosie Tait, in the course of a 40-minute meeting with Renzo, on being asked to comment if it feels relevant
“*Yeah, So one of the many problems is kind of*” the claimant “*wouldn't be straightforward*”
In the context of being asked to comment on the nature of communications she had seen, Rosie Tait described, “*I only really think of the last email, which was really hostile and kind of destructive ... Aggressive and yeah, just not really sticking to the facts, not saying a decision has been made that I'm unhappy with ... I'd like to explore ways ... It wasn't like that at all. It was just really personal and destructive and yeah, sent to a number of people to give an impression that which is just kind of yeah, divisive and destructive when ... you're kind of like going after someone who's in charge of or dealing with HR and kind of, you know it is really destructive because it starts to .. feed in all sorts of unpleasantness, which has happened*”
In response to being asked if there was anything to add in relation to the claimant's involvement in the recruitment process or staffing concerns, Rosie Tait makes a number of comments, including “*that at some point... there's collective responsibility... You don't kind of,*...

well, for me anyway, you don't continue with the sort of ... lots of kind of personal accusations... Yeah I, I consider her approach manipulative and destructive"

53. On **Thursday 6 February 2025**, the claimant had her first in-person meeting with Hannah Wallis.
54. On **Tuesday 11 February 2025**, Sarah-Jane Mills emailed the claimant in response to the claimant seeking an update on her January 2025 Grievance, advising she doesn't need to meet with the claimant but will report to the Board as she has gathered sufficient information – the claimant responded seeking information from Sarah Jane Mills on her credentials. By 14 February, Sarah Jane Mills noted the claimant has appealed the respondent's decision on the claimant's January 2025 Grievance.
55. On **Wednesday 12 February 2025**, the claimant sets out to Sarah-Jane Mills that until the email of 11 February she had understood that Renzo would deal with her January 2026 Grievance, setting out that she has reasonable grounds for concern as Renzo were external and impartial have been removed and given Sarah-Jane Mills' role as 'Clerk of Trustees' setting out 11 bullet pointed questions including requesting *"more detail of your credentials with emphasis of your work in Human Resources and your role in workplace investigations, providing examples where possible?"*
56. On **Thursday 13 February 2025**, the Board issued the outcome of the Investigation into the claimant's **January 2025 Grievance** to the claimant.
57. On **Friday 14 February 2025**
 1. Sarah-Jane Mills' investigation report to the Board on the claimant's January 2025 Grievance (the **respondent's February 2025 Report on the claimant's January 2025 Grievance**) set out a detailed timeline of events and concludes *"The grievance raised by AS is partially upheld, in that there was a delay in putting wellbeing support but there were extenuating circumstances"*
 2. At **7.53 am**, the claimant emailed her appeal against the Board decision on her January 2026 Grievance, setting out 4 grounds, including that she disputed the *"statements on the way chain of care was provided. I have evidence to the contrary of what you said."*, *"Not all evidence has been considered, and I haven't been afforded the opportunity to discuss this in detail with the investigating officer"* and *"I have good reason to believe the investigation has not been carried out fairly or without bias"*. The claimant did not give notice of the evidence she considered was not considered, nor did she subsequently provide it.

3. At **10.46 pm, Sarah Jane Mills** noted the claimant has appealed the decision on the claimant's January 2025 Grievance.
58. On **Monday 10 February 2025 at 9.35 pm**, Rosie Tait for the Trustees emailed Renzo Consulting (**the respondent's email of 10 February 2025 to Renzo**), copying the respondent HR, the general Trustee email address and Sarah Jane Mills (the Tribunal concludes that Sarah Jane Mills was included as she was not added within the general email for Trustees):

"Thank you for your detailed response to my e-mail.

We note your understanding of the reason for suspending our staff member.

The decision to suspend our staff member was not made because of a grievance. The grievance in question may have narrated some of the type of behaviour the Board independently considered breached the bond of trust and confidence between the parties but the grievance was not the reason for suspension.

Of particular concern to us, was that behaviour directed towards other staff members, to whom, we also have a duty of care. Much of this highly divisive behaviour was addressed with the suspended staff member on a contemporaneous basis, prior to suspension, although it's conceded that disciplinary proceedings were not instituted. It was the repeated pattern of this type of behaviour which gave a significant concern particularly having regard to the well-being of other staff members.

We would question your assertion that findings of gross misconduct must inevitably be preceded by patterns of previously addressed behaviour. Any behaviour which fundamentally breaches trust and confidence between the parties can potentially constitute gross misconduct an isolated behaviour such as theft are often cited.

*We sought independent oversight to test our impressions and were left open to a finding that the evidence was insufficient to arrive at the initial impression formed. **Sadly we are left feeling that an opportunity has been missed. (emphasis added)** We are where we are and we must now decide the best course of action for all of our staff members and those children we support as a matter of urgency*

We note you have indicated that your reports will not be available until Friday (14th). With that in mind it would help to have your response to the following questions

- 1. Have the matters itemised in the bullet points to the letter of suspension form part of your investigation. Have they been put to AS?*
- 2. Will the two reports you are providing on the investigation relate to (1) the grievance and (2) the matters raised in suspension letter*
- 3. Is it possible to give a verbal outline of the outcome of your investigation into the two above matters prior to you sending the board the two reports next Friday. This would greatly assist us as we have very limited time to consider next steps particularly given there is half term holiday*

from the 14th and parents are looking to hear whether the staff member will return to work after the half term break.

Given the very narrow issues raised by the suspended employer grievance the board has decided to deal with this matter internally thank you for your offer of support."

59. On or around **Friday 14 February 2025**, the day before school half term break Renzo issued its report (**the Renzo February 2025 report**) including **Recommendations**(for ease the claimant is AS and SC is Sue Carlilie): set out Summary of the Grievance (that being **the December 2025 Grievance**) describing that interviews where held with Mariane Lee HR Manager, Sue Carlile (the complaint and Early Years Co-Ordinator), the claimant accompanied by her representative and Rosie Tate as a School Trustee, noting that a request was made to Stephen Carlile as although no response was received nothing that while Stephen Carlile was employed by the respondent he had since left employment.
60. The Renzo February 2025 report set out **Final Assessment of the Evidence** (for ease, the claimant is AS and SC is Sue Carlilie):
 1. *The evidence gathered during the investigation confirms that AS **persistently** (emphasis added) raised concerns about staffing through both verbal and written communication.*
 2. *Between August 2024 and December 2024 AS sent 12 emails and 8 WhatsApp messages regarding staffing. The recipients included SC, ML, and the education coordinators. These figures are based on the evidence provided by all parties during the investigation.*
 3. *AS stated that she was seeking updates on staffing levels when sending these emails on WhatsApp messages. However, **the tone and content of some emails could be interpreted as unprofessional or hostile.** (emphasis added)*
 4. *The evidence regarding WhatsApp communication outside of working hours confirms that some messages were sent by AS to SC out of hours. However, the evidence also shows that SC sent staff relating messages to AS outside of working hours.*
 5. *All parties interviewed confirmed that no formal instruction was given to as to stop contacting SC outside of working hours before the grievance was raise.*
 6. *All parties interviewed confirmed that no formal instruction was given to as to stop sending emails regarding staffing issues*
 7. *During a meeting on 4th November, AS demonstrated unprofessional behaviour which she acknowledged during the investigation meeting. A follow-up meeting was held by ML and SC, during which AS's*

behaviour was discussed. However no formal discussion took place regarding the use of WhatsApp or emails about staffing.

- 8. WhatsApp communications practices within the school lack clear guidance the evidence provided indicates that WhatsApp is widely used by employees with messages sent at various times and on different days by multiple staff members*
- 9. AS acknowledged the recruitment process has changed in July 2024 **but remained dissatisfied (emphasis added)** with how they were implemented.*
- 10. Trustees and HR were not fully aware of concerns regarding WhatsApp communication before the grievance was submitted.*

61. The Renzo February 2025 report set out recommendations:

“Following recommendations have been developed based on the evidence presented during the investigation.

These recommendations are intended to provide guidance on potential next steps and should be reviewed by the board of trustees who will determine any appropriate course of action.

The recommendations focus on ensuring procedural fairness addressing communication concerns supporting professional relationships reinforcing professional standards and mitigating future risks they are not prescriptive but serve as considerations to support and inform me informed decision-making process.

Ultimately, the Board of Trustees will decide on any next steps based on the findings and their assessment on of what is appropriate and proportionate in the circumstances.

The findings from the investigation have identified several key areas that require review and consideration by the board of trustees

1. Grievance outcome

Based on the evidence gathered during the investigation it is recommended that the grievance is partially upheld however the final decision race with the board of trustees who will determine the outcome upon thorough review of this report and supporting appendices.

...

2. AS Communication and Behaviour

The investigation found that the tone of certain verbal and written interactions by as could be deemed unprofessional and the volume and frequency of our messages regarding staffing may have created an environment where others perceived her communications as excessive or disruptive.

The evidence confirms that AS was aware of the centralization of recruitment and was advised on multiple occasions that staffing decisions

rest with SC however no formal instruction was given to AS to cease her communication and behavioural concerns were not addressed at the time.

Recommendation. *Given these factors, immediate disciplinary action may not be proportionate, instead*

.....

3. Line management training and support

SC stated she requested support in managing as but did not receive guidance or assistance. This highlights a gap in management training and support for line managers

Recommendations included a structured line management training programme for all employees with management responsibilities.

4. Formalised communication expectations

The investigation highlighted concerns about workplace communication particularly in relation to the use of WhatsApp for work-related discussions there is no formal policy regarding its use and messages have been sent at various times by multiple employees.

Recommendation implement clear communication policy with appropriate channels for work related discussion... right to disconnect

5. Mediation and conflict resolution

To facilitate a positive working environment and restore professional relationships it is recommended that facilitated mediation is offered to SC and AS. Recommendations included appointing trained external mediator or HR professional should guide the process, if mediation if instructed a follow up process should be implemented

6. Review of organised decision-making structure

The investigation found inconsistent understandings of the education coordinator's role and who they report to .. Recommendation include that the decision making hierarchy should be clearly documented and communicated to all staff

7. Review and strengthening of policies

A workplace conduct and communication policy should be implemented

8. Grievance procedure review and update

A comprehensive review of Grievance Procedure should be conducted to ensure its robust clear and aligned with UK employment law...

9. Electronic Communication Policy

A policy on electronic communication should be developed...

Next Steps

The recommendations outlined in this report are based on the evidence gathered during the investigation are provided for review by the board of trustees who will determine the appropriate next steps in light of the findings once the recommendations have been reviewed it is advised that

an outcome letter is issued to SC formally advising her of the outcome of the grievance the letter should provide a high level overview of any recommendations relevant to our ensuring that only information directly any recommendations that do not pertain to her should not be disclosed in line with confidentiality obligations this outline letter will serve to formally close the grievance process and must include clear information regarding sees right of appeal in accordance with the organisation grievance procedure.”

62. On **Wednesday 19 February 2025** the claimant attended a second meeting with Hannah Wallis.
63. On **Monday 24 February 2025**,
 1. The claimant was advised by Rosie Tait for the Trustees that Investigations into the allegations were still ongoing and, as such, the claimant's suspension was extended to 27 March 2025, concluding that *“I know that you will be disappointed by this but because there was an outstanding grievance raised against you we felt it proper to investigate that in the first instance due to our limited resources it was not possible to investigate the allegations detailed in our letter of 19th December 2024 at the same time”*
 2. The claimant spoke to a GP at her local practice, and reported significant stress, anxiety, and poor sleep, all secondary to a workplace suspension and ongoing issues related to the workplace.
64. On **Wednesday 26 February 2026**, the claimant responded to the email on 24 February to the generic respondent Trustee email, copying in the Trustees Martin Kutternik, Andy Slater, Kevin Robertson, Pamela Conney, Jim Hall and Rosie Tait, asking *“what on earth is going on? Four more weeks of suspension seems very severe and unnecessary”* asking if this was due to a new grievance or the respondent had not finished the investigation, describing that she did not know what *“outstanding grievance against me”* was and that *“concerns about my behaviour”* was not the reason for the suspension *“it was ALLEGATIONS against me, which I entirely refute, This is feeling like a witch hunt”*
65. On **Thursday 27 February 2025**;
 1. At 8.58 am, Rosie Tait emailed, setting out that the allegation or concerns set out in the original letter of suspension remain the subject of investigation *“As mentioned in our most recent letter given the school's limited resources we instructed an external HR firm to investigate after instruction it was made clear to us that we would first have to deal with an outstanding grievance against you... The school did not appreciate that investigation of this grievance would take 8 weeks to conclude. We understand that this must be a very stressful*

for you and the school will use best efforts to conclude the outstanding investigation as quickly as possible.”

