Case Number: 6027335/2025

EMPLOYMENT TRIBUNALS

Claimant: Amanda Jenkins

Respondent: Creative Education Trust

Heard at: Nottingham ET (hybrid hearing) **On:** 7 and 30 July 2026

Before: Employment Judge Ost (sitting alone)

Representation
Claimant: in person
Respondent: Mr Dilaimi (Counsel)

RESERVED JUDGMENT

After consideration of the evidence provided and hearing from the parties the judgment of the Tribunal is as follows:

1. The complaint of Unfair Dismissal is well founded and succeeds. The Claimant was unfairly dismissed.

2. The respondent shall pay the claimant the following sums:

   (a) A basic award of **£1,078.50**.

   (b) A compensatory award of **£757.75.**

   Note that these are actual the sums payable to the claimant after any deductions or uplifts have been applied.

3. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:

   1. The total monetary award (i.e. the compensatory award plus basic award) payable to the claimant for unfair dismissal is **£1,836.25**

   2. The prescribed element is **£757.75**.

   3. The period of the prescribed element is from **25 April 2025 to 1 December 2025**.

4. The difference is **£1,078.50**.

5. The complaint of Wrongful Dismissal is well founded and succeeds.

6. The Respondent shall pay the Claimant **£3,283.58** as damages for wrongful dismissal/breach of contract regarding notice pay. This figure has been calculated using gross pay to reflect the likelihood that the claimant will have to pay tax on it as Post Employment Notice Pay.

REASONS

Introduction

7. The Respondent is a multi-academy trust which operates a network of 17 primary and secondary schools across the East and West Midlands and the East coast of England. This network includes an educational establishment known as Bulwell Academy. The Claimant was employed as an Attendance Improvement Manager at Bulwell Academy from 16 January 2023 until the termination of her employment on 2 May 2025. During this time the Claimant worked continuously and exclusively for the Respondent.

8. The claim concerns a reference which the Claimant provided for a former colleague at Bulwell Academy and the Respondent's subsequent decision to summarily dismiss the Claimant on the grounds of gross misconduct for doing so.

9. The Claimant commenced early conciliation on 4 February 2025 ("Day A") and the early conciliation certificate was issued on 18 March 2025 ("Day B").

10. On 22 July 2025 the Claimant presented a claim form in which she ticked a box at section 8.1 to indicate that she was bringing a complaint of Unfair Dismissal. She did not tick the box which indicated that she wished to bring a claim for notice pay. However, she did state in the narrative in box 9.2 "*I was not given notice which is in my contract that I should have been entitled to, but due to being dismissed on gross misconduct, the school dismissed me with immediate effect and no notice period*". The claim was original pleaded against Bulwell Academy, but the name of the Respondent was subsequently amended to

11. The Respondent submitted a response form dated 24 September 2025 in which it resisted those complaints.

12. The case was previously listed to be heard on 5 January 2026. However, the final hearing was postponed until 7 July 2026. The hearing was not able to be concluded within the one day allocation and therefore a further day was listed to conclude the hearing on 30 July 2026.

13. Both parties attended the final hearing and called witnesses to give evidence on their behalf.

14. The parties cooperated in the production of a hearing bundle of 994 pages (which were numbered 1 to 995 due to an error). The parties also produced an index to the hearing bundle. The Tribunal explained to the parties that in the timescales it would only read those documents in the bundle to which its attention was drawn.

The hearing

15. This was a public hearing in which all parties attended in person for the first day of hearing. For the second day of the hearing the Tribunal agreed that the Claimant could attend by CVP. The Claimant represented herself in person. The Respondent was represented by Mr Dilaimi of Counsel. Mr Keen and Ms Tricarico from the Respondent attended and gave evidence. Ms Roy from the Respondent observed.

16. The Tribunal received witness evidence from the following witnesses for the Claimant:

    16.1 The Claimant.

17. The Tribunal received witness evidence from the following witnesses for the Respondent:

    17.1 Chris Keen ("Mr Keen") – the Respondent's Executive Principal responsible for the Bulwell Academy at the time in question who made the decision to dismiss the Claimant; and

    17.1 Victoria Tricarico ("Ms Tricarico") – the Respondent's Director of Human Resources at the time in question who decided the appeal.

18. Each witness provided a prepared witness statement. The Tribunal took time to read the statement in advance. Each of the witnesses attended in person to give evidence under oath/affirmation and made themselves available for cross examination. Each of those witnesses were cross examined by the other party and the Tribunal also asked questions.

19. The Respondent also provided a counter schedule of loss, a chronology and a cast list which were all helpful and for which the Tribunal repeats its thanks.

Amendment

20. At the outset of the hearing the Tribunal noted that there were references within the Claimant's claim form and her witness statement which suggested that she may be seeking to bring (a) a wrongful dismissal complaint regarding the non-payment of notice pay and possibly also (b) complaints of discrimination on the grounds of sex and/or disability. However, such complaints had not been expressly and clearly dealt with by either party.

21. At the hearing the Tribunal explained that it was fundamentally important that both parties were clear on the complaints which were live for determination before the hearing began and that they had an equal and reasonable opportunity to prepare for the correct complaints. Furthermore, an application to amend the claim may be necessary in which case a fair and just hearing

may not be able to proceed at the listed hearing. The Tribunal therefore asked the parties to confirm their understanding of the complaints that were being brought and defended at this hearing.

22. Mr Dilaimi had helpfully provided a skeleton argument on behalf of the Respondent. This skeleton argument asserted that "*C's ET1 and Grounds of Claim ([1-20]) do not appear to disclose a claim of wrongful dismissal/breach of contract. However, paragraph 57 of C's witness statement suggests that C wished to bring such a claim …*" In submissions upon the point Mr Dilaimi accepted on behalf of the Respondent that the witness statement contained a clear reference to wrongful dismissal and the Respondent was prepared for that argument. He indicated that this would technically need an amendment, but the Respondent would not object to that amendment and it was itself asserting a 'contributory fault' argument in any event. In contrast, Mr Dilaimi stated that there was no pleaded claim for discrimination related to sex or disability. Mr Dilaimi stated that whilst he could see references to health, he could see no suggestion from the Claimant that it amounts to a disability, and he didn't believe that her relatives' health issues were relevant to the claim. Mr Dilaimi confirmed that the Respondent was not prepared to deal with a complaint discrimination related to sex or disability at the start of the listed hearing.

23. The Claimant clarified that she was seeking to bring a claim for the value of her notice pay because in her view she should not have been dismissed for gross misconduct. The Claimant further explained that she was describing matters relating to her health, family members' health and the impact of caring requirements upon her, and her view of the treatment of allegations against male and female members of staff as contextual matters only to demonstrate the unfairness of the dismissal within her unfair dismissal complaint. She did not want to apply to amend her claim to asset complaints of discrimination related to sex or disability.

24. The Tribunal explained to the Claimant that this was her decision to make but she needed to understand that it was a permanent decision. The Tribunal asked the Claimant if she would like a short break to reflect before she made her final decision. The Claimant declined the option for some time to consider this decision, and confirmed that she was not pursuing claims for discrimination on the grounds of sex or disability.

25. On this basis, the Tribunal allowed the Claimant to amend her claim to specifically assert a complaint of wrongful dismissal for the reasons already articulated in her claim form. The Tribunal similarly allowed the Respondent to amend its response form to specifically state that it denied that the Claimant was wrongfully dismissed. No application was made to amend the Claimant's case to include any complaints of discrimination related to sex or disability.

The Issues

26. The issues to be decided by the Tribunal in order to determine the complaints of unfair dismissal were adopted from the Respondent's skeleton argument. The Tribunal explained that it would add a simple statement of the issues to be determined in a claim for wrongful dismissal as a third section. The resultant list of the issues to be determined by the Tribunal were therefore as follows:

List of Issues

1. Unfair dismissal

The parties both accept that the Claimant was dismissed.

1.1 What was the reason (or principal reason) for dismissal? The Respondent says that it was a reason related to conduct which is a potentially fair reason for dismissal under s98(2).

1.2 If the reason was related to misconduct, did the Respondent hold a genuine belief in the Claimant's misconduct on reasonable grounds and following as reasonable an investigation aw was warranted in the circumstances?