2. At **9.36 am**, the claimant again emailed “*Dear Rosie Sorry I still don’t understand what you are saying*”.
 3. At **9.48 am**, the claimant emailed Renzo Consulting asking how the investigation was going, noting that her suspension had been extended for a further 4 weeks, asking “*Are you still involved in this investigation as the communication I’ve just received from the school doesn’t make it clear*”
 4. At **11 am**, Renzo set out to the claimant that their involvement in the process ceased on 11 February at the request of the Trustees; they were unable to provide any update, and all responsibility for communication has sat with the school since 11 February 2025.
 5. At **16.24 pm** Rose Tait responded for the Trustees “*Apologies for any lack of clarity. Perhaps I should use the words in your question: this is a continuation of the current suspension as we have not finished our investigation.*”
 6. The claimant also had a telephone conversation with Hannah Wallis, as the respondent appointed support contact.
66. On **Tuesday 4 March 2025**, the claimant attended her **Grievance Appeal** meeting with her trade union representative, chaired by Andrew Slater, a member of the Board of Trustees who had no direct involvement in the investigation of the claimant’s grievance. The date of 4 March 2025 was chosen to align with the respondent’s half-term break and accommodate the respondent’s availability. Whilst the claimant said they had new information to present at this meeting, they did not produce it. The claimant was informed that, in accordance with the respondent’s grievance procedure, the original finding would stand absent additional evidence. However, Andy Slater discussed options for how to proceed, and the claimant was given a further period to submit any additional information but failed to do so. In the absence of this, her Grievance appeal was denied.
67. On **Monday 17 March 2025**, the claimant emailed Hannah Wallis “*I’m so sorry I haven’t been in touch. I’m really struggling. Let’s try and talk this week if possible.*” The claimant did not mention that Hannah Wallis had moved away or that this created any issue.
68. On **Tuesday 18 March 2025** Hannah Wallis responded by email “*I am so sorry to hear that. I did wonder if that was what was happening for you. Let’s try and speak this week if you feel up to it. I will have a think and then mail you with a few suggestions to see what suits you best. I am very flexible at the moment, so we can find a time when you are able to*” Hannah

Wallis did not set out to the claimant that, having moved away, she was unwilling or unable to continue to provide support to the claimant. The claimant did not subsequently set out to the respondent that Hannah Wallis was unwilling to provide support to the claimant.

69. On **Wednesday 26 March 2025**;

1. The suspension was extended to **25 April 2015** *"In light of the meeting date the suspension is continued to 25 April 2025"*, this was in the context of protected conversation arrangements.
2. The claimant was seen by GP referred Mental Health Worker, the GP recording in December 2025 that *"it was clear that that ongoing issues with work were causing significant stress."*
3. An email supportive of the claimant was issued to the Trustees by some parents of children in the Rowan kindergarten, which letter was also read out at the respondent AGM.

70. On **Friday 28 March 2025**, the respondent and claimant entered into a period of *"protected conversation"*.

71. On **Sunday 30 March 2025**, the claimant was informed in writing by Andrew Slater, Trustee, that her Appeal against the decision on her January 2025 Grievance was not successful; in the final paragraphs, he set out that

"During the appeal hearing you indicated you had additional evidence to present but were unable to provide it at that time. As per the school's grievance procedure, we informed you that, in the absence of additional evidence, the original findings would stand. We also discussed options on how to proceed

Following the hearing, I wrote to you offering a further period to support any additional evidence or testimony in a continued effort to ensure you a fair and thorough process. However, no additional evidence has been submitted to date.

In light of the above, I believe that the grievance has been handled in accordance with the school's grievance policy and procedure. The only deviation from the procedure was the additional time afforded to you to submit evidence following the appeal hearing.

I appreciate that you have raised concerns about the independence and objectivity of the Trustees to hear the grievance appeal. The school has made every effort to ensure fairness in handling your grievance and appeal, and the policy is for it to be held by a trustee. I would like to assure you that I and the rest of the trustees remain committed to impartiality and fairness.

I would also like to reassure you that the process followed aligns with the guidelines provided by ACAS in its code of practice on disciplinary and grievance procedures as part of ACAS best practice, we have made every

effort to ensure transparency, fairness and opportunities for you to present your case.

*In conclusion, **without the submission of new evidence**, I uphold the findings communicated to you on the 13th of February 2025. “ **(emphasis added)**”*

72. On **Thursday 2 April 2025**, Mona Zaiden became a Trustee.

73. On **Thursday 24 April 2025**,

1. Andrew Slater for the Trustees wrote to the claimant, *“it is considered appropriate to further extend the suspension to 23rd May to enable further dialogue to take place”*
2. The claimant was seen by GP referred Mental health Worker, the GP recording in December 2025 that *“it was clear that that ongoing issues with work were causing significant stress.”*

74. On **Friday 25 April 2025**:

1. At **9.40 am**, the claimant sent an email to 7 Trustees, including Mona Zaiden, and the generic Trustee email, asking for an update on the Investigation and when it would be finished, describing, *“As you already know I wholly refute these allegation, and also possess evidence not only backing me up but also to prove that there is in fact a campaign against me”*

My understanding is that I am suspended for an investigation into the allegations against me and that is the reason for the restrictions placed upon me about what I may communicate with other members of staff ACAS guidelines state that suspensions are to be kept as brief as possible this is not what has happened to me

If you are suspending me further with the gagging order in place I want to be clear this should be only to enable you to conduct and hopefully finally conclude your investigation

Can I at least have your word that this will be the last extension to my suspension my original suspension has been extended three Times Now with the investigation seeming to have stalled and it's causing me much stress and mental strain

I would like to see your future dialogue being a return to work strategy for me and lifting this suspension which is now starting to feel like an unfair punishment.”

The claimant did not at any point provide the evidence she described she had backing her up and /or to prove that there was, in fact, a campaign against her.

2. At **12.24 pm** under cover of an email, **Martin Kutternik** (Trustee and Member of Board of Trustees) wrote responding to an email responding to a named teacher, to respondent staff addressed to 7 named teachers and 2 additional staff representing the staff cohort and 5

Trustees and headed with the named individual and the “*The College of Teachers*”, that being the informal body which the claimant had chaired until her decision to resign from that role notified to the College of Teachers on 3 October 2024, copying in 13 individuals together with the school reception in what was expressed as a personal capacity and not on behalf of the respondent Trustees in what was in his view an attempt to dispel any allegation that the claimant’s suspension had been made arbitrarily or without consideration, **(the Kutternik April 2025 email)**, it set out

Thank you for your e-mail I'm writing to you in a personal capacity not on behalf of the Trustee body (as it will take some time for trustees to agree on a collective reply).

Your message helped clarify certain aspects of the situation for me. It seems much of the concern has arisen from a misunderstanding - though it also brought up a point of confusion for me

First, what I now see more clearly:

There appears to be a perception that the decision to place Andrea on leave was made arbitrarily or without sufficient consideration. From this, it seems you've concluded that our actions undermined the success of the school.

The unrest among some teachers and parents appears to stem from this misunderstanding and has unfortunately caused considerable strain and damage- seemingly fuelled by a lack of trust in the trustee's intentions. I fully respect and appreciate the loyalty you feel towards a colleague; that is truly commendable at the same time, I want to acknowledge that I (and Sarah-Jane!) attended several meetings with the aim of listening to your concerns and sharing and explaining the perspective of the trustee. (Andrew, I believe you are not present in any of these). As I mentioned in those meetings, I ask you to consider there may be relevant information informing this decision that is not publicly available.

In my view, there was a genuine risk that the school would not have made it into the new year had this action not been taken. Admittedly what should have been relatively straightforward process has unfortunately been complicated by several unforeseen issues and delays.

Understanding the root of this misunderstanding- the wrong perception that trustees did not act with the best interests of the school at heart- helps explain the energy that's been directed by you and the college towards this HR issue...

What continues to confuse me, however is why Rosie has been singled out by the signatories. Would you kindly explain that as it puzzles?

Thank you again for your continued commitment to the school. I sincerely hope we can move forward with mutual understanding and renew trust...

We need committed parents, committed teachers and staff, and committed trustees to make a school an organisation like ours work.

It's a real shame that people with good intentions for the school have found themselves divided by the powers of misconceptions. I hope this e-mail can be a step towards greater collaboration and unity

We need to treat each other with kindness, respect and forgiveness, which does not mean that standards can slip. Also, I notice a lot of rumours spread easily, and each of us needs to control that and not take it as gospel and not jump to (possibly wrong) conclusions when we hear something but try to check and find facts before passing on something we have heard.

I hope that staff/ teachers and volunteers and trustees are all giving their best in different ways to help steady and unite 'the ship' for the greater purpose of this educational establishment, and the children and the parents. If we feel personally (emotionally) challenged I suggest that first to look always at the six basic exercises of Steiner or a bit before taking it further. It is something I often have to remind myself too, as emotional outburst within an organisation can often lead to an endless spiral of complications.

I also previously suggested that at least one trustee attend a staff meeting each month if that is welcome, and that we hold "a circling of the wagons" day annually - bringing together all staff, volunteers and, trustees for a day of connection and shared purpose

If you have any suggestions, please let me/ us know.

PS You mentioned an interest in additional staff well-being support. For the past 30 years I've run a business focused on holistic self-help health and well-being support tools. If there's interest I'd be happy to give a presentation and or advice on some practical approaches with continued good wishes.

3. At **2.49pm** Catherine Fenton forwarded the email to the claimant: *"He's close to libel against you here. They didn't know Sue had resigned did they?"*
4. Andrew Slater on behalf of the Trustees wrote extending the suspension to 23 May 2025 *"Following your recent communication, it is considered appropriate to further extend... to 23rd May 2025 to enable further dialogue to take place"*
75. On **Saturday 26 April 2025**, the claimant emailed the then 7 Trustees, including, by that time, Mona Zeidan, Katie Long and Willie Aristde-Deghan, expressing concern on the Kutternik April 2025 email, describing that it implies a pre-determined decision of guilt, and *"that I have clearly done nothing wrong"* and referring to it as *"libellous and confidentiality breaking communication"*
76. On **Sunday 27 April 2025**, the Trustees set out that they would look into the detail and discuss further as a Board *"We would like to assure you that*

there is no pre-determined judgment against you. We would also like to assure you that we are not ignoring you... We are in the process of replying to your email of 16 April, as well as the email you sent on Friday.

77. On **Wednesday 30 April 2025**, Martin Kutternik emailed the claimant with an apology for the terms of his April 2025 email setting out that he acknowledged that the claimant's concerns had been noted, apologising for any impact that was not intended, that it was sent in good faith with the intention of supporting "*us all during a challenging time*" and recognised that the investigation process must remain confidential and that he did not intend to make any further comment while the process remained ongoing but would send an amended clarification to the recipients of his original email.
78. On **Thursday 22 May 2025**, the protected conversation concluded, and the respondent wrote to the claimant setting out that the Board had decided to conduct a formal investigation (**The May 2025 Notice of Investigation**) into what was said to be the claimant's actions, set those out in 6 bullet points
 - *Bullying and harassing behaviour*
 - *Publicly undermining and devaluing other members of staff*
 - *Failing to accept decision-making or instruction from your line manager*
 - *Actively obstructing your line manager*
 - *Destabilising and undermining your line manager and stability of your department*
 - *Poor working relationships with management"*

The **May 2025 Notice of Investigation** intimated that the person in charge of the investigation would be appointed by the Trustees, that the aim of the investigation was to establish the facts of the matter by gathering as much relevant information as possible and that it was currently expected that the investigation would be completed by Friday 20th June. It was described that if it is found there was a case to answer, the claimant would be invited to attend a formal disciplinary hearing and that the investigator **may** invite the claimant to attend an investigation meeting where the claimant can explain their version of events if this is required; the claimant would be informed of the time and date of the meeting in advance.

79. The May 2025 Notice of Investigation set out that the claimant's suspension would be extended to **Friday 27 June 2025**.
80. As part of the investigation process, **Rosie Tait**, Member of the Board of Trustees, was appointed as the investigating officer.
81. On **Friday 12 June 2025**, Mona Zaiden ceased to be a Trustee.

82. On **Friday 20 June 2025**, the respondent investigation report by Rosie Tait was completed (**the June 2025 Investigation Report**), as set out at the end.
83. The **June 2025 Investigation Report**, extended to 8 pages, recommended that matters proceed to a disciplinary hearing.
84. The **June 2025 Investigation Report** described that in Sue Carlile's (although unnamed) resignation email, it was stated that the claimant's actions ultimately resulted in her decision to resign. This was identifiable by the claimant. In respect of another member of staff, in late 2024, they had raised concerns that the claimant raised her voice and acted in what was said to be an inappropriate manner towards them, and within earshot of children, describing the incident as unsettling and further described another manager's complaints. It further set out that issues raised by another work colleague related to 2022 and described these *"issues are historic and as they are not contemporaneous, they have been discounted"*. The Tribunal concludes that those comments which were discounted by Rosie Tait were made by Gillian Barrett.
85. The **June 2025 Investigation Report** further set out Rosie Tait's reasons for not interviewing current staff and described that the claimant *"has either directly or indirectly shared with her colleagues that she's been suspended and actively lobbying colleagues to advocate for. Such steps are in direct contradiction to a request contained in the letter of 19th December coming on to schoolgrounds on 4th April 2025 to attend the end of term festival without prior arrangement."*
86. The **June 2025 Investigation Report** signed by Rosie Tait, and set out that there were 5 issues

Issue 1: bullying and harassing behaviour towards managers and other work colleagues; which described a resignation email for unidentified members of staff stating it was the claimant's actions which ultimately resulted in their decision to resign, although unnamed, it was apparent that this was a reference to Sue Carlile and Rosie Tait concludes that she had found there was evidence, as reported in Statement A; namely

1. Becoming verbally aggressive and accusing them of lying during the course of a departmental meeting in November.
2. Raising her voice and attempting to dominate conversations refusing to accept alternative perspectives
3. refusing to accept the need for confidentiality when urged to practise the same
4. contacting parents when expressly asked not to
5. sharing factually inaccurate information to the parent body

6. ignoring a specific request to allow them to deal with concerns which arose and refrain from involving third parties
7. refusing to assist in any way with cleaning preparing children for the outside environment or classroom maintenance.

Issue 2;

During the course of the investigation, I considered a statement from the early years department made on 4th November 2024. That statement explained the claimant had made an extremely angry outburst when she did not get what she wanted, describing that the claimant Then suggested that other members of staff should be given their notice if they did not agree to working particular work pattern describing that the outburst was so surprising that a member of staff broke down and left the room I consider the above is an example of potential direct bullying colleagues, in the suggestion that colleagues should be dismissed verbalised in a group meeting on the 4th of November 2024 and repeated to others outside the group in an e-mail correspondence on 5th November

Issue 3: failure to accept decision-making or instruction from their line manager, setting out that she had found evidence that the claimant had become verbally aggressive in accusing the manager of lying during the course of a departmental meeting (that the Tribunal concludes was identifiably the meeting in November), Raising her voice and attempting to dominate conversations, refusing to accept alternative perspectives, refusing to accept the need for confidentiality when urged to practise the same, contacting parents when expressly asked not to, ignoring a specific request to allow the manager to deal with concerns which arose and refrain from involving third parties, refusing to assist in any way with cleaning preparing children for the outside environment or classroom maintenance.

Issue 4: the claimant has had a destabilising influence on our line manager and has undermined them. *“As above, In addition, I have had regard to statements of previous line managers who also report an unwillingness to listen to alternate points of view, becoming abusive when challenged and to refusing to accept decisions which do not accord with her own. I find minimal evidence of any ownership of inappropriate or under professional behaviour and repeated blaming of others. I find the comments on placing or professionalism in the context of Waldorf pedagogy prepared by a manager of influence and helpful.*

Issue 5: claimant has a poor working relationship with management. *“As above. In addition, I have had regard to the statements of previous line managers who also report an unwillingness to listen to alternate points of view, becoming abusive when challenged to refusing to accept decisions which do not accord with her own. I find minimal evidence of any ownership of inappropriate or unprofessional behaviour and repeated blaming of*

others. I find the comments on the placing of professionalism in the context of Waldorf pedagogy prepared by Sue Carlisle of influence and helpful”

87. It set out that a decision was made not to interview current Kindergarten staff, describing that this decision was made in light of concerns about retribution and because breaches of confidentiality have been evident.
88. Extracts of contractual terms were provided, along with what were described as supporting documents, including 3 anonymised witness statements described as Statements A to C.
89. On **Thursday 26 June 2025**, the claimant was invited to a Disciplinary Hearing under cover of a letter (**the June Disciplinary Invite letter**), which advised that the hearing would take place on **11 August 2025** and be conducted by Pamela Cooney (a member of the Board of Trustees), who did not have any direct involvement in either the grievance raised against the claimant, the grievance raised by the claimant, nor had she been involved in the investigation concerning the claimant's conduct. Pamela Cooney had no substantive prior dealings with the claimant. The claimant was advised of her right to be accompanied by either a colleague or a trade union representative. The claimant was advised that she would face allegations that she had:
 1. Engaged in bullying and harassing behaviour towards managers and other work colleagues
 2. Publicly undermined and devalued other members of staff
 3. Destabilised and undermined the line manager of her department
 4. Had a poor working relationship with management.

While this is one fewer allegation than set out in the June 2025 Investigation Report, items 1 and 2 in her report were conjoined into a single allegation (item 1) in the disciplinary agenda.

90. **The June Disciplinary Invite letter** advised the claimant of her right to respond to the allegations and that she would have the ability to make representations. The claimant was advised of the serious nature of the allegations and that one outcome might be her dismissal. The claimant was provided with a copy of the Investigation Report along with supporting documents and policies (the three anonymised statements see below and the **June 2025 Investigation Report**). The claimant was advised that if she was unclear about anything, she should raise her concern, and she would do so immediately. The claimant was also advised that if she did not believe that she had had an opportunity to put her case forward, she would say so.
91. While the **June Disciplinary Invite letter** listed 4 allegations, there was no detail of when and how it is alleged any of the allegations took place.

92. The supporting documents provided under cover of **the June Disciplinary Invite letter** included 3 anonymous witness statements. The Tribunal does not accept that they were not genuine.
93. On **Friday 27 June 2025**, the Board wrote to the claimant describing that the disciplinary hearing was the claimant's opportunity to respond to the evidence sent with the letter of 26 June, and described that time constraints apply for everyone in the process (that being a reference to the end of school term) *"To that end, please provide available dates in July and we'll do our best to accommodate one of them"*.
94. On **Monday 30 June 2025** the claimant intimated that she was unable to give availability for the disciplinary hearing with this short notice for 3 reasons, her representative was away on leave(although did not indicate the period), she had holidays and trips away booked (although did not indicate when) and the respondent had not invited meeting regarding *"this NEW set of allegations and that I was only informed of the details of these in the disciplinary invite letter, I will not have sufficient time (due to holiday commitments) to collate evidence to support my defence, describing that the time frame was unreasonable, that she would advise of suitable dates once she had spoken with her representative "but please be aware these dates will be in August due to my holiday commitments in July"*
95. On **Thursday 3 July 2025**, Marianne Lee for the respondent noted that the claimant representative was not available till 7 July and that, due to limited availability, asked if the claimant would provide some dates in the latter weeks of July.
96. On **Sunday 13 July 2025**, the claimant emailed proposing either Monday 11 August or Wednesday 13 August 2025.
97. On **Monday 14 July 2025**, Marianne Lee asked which date would be preferred, and the date of 11 August was subsequently agreed.
98. On **Wednesday 30 July 2025**
 1. the claimant's trade union rep wrote to respondent setting out that they had still not received the associated case papers *" copies of the all evidence, witness statements etc that you will rely on in the hearing"* and further intimated that if these were not *"returned by the end of the week we may have to postpone the members as our member will not have sufficient time to prepare her case"*
 2. Mariane Lee, HR manager, forwarded, by email, copies of correspondence along with all the associated evidence and documentation sent to the claimant on 26 June 2026, that include the respondent June 2025 Investigation report prepared by Rosie Tait and copies of the **three anonymised undated statements**:

1. A typed statement extending just beyond 3 pages from **Sue Carlile** which although anonymised identified the author “*served as the Early Years co-ordinator for the Kindergarten Department and was a member of the schools management team*”, describing that upon her appointment a two year provision had been approved by the school to begin three days a week and two new staff members Rachel and Faye were hired accordingly and that as she had not at the time completed a relevant qualification she was told the new provision could not go forward until she achieved that qualification and that simultaneously a new Kindergarten teacher was hired with a general Steiner qualification from Australia but with no prior experience in early childhood the effect of which there was a temporary overstaffing situation., the statement set out events in October including the claimant and in November noting that shortly after the event in November “*Rachel resigned, citing a new job opportunity*”. The claimant knew that the author was Sue Carlile and while there was some lack of detail of when it was suggested that the claimant “*pressured me to send a family an email supporting her stance*”, there was sufficient context for the claimant to be able to respond, setting out, by the time of the claimant’s appeal on 20 August 2025, the basis of denial of the allegations set out in this statement.

2. A typed, undated, anonymised statement from **Gillian Barrett** which described that she had worked at the school between 2018 and 2022 and routinely took minutes for Trustee meetings and recalled an event when she attended a meeting of kindergarten staff with another Trustee to discuss increasing time with students to avoid employing additional staff when it was described that the claimant became “*upset and aggressive in her manner towards myself and my fellow Trustee. She told me that I could not understand because I had no Steiner training... refused to explained the nature of her objections and stormed out of the meeting... I allowed 20 minutes to pass... I had a vivid memory of Andre being very personally abusive at the time and calling me inhuman*”. From this information, the Tribunal concludes that the claimant was able to identify the author.
 While no dates were provided, there was sufficient context for the claimant to be able to respond, setting out, by the time of the claimant’s appeal on 20 August 2025, the basis of denial of the allegations set out in this statement.
 Rosie Tait, in her deliberations, did not place a huge amount of weight on it due to the historical nature but considered that it pointed to a pattern.

3. A typed undated, anonymised statement from **Penny Wilkinson**, who described in her statement that she was a Behaviour Analyst

with 30 years of experience of supervising staff teams in childcare and further described that between 2021 and 2024 she worked as the Kindergarten Manager at the school and her colleague's wife, Leah Finlay, had previously managed the kindergarten department. From this information, the Tribunal concludes that the claimant was able to identify the author. The statement sets out that the claimant *"in particular, made it clear to me that my role was limited because I didn't have either authority or Steiner training which made my role 'purely administrative' ...*

Her way of working brought her into a great deal of conflict with her colleague Mirjam. As I recall this conflict and tension centred around Andrea's refusal to accept shared responsibility for communal areas or work jointly with Mirjam in other ways such as festivals. When asked to help clean for example a communal storage cupboard or helped with a kindergarten cupboard response was invariably no things were so tense between the teachers that they went for long periods without speaking to one another at one point we could not hold kindergarten meetings and I know this really impacted Mirjam's sense of well-being

I think it's fair to see that I felt unable to do my job effectively because Andrea wouldn't talk about or discuss anything difficult, I tried various different ways to invite Andrea to compromise or cooperate nothing worked if Andrea didn't agree with something that was the end of the story...

I recall another occasion when Andrea walked out of her classroom leaving her assistant alone with the students without any form of explanation later that day Andrea phoned the school and said she was ill on another occasion when I asked her about her hours she left her group in anger and told me she couldn't believe that I was asking her about this.