1.3 Did the Respondent adopt a fair procedure (within the range of reasonable responses)?

1.4 Was the decision to dismiss a fair sanction, i.e. was it within the range of reasonable responses) open to a reasonable employer when faced with these facts?

1.5 If the Respondent did not dismiss fairly, would the Claimant have been dismissed in any event and/or to what extent and when?

1.6 If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable or blameworthy conduct? This requires the Respondent to provide, on the balance of probabilities, that the Claimant actually committed the misconduct alleged.

2. Remedy for unfair dismissal

2.1 The Claimant does not wish to be reinstated or reengaged

2.2 What basic award is payable to the Claimant, if any?

2.3 Would it be just and equitable to reduce the basic award because of any culpable or blameworthy conduct of the Claimant before the dismissal?

2.4 If there is a compensatory award, how much should it be? The Tribunal will decide:

2.4.1 What financial losses has the dismissal caused the Claimant?

2.4.2 For what period of loss should the Claimant be compensated?

2.4.3 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason? If so, should the Claimant's compensation be reduced? By how much?

2.4.4 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did the Respondent or the Claimant unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion, up to 25%?

2.4.5 Was the Claimant's dismissal to any extent caused or contributed to by any culpable or blameworthy conduct? If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?

2.4.6 Does the statutory cap apply?

3. Wrongful dismissal / Notice pay

3.1 The parties agreed that the Claimant's notice period was set out in her contract of employment.

3.2 The parties agreed that the Claimant's was not paid for that notice period.

3.3 Did the Claimant do something so serious that the respondent was entitled to dismiss without notice?

3.4 If so, how much should the claimant be awarded as damages?

27. At the conclusion of the evidence both parties made submissions which are not repeated but were taken fully into account.

28. Mr Dilaimi provided the following authorities to the Tribunal and the Claimant which were also considered:

- *British Homes Stores v Burchell [1980] ICR 303*
- *London Ambulance Service NHS Trust v Small [2009] EWCA Civ 220*
- *DHL Services v Ignatowicz [2026] EAT 74*

The Relevant Facts

29. The relevant facts are as follows in the paragraphs below. Many of the facts relating to the case were not disputed. Where the Tribunal had to resolve a conflict of evidence, it did so on the balance of probabilities and it has indicted how it resolved that conflict at the relevant point. Otherwise, the facts found are based upon evidence that was consistent between the parties or evidence from one party which was unchallenged by the other party.

30. The determination of the complaint of unfair dismissal, the assessment of any contributory fault and the determination of the complaint of wrongful dismissal/breach of contract in respect of an entitlement to notice rely on different tests and therefore they require different findings of fact.

31. Importantly, some of the findings of fact which are required for assessing contributory fault and/or the complaint of wrongful dismissal/breach of contract cannot be taken into account when making a determination on liability for unfair dismissal. Therefore, in order to keep the findings which are relevant to each of those considerations separate from one another (and thereby guard against slipping/appearing to slip into a 'substitution' mindset in respect to the unfair dismissal consideration) the Tribunal has provided its findings of fact for each consideration separately.

Background

32. The Claimant accepted the Claimant's uncontested evidence that at the relevant time she was an experienced education professional with approximately 18 years of experience.

33. The Claimant was employed by the Respondent as Attendance Improvement Manager at Bulwell Academy from 16 January 2023 until her dismissal without notice on 25 April 2025.

34. As an educational establishment, the provisions of the current version of Keeping Children Safe in Education ("KCSIE") applied to the school at all relevant times.

35. In September and October 2024, the Claimant fulfilled the role of accompanying colleague within a disciplinary process to a then work colleague at Bulwell Academy who the Tribunal shall identify as "[H]". It is relevant and necessary for the purposes of this case to provide a brief description of the circumstances and reasons for [H]'s disciplinary process.

36. In summary, the Respondent investigated and conducted a disciplinary process involving [H] on the allegations that [H] had shown to another teacher a sexually explicit image and discussed with a teacher the receipt of sexually explicit images (which had originally been sent to [H] by two more senior male teachers within the Respondent Trust [A] and [B]). [H] was dismissed by the Respondent for her actions relating to showing and discussing the sexually explicit pictures to a work colleague. The two person panel who made the decision to dismiss [H] included Chris Keen, Executive Principal for Bulwell Academy.

37. The Tribunal accepted Mr Keen's uncontested evidence that apart from their respective involvement in [H]'s disciplinary process Mr Keen and the Claimant had little contact with each other.

38. The Tribunal accepted the Claimant's evidence which was consistent with various documents within the hearing bundle that she believed the male teachers' actions in sending such images to a more junior female member of staff were highly inappropriate. The Claimant believed that that no action was taken against the more senior male teachers who initially sent the sexually

explicit images to [H] and she was agitated by this. The Claimant considered the difference in outcomes for [H] and for the male teachers to be unfair and discriminatory in nature; she made allegations to this effect within the internal processes. The Claimant's later whistleblowing report states "*[H] was not in a position of a management and that strikes me as extremely concerning that a female member of staff should not only be subjected to such behaviour, but also have her employment terminated, but not the man who sent the picture. This is clearly a miscarriage of justice and I did raise this with Mr Chris Keen and Mr Donald at the time.*"

39. The Tribunal accepted as accurate an email within the hearing bundle from the Respondent's Data Protection Officer to [H] dated 1 May 2025 which confirmed that within the period September to December 2024 (i.e. the four months around [H]'s suspension and following dismissal), the Respondent did not report any safeguarding concerns regarding [H]:

    39.1 to the Disclosure & Barring Service ("DBS") as the organisation which maintains the Adults' and Children's Barred Lists, and which makes decisions as to whether an individual should be included on one or both of these lists and barred from engaging in regulated activity; or

    39.2 to the Local Authority Designated Officer ("LADO") as the person within a local authority who is responsible for managing and overseeing allegations made against adults who work or volunteer with children and who coordinates information sharing between agencies such as social care, the police, schools and regulatory bodies.

40. The Tribunal accepted Ms Tricarico's uncontested evidence that "*References play a critical role in recruitment within Schools*".

Findings relevant to the assessment of the unfair dismissal

41. The Respondent's provision or non-provision of guidance or training regarding references to staff and in particular to the Claimant was a matter of dispute between the parties.

42. The Claimant's evidence within her witness statement was as follows:

> *"The school has no reference policy and whilst I have subsequently learned that there is mention of this in the document Keeping Children Safe in Education, part three, I have only ever been told that I needed to be aware of part one. Whilst at the disciplinary meeting I was informed that there was an expectation for staff to know the entire document, there were numerous occasions (as mentioned in the chronology) where I was told that I needed to know part one of KSCIE and only part one. In fact, when I joined the academy and two further training sessions, I was only shown part one of the document and in addition I had to sign that I had read part one. There has never been any mention nor expectation for me to read part three where it mentions informing the headteacher of executive headteacher of a reference request. Furthermore, there have been numerous examples of times when line managers would be expected to*

write references and I have never been informed that this is no longer acceptable."

43. The Claimant's account of what she was personally told wasn't disputed in evidence. Her account was consistent with the documentary evidence in the hearing bundle. Notably within the hearing bundle was the document which the Claimant was required to sign and date at the start of her employment (doing so on 9 January 2023) by the Respondent to confirm that she had read part one of the then current version of KCSIE (as well as other documentation). There was no reference to the Claimant being required or advised to read part three of KCSIE in this document. The Tribunal's attention was not drawn to any other part of the hearing bundle which contained or referred to such a requirement. Similarly, the KCSIE 2024 document itself within the bundle only created an expectation that staff such as the Claimant should be aware of part one, stating that "*Governing bodies and proprietors should ensure that those staff who work with children read at least Part one of this guidance.*"

44. The Tribunal finds that the Respondent informed the Claimant that she should read and understand part one of the then current version of KCSIE. In contrast, the Tribunal finds that the Respondent did not inform the Claimant that she should read and understand part three of KCSIE, and, it did not inform her that she must comply with the contents of part three of KCSIE.

45. The Respondent did not contest the Claimant's evidence that the Respondent did not have a written policy on the provision of references. The Tribunal finds that the Respondent did not have a written policy on the provision of references.

46. On 22 May 2024, the Claimant had an email exchange with Matt Irons, the Principal of Bulwell Academy in which she stated openly that she had provided a reference to a former colleague. The Tribunal accepts the Claimant's uncontested evidence that she was not disciplined for this and, in fact, she was not even told that there was any issue with this.

47. Within his witness statement, Mr Keen asserted that the Respondent had what he described as 'underlying principles on referencing'. He stated them as follows:

> "*The underlying principles on referencing were, at the time of the Claimant's disciplinary p*rocess, as follows:
>
> *(a) reference requests should be communicated to the Principal of the school prior to a reference being written.*
>
> *(b) the Principal/SLT of the school should be nominated as a referee for an educational appointment and they should provide the reference.*
>
> *(c) in instances where a member of staff has been requested to provide a reference, and there is a known disciplinary issue, this must be escalated and approved by approved by the Principal, in accordance with KSCIE section 3; and*

(d) *references should be factual and accurate. References are also required to include details of any safeguarding or disciplinary concerns in line with Keeping Children Safe in Education."*

48. The Tribunal noted that these four clearly articulated principles match exactly the failures which the Respondent subsequently alleged against the Claimant.

49. However, also noted that the four 'underlying principles of referencing' presented by Mr Keen were not quoted or referred anywhere in the investigation meeting notes, the investigation report, the notes of the disciplinary hearing conducted by Mr Keen, the disciplinary outcome letter issued by Mr Keen, the appeal hearing notes and/or the appeal outcome letter. As far as the Tribunal could discern, nobody within the investigation, the disciplinary and the appeal stages of the process (not even Mr Keen) referred to the existence of a set of four underlying principles for referencing.

50. In the investigation report within the hearing bundle, Mr Smith, a Vice Principal, stated that "*The expectation of the Trust is that member of staff have a professional responsibility to seek advice with regards to providing references for a member of staff who has been removed from regulated activity and dismissed for gross misconduct.*" This was very different from the Trust's four underlying principles as put forward by Mr Keen. This is a senior member of staff, a Vice Principal, who appears unaware that the Respondent has the four underlying principles which Mr Keen put forward. Mr Smith states only that a member of staff should seek advice when a member of staff has been removed from regulated activity and dismissed for gross misconduct. Furthermore, he describes this as an expectation.

51. The absence of any reference to the four underlying principle at the time of the events in question when the principles so perfectly match the allegations against the Claimant, is so unlikely that it causes the Tribunal to consider whether the four principles have been thought up more recently and then retrospectively and wrongly projected back to that time.

52. Mr Keen went on to state within his witness evidence that "*I was aware of the above information from participating in annual safeguarding training (KCSIE) from the Trust, written by the Director of Safeguarding of the Trust, and delivered by the Designated Safeguarding Lead to all staff, by regularly referring to and reading Trust related policies and from regular contact with the Trust's HR Director and Senior HR Business partner who would both provide support and guidance as needed. This would take place on one of the September inset days each year."* At first impression this appeared to be a clear statement by Mr Keen that the referencing principles were communicated to all staff in September each year.

53. However, the Claimant specifically disputed that she had ever been trained on giving references at any of the inset days she attended or at any other time. When Mr Keen was asked directly by the Tribunal within the hearing how those referencing principles were communicated to staff, Mr Keen's answer gave a materially different impression than his witness statement. He did not provide an answer about what had happened, his answer was speculative in

nature. Mr Keen said "*my understanding was that those messages would be communicated to staff in briefings or email. Staff would look for jobs at certain time of the year and it is important that a referee is always a Principal. They would share something about that. I know I did.*" The Tribunal also noted that the answer he gave was unrelated to the September inset training days referred to in his written statement.

54. The statutory requirements and good practice expectations on an educational setting are such that a school/academy is required to provide training and guidance on many areas. Accordingly, a school/academy would usually be expected to keep clear written records of (a) which employees attended specific training or received specific guidance and (b) when this occurred. (A good example of such, within the evidence at hearing, was the signed and dated confirmation which the Respondent required the Claimant to sign and date to document that she had read and understood six key policies and sets of guidance which specifically included part one of KSCIE.)

55. The hearing bundle contained just under 1000 pages. The Respondent did not draw the Tribunal's attention to any evidence within the hearing bundle of any training relating to providing references of the type suggested by Mr Keen in his witness statement which was attended by the Claimant (or indeed by any staff generally). Similarly, the Respondent did not draw the Tribunal's attention to any evidence within the hearing bundle of any emails or briefings communicating the underlying principles of referencing to the Claimant (or indeed by any staff generally).

56. In the context of Mr Keen's changeable answer and the lack of documentary evidence of training (as referred to by Mr Keen in his witness statement) or emails/briefings (as referred to by Mr Keen in his oral answer), the Tribunal preferred the Claimant's evidence on this issue. The Tribunal found that:

    56.1 the Respondent did not provide training on the provision of references to the Claimant;

    56.2 the Respondent did not communicate the 'underlying principles of referencing set out by Mr Keen in his witness statement'; and

    56.3 the Respondent did not communicate orally its requirements or expectations on the provision of references to the Claimant until after the events in question.

57. The Tribunal accepted the Claimant's uncontested evidence that the Respondent's disciplinary policy was out of date by reference to the timescales set for the policy to be reviewed and then either renewed or updated. Notwithstanding that date for review issue, the policy used by the Respondent to manage the disciplinary process was the only one in force.

58. The Tribunal accepted the Claimant's evidence in cross examination that she had a positive and friendly working relationship with [H] but she did not socialise with [H] outside of work. As Mr Dilaimi put it and the Claimant accepted, they were '*colleagues on friendly terms*'.

59. The communication by text between the Claimant and [H] was familiar and friendly in its tone. Examples included [H] referring to the Claimant as "*lovely*"

and ending texts with one or more "x" (often referred to as 'a kiss' in written communication). For context the Claimant did end communications with colleagues with a light positive symbol, for example her email communications within Respondent managers regularly ended with a smiley face emoji even during the subsequent disciplinary and grievance processed.

60. The Tribunal accepted the Claimant's uncontested evidence that during her provision of companion support to [H] shortly prior to completing the reference she had been having to support family members who were themselves very unwell and she had been experiencing health difficulties with hypertension and as well as being under work pressures. This was supported by an email on 16 October 2024 when the Claimant had written an email to Claire Hallam, which was copied to Mr Keen in which she stated in regard to her health:

> "*I am so sorry to be a pain, but I am currently on sick leave due to hypertension which is causing me to be dizzy/headache and cannot drive … I still do not feel ready for work and am taking my GP's guidance.*"

61. After [H] was dismissed by the Respondent, [H] asked the Claimant to provide a reference for an application for a new safeguarding role with a new educational establishment. The precise nature of that reference was central to the disciplinary allegations against the Claimant.

62. The text from [H] to the Claimant on 13 November 2024 at 08:23 stated:

> *"Morning Lovely*
>
> *Hope you're ok.*
>
> *For my new job I have been really honest with them about what's been going off and they are willing still to take me on roll. [Raising hands/celebration' emoji] Hallelujah!*
>
> *They've received two references from my former employer but now would like two character references from people I have worked with. I have asked MO and wondered if you would be the other?*
>
> *Totally get it if you don't want too [sic], just trying to get the ball moving so I can start xxx"*

63. The reference template was then sent by the new/prospective employer to the Claimant via her work email address at 8:31am on the same day.

64. In cross examination the Claimant agreed that she wanted [H] to get the job and she didn't want her to lose her career in safeguarding.

65. The reference template provided a description as to which sections should be completed depending on who was providing the reference. It stated:

> *"1. Current or previous employer – Sections A, C and D.*
>
> *2. Current or former teacher of Tutor – Sections B, C and D.*

3. Personal reference - Sections C and D"

66. The Claimant responded to [H] at 8:15pm in that evening with a text exhibit confusion about the content of the template given her expectation that she was providing a character reference stating:

> *"It also wants to know absences, dates of any disciplinary meetings, etc… Do you want me to go down as a character reference instead?"*

67. In response at 9:58pm [H] states:

> *"It's OK lovely I've already started so I don't think I need yours now. You ok holding off on it for now? If they ask me again can I let you know xxx"*

68. The Tribunal determined that the Claimant was subsequently asked to provide the reference because she sent it back to the new/prospective employer via her work email address on Sunday 17 November 2024 at 19:21.