I vividly recall being told by Andrea that I should watch out she also referred to me as passive aggressive after trying to discuss a difficult issue with her and that she was counting the days until I left the school." While no dates were provided, there was sufficient context for the claimant to be able to respond setting out, by the time of the claimant's appeal on 20 August 2025, the basis of denial of the allegations set out in this statement.

99. On **Monday 4 August 2025**,

1. At **10.46 am**, the claimant made a subject access (**The 4 August claimant Subject Access Request**) request to respondent HR email-seeking

"My personal file

All documents and correspondence relating to Renzo consulting's involvement in this case.

All documents and correspondence relating to my suspension from work and the resulting investigation 20 December 2024 to date.

All documents and correspondence relating to any complaints or grievances made against me (Andrea Smart) since January 2024 to date.

All documents and correspondence relating to the grievance I raised to you in January 2025 regarding chain of care.

All documents in correspondence that bear my name specifically with regards to communication to and from the trustees of the school. (emphasis added)

I will need this information in order to properly and fairly defend myself against the allegations against me.

I would prefer to receive this information electronically and please could you respond to this e-mail with an estimated time frame for its completion given the current date I don't feel I would have enough time to digest the information I require and prepare for the disciplinary hearing you've scheduled for August 11th 2025 I would suggest that you please arrange a new realistic date when I'm in receipt of this information

2. **At 12.09 pm**, the claimant emailed respondent HR Mariane Lee (who was on leave)

Further to my Subject Access request email, and for your information

Lack of Specification

A number of allegations of misconduct are set out in the invitation letter dated 26 June 2025. These allegations are wholly lacking in specification

Under the ACAS code... in advance of a disciplinary hearing employees should be given fair notice of the allegations against them.

I am concerned that I will not have the opportunity to respond fully to the allocations against me since I the specific details of the allegations have not been set out in the invitation letter.

I consider that the absence of any detail in the allegations renders the disciplinary process unfair

To allow me a reasonable opportunity to properly prepare to respond to the allegations, I would expect these to be set out in sufficient detail, e.g. (in relation to the allegation of "engaging and bullying and harassing behaviour") it is alleged that on [date], you [insert specific details of action/ omission] towards [name of individual], in breach of [insert details of relevant policy provision]

You will appreciate that in the absence of such detail, I am being asked to guess at the alleged acts/ omissions which are causing concern. I consider that to be an unreasonable approach, which does not align with the organisation obligations under the ACAS Code.

Please provide me with specific details of the allegations against me in advance of the disciplinary hearing.

Non-Production of the Evidence gathered during the disciplinary investigation. (emphasis added)

...

I have not received copies of any of the evidence gathered during the investigation.

3. Ms Tait was aware of this request, although not in its specific terms, as a separate Trustee dealt with the same.
100. On **Monday 11 August 2025**, the claimant attended the **Disciplinary Hearing** notified to the claimant on **26 June (the June Disciplinary Invite letter)** with her trade union representative. Pamela Cooney stated that the Disciplinary Hearing would discuss the Investigation Report, giving the claimant the opportunity to answer any questions and present her version of events. At the outset, the claimant read out a statement in broad terms; the statement said that the claimant refuted all allegations, and that her representative requested information about the investigation to answer “your questions and give you my side of the story. That request was declined almost immediately by HR. Following this I then sent to HR two emails, one, a detailed Subject Access Request, and one going into more detail about some of the specific information that I would require. The subject access request have been passed on to your GDPR officer who has stated this information is likely to be at least another month away which has prevented me from using this as part of my defence. The other e-mail I sent to HR requesting specific details with times and dates etc was not responded to at all. I would have expected this information should have been provided without me asking for it, but you seem intent on progressing this disciplinary hearing as soon as possible and at any cost. Because of your failure to disclose evidence, incidents, and information that I have requested, I find myself sitting here at your disciplinary hearing confused and unprepared. Rosie's Tait's investigation also raises new allegations of attempted corruption by myself, this I also wholly refute, but again is noticeably lacking in substance, evidence and incidents. I do not feel I've been treated fairly in this whole process, the investigation has been one-sided, my treatment since suspension has felt malicious and intentional. Please also note the gagging order that I was placed under during my suspension has been very effective in preventing me from gathering my own information that I require for my defence. Because of this I am not prepared to answer any questions today and I strongly oppose your conducting A disciplinary hearing until I'm fully furnished with the information I require from HR and the Subject Access Request”

(The 4 August claimant Subject Access Request).

Pamela Cooney set out (page 523) that the claimant had been provided with everything the claimant required and the respondent's view was that the 4 August 2025 claimant Subject Access Request was not relevant to this disciplinary hearing. The claimant described “It's not that I'm refusing,

I'm just saying I would be happy to, of course I want to give my side of everything, but I can only to that when you give me specifics of what these are... there are times, dates ow witness to any of those acts... I haven't been asked to come forward to give my side at all, until now... give me clarity, process, specific, then absolutely I'll be very keen and enthusiastic to give my side of it". The claimant stated that she *could not* respond to the allegations against her but afforded *no* additional information for consideration. The claimant confirmed that she had received copies of the investigation report and supporting information, including the anonymised witness statements.

101. On **Monday 18 August 2025**, the respondent issued (**the August 2025 dismissal letter**) the letter setting out

"At the hearing you were given an opportunity to present your version of events but failed to engage you indicated you were not in a position to respond to the allocations and have afforded no additional information for further consideration you did confirm that all documentation relied upon in support of the investigation was sent and received by you as a consequence we have carefully considered the allegations against you we find the allegation of

Issue 1 ... engaged in bullying and harassing behaviour towards managers and other work colleagues

Issue 2 ... publicly undermined and devalued other members of the kindergarten team.

Issue 3... failed to accept decision-making or instruction from their line manager.

Issue 4... has had a destabilising influence on her line manager and has undermined her

Issue 5 ... has poor working relationship with management. as being upheld.

We have carefully considered options open to us and has considered sanctions short of dismissal. However, given the severity of the allegations it has been concluded that your actions amount to gross misconduct. Your employment will terminate with immediate effect from Friday 22nd of August.

You have the right to appeal against receiving this disciplinary decision if you would like to do so e-mail... within 10 working days Friday 5th September 2025.

102. On **Friday 22 August 2025**

1. The claimant was dismissed.
2. The claimant submitted an appeal, (**the claimant's August 2025 Appeal**) via email:

"I wish to raise an appeal of your (The Board of Trustees decision to dismiss me for gross misconduct I still maintain my innocence in this

*matter and feel that your previous decision was not based on sound and reliable information I was hoping to be given the opportunity at the disciplinary hearing to answer questions for you but as I was not furnished with the specifics felt that I could not answer and requested more information and until this information is forthcoming I remain **unable to give further evidence** at that this point. I would however ask that you reconsider your decision to immediately dismiss me on 22nd August 2025. **(emphasis added)***

3. While in the claimant's August 2025 appeal, the claimant set out that she was not furnished with specifics, she did not give notice of what those specifics were. At the time of the disciplinary hearing, the claimant had the allegation, the Rosie Tait Investigation report, and the anonymised witness statements; while those statements did not disclose names, they did provide job titles. The respondent was a small employer with fewer than 30 employees; the claimant was reasonably able to identify, so far as necessary to respond, the individuals who authored those witness statements. The Tribunal does not agree that the claimant required the information sought in her 4 August claimant Subject Access Request to respond to the Rosie Tait Investigation Report or to the 3 anonymous witness statements
4. While the claimant set out that, as she was not furnished with specifics, she "*felt she could not answer,*" she did not give notice of what specific information she considered was required. The claimant's August 2025 Appeal did not set out (did not give notice) that the claimant did not understand what the allegations were and had not been given (taken into account the documentation provided) sufficient detail of allegations to respond.

103. On **Friday 29 August 2025**

1. At **7.12 pm**, the claimant sent an email to the Trustees both to the general email address and to 5 Trustees individually, including Martin Kutternik, asking for information on progress in her appeal, setting out that she was no longer being paid. She did not specify the terms of her appeal. The claimant did not set out any objection to Martin Kutternik being involved in the appeal, although she was aware of the terms of his email of **25 April 2025 at 328 to 330** (sent to the claimant on 25 April by Catherine Fenton).
2. At **8.03 pm**, Martin Kutternik responded directly, describing that he was about to write when he saw her message; that they were working hard to co-ordinate date and venues to hear her appeal but that, against expectation, the school had not yet managed to secure a suitable available venue. Martin Kutternik apologised, explaining the need to postpone sharing this information until ASAP next week, and the lateness of this email, as he had been in training and working (i.e., not

as a volunteer Trustee) throughout the day and had only just got back in. By this time, Martin Kutternik had explored several venues, including Horizon Centre in Forres; however, rooms were not let out.

3. At **9.29 pm**, the claimant set out that she was confused by the response, as his email of 22 August 2025 had set out that she would *“formally hear from you by the end of this week.*

Because of the timescale and the word formally that indicated to me that I was to expect an outcome.

I'm pained but not surprised that you don't seem bothered that I have had to chase a response from you before getting one, you had a full week to respond but did not.

You promised me a formal response but your e-mail 29 August 2025 that's not providing me with any information or progress my appeal at all

ACAS guidelines state that “appeals should be conducted without unreasonable delay”

The ACAS guidelines also state that five days could be considered normal and reasonable.

I would like to make two points.

Firstly, I have no new information to give you beyond what I said in my disciplinary hearing and wrote in my appeal e-mail, so unless YOU wish to bring new information forward at an appeal meeting, a meeting would be pointless and you should hold the appeal in my absence. This was made very clear in my appeal e-mail.

Secondly, given the size of the school, I do not think an excuse of venue is acceptable. You have had ample opportunity to deal with this but you have stated that you've been too busy.

As such and for the sake of my mental health, which this lengthy process has caused considerable damage to, I would respectfully ask that you conduct the appeal hearing no later than Thursday 4th September and let me know the outcome no later than 1300hrs Friday 5th September.

If you wish to hold a meeting where you have got new information to disclose relevant to the investigation that was carried out please let me know no later than 1700hrs Monday 1st September and I will explore dates that myself and Archie can attend.””

The claimant did not give further specification of the grounds of her appeal, nor object to Martin Kutternik hearing the appeal. Martin Kutternik was surprised by the terms of the claimant's email; he had hoped to be able to speak to the claimant to understand the appeal, although phoning the claimant was out of the question given the terms of the claimant's email. He couldn't believe that the claimant did not want to add anything further.

1. **At 9.29 pm** the Trustees wrote to the claimant by email and registered post, noting that they wrote on 26 June advising the outcome of the investigation carried out by Rosie Tait, that she was notified of a Disciplinary Hearing facilitated by Pamela Cooney, setting out that the purpose was to hear the claimant's response to the investigation findings, noting *"At the meeting, you indicated you were not in a position to respond to the allegations and had nothing to add. The Trustees decision to dismiss you was communicated to you in writing on 18th August 2025. On the 20 August 2025, you contacted the school by email... You did not offer any additional information. You were contacted on 22 August 2025, advising that a meeting ... would be schedule... You contacted the school on the 29th August and appeared to invite Martin Kutternik (who has been designated to hear your appeal) to consider this matter in your absence, stating that you have nothing to add. Please confirm you have no additional information you would like Martin Kutternik to consider"*
105. On **Tuesday 9 September 2025**, the claimant was invited to an appeal hearing by email. The claimant did not object to Martin Kutternik being involved in the appeal, although she was aware of the terms of his email of **25 April 2025 at 328 to 330** (sent to the claimant on 25 April by Catherine Fenton).
106. The claimant did not respond and did not attend the appeal hearing.
107. On **Thursday 11 September 2025**, an appeal hearing took place in the absence of the claimant.
108. On **Thursday 18 September 2025**, the claimant was advised by letter that her appeal was not upheld, the letter setting out *"Following your request on 22nd August 2025 to appeal against the decision of the recent disciplinary hearing and with reference to further communication on 25th August 2025, we set out below the outcome of your appeal. Trustee correspondence dated 1st and 9th September 2025, which relate and reference the Notice of Appeal meeting, remained unanswered. Therefore, the Notice of Appeal meeting was held in your absence, at your choice, on Thursday 11 September 2025. Martin Kuternik conducted the appeal meeting. The outcome is that the disciplinary decision to dismiss you with immediate effect from 22nd August 2025 is upheld. The reasons for this decision are that having reviewed the past evidence, the issues raised, and the supporting statements and documentation, no new information was provided by you for further consideration, and having reviewed this matter again, the outcome of the previous disciplinary hearing is upheld."*
109. In **June 2026**, the respondent ceased to operate as a school, and all staff, including remaining teaching staff, were made redundant.

Unfair Dismissal

110. The claim is one of Unfair Dismissal; the respondent admits the dismissal and pleads that the claimant was dismissed for a fair reason, namely conduct and capability; further, or in the alternative, the claimant was dismissed for some other substantial reason. The issues for the Tribunal include:

- a. What was the principal reason for dismissal and was it a potentially fair one in accordance with Sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The respondent asserts that it was a conduct dismissal.
- b. Was the dismissal fair or unfair in accordance with Section 98(4) ERA? Was the decision to dismiss a sanction within the "*band of reasonable responses*" for a reasonable employer?
- c. If the claimant was dismissed: what was the principal reason for dismissal and was it a potentially fair one in accordance with Sections 98(1) and (2) of the Employment Rights Act 1996 (ERA 1996); and, if so, was the dismissal fair or unfair in accordance with Section 98(4) ERA 1996, and, in particular, did the respondent act within the "*band of reasonable responses*"?
- d. Was the principal reason for the claimant's dismissal a potentially fair reason in accordance with section 98(1) (b) of the Employment Rights Act 1996 (ERA 1996)? It was asserted (but disputed by the claimant) by the respondent that it was a reason relating to the claimant's conduct and capability, or, in the alternative for some other substantial reason of a kind such as to justify dismissal (SOSR).
- e. If so, did the respondent act reasonably in treating that reason as sufficient for dismissing the claimant within the meaning of section 98(4) of ERA 1996?
- f. If not, what is the appropriate remedy, including having regard to the claimant's assertion that the dismissal was not for conduct, or for SOSR, the extent to which the Tribunal considers there were any procedural defects in the process followed by the respondent, and whether the dismissal was procedurally unfair, would the claimant have been dismissed in any event? Whether it would be just and equitable to reduce compensation to reflect any blameworthy conduct by the claimant contributing to the dismissal. Whether compensation should be increased to reflect an unreasonable failure to follow the ACAS Code of Practice on Disciplinary and Grievances?

Remedy for unfair dismissal

111. If the claimant was unfairly dismissed and the remedy is compensation:

- a. If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would have been dismissed had a fair and reasonable procedure been followed? **Polkey v AE Dayton Services Ltd** [1987] UKHL 8 (**Polkey**).
 - b. Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to Section 122(2) ERA 1996; and if so to what extent?
 - c. Did the claimant, by blameworthy or culpable actions, cause or contribute to the dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to Section 123(6) ERA 1996?
112. If the claimant was unfairly dismissed, issues in relation to remedy would include, what loss is attributable; whether the claimant minimised her loss; whether it be just and equitable to reduce the amount of the claimant's award because of any blameworthy or culpable conduct before the dismissal, under Section 122(2) and 123(6) ERA 1996, and if so, to what extent?

Submissions

113. For the **respondent**, in addition to the respondent's written submissions, which extended to 22 primary paragraphs (many of which had subparagraphs) over 22 pages with headings, the respondent provided a chronology and confirmed that they broadly relied on their submissions at the oral hearing.
114. For the **claimant**, in addition to the claimant's written submissions which extended to 109 paragraphs over 24 pages with headings, broadly following the respondent's draft submissions setting out the claimant's responses and Conclusions, the claimant provided a chronology and supplementary oral submissions.
115. It is not considered necessary in the interest of brevity to set out either of the submissions in full. However, it is useful to note aspects of the respective submissions below in Discussion and Decision.

Witness evidence

116. The respondent witnesses Rosemary (Rosie) Tait and Martin Kutternik were both credible and straightforward in their evidence. Rosie Tait, in her evidence, accepted that on reflection it would perhaps have been preferable had she interviewed the claimant for the purpose of the June 2025 Investigation Report.

117. The claimant was broadly straightforward, although in large parts expressing her opinion on the motivations of others. The claimant is mistaken in her recollection that she was unable to identify the authors of the anonymised witness statements and the substance of matters described within same and is also mistaken in her recollection that she was unable to identify factual content set out in the June 2025 Investigation Report taken that together with the 3 witness statements.
118. Rebecca Mitchell, between August 2022 and July 2025, was employed at Drumduan School as an upper schoolteacher and co-ordinator and was formerly a member of the respondent Management Team with oversight of education and staff. Ms Mitchell left her employment at the school as she had “lost faith in the trustees”
119. Catherine Fenton, formerly job-shared the role of Lower and Middle School Education Manager, gave evidence of her experience of dealing with the claimant, which was broadly positive, but was not a Trustee at any relevant time.
120. Mona Zaiden had a child at the school from September 2024 to May 2025 and was a Board Trustee from 2 April 2025 to 12 June 2025. She was not an employee at the school and was not a Trustee when the respondent suspended the claimant, nor when Rosie Tait completed the June 2025 Investigation Report recommending a disciplinary process to the Trustees and made it available to Trustees.
121. Each of the claimant’s witnesses sought to express honest recollection of matters although to a degree expressed opinion.

Fair Notice

122. The Tribunal has reminded itself of the guidance in **Chandhok v Tirkey** [2015] ICR 527 paragraph 16 *“The claim, as set out in ET 1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely on their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a respondent is required to respond. A respondent is not required to answer a witness statement nor a document, but the claims made...”*.

Unfair Dismissal

Relevant Law

123. Section 94(1) of the Employment Rights Act 1996 (ERA 1996) provides
“An employee has the right not to be unfairly dismissed by his employer.”
124. Section 98 ERA 1996 states

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

.....
- (4) *In any other case where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
 - (a) *depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
 - (b) *shall be determined in accordance with equity and the substantial merits of the case.*

- 125. The employer requires to show a potentially fair reason within s98(2) of ERA 1996.
- 126. The EAT set out the appropriate approach in conduct cases in **BHS v Burchell** [1980] ICR 303 (**Burchell**). The principles can be summarised as:
 - (i) The employer must show that it *believed* the employee to be guilty of misconduct.
 - (ii) The Tribunal must determine whether *the employer had in mind reasonable grounds* upon which to sustain that belief.
 - (iii) The Tribunal must determine whether, at the stage at which that belief was formed on those grounds, the respondent had carried out as much investigation into the matter *as was reasonable in the circumstances*.
 - (iv) This means that the employer does not need to have conclusive direct proof of the employee's misconduct: the respondent only needs to have a genuine and reasonable belief, reasonably tested.
- 127. The Tribunal must take care not to substitute its own view of events or the decision it would have made for that of the employer: the question is

always whether or not dismissal was a reasonable response in all the circumstances: see **Iceland Frozen Foods Ltd v Jones** [1982] IRLR 439, **Trust House Forte Leisure Ltd v Aquilar** [1976] IRLR 251.

128. When reviewing an employer's decision, the Tribunal should not require the employer to conduct a perfect investigation into every conceivable line of defence available to an employee. What is required is that the Tribunal consider any defences advanced to the extent necessary, considering the circumstances as a whole.
129. In **Shrestha v Genesis Housing Association** [2015] EWCA Civ 94 (**Shrestha**), Lord Justice Richards said (para 23), *"To say that each line of defence must be investigated unless it is manifestly false or unarguable is to adopt too narrow an approach and to add an unwarranted gloss to the Burchell test. The investigation should be looked at as a whole when assessing the question of reasonableness. As part of the process of investigation, the employer must of course consider any defences advanced by the employee, but whether and to what extent it is necessary to carry out specific inquiry into them in order to meet the Burchell test will depend on the circumstances as a whole."*
130. If so in terms of s98(4) was the dismissal fair or unfair (that is
 - a. was it reasonable to dismiss, or
 - b. can it be said that no reasonable employer would have dismissed - there is a band),

having regard to the matters set out in s98(4) (a) and (b) – whether taking into account the size and administrative resource of the employer, it acted reasonable or unreasonably in treating the reason as a sufficient reason for dismissing the employee in accordance with equity and the substantial merits of the case.
131. It falls to the Tribunal to determine which, if any, of the potentially acceptable reasons the employer's factual reasons for dismissal fall. Further, the Tribunal is required to make findings as to the employer's own reasons (that is, the reason which the Tribunal finds, as a matter of fact, led the employer to dismiss on the information available to the employer at the material time). The Tribunal should not substitute its own view as to the reason for dismissal.
132. When assessing whether the dismissal was reasonable in all the circumstances, the Tribunal must have regard to the operative (actual/live) reason.
133. The burden is on the respondent to show the reason for dismissal and that it is potentially fair.

134. The Tribunal had regard to **Taylor v OCS Group Ltd** [2006] ICR 1602 [**Taylor**] at 43. ... *the employment tribunal must focus on the statutory test and that, in considering whether the dismissal was fair, it must look at the substance of what happened throughout the disciplinary process*” When considering fairness, a Tribunal is bound to consider the *entirety* of a disciplinary process to make the determination of whether the dismissal was unfair or not. This includes that which takes place at the initial disciplinary process and, at appeal, whether the appeal takes place by way of rehearing or a review of what has gone before. There is no rule of law that a review cannot remedy defects which an appeal by way of rehearing can. The question is whether, having regard to the equity and substantial merits of the case, the employer acted reasonably or unreasonably in treating the particular issue as a sufficient reason to dismiss the employee.
135. Assessing the reason for dismissal involves considering the employer's subjective state of mind.
136. Once the employer has shown the reason for dismissal, it is then for the Tribunal to determine whether the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissal.
137. That question is to be determined in accordance with equity and the substantial merits of the case and the circumstances to be taken into account include the size and administrative resources of the employer's undertaking. The burden as to fairness under s 98(4) ERA 1996 is neutral.
138. The Tribunal must assess the reasonableness of the employer's decision and must not substitute its view of the right course of action. There is a band of reasonable responses within which one employer might take one view and be acting fairly, and another quite reasonably another view and still be acting fairly **Iceland Frozen Foods v Jones** [1982] IRLR 439 [**Iceland Frozen Foods**].
139. It is for the Tribunal to decide if the reason is both substantial and justifies dismissal.
140. While an investigation and hearing may not always be required, the importance of doing so normally in the case of alleged misconduct was set out by the House of Lords in **Polkey v AE Dayton Services Ltd** [1987] UKHL 8 [**Polkey**], in which Lord Bridge made the following comments: *“Employers contesting a claim of unfair dismissal will commonly advance as their reason for dismissal one of the reasons specifically recognised as valid by [ERA 1996 s 98(2)]. These, put shortly, are:*
(a) *that the employee could not do his job properly;*
(b) *that he had been guilty of misconduct;*
(c) *that he was redundant.*
But an employer having prima facie grounds to dismiss for one of these reasons will in the great majority of cases not act reasonably in treating the

reason as a sufficient reason for dismissal unless and until he has taken the steps, conveniently classified in most of the authorities as 'procedural', which are necessary in the circumstances of the case to justify that course of action. Thus.....; in the case of misconduct, the employer will normally not act reasonably unless he investigates the complaint of misconduct fully and fairly and hears whatever the employee wishes to say in his defence or in explanation or mitigation;...

If an employer has failed to take the appropriate procedural steps in any particular case, the one question the [employment] tribunal is not permitted to ask in applying the test of reasonableness posed by [s 98(4)] is the hypothetical question whether it would have made any difference to the outcome if the appropriate procedural steps had been taken. On the true construction of [s 98(4)] this question is simply irrelevant. It is quite a different matter if the tribunal is able to conclude that the employer himself, at the time of dismissal, acted reasonably in taking the view that, in the exceptional circumstances of the particular case, the procedural steps normally appropriate would have been futile, could not have altered the decision to dismiss and therefore could be dispensed with. In such a case the test of reasonableness under [s 98(4)] may be satisfied."