69. The reference completed by the Claimant was within the bundle. The contents were not disputed, and it was accepted by the Tribunal as an accurate record of the reference produced by the Claimant and then provided by her to the new/prospective employer by email.

70. On the basis that the Claimant was only asked to provide a 'character reference' also known as a 'personal reference' she should have completed Sections C & D only. However, she completed some (but not all) parts of Section A: she completed [H]'s position/title, a description of [H]'s main duties and responsibilities, and when asked if she would 're-employ' [H] she ticked the box marked 'yes'.

71. In section A, the referee was asked the question, "*Does the applicant have any disciplinary action on their file or are they subject to an investigation or disciplinary hearing?*". The form provided a 'yes' box and a 'no' box for the referee to tick. The Claimant did not tick either box.

72. The Claimant went on to provide answers to questions asked in sections C and D.

73. In section C, the Claimant stated that [H] was "*extremely professional in all aspects of her roll* [sic]".

74. In section D the Claimant answered the question "*Is there any reason, to your knowledge, why this applicant should not work with children*" by ticking 'No' in

75. At the end of the reference, all types of referee were required to give a declaration which stated: "*I confirm that all of the information supplied is a true and correct record of the applicant, and that any safeguarding concerns have been detailed on this form*" before signing and dating the reference along with their name and job title. The Claimant signed and dated this declaration. The Tribunal accepted the Claimant's evidence that she interpreted this question as only being concerned with the safeguarding of children and answer on that

basis. However, the question asked did not limit safeguarding to the safeguarding of children.

76. On 3 March 2025 Amy Fuller, Vice Principal and the Claimant's line manager, was with the Claimant when an email request for a reference appeared on the Claimant's computer screen. At the time Ms Fuller did not query this or raise this with the Claimant as something which must go to the Headteacher at the time.

77. The Tribunal accepted the documentary evidence within the email from Louis Donald, Director of Safeguarding and Personal Development, to Mr Irons on 4 March 2025 in relation to how and when the Respondent became concerned about the reference request. The email records:

> *"…*
>
> *During the conference today, Amy Fuller mentioned in passing to Stacey Anderson that she noticed Amanda Jenkins had received a reference request via email. When Stacey later raised the question of whether the request might have come from [H], the two worked through the timeline and concluded it was a possibility.*
>
> *Following Stacey's report we reviewed Amanda's inbox and discovered several reference requests for [H], the most receipt of which arrived this week. Amanda has responded to one of these requests two weeks after the appeal hearing was scheduled, providing a highly positive reference. In her response, she described [H] as "outstanding", stated she would reemploy her again and included a supportive narrative about her performance. There was, of course, no reference to any disciplinary outcome or safeguarding risk"*

78. This email was copied to Mr Keen and Ms Tricarico (and two others).

79. The parties agreed that on 4 March 2025 Ms Fuller and Mr Irons held a meeting with the Claimant to explore what reference(s) she had given. The Claimant admitted openly that she had been asked to give a reference for [H] and she had given one. Mr Irons decided to suspend the Claimant on full pay pending an investigation.

80. The Tribunal accepted the uncontested evidence from the Claimant which was consistent with various documents within the hearing bundle that the process of being suspended was deeply upsetting to her.

81. Mr Irons confirmed the suspension and set out the next steps in the disciplinary process in writing by a letter dated 5 March 2025. The letter stated that the allegations against the Claimant were:

> *"(1) You have supplied employment reference(s) for [H] without the knowledge or permission of the Principal or Executive Principal.*
>
> *(2) Information you have provided in the employment reference(s) did not accurately reflect [H]'s employment at The Bulwell Academy including disciplinary action which you were fully aware of.*

If found to be proven, the allegations may be seen to be an example of behaviour that could constitute breaches of Keeping Children Safe in Education (2024).

…"

82. On 6 March 2026, the Claimant queried with the Respondent's HR team where the rules around references are found and stating, "*I don't remember anything about references*".

83. On 7 March 2026 Claire Hallam confirms to the Claimant by email that on the Inset day staff were provided with part one of KCSIE to read.

84. Chris Smith, Vice Principal, was appointed to conduct the investigation and produce a report. The Claimant wanted to meet with her chosen companion, Sharna Morton, to prepare for the disciplinary investigation meeting due to take place at 12:30pm on 11 March 2026. The Tribunal accepts the Claimant's uncontested evidence supported by the email from Ms Morton dated 10 March 2025 that Claire Hallam in HR had told her that they were allowed to meet 15 minutes prior to the investigation meeting. This impacted upon the Claimant's ability to prepare with her accompanying individual and reduced the accompanying individual role to that of an emotional support.

85. The Tribunal accepted the Claimant's evidence in cross examination that this refusal and the Claimant's resultant inability to prepare with Ms Morton unsettled the Claimant and it meant that the companion was hearing things for the first time during the investigation meeting.

86. Mr Smith interviewed the Claimant on 11 March 2025. The Tribunal accepted the notes of the interview as an accurate summary of what was said on the basis that this was not substantially contested by either party.

87. On 25 March 2025 the Claimant raised a grievance in a 4 page letter which referred to multiple issues some connected to the disciplinary process and some unrelated. Within this the Claimant referred to having only just returned from sick leave due to her own health issues and serious health issues within her family.

88. Mr Smith produced an investigation report dated 3 April 2025 in which he recommended that the allegations against the Claimant be considered in a disciplinary hearing. The investigation report repeated the nature of the allegations, stated that they had been found to be substantiated and that they may amount to breaches of KCSIE (2024) as set out above.

89. Mr Smith's report to the disciplinary hearing under the heading "Summary of reference for [H]" to the new/prospective employer to (Appendix 3)" incorrectly suggested that the Claimant's statement that [H] was extremely professional in her role was within the section for an employer to complete, section A. It was not; it was within section C part of the personal reference content.

90. Mr Smith who conducted the investigation, found the first allegation substantiated and in doing so he specifically relied upon a bullet point under section 228 from part three of KCSIE entitled ‘Safer Recruitment’.

91. Section 228 states:

> “Schools and colleges should:
>
> - *Not accept open references e.g. to whom it may concern*
> - *Not rely on applicants to obtain their reference*
> - *Ensure any references are from the candidate’s current employer and have been completed by a senior person with appropriate authority (if the referee is school or college based, the reference should be confirmed by the headteacher/principal as accurate in respect of any disciplinary investigations)*
> - ...”

92. By letter dated 3 April 2025 the Claimant was invited to attend a disciplinary hearing on 25 April 2025.

93. The Tribunal accepted the notes of the disciplinary hearing as an accurate summary of what was said on the basis that this was not contested by either party. The Claimant's views of Mr Keen's decisions in [H]'s case were discussed in the disciplinary hearing. The notes record that the Claimant questioned "*why the person who sent the photos had not been disciplined and made a claim about sexual discrimination at the Academy and it was worrying*" and [H] was sent photos by [A] and [B] and "asked *why nothing had been done about it*". She also said that "*through [H]'s disciplinary she felt that women and men were treated differently.*"

94. Within that hearing Mr Keen assessed the Claimant against a requirement that she should comply with part three of KCSIE. The Claimant disputed this and stated that she had been specifically told that she only needed to read and understand part one of KCSIE.

95. In cross examination, Mr Keen said that he did not take into account the Claimant’s personal circumstances at the time when she wrote the reference because she had not been off work at that time. However the Tribunal noted that as recorded above Mr Keen had been copied into the email of 16 October 2024 when the Claimant wrote:

> “*I am so sorry to be a pain, but I am currently on sick leave due to hypertension which is causing me to be dizzy/headache and cannot drive … I still do not feel ready for work and am taking my GP’s guidance.*”

According to the notes of the disciplinary hearing, Mr Keen took just 35 minutes to consider the situation, to check any relevant evidence, to make his decision and to plan his oral explanation of that decision. He orally explained his decision to summarily dismiss the Claimant at that time.

96. On 30 April 2025 the Claimant submitted a whistleblowing complaint to the Chair of Trustees in which she referred to "*three counts of sexual discrimination*". The first issue related to [H]'s dismissal in comparison to the male members of staff, the second issues concerned the handling of an allegation about another member of staff being threatening, and the third was about the Claimant's own treatment in the disciplinary process.

97. Mr Keen confirmed his decision and his reasons in writing by letter dated 2 May 2025. In respect of allegation 1 Mr Keen stated:

> *"You also explained that you were unaware of the necessity to ensure that either the Principal or the Executive Principal were informed of the reference request. You supported this by explaining staff are only asked to read Section 1 of KCSIE whilst Section 3 of KCSIE is what refers to procedures for references. Whilst the panel has taken this point into account it does not mean that the statutory guidance does not apply because you have failed to read it."*

98. He also stated:

> *"Taking everything into consideration, the panel concludes that despite your intention and despite regular training for staff about the necessity of 'reporting concerns about staff to the Principal' you completed aspects of any employment reference on behalf of the Trust for an employee that you were fully aware was dismissed for gross misconduct and you failed to let the Principal or the Executive Principal know about the reference request. Therefore this allegation is founded."*

99. In respect of allegation 2, Mr Keen stated:

> "*You also state that you saw no reason why [H] could not work with children, but this was not your decision to make and highlights concerns about your professional judgement*"
>
> *...*
>
> *You acknowledged that despite your proposed intention to provide a character reference for [H] you understood how completing the employer section, not completing the disciplinary action section and sending the reference from your work email address was misleading."*
>
> *Having considered all the evidence presented in relation to Allegation 2, the panel concludes that through providing the reference you did, not only were you dishonest in your assessment but you also lied through omission in order to assist [H] in obtaining a post within regulated activity.*
>
> *.. I confirm that the above allegation is founded."*

100. In his conclusion section entitled 'Decision' Mr Keen wrote:

> "The actions you have taken **and the opinions you have shared regarding *[H]'s dismissal*** *have caused the panel to have serious*

concerns around your professional judgement and integrity." (emphasis added)

101. The Claimant appealed against the decision to dismiss her by an appeal dated 6 May 2025. The appeal was arranged for 2 June 2025 and it was heard by Ms Tricarico Director of Human Resources who chaired the hearing and John Ward, Director of Estate & Facilities. Mr Keen attended to present and explain his decision. The Claimant attended and was accompanied by another colleague, Mick Astle. The Claimant was able to present her appeal as she wished, and all of her points were considered.

102. The Claimant did at the appeal raise her health issues at the time of providing the reference for [H] but Ms Triciarico found that the issues had not been raised with Mr Keen and she rejected them.

103. The Tribunal accepted Mr Keen's written preparatory notes for the appeal hearing as representative of his view when he wrote:

> *"Should not be sidelined or distracted by grievances, SAR requests, a picture of dbs certificate, KCSIE extracts, text messages and Ofsted complaints – these only confirm the utter breakdown of trust and confidence between the employee and employer"*

104. The Tribunal accepted the notes of the appeal hearing as an accurate summary of what was said on the basis that this was not contested by either party.

105. Ms Tricarico wrote to the Claimant by letter dated 9 June 2026 and confirmed that each ground of her appeal had been rejected and gave the reasons for this.

Additional findings relevant to the assessment of contributory fault

106. The Claimant completed the reference for [H] as described above and provided that to a new/prospective employer within the education sector.

107. The Claimant took an insufficient level of care when compiling the character reference for [H] and sending it to the new/prospective employer in a sector where references are critical to safe recruitment by:

107.1 Completing parts of section A which were reserved for an employer referee (and in particular stating that she would "re-employ" [H]) meant that it was possible that a recipient could conceivably construe it as an employer reference from the Respondent and therefore that could impact upon the Respondent's reputation;

107.2 Stating that [H] was "*extremely professional in all aspects of her roll* [sic]";

107.3 Giving the declaration "*that all of the information supplied is a true and correct record of the applicant, and that any safeguarding concerns have been detailed on this form*" without referring to the nature of [H]'s dismissal.

Findings relevant to the assessment of the wrongful dismissal/breach of contract complaint

108. The Claimant intended to provide a personal character reference for [H]. She did not intend to provide an employer's reference.

109. The Tribunal accepted the Claimant's uncontested evidence that she thought that [H] was good at the technical aspects of her role. The Tribunal also noted that the appeal hearing notes in the bundle recorded Mr Keen as saying that [H] "*may have been an outstanding manager but she sent explicit images to another colleague without permission*". The Tribunal found that it was reasonable for the Claimant to hold the view that [H] was good at the technical delivery aspect of her role towards children.

110. The Tribunal determined for the purposes of the wrongful dismissal/breach of contract complaint only that the Claimant did not deliberately provide an employer's reference based on her evidence and because that is consistent with the only documentary evidence as to intention being the text of 13 November 2024. As a result of this request, the Claimant was seeking to provide a personal/character reference.

111. When the Claimant filled in the reference she stated that H was "*extremely professional in all aspects of her roll* [sic]" and declared "*that all of the information supplied is a true and correct record of the applicant, and that any safeguarding concerns have been detailed on this form*" even though she knew that but H had been dismissed for showing and describing sexually explicit images to colleagues in her professional work setting. This is because she only considered whether H was professional when interacted with children rather than her interactions with adults.

Findings relevant to the assessment of remedy

112. The Claimant was unemployed for 9 weeks after her dismissal by the Respondent. The Claimant's net financial loss from the loss of her job with the Respondent was £555.03 per week for the first 9 weeks.

113. The Claimant obtained a lower paying role after 9 weeks. At that point the loss was £101 per week for until December 2025.

114. In December 2025, the Claimant decided to stop work to provide care and support for a family member. At that point the loss of wages was no longer caused by the unfair dismissal.

The Law

Unfair Dismissal

115. The test for the complaint of unfair dismissal in so far as is relevant is found in **s.98 Employment Rights Act 1996** ("ERA") which provides as follows:

> *(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
>
> *(a) the reason (or, if more than one, the principal reason) for the dismissal, and*
>
> *(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
>
> *(2) A reason falls within this subsection if it—*
>
> *…*
>
> *(b) relates to the conduct of the employee,*
>
> *…*
>
> *(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
>
> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case.*

116. The burden of proof is on the employer to establish the reason for dismissal and that it was a potentially fair reason pursuant to s.98(1) and (2). **Gilham and ors v Kent County Council (No.2) 1985 ICR 233, CA**: "The hurdle over which the employer has to jump at this stage of an inquiry into an unfair dismissal complaint is designed to deter employers from dismissing employees for some trivial or unworthy reason. If he does so, the dismissal is deemed unfair without the need to look further into its merits. But if on the face of it the reason could justify the dismissal, then it passes as a substantial reason, and the inquiry moves on to S.98(4), and the question of reasonableness."

117. **Associated Society of Locomotive Engineers and Firemen v Brady 2006 IRLR 576, EAT** - it is for the employer to show, on the balance of probabilities, that the principal reason was one of the potentially fair reasons, and it is then open to the employee to adduce some evidence that casts doubt on whether the reason put forward by the employer was indeed the real reason for dismissal. If this happens, the employer will have to satisfy the tribunal that its proposed reason was in fact the genuine reason relied on at the time of dismissal. **London Borough of Brent v Finch EAT 0418/11**, the EAT emphasised that if an employee wishes to cast doubt on an employer's

seemingly fair reason for dismissal, he or she must adduce some evidence in this regard.

118. The reason for dismissal is 'a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee'. (**Abernethy v Mott Hay and Anderson [1974] ICR 323, CA**.) In a more recent analysis in **Croydon Health Services NHS Trust v Beatt [2017] ICR 1240, CA**, Underhill LJ said that the 'reason' for dismissal connotes the factor or factors operating on the mind of the decision maker which causes them to take the decision. It is a case of considering the decision-maker's motivation.