141. The approach to procedural questions is wide. A Tribunal should view it, if appropriate, as part of the overall picture, not as a separate aspect of fairness **Taylor v OCS Group Ltd** [2006] ICR 1602 [**Taylor**].

Allegations

142. It is important that the employee knows the full allegations against them.
143. In **Alexander v Bridgen Enterprises Ltd** [2006] IRLR 422 [**Brigden**], the EAT held that the employee had to be given "sufficient detail of the case against them to enable them to properly put his side of the story"
144. The EAT (Mr Justice Elias – President, Lord Davies of Coity CBE, Mrs D Palmer) setting out (at para 38) that "*the first step of the standard procedure requires the **employer merely to set out in writing the grounds** which lead him to contemplate dismissing the employee, together with an invitation to attend a meeting.... **the statement need do no more than state the issue in broad terms.** .. In a conduct case, this will involve identifying the nature of the misconduct in issue, such as *fighting, insubordination or dishonesty*" and at 39 "the second step, the employer must inform the employee of the basis for the ground or grounds given in the statement. This information need not be reduced to writing; it can be given orally. The basis for the grounds is simply the matters that led the employer to contemplate dismissal for the stated ground or grounds... . In order to comply with the statutory procedure, there is no need to provide detailed evidence, but the employee must be given sufficient detail of the case against him to enable him properly to put his side of the story. The fundamental elements of fairness must be met."*

Procedural Defects

145. While procedural defects are in principle capable of rendering the dismissal unfair, as the EAT commented in **Whitbread & Co plc v Mills** [1988] IRLR 501 (**Mills**), *“not every formality of legal or quasi-legal process is required during the disciplinary and appeal procedures. Each set of circumstances must be examined to see whether the act or omission has brought about an unfair hearing.”*
146. The Tribunal must consider the disciplinary process as a whole when assessing the fairness of the dismissal.
147. The band of reasonable responses test applies not only to the decision to dismiss but also to the procedure followed by the employer, **Sainsbury's Supermarkets Ltd v Hitt** [2003] IRLR 23 [**Hitt**].
148. The Tribunal directed itself to the following passage in **Hitt**, which it found to be of assistance in this case: -

“The investigation carried out by Sainsburys was not for the purposes of determining, as one would in a court of law, whether Mr Hitt was guilty or not guilty of the theft of the razor blades.

The purpose of the investigation was to establish whether there were reasonable grounds for the belief that they had formed, from the circumstances in which the razor blades were found in his locker, that there had been misconduct on his part, to which a reasonable response was a decision to dismiss him.

The uncontested facts were that the missing razor blades were found in Mr Hitt's locker and that he had had the opportunity to steal them in the periods of his absence from the bakery during the time they went missing. Investigations were then made, both prior to and during the period of an adjournment of the disciplinary proceedings, into the question whether, as Mr Hitt alleged, someone else had planted the missing razor blades in his locker. In my judgment, Sainsburys were reasonably entitled to conclude, on the basis of such an investigation, that Mr Hitt's explanation was improbable.

The objective standard of the reasonable employer did not require them to carry out yet further investigations of the kind which the majority in the employment tribunal in their view considered ought to have been carried out.”
149. The Tribunal has reminded itself that the Court of Appeal identified in **Taylor** that there is no rule of law that earlier unfairness can be cured only by an appeal by way of a rehearing and not by way of a review, because the examination should be the fairness of the disciplinary process as a whole.
150. Whether a procedural defect is sufficient to undermine the fairness of the dismissal as a whole is a question for the Tribunal. Not every procedural

error will do so; the fairness of the whole process should be looked at. In **South Maudsley NHS Foundation Trust v Balogan** [2014] UKEAT0212/14 [**Balogan**], the EAT explained in paragraph 9: “As *this Tribunal has said countless times, the crucial thing is the statutory test in section 98(4) namely whether in all the circumstances the employer acted reasonably in treating its reasons for dismissing the employer sufficient.*

A procedural defect is a factor to be taken into account but the weight to be given to it depends on the circumstances and the mere fact that there has been a procedural defect should not lead to a decision that the dismissal was unfair. The fairness of the whole process needs to be looked at and any procedural issues considered together with the reason for the dismissal, as the two will impact on each other.”

ACAS Code and Process

151. The Tribunal has reminded itself of what is set out in the ACAS Code of Practice on Disciplinary and Grievance Procedures which came into effect on 11 March 2015: Code of Practice (Disciplinary and Grievance Procedures) Order 2015, SI 2015/649 provides:

1. *This Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.*
 - *Disciplinary situations include misconduct and/or poor performance. If employers have a separate capability procedure they may prefer to address performance issues under this procedure. If so, however, the basic principles of fairness set out in this Code should still be followed, albeit that they may need to be adapted.*
- ...
2. *Fairness and transparency are promoted by developing and using rules and procedures for handling disciplinary and grievance situations. These should be set down in writing, be specific and clear. Employees and, where appropriate, their representatives should be involved in the development of rules and procedures. It is also important to help employees and managers understand what the rules and procedures are, where they can be found and how they are to be used.*
3. *Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case. Employment tribunals will take the size and resources of an employer into account when deciding on relevant cases and it may sometimes not be practicable for all employers to take all of the steps set out in this Code.*

4. *That said, whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:*
 - *Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.*
 - *Employers and employees should act consistently.*
 - *Employers should carry out any necessary investigations, to establish the facts of the case.*
 - *Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.*
 - *Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.*
 - *Employers should allow an employee to appeal against any formal decision made.*
5. *It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.*
6. *In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing.*
7. *If there is an investigatory meeting this should not by itself result in any disciplinary action. Although there is no statutory right for an employee to be accompanied at a formal investigatory meeting, such a right may be allowed under an employer's own procedure.*
8. *In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action.*

Inform the employee of the problem

9. *If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.*

10. *The notification should also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting.*

Hold a meeting with the employee to discuss the problem

11. *The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.*
12. *Employers and employees (and their companions) should make every effort to attend the meeting. At the meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witnesses they should give advance notice that they intend to do this.*

...

Decide on appropriate action

18. *After the meeting decide whether or not disciplinary or any other action is justified and inform the employee accordingly in writing.*

...

23. *Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct.*
24. *Disciplinary rules should give examples of acts which the employer regards as acts of gross misconduct. These may vary according to the nature of the organisation and what it does, but might include things such as theft or fraud, physical violence, gross negligence or serious insubordination.*
25. *Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available.*

Provide employees with an opportunity to appeal.

26. *Where an employee feels that disciplinary action taken against them is wrong or unjust they should appeal against the decision. Appeals should be heard without unreasonable delay and ideally at an*

agreed time and place. Employees should let employers know the grounds for their appeal in writing.

27. *The appeal should be dealt with impartially and, wherever possible, by a manager who has not previously been involved in the case.*
28. *Workers have a statutory right to be accompanied at appeal hearings.”*
152. The Tribunal has reminded itself of the Court of Appeal decision in **Slater v Leicestershire Health Authority** [1989] IRLR 16 (**Slater**) that for some employers, it may not always be straightforward to avoid a situation where the same person carries out the investigation, discipline and the appeal and set out that *“it could not be held that because the person, conducting the disciplinary hearing had conducted the investigation, he was unable to conduct a fair inquiry. While it is a general principle that a person who holds an inquiry must be seen to be impartial, the rules of natural justice do not form an independent ground upon which a decision to dismiss may be attacked”*.
153. Further, the Tribunal has reminded itself of the comments of the EAT in **St Nicholas School (Fleet) Educational Trust Ltd v Sleet** [2017] UKEAT/0118/17 (**Sleet**) that at such an appeal, the focus is on the impartiality (or otherwise) of the decision-maker who *“might have a particular conduct issue in mind as the reason for dismissal, but dismiss unfairly because they have a closed mind to the possibility that the employee might be innocent, or that the conduct in issue might not justify dismissal.”*

Gross Misconduct

154. **Reilly v Sandwell Metropolitan Borough Council** [2018] IRLR 558 (**Sandwell**) sets out that gross misconduct involves deliberate wrongdoing or gross negligence.
155. The Tribunal has further reminded itself that the courts have considered when ‘*misconduct*’ might properly be described as ‘*gross*’: **Neary v Dean of Westminster** [1999] IRLR 288 **Neary** (para 22). In **Neary**, Lord Jauncey rejected a submission that gross misconduct was limited to cases of dishonesty or intentional wrongdoing. **Neary** was considered by the Court of Appeal in **Adesokan v Sainsbury’s Supermarkets Ltd** [2017] I.C.R. 590 (**Adesokan**) at paragraph 23, Elias LJ said that the focus was on the damage to the relationship between the parties; that some deliberate actions which poison the relationship obviously fall into the category of gross misconduct.
156. Gross misconduct means misconduct so serious, that it breaches the contract of employment in such a way as to relieve the other party to the contract of being bound by it. Most such terms are implied. A classic

formulation of the implied term of confidence and trust between employer and employee was set out in **Woods v PWM Car Services (Peterborough) Ltd** 1981 IRLR 347 (**Woods**), dealing with employer's conduct, as that a party to the contract must not "*without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee*".

Suspension

157. The respondent refers to **Gogay v Hertfordshire CC [2000] IRLR 703** noting the terms of the subsequent Court of Appeal decision in **Agoreyo v London Borough of Lambeth 2019 ICR 1572, CA**. There, the Court overturned the decision of a High Court judge (Mr Justice Foskett) that a teacher's suspension for allegedly using unreasonable force in three incidents involving two children breached the implied term of trust and confidence.
158. Contrary to the finding of the judge at first instance (who had concluded that the employer had reasonable and proper cause to suspend the claimant and therefore had not breached its obligation to preserve trust and confidence), the High Court judge had relied on **Gogay** to find that suspension had been used as a knee-jerk reaction to the '*strident*' way in which the complaint against the claimant by a teaching assistant had been phrased.
159. However, the Court of Appeal held that Foskett J had fallen into the trap of interfering impermissibly with the first instance judge's findings of fact.
160. Lord Justice Singh (with whom Lord Justices Peter Jackson and Irwin agreed) further held that Foskett J had erred by introducing a test of necessity when considering whether the teacher's suspension had breached the implied term of trust and confidence: the *only* relevant question in such a case is whether the employer had reasonable and proper cause to suspend the employee, not whether the suspension was necessary.
161. In the Court of Appeal, Singh LJ considered that the question of whether suspension is a neutral act, was neither relevant nor particularly helpful. Instead, His Lordship reiterated that the question is whether by suspending the employee there has been a breach of the implied term of trust and confidence. That, in turn, requires consideration of whether there was reasonable and proper cause for the suspension.
162. Even where the period during which an employee remains suspended is surprisingly long, and other aspects of the disciplinary process have not been ideally handled, a Tribunal should not lose sight of the fact that, to establish a breach of the implied term of trust and confidence, it is

necessary to show that the employer's conduct was without reasonable and proper cause.

Suspension Risk Assessment & Occupational Health

163. By reference to the written submissions at paragraph **72** of the claimant's written submission, it is understood that the claimant seeks to rely upon Regulation 3 of the Management of Health and Safety at Work Regulations 1999 SI 1999/3242, all in accordance with the general duties in the Health and Safety at Work etc Act 1974. The Tribunal notes that:

164. **Regulation 3** provides:

"3 Risk assessment

- (1) *Every employer shall make a suitable and sufficient assessment of*
- (a) *the risks to the health and safety of his employees to which they are exposed **whilst they are at work**; and*
 - (b) *the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking*

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions ..."

165. Regulation 14 provides:

"14 Employees' duties

...

2) **Every employee shall inform his employer** or any other employee of that employer with specific responsibility for the health and safety of his fellow employees—

- (a) *of any work situation which a person with the first-mentioned employee's training and instruction would reasonably consider represented a serious and immediate danger to health and safety; and*

...

in so far as that situation or matter either affects the health and safety of that first mentioned employee or arises out of or in connection with his own activities at work, and has not previously been reported to his employer or to any other employee of that employer in accordance with this paragraph.