119. The Tribunal may only take account of those facts or beliefs that were known to the employer at the time of the dismissal: **W Devis & Sons Ltd v Atkins (1977) ICR 662**.

120. In misconduct dismissals, there is well-established guidance on fairness within section 98(4) in the decisions in **British Home Stores v Burchell [1978] IRLR 379; [1980] ICR 303, EAT** and **Post Office v Foley 2000 IRLR 827**. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide, without there being any burden of proof on either party, whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. As a result, there are three stages to follow:

(a) did the respondent genuinely believe the claimant was guilty of the alleged misconduct?

(b) did they hold that belief on reasonable grounds?

(c) did they carry out a proper and adequate investigation?

121. Tribunals must bear in mind that whereas the burden of proving the reason for dismissal lies on the respondents, the second and third stages of Burchell are neutral as to burden of proof and the onus is not on the respondents (**Boys and Girls Welfare Society v McDonald [1996] IRLR 129**).

122. The tribunal should not substitute its own factual findings about events giving rise to the dismissal for those of the dismissing officer (**London Ambulance NHS Trust v Small [2009] IRLR 563**).

123. In the case of **Iceland Frozen Foods Limited v Jones 1982 IRLR 439**, the EAT gave guidance that the function of the employment tribunal was to decide whether in the particular circumstances the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair. If the dismissal falls outside the band, it is unfair. Again, It is not for a tribunal to substitute its own decision of what decision should have been made.

124. In the case of **Sainsburys Supermarket Ltd v Hitt [2003] IRLR 23, CA**, the Court of Appeal gave guidance that the band of reasonable responses applies to both the procedures adopted by the employer and the sanction or penalty of the dismissal.

125. It is a fundamental part of a fair disciplinary procedure that an employee knows the case against them. The Court of Appeal in **Sattar v Citybank NA and another [2020] IRLR 104, CA** said:

> *'It is obviously an elementary principle of justice that the employee should know the case he or she has to meet. It is equally obvious that it is the employer's obligation to put that case so that on a fair and common sense reading of the relevant documentation, the employee could be expected to know what charges he or she has to address. That duty is not met if the employee has to speculate what may be in issue and what may not. The question is not what charges the employer may have been entitled to charge on the material provided to the employee; it is what charges have in fact been made. There may be potential charges which, for one reason or another, are not being pursued. What the ET must be satisfied about is not that the charges actually made in general terms could be read as entailing specific charges not specifically identified; it is whether it can properly be satisfied that an employee would understand from the way the case is put that these charges were actually being made; and any doubt about that question should be resolved in the employee's favour, given that the burden is on the employer to make the charges sufficiently clear.'*

126. The charge against the employee must be precisely framed **Strouthos v London Underground [2004] IRLR 636**.

127. The employer should be even handed and focus on potential evidence which exculpated the employee as much as evidence directed towards proving the disciplinary charges (**A v B 2003 IRLR 405**).

128. The Tribunal must look at the circumstances in the round, including the appeal stage, and procedural imperfections do not automatically render dismissals unfair (**Taylor v OCS Group Ltd 2006 ICR 1602**). Minor procedural defects may not be material to an assessment of reasonableness (**D'Silva v Manchester Metropolitan University and ors EAT 0328/16**). In **Sharkey v Lloyds Bank Plc EATS 0005/15** Mr Justice Langstaff, then President of the EAT, observed that it will almost inevitably be the case that in any alleged unfair dismissal a claimant will be able to identify a flaw, small or large, in the employer's process, and that it is therefore for the tribunal to evaluate whether that defect is so significant as to amount to unfairness. Langstaff P stated: 'Procedure does not sit in a vacuum to be assessed separately. It is an integral part of the question whether there has been a reasonable investigation that substance and procedure run together.' Therefore, it is important for tribunals to consider the reasonableness of the whole procedure, including the decision to dismiss, in the round.

129. The Tribunal has to ask whether, in the circumstances of the case, the claimant was unduly prejudiced by any procedural failings of the employer. Only faults which are likely to have an impact on the employer's decision to dismiss are likely to affect the reasonableness of the procedure. For example, the Tribunal should ask itself whether the employer's actions prevented the employee from putting forward mitigatory material at a hearing (**NHS 24 v Pillar [2017] UKEATS/0005/16**).

130. The degree of thoroughness required for an investigation to be reasonable is, according to the EAT in the case of **ILEA v Gravett [1998] IRLR 497**:

> *"infinitely variable; at one extreme there will be cases where the employee is virtually caught in the act and at the other there will be situations where the issue is one of pure inference. As the scale moves towards the latter end, the amount of inquiry and investigation which may be required, including questioning of the employee, is likely to increase. At some stage, the employer will need to face the employee with the information which he has. That may be during an investigation prior to a decision that there is sufficient evidence upon which to form a view or it may be at the initial disciplinary hearing".*

131. In reaching their decision, tribunals must also take into account the **ACAS Code of Practice No 1 on Disciplinary and Grievance Procedures** (the "ACAS Code of Practice"). By virtue of **section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992**, the ACAS Code of Practice is admissible in evidence and if any provision appears to the tribunal to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question. However, compliance or non-compliance with the ACAS Code of Practice is not necessarily determinative of the claim.

132. The ACAS Code of Practice states that it "*provides basic practical guidance to employers, employees and their representatives and sets out principles for handling disciplinary and grievance situations in the workplace*". It sets out the basic requirements of fairness that will be applicable in most cases. Amongst other guidance, it provides as follows:

1. *In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing*. (Paragraph 6)

2. *The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.* (Paragraph 17)

133. ACAS also provides explanatory guidance. This guidance states that it provides good practice advice for dealing with discipline and grievances in the workplace and it complements the **Acas Code of Practice** on disciplinary and grievance procedures. Compliance or non-compliance with the guidance is not determinative of the claim and it does not lead to an adjustment to the award. The Tribunal is not required to have regard to guidance in this booklet that does not form part of the Code, but it may do so.

134. The explanatory guidance to the ACAS Code of Practice illustrates the problem that arises from a conflict of interest for the decision-maker at the disciplinary hearing and/or bias in the disciplinary hearing in the context of

handling a grievance alleging such issues identifying it as a reason to stop the process until the issue is resolved. It provides on page 22 of the guidance:

> *"When an employee raises a grievance during the meeting it may sometimes be appropriate to consider stopping the meeting and suspending the disciplinary procedure – for example when:*
>
> - *the grievance relates to a conflict of interest that the manager holding the disciplinary meeting is alleged to have;*
> - *bias is alleged in the conduct of the disciplinary meeting*
> - *…"*

135. The explanatory guidance to the ACAS Code of Practice also provides guidance on allowing an accompanying employee to prepare for the disciplinary hearing. It provides on page 25 of the guidance:

> *"A worker who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of paid time off to fulfil that responsibility. This should cover the hearing, and it is also good practice to allow time for the companion to familiarise themselves with the case and confer with the worker before and after the hearing."*

Inconsistent Treatment

136. Inconsistency of punishment for misconduct may give rise to a finding of unfair dismissal, as the Court of Appeal recognised in **Post Office v Fennell 1981 IRLR 221, CA**. Lord Justice Brandon stated:

> *'having regard to equity and the substantial merits of the case' (contained in the precursor to S.98(4) ERA) and said: 'It seems to me that the expression "equity" as there used comprehends the concept that employees who misbehave in much the same way should have meted out to them much the same punishment, and it seems to me that [a] tribunal is entitled to say that, where that is not done, and one man is penalised much more heavily than others who have committed similar offences in the past, the employer has not acted reasonably in treating whatever the offence is as a sufficient reason for dismissal.'*

137. Brandon LJ went on to make two further observations. First, it is for the tribunal to decide whether, on the facts, there was sufficient evidence of inconsistent treatment. As he pointed out, the tribunal would have less detailed information regarding other cases allegedly dealt with more leniently by the employer than the information in the case before it. His second point stressed that while a degree of consistency was necessary, there must also be considerable latitude in the way in which an individual employer deals with particular cases.

138. **Hadjioannou v Coral Casinos Ltd 1981 IRLR 352, EAT** was decided by the EAT within two months of the Court of Appeal's decision in **Fennell (above)**. The EAT there also recognised the importance of consistency of treatment but placed more emphasis on the employer's ability to be flexible in such matters. On the facts of that particular case, it was found that there had been no

evidence of inconsistent treatment. Nevertheless, and without reference to Fennell, the EAT accepted the argument that a complaint of unreasonableness by an employee based on inconsistency of treatment would only be relevant in limited circumstances:

- where employees have been led by an employer to believe that certain conduct will not lead to dismissal (see 'Creating "false sense of security"' below);

- where evidence of other cases being dealt with more leniently supports a complaint that the reason stated for dismissal by the employer was not the real reason; or

- where decisions made by an employer in truly parallel circumstances indicate that it was not reasonable for the employer to dismiss.

139. The EAT's decision in **Hadjioannou (above)** was subsequently endorsed by the Court of Appeal in **Securicor Ltd v Smith 1989 IRLR 356, CA** and in **Paul v East Surrey District Health Authority 1995 IRLR 305, CA.** In **Smith (above)** the Court of Appeal made it clear that the question of consistency is subject to the 'range of reasonable responses' test.

Bias

140. It is a cardinal principle of natural justice that the person conducting the proceedings should not be a 'judge in his own cause'. In other words, the decision-maker should not have a direct interest in the outcome of the proceedings and should not give any appearance of bias or partiality.

141. In **Whitbread plc (t/a Whitbread Medway Inns) v Hall 2001 ICR 699, CA**, the claimant's dismissal was found to be unfair despite an admission of guilt because the manager holding the disciplinary meeting had initiated the investigation and was biased against him, as she had already made up her mind to dismiss. Similarly, in **Perkin v St George's Healthcare NHS Trust 2006 ICR 617, CA**, the person who had talked of wanting an 'exit strategy' for a difficult employee was the wrong person to chair his disciplinary hearing.

142. The issue of bias was further considered in the context of an appeal from a grievance decision by the EAT in **Watson v University of Strathclyde 2011 IRLR 458, EAT**. Therein the EAT referred to the test in **Porter v Magill 2002 AC 357, HL**, where the House of Lords held that the key question was whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that a tribunal, or any member of it, was biased. The EAT said that '... *what is, in our view, clear, is that any reasonable employer requires to have regard to the need to afford an employee a fair hearing of her grievance throughout ..."*

Gross Misconduct

143. In **Brito-Babapulle v Ealing Hospital NHS Trust 2013 IRLR 854, EAT** the EAT held that finding gross misconduct did not automatically mean that a dismissal would be justified as a reasonable response. An employer should consider whether dismissal would be reasonable after considering any mitigating circumstances.

144. When applying s.98 ERA, the Tribunal has been cautioned about attaching labels such as "gross misconduct". In **Hope v British Medical Association [2022] IRLR 206** the EAT held that whether or not dismissal by reason of conduct is fair or unfair within the meaning of s98(4) depends not on the label attached to or characterisation of the conduct as gross misconduct, but 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.

145. **Sandwell and West Birmingham Hospitals NHS Trust v Westwood UKEAT/0032/09** - As well as an employer's reasonable belief that an employee had committed misconduct, a finding of gross misconduct justifying dismissal required that the conduct alleged was capable of amounting to gross misconduct. The conduct had to be a deliberate contradiction of the contractual terms or had to amount to gross negligence.

146. **Eastland Homes Partnership Ltd v Cunningham EAT 0272/13** - In determining the reasonableness of a summary dismissal, the tribunal must have regard to whether the employer had reasonable grounds for its belief that the employee was guilty of gross misconduct.

Adjustment relating to the principle within the 'Polkey' case

147. Section 123(1) ERA provides

> *"Subject to the provisions of this section and sections 124, 124A and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer."*

148. The cases of Polkey **v AE Dayton Services Ltd [1987] UKHL 8, Software 2000 Ltd v Andrews [2007] ICR 825; W Devis & Sons Ltd v Atkins [1977] 3 All ER 40; and Crédit Agricole Corporate and Investment Bank v Wardle [2011] IRLR 604** provide the principle that where a tribunal finds that a claimant was unfairly dismissed, it may reduce the compensatory award to reflect the likelihood that an employee could have been dismissed at a later date or if a fair procedure had been followed. Therefore, where the dismissal is unfair on procedural grounds, the tribunal must also consider whether, by virtue of **Polkey**, there should be any reduction in compensation so that it is just and equitable as per s.123(1) ERA to reflect the chance that the claimant could still have been dismissed had fair procedures been followed.

149. In **Ms M Whitehead v Robertson Partnership UKEAT 0331/01** the following guidance was provided when considering any 'Polkey' deduction:

(a) What potentially fair reason for dismissal if any might emerge as a result of a proper investigation and disciplinary process?

(b) Depending on the principal reason for any hypothetical future dismissal, would dismissal for that reason be fair or unfair. If conduct is the reason, might the respondent have reasonable grounds for their belief in such misconduct?

(c) Even if a potentially fair dismissal was available to the respondent, would he in fact have dismissed the claimant as opposed to imposing some lesser penalty and if so would that have ensured the claimant's continued employment?

150. **Hill v Governing Body of Great Tey Primary School [2013] IRLR 274** held that a tribunal needs to consider both whether the employer could have dismissed fairly and whether it would have done so. Furthermore, the enquiry is directed at what the particular employer would have done, not what a hypothetical fair employer would have done.

Adjustment relating to non-compliance with the ACAS Code of Practice

151. **Section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992** provides that where it appears to the employment tribunal that the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies, the employer had failed to comply with the Code in relation to that matter, and the failure was unreasonable, the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase the award it makes by no more than 25%.

Adjustment relating to 'contributory fault'

152. **Section 122(2) ERA** provides that "*Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly*".

153. The conduct must occur before the dismissal or the notice of dismissal but section 122(2) does not require that the conduct caused the dismissal or that the respondent knew about the conduct at the time as per **Renewi UK Services Ltd v Pamment EA-2021-000584.**

154. **Section 123(6) ERA** provides that "*Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding*."

155. In **Nelson v BBC (No.2) 1980 ICR 110, CA**, the Court of Appeal said that three factors must be satisfied if the tribunal is to find contributory conduct:

(a) the conduct must be culpable or blameworthy

(b) the conduct must have actually caused or contributed to the dismissal, and

(c) it must be just and equitable to reduce the award by the proportion specified.

156. In **Hollier v Plysu Ltd [1983] IRLR 260, EAT**, the EAT suggested that the contribution should be assessed broadly and should generally fall within the following categories: wholly to blame (100 per cent); largely to blame (75 per cent); employer and employee equally to blame (50 per cent); slightly to blame (25 per cent).

157. However, a finding that an employee's conduct is the sole cause of his or her dismissal will not inevitably result in a nil compensatory award. In **Lemonious v Church Commissioners EAT 0253/12** the EAT said that even where a tribunal finds no reason for dismissal other than the employee's conduct, it might still have to modify the percentage reduction in light of what is just and equitable.

158. In **Rao v Civil Aviation Authority 1994 ICR 495, CA**, the Court of Appeal rejected the contention that the making of both deductions would amount to a double penalty for the employee. The Court held that the proper approach in these circumstances is first to assess the loss sustained by the employee in accordance with S.123(1), which will include the percentage deduction to reflect the chance that he or she would have been dismissed in any event, and then to make the deduction for contributory fault.

159. When deciding the extent of the employee's contributory conduct and the amount by which it would be just and equitable to reduce the award for that reason under S.123(6), the Court of Appeal in **Rao** (above) made it clear that the tribunal should bear in mind that there has already been a deduction under S.123(1). Comments to similar effect were made by the EAT in **Grantchester Construction (Eastern) Ltd v Attrill EAT 0327/12**. Hearing an appeal against an employment tribunal's remedies decision, Mr Justice Langstaff (then President of the EAT) referred to the Court of Appeal's decision in **Rao** (above) before noting that it may be '*appropriate to moderate what would otherwise be the degree of contributory fault that would reduce an award because there have been matters of conduct taken into account in assessing the chances of a fair dismissal'*. Were this not so, he continued, '*it might be in effect double-counting to impose upon the claimant a further reduction by way of contributory conduct*'.