166. Further, Section 7 of the Health and Safety at Work etc Act 1974 provides that it is the duty of every employee while at work

- (1) to take reasonable care for the health and safety of themselves and of other persons who may be affected by their acts or omissions at work; and

(2) as regards any duty or requirement imposed on their employer or any other person by or under any of the relevant statutory provisions, to co-operate with them as far as is necessary to enable that duty or requirement to be performed or complied with.

167. The Enterprise and Regulatory Reform Act 2013 amended the Health and Safety at Work Act 1974, s 47 by virtue of s 69, removing the standard of strict liability from such health and safety regulations.
168. The Enterprise and Regulatory Reform Act 2013 did not remove the broad obligation, under reg 18 of the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242 reg 18), to have carried out (and, if necessary, act on) an assessment for specific instances such as when an employee has notified the employer in writing of her pregnancy (SI 1999/3242 reg 18).
169. No general statutory or regulatory provision requires an employer to arrange for an employee to attend any form of occupational health assessment for the purpose of suspension from work.

Discussion and Decision

170. At paragraph 6, of the claimant's submission, the claimant references extracts of two Rosie Tait's comments during a 40-minute meeting on 5 February 2025 with Renzo for the Renzo investigation: the first referencing an email and her view of it and the second some comments at the end of a lengthy statement around use of WhatsApp; however, while Rosie Tait was appointed as Investigator from limited pool of volunteer Trustees for the June 2025 Report, she was not the decision maker in relation to the respondent's consideration of the claimant's January 2025 Grievance, nor its Appeal and was not the respondent's decision make for the Disciplinary Hearing or the Appeal. While the claimant disagrees with Rosie Tait's views, as Investigator, she was not the decision maker for the Disciplinary Hearing or the Appeal. While the claimant did not have the Renzo report by the time of the Appeal and did not know it had been provided, that did not substantively prevent her from responding to the details in the documentation she had been provided with, including the June Investigation Report and the 3 anonymous statements. The Tribunal concludes that Rosie Tait's views as expressed on 5 February 2026 did not determine the respondent's decisions.
171. At paragraph 7 of the claimant's submission, the claimant references Rebecca Mitchell's recollection of what was said at some point by a former Trustee in the context of reduction of the claimant's hours; there was no pled notice of same from which a decision could have been taken on calling that former Trustee; the Trustee was not called to give evidence of what was said, he was not listed by the claimant a Trustee in email of 25 April 2025 he was not the decision maker in relation to the respondent's consideration of the claimant's January 2025 Grievance, nor its Appeal

and was not the respondent's decision make for the Disciplinary Hearing or the Appeal. The Tribunal places no weight on Rebecca Mitchell's recollection as to the former Trustee's comments.

172. At paragraphs 8 and 9 of the claimant's submissions, the claimant references the Kutternik 2025 April email. While the Tribunal considers the Kutternik April 2025 email response was unwise, the Tribunal accepts including having regard to his evidence to the Tribunal and its wording that it was an attempt address what he considered was drama at the AGM with a named teacher what he considered was a "*perception that the decision to place*" the claimant "*on leave was made arbitrarily or without sufficient consideration*", it did not set out that the claimant had been suspended, nor what any allegations were and while describing his view at that time of "*a genuine risk that the school would not have made it into the new year had this action not been taken*" on the evidence before the Tribunal including that of Martin Kutternik the Tribunal concludes that did not demonstrate that there was a predetermined outcome nor a closed mind including in relation to the subsequent appeal which he considered, noting that he continued "*Admittedly what should have been relatively straightforward process has unfortunately been complicated by several unforeseen issues and delays.*" and his subsequent apology on 30 April 2025.
173. In paragraph 8 of her submission, the claimant references Mona Zaiden's evidence, who recalled that, at a Trustee Board meeting she attended while the claimant was suspended, the claimant's suspension was discussed and, when she asked Martin Kutternick if there was any way the claimant should return to work, he intimated that there was not. Mona Zaiden described feeling "*uncomfortable*" in that meeting and said she had asked for full details but was not provided with them. It was Mona Zaiden's recollection that there were "*some personal comments against the claimant*" and that they had been "*harsh and punitive*". The Tribunal notes that the respondent did not cross-examine Mona Zaiden. The discussion concerned the claimant's suspension. The Tribunal while noting Mona Zaiden's recollection of what was said at a Board meeting while the claimant was suspended specifically by Martin Kutternik in the short period that she was a Trustee, notes the claimant had written to the Tribunal on 25 June 2026 in response to an opposed request that her witnesses attend remotely saying that her witnesses had "*relevant first hand evidence concerning matters within their own knowledge and observations which bear directly on the issues the Tribunal will need to determine*" – but gave no specifics, there was no fair notice in the amended ET1 of what was suggested to have been said by Martin Kutternik (reference is made to **Chandhok**) and his alleged comments were not put to him allowing him to respond. Mona Zaiden gave evidence after the respondent witnesses. The Tribunal places little weight on the Mona Zaiden comments and

concludes that Martin Kutternik did not have a closed mind at any relevant time, including in respect of the claimant's Appeal.

174. At paragraph **10** of the claimant's submissions, the claimant proposes, in effect, that the comments demonstrate that the respondent's decision-making process in relation to the Disciplinary Hearing and the Appeal was not conducted with an open mind.
175. The Tribunal notes that while the claimant emailed the Trustees, including Mona Zaiden, on **25 April 2025**, describing that *"As you already know I wholly refute these allegation, and also possess evidence not only backing me up but also to prove that there is in fact a campaign against me"* the claimant did not provide that evidence at any point.
176. The Tribunal notes that the claimant did not object to Martin Kutternik being involved in the appeal, although she was aware of the terms of his email of **25 April 2025** sent to the claimant on 25 April by Catherine Fenton.
177. Having heard the evidence, including that of Mr Kutternik, the Tribunal disagrees and concludes that, considering fairness has had regard to the entirety of the disciplinary process, including the appeal, in making its determination of whether the dismissal was unfair or not (ref **Taylor**). The question is whether, having regard to the equity and substantial merits of the case, the employer acted reasonably or unreasonably in treating the particular issues (which, although summarised in the **Disciplinary Hearing** invite on **26 June 2025** and **Dismissal Outcome on 18 August 2025**, were more fully specified in the June 2025 Investigation Report and the 3 anonymised witness statements) as sufficient reason to dismiss the claimant. While the claimant criticism includes of the role of Rosie Tait in the June 2025 Investigation Report and, by extension, decision-making at the Disciplinary Hearing and thereafter, by the time of submitting her Appeal the Tribunal is satisfied that the claimant had sufficient information to formulate her substantive responses to all 3 anonymised witness statements and the June 2025 Investigation Report and at the appeal the Tribunal is satisfied, having regard to the equity and substantial merits of the case, that Martin Kutternik acted reasonably having regard to the limited information the claimant elected to provide for same, in treating the particular issues set out in more detail in the **June 2025 Investigation Report** and the **3 anonymised witness statements** as sufficient reason to uphold the dismissal..
178. At paragraph **15** and **16** of the claimant's submission, the claimant having described (in the preceding paragraph) that she had apologised to those who had been present and sought to put matters right following the meeting on 14 November, is critical that the events of 14 November 2024 appeared subsequently in the June 2025 Investigation Report (which is provided for the Disciplinary Hearing on 11 August 2025) the Tribunal notes, however the limited nature of the information the claimant elected

to provide for the Disciplinary Hearing and the Appeal. It would have been open to the claimant to set out by the Appeal her position as she does in submissions to the Tribunal, that she acknowledged that she could have handled the situation better and her questioning of Rachel, reflected on what had happened, apologised to all those involved.

179. At paragraphs **17** to **28** of the claimant submission, the claimant criticises the respondent's approach to the Renzo report, including not disclosing it. The Tribunal accepts that the respondent concluded, having instructed Renzo to only consider the December 2024 Grievance, that this was not its sole concern.
180. With regard to the respondent's email of 10 February 2025 to Renzo, the Tribunal agrees that it would be incorrect to assert that gross misconduct must inevitably be preceded by patterns of previously addressed behaviour.
181. Further, while in **the respondent's email of 10 February 2025 to Renzo** the phrase "*opportunity has been missed*" was used, the Tribunal concludes that the full context of the email, including the preceding sentence, does not demonstrate that the Trustees individually or collectively considered that the report was intended to give cover to a predetermined decision to dismiss. It was expressing that they had **only** appointed Renzo to consider what was expressed in the December 2024 Grievance (that being issued by the husband of Sue Carlile) and that would not include wider matters which Renzo had not been instructed to consider, including the claimant's suggestion in the presence of Rachel that if she was not willing to work the hours the claimant felt were appropriate, then she should be given notice. The Tribunal takes the opportunity to note that the Renzo report issued on 14 February 2025 expressly set out what Renzo had been instructed on; there was no failure on the part of Renzo, they reported on what they had been instructed. The respondent's email of 10 February 2025 to Renzo effectively expressed, on 10 February 2025, a few days before issue of the Renzo report on 14 February 2025 to the respondent, the respondent's own omission to set out wider parameters to Renzo.
182. Further, and while the claimant was aware from Renzo's communication on 26 February 2025 that it was no longer involved, the claimant did not set out in her appeal that she had provided Renzo on 3 February 2025 (although not the respondent) the name of a potential witness.
183. At paragraphs **29** to **37** of the claimant's submission, the claimant criticises Rosie Tait's approach to the investigation, including not interviewing the claimant. Further, the claimant sets out that the respondent "*failed to interview a number of obvious witnesses who had direct knowledge of the matters under investigation*"; the claimant does not propose that she identified to the respondent at any point such witnesses, and while the

claimant sets out at paragraph **35** that she was instructed to maintain confidentiality, it was obvious to the claimant that it was open to her to identify potential witnesses who could provide relevant information by the Grievance Hearing and certainly by the Appeal, as she had done with Renzo on 3 February 2025.

184. At paragraphs **38** to **42** of the claimant's submission, the claimant refers to communication in the period before the Appeal. In this context, the Tribunal notes the terms of the claimant's appeal on 22 August 2025, in which the claimant describes "*until more information is forthcoming I remain unable to give further evidence*" and on 29 August 2025 that she had "*no new information to give beyond what I said in my disciplinary hearing.... Unless YOU wish to bring new information forward ... you should hold the appeal in my absence*". Martin Kutternick was surprised by the claimant's email of 29 August 2025; he had intended to consider fairly what the claimant wished to say in support of her position at the Appeal and to review fairly the respondent's decision to dismiss. Martin Kutternick considered the matter in the claimant's absence, reviewed the available information, and did not do so with a closed mind.
185. Further, while the claimant at paragraph **51** of her written submission argues that there "*was substantial evidence contradicting the allegations*" the claimant did not take the opportunity of providing the same to the respondent, including at the Appeal. In paragraph **50** of her written submission, the claimant refers to her subject access request on 4 August 2025, which she referred to in her email to the respondent HR email on the same date at 12.09 pm; however, the claimant did not require additional documentation, including that sought in her subject access response on 4 August, to set out a detailed response, including for the purposes of her appeal.
186. While the Tribunal considers that it would have been appropriate for Rosie Tait to have interviewed the claimant, the Tribunal observes that the claimant understood she could provide names of individuals she considered would have supported her position in refuting the allegations, as she did with Renzo on 3 Feb 2025.
187. The Tribunal concludes that the claimant was able to identify the authors of the anonymous statements and substantive matters referred to therein; reference is made to **Brigden**.
188. In relation to the **Sue Carlile statement**, which had been anonymised and provided to the claimant by 30 July 2025, the claimant could have chosen to set out an explicit repudiation rather than argue that there was insufficient specification to allow *any* response. Further, while there were what was described as multiple occasions when the claimant refused to perform any part of her job description, with a 7-bullet-point description, the claimant could have responded with an explicit repudiation rather than

arguing that the specification was insufficient to allow *any* response beyond denial.

189. The Tribunal concludes that the claimant had, by the provision of this statement, been given sufficient detail of the case to enable her to properly put her side of the story; reference is made to **Brigden**. The Tribunal has reminded itself that an employer need not have conclusive direct proof of an employee's misconduct, but a genuine and reasonable belief reasonably tested. In all the circumstances, the Tribunal concludes that Martin Kutternik, on review of the documents at appeal, which the claimant elected not to attend, formed a reasonable belief in the misconduct of the claimant as asserted in the statement by Sue Carlile by the time of the appeal hearing.
190. In relation to the **Gillian Barrett statement**, which had been anonymised and provided to the claimant by 30 July 2025, the Tribunal concludes that the claimant had been given sufficient detail of the case to enable her to properly put her side of the story; reference is made to **Brigden**. The Tribunal has reminded itself that an employer need not have conclusive direct proof of an employee's misconduct, but a genuine and reasonable belief reasonably tested. In all the circumstances, the Tribunal concludes that Martin Kutternik, on review of the documents at appeal, which the claimant elected not to attend, formed a reasonable belief in the misconduct of the claimant as asserted in the statement of Gillian Barrett, by the time of the appeal hearing.
191. In relation to the **Penny Wilkison statement**, which had been anonymised and provided to the claimant by 30 July 2025, the Tribunal concludes that the claimant had been given sufficient detail of the case to enable her to properly put her side of the story, reference is made to **Brigden**. The Tribunal has reminded itself that need not have conclusive direct proof of an employee's misconduct, but a genuine and reasonable belief reasonably tested. The fundamental elements of fairness must be met. In all the circumstances, the Tribunal concludes that Martin Kutternik, on review of the documents at appeal, which the claimant elected not to attend, formed a reasonable belief in the claimant's misconduct as asserted in Penny Wilkinson's statement by the time of the appeal hearing.
192. While paragraph **52** of the claimant's submission notes that the authors were not called to give evidence, the question for the Tribunal is not whether it is satisfied of the allegations but, in broad terms, whether the respondent had a genuine and reasonable belief at the material time.
193. Further, and to the extent that the June 2025 Investigation Report itself beyond the 3 anonymous witness statements set out details of events, including criticism of the event on 4 November 2024 and 5 November 2024 and, what was said to be relevant information, the claimant's attendance on the school grounds on 4 April 2025, it was open to the claimant, in

response by the time of the Appeal to set out her specific responses and further set out the detail where the claimant considered the June 2025 Investigation Report was factually inaccurate. The claimant did not require the respondent to provide documentation in response to her 4 August 2025 subject access request, before formulating her factual response.

194. While the claimant, at paragraph **53** of her submission, described that her central complaint is that the respondent relied upon undated anonymous accounts while failing to obtain “*obvious evidence from the obvious witnesses who directly worked with me*”, the claimant did not, in her appeal, propose the identity of such individuals.
195. While the claimant in paragraphs **57** to **62** of the claimant written submission criticises the respondent, pointing to what she extracts from the Renzo recommendations, namely the specific recommendation of facilitated mediation, that does not recognise that Renzo explicitly set out its remit as being limited to the December 2024 Grievance and in that context found tone of and written interactions by the claimant could be deemed unprofessional, the volume and frequency of messages regarding staffing may have created an environment where others perceived the claimant’s communication as excessive or disruptive, that the claimant was advised on multiple occasions that staffing decisions rested with Sue Carlile, although noting that no formal instruction was given to the claimant to cease her communication and behavioural concerns were not addressed and further Renzo expressly set out, again in the context of its limited remit, that the recommendations were intended to provide guidance on potential next steps, and ultimately the Board will determine any appropriate and proportionate course of action.
196. The Renzo February 2025 report, as set out in its introduction, only focused on the December 2024 Grievance, although discussions with those interviewed did not seek to restrict the discussion.
197. The claimant is critical that the Tribunal did not hear from Pamela Cooney, and in paragraph **61** of her written submission, argues that the respondent did not identify what outcomes short of dismissal were considered. The Tribunal notes the respondent’s original ET3 paper apart gave fair notice, at paragraph 34, that it is the respondent’s position that Pamela Cooney considered sanctions short of termination but determined that dismissal was merited. That is what the June 2025 dismissal letter set out. The claimant, including in the responsive amended paper, did not give fair notice that it was proposed that Pamela Cooney, for the Trustees, had not considered sanctions short of dismissal; reference is made to **Chandok**.
198. The Tribunal notes that the allegation list given to her before the Disciplinary Hearing cited 4 allegations; the finding narrates 5 allegations, consistent with the June 2025 Investigation Report

199. The Tribunal concludes that the claimant was aware that Issues 3 and 4 identifiably related to Sue Carlile, the respondent's investigation report; Issues 1 and 2 identifiably related to the allegations in the anonymised statements, but which the Tribunal concludes had identifiable authors; reference is made to **Brigden**. Issue 5 refers to both Sue Carlile and the authors of the anonymised statements. Following the hearing, the respondent, specifically Pamela Cooney, considered the allegations and the claimants' responses, as set out. **Pamela Cooney** considered outcomes short of termination but determined that the allegations were so serious as to constitute gross misconduct and merited dismissal; reference is made to **Reilly, Neary Adesokan** and **Woods**.
200. While at paragraphs **63** to **64** of the claimant's submission, the claimant sets out criticisms, including that she was not provided with the Renzo report and describes that the decision to dismiss (and thus to uphold at appeal) to dismiss was incomplete; it reflected the information available, the Renzo report, which was limited in its scope, was superseded, and while the Tribunal did not hear from Pamela Cooney, it heard from the relevant decision maker Martin Kutternik in relation to the appeal who on review of the information available to him for the appeal not operating with a closed mind, upheld the decision to dismiss.
201. At paragraphs **66** to **78** of the claimant's written submission, the claimant criticises the imposition of suspension; she does not argue that it was not permitted within the contract of employment.
202. The Tribunal concludes that the decision was not a knee-jerk reaction; the respondent had not moved to suspend following the claimant's email on **3 October 2024** to colleagues setting out her view of meeting 2 October 2024 during which meeting she had been advised there was a need for confidentiality; nor immediately following upon the claimant's comments at the meeting on **4 November 2024**, it followed from the **December 2024 Grievance** which expressly set out that the claimant should not make contact with Sue Carlile over the Christmas period. This was a relatively small workplace; there was no obvious place the claimant could be placed outside the kindergarten.
203. The **December 2024 Suspension** letter set out that the respondent had "*also considered your health, and the health challenges you have made us aware of*", which was a reference to the limited information the claimant elected to provide, including on **14 August 2024**, which in broad terms essentially described that the respondent may find the claimant to be fatigued
204. Further, while the claimant, on **29 September 2024**, referenced health challenges, she did not offer any view as to why having her preferred one assistant would help her with her health challenges or any other matters relevant to the decision to suspend. Further, the claimant referred to

becoming unwell on **5 November 2024** due to what she indicated were the arrangements at work and referenced stress on **11 November**, although she did not give notice of any material reason why suspension on pay in all the circumstances would not have been an option for the respondent. The claimant's **January 2025 Grievance** described that she *"had panic attacks, severe anxiety, high pulse rates and severe lack of sleep due to worrying, this in turn has aggravated my existing medical condition too."* The respondent partially upheld the January 2025 grievance, finding that there was a delay in putting wellbeing support in place, but concluded that there were extenuating circumstances. The respondent, having explored options seeking to identify a neutral member of the Board, identified Hannah Wallis, who was a nurse with an understanding of the respondent school and claimant ethos, who made contact with the claimant on **2 February 2025**. While the claimant described to Hannah Wallis on 17 March that she was *"really struggling"* and suggested that they talk that week, *"if possible"*, she did not set out the context of struggling nor suggest or direct that Hannah Wallis notify the respondent or that Hannah Wallis had moved away and a different person be identified. While Hannah Wallis responded on **18 March 2025**, she did not tell the claimant that, having moved away, she was unwilling or unable to continue with the claimant. The claimant did not subsequently raise lack of contact with Hannah Wallis with the respondent, including at the Disciplinary Hearing or in her Appeal.

205. The respondent kept the suspension under review; however, on the facts and while extended over the remaining period of the claimant's employment, the Tribunal concludes that those extensions arose from delays from the volunteer board's limited remit to Renzo, with consequential decision on the part of the respondent to appoint Rosie Tait for the **June 2025 Investigation Report** and further included practical issues arising from what was a small board of volunteer Trustees and the period of protected conversation and further practical issues of the effect of school term time during the period of suspension.
206. It was not argued that the claimant lost income during the period of suspension (until the end of her employment). It was not argued that the respondent had sought to replace the claimant during the suspension period.
207. Having regard to **Agoreyo**, there was reasonable and proper cause to suspend and continue that suspension.
208. The Tribunal notes the claimants' submissions para **83 to 87**. Broadly, the Tribunal has already dealt with matters above, taking matters as a whole, and while the claimant has criticism of Rosie Tait, including in relation to the June 2025 Report, the claimant did not propose that she set out a specific response to matters which were specified in same, including what was intimated to be the claimant coming onto school grounds on 4 April 2025 without prior arrangement. While a decision could have been made

to seek further external assistance, as proposed to Rosie Tait in this hearing by the claimant, from Waldorf UK, that had not been proposed to the respondent at any relevant time.

209. While the decision of Rosie Tait not to interview the claimant and the Trustees not to provide the Renzo report (in its limited scope) to the claimant, or indeed to instruct Renzo with the full scope of matters the Trustees wished Renzo to consider to allow for a wider report, could be regarded as procedural defects, what is necessary is for the Tribunal to consider the disciplinary process as a whole that includes consideration of the information which was provided to the claimant including the witness statements and the June 2025 Investigation Report. The Tribunal notes the terms of the claimant's position to the Disciplinary hearing and Appeal and, in light of same, taking matters as a whole concludes that there was a fair disciplinary process as a whole
210. Martin Kutternik did not approach matters with a closed mind; this was a small employer, and he carried out a review of the available information and formed what was a genuine belief in the misconduct of the claimant was, that misconduct being properly defined as gross misconduct in respect that the claimant, without reasonable and proper cause, conducted herself in a manner which was calculated and likely to destroy or seriously damage the relationship of confidence and trust between the claimant and respondent, including having regard to the claimant's actions on 4 November 2024 and while the claimant sets out that she apologised to those involved that of itself does not preclude such actions as amounting to gross misconduct. The respondent's actions, taken as a whole, were consistent with the ACAS code; there was sufficient information (including the documentation provided with the invite to the disciplinary hearing) to enable the claimant to prepare to answer the allegations, including at the Appeal. The Tribunal notes that while on **25 April 2025** the claimant emailed the Trustees describing that she refuted the allegation and set out that she also possessed evidence not only backing her up but also proving that there was in fact a campaign against her, she did not provide that evidence at any point.
211. While the allegations of misconduct were only broadly set out in the invitation to the disciplinary hearing, they were identifiable from the 3 witness statements and the June 2025 Investigation Report, based on reasonable grounds, and by that time the respondent had carried out a reasonable investigation including having regard to the information the claimant elected to provide in response to the June 2025 Investigation Report.
212. With regard to **Hitt**, beyond the claimant's general denial, despite what the Tribunal concludes on the facts of this case as a **Bridgen**-compliant specification from accompanying documentation, the respondent was not presented with any contrary factual matrix to consider; to that extent the

respondent was presented by the time of the appeal with what was in effect, on the facts, as unchallenged allegations.

213. The Tribunal conclude that Martin Kutternik at the appeal reviewed matters genuinely and not with a closed mind and, absent the claimant's attendance and/or information being provided by her by the stage of the appeal formed a reasonable belief in the misconduct of the claimant as set out within the Investigation Report read together with the 3 witness statements and, had by the stage of appeal reasonable grounds upon which to sustain that belief and by that stage had carried out as much investigation as was reasonable in all the circumstances of the case including affording the claimant the opportunity to respond to the documentation provided for the Disciplinary Hearing including the Investigation Report and the anonymous witness statements which while anonymous the Tribunal concludes the claimant was aware of the identity of the authors, including from the information contained and was able to respond to the matters set out therein.
214. In the circumstances, the Tribunal is not required to consider whether, as pled by the respondent, there was some other substantial reason.

Conclusion

215. The claimant's claim of unfair dismissal does not succeed and is dismissed.

Date sent to parties

25 September 2026