Wrongful Dismissal

160. The rule that only repudiatory breaches by employees will justify summary dismissal can be traced back to the Court of Appeal's decision in **Laws v London Chronicle (Indicator Newspapers) Ltd 1959 1 WLR 698, CA**. In that case, Lord Justice Evershed, then Master of the Rolls, thought that in order to amount to a repudiatory breach, the employee's behaviour must disclose a deliberate intention to disregard the essential requirements of the contract.

161. Some more recent cases have expressed the threshold for repudiation by reference to the implied term of mutual trust and confidence. In **Briscoe v Lubrizol Ltd 2002 IRLR 607, CA**, the Court of Appeal approved the test set

out in **Neary and anor v Dean of Westminster 1999 IRLR 288, Special Commissioner (Westminster Abbey)**, where Lord Jauncey asserted that the conduct 'must so undermine the trust and confidence which is inherent in the particular contract of employment that the [employer] should no longer be required to retain the [employee] in his employment'.

162. In **XX v YY 2026 EAT 89**, the EAT held while the question of repudiatory breach is assessed objectively, tribunals must consider all the circumstances bearing on that assessment, which can include the employee's motive.

163. The Tribunal noted that recently the courts have expressed the view that, in the context of dismissals for misconduct, it may not be helpful to consider the extent to which the conduct in question breaches the employee's obligation to preserve trust and confidence in the employment relationship. For example, in **McFarlane v Relate Avon Ltd 2010 ICR 507, EAT**, Mr Justice Underhill (then President of the EAT) observed:

> '*Although in almost any case where an employee has acted in such a way that the employer is entitled to dismiss him the employer will have lost confidence in the employee (either generally or in some specific respect), it is more helpful to focus on the specific conduct rather than to resort to general language of this kind. We have noticed a tendency for the terminology of "trust and confidence" to be used more and more often outside the context of constructive dismissal in which it was first developed… [T]his is a form of mission creep which should be resisted*.'

164. Similar sentiments were subsequently expressed by Mr Justice Underhill in **A v B 2010 ICR 849, EAT.**

165. In **Leach v Office of Communications 2012 ICR 1269, CA**, Lord Justice Mummery, after referring with approval to Underhill P's remarks in **Macfarlane** and **A v B (both above)**, also enjoined tribunals and parties not to apply a casual use of 'trust and confidence' terminology when characterising misconduct. His Lordship remarked:

> '*The mutual duty of trust and confidence, as developed in the case law of recent years, is an obligation at the heart of the employment relationship. I would not wish to say anything to diminish its significance. It should, however, be said that it is not a convenient label to stick on any situation, in which the employer feels let down by an employee or which the employer can use as a valid reason for dismissal whenever a conduct reason is not available or appropriate. The circumstances of dismissal differ from case to case. In order to decide the reason for dismissal and whether it is substantial and sufficient to justify dismissal the employment tribunal has to examine all the relevant circumstances*.'

166. A court or tribunal must be satisfied, on the balance of probabilities, that there was an actual repudiation of the contract by the employee. It is not enough for an employer to prove that it had a reasonable belief that the employee was guilty of gross misconduct.

167. It is generally accepted that criminally dishonest acts such as theft and fraud amount to serious misconduct justifying summary dismissal at common law. However, the situation may be less clear cut where the employee stands accused of dishonesty which does not amount to a criminal offence. Following the test in **Neary (above)**, the question must be whether the employee's dishonesty so undermined trust and confidence that the employer is no longer required to retain the employee in its employment.

168. The Supreme Court reviewed the law on dishonesty in **Ivey v Genting Casinos (UK) Ltd (t/a Crockfords Club) 2018 AC 391, SC**. In a decision which effectively aligns the criminal and civil tests for dishonesty, the Supreme Court held that where a question arises as to whether conduct is in fact dishonest, the fact-finding tribunal must first ascertain the actual state of the individual's knowledge or belief as to the facts. The question whether the conduct was honest or dishonest should then be determined by applying the objective standards of ordinary decent people.

The analysis – application of facts to law to determine the issues

Unfair dismissal

169. The parties agreed that the Claimant had been dismissed by the Respondent.

What was the reason (or principal reason) for dismissal? The Respondent says that it was a reason related to conduct which is a potentially fair reason for dismissal under s98(2).

170. The Respondent's case was that the Claimant was dismissed for her conduct (which it categorised as 'gross misconduct'). That conduct in question was the Claimant's provision of a reference for [H] (who had been dismissed for sharing and discussing with other colleagues sexually explicit photographs she had received from male colleagues) to a new/prospective employer which the Respondent described as:

> *"(1) You have supplied employment reference(s) for [H] without the knowledge or permission of the Principal or Executive Principal.*
>
> *(2) Information you have provided in the employment reference(s) did not accurately reflect [H]'s employment at The Bulwell Academy including disciplinary action which you were fully aware of.*

171. This was the set of 'beliefs' or 'factors' which caused Mr Keen to dismiss the Claimant as per the cases of **Abernethy** and **Beatt (above)**.

172. In cross examination the Claimant accepted that the reasons recorded in Mr Keen's written outcome letter were his reasons for dismissing her. The Claimant did also give evidence that she thought there 'might have been a political agenda' (which she explained was related to a large increase in the number of suspensions for conduct by the Respondent in recent years) but she confirmed that was only an opinion and there was no evidence to support that opinion. The Claimant indicated at different times that she believed there were or may be other reasons (such as the number of days of sick leave she

had taken). The Tribunal noted that in each case the Claimant did not adduce any evidence to support any alternative reason as required in **Finch (above)**.

173. In the absence of any evidence of another reason, the Tribunal accepts that the Respondent's reason for dismissing the Claimant was related to the Claimant's conduct.

174. This is a potentially fair reason for dismissal within the meaning of s98(2) ERA.

If the reason was related to misconduct, did the Respondent hold a genuine belief in the Claimant's misconduct …?

175. Mr Keen was in effect the decision-maker who made the decision on the Claimant's dismissal. It was apparent from Mr Keen's evidence in writing and in cross examination that he genuinely and very strongly believed that the Claimant had committed misconduct. His disciplinary outcome letter (excerpted above) and his representations at the appeal hearing were all consistent with Mr Keen having a genuine belief that the Claimant had carried out the acts of alleged misconduct.

176. The Claimant did not challenge the Respondent's position that Mr Keen genuinely believed that she had committed the misconduct in question. In cross examination, the Claimant accepted that the reasons in Mr Keen's disciplinary outcome letter were his genuine reasons for dismissing her. She also accepted that if she hadn't written the reference for [H] then she wouldn't have been dismissed.

177. The Tribunal did not place emphasis on the label of gross misconduct applied by the Respondent but instead it focused on whether the Respondent acted reasonably or unreasonably in treating this conduct as a sufficient reason for dismissing the employee as per **Hope (above)**.

178. In accordance with **Cunningham (above)**:

(a) the Tribunal was not satisfied that the act of *supplying an employment reference(s) for [H] without the knowledge or permission of the Principal or Executive Principal* was sufficient to justify a finding of gross misconduct given the relaxed attitude that Mr Irons displayed in a few months earlier and the fact that Ms Fuller only mentioned the reference request she saw in passing to Ms Anderson (both as described above); but

(b) the Tribunal was satisfied that *providing information in employment reference(s) which did not accurately reflect [H]'s employment at The Bulwell Academy including disciplinary action which you were fully aware of"* was sufficient to potentially justify a finding of gross misconduct.

Was that belief on reasonable grounds …?

179. The Tribunal determined that Mr Keen did not have reasonable grounds for key aspects of his belief for the reasons set out below.

180. It was common ground at the disciplinary hearing between the Claimant and Mr Keen that the Claimant had completed some elements of section A which were reserved for employers providing an 'employer's reference'. The dispute was whether this was an accident as the Claimant said, or, a deliberate attempt to mislead the prospective employer as Mr Keen suggested and ultimately decided.

181. For the purposes of an unfair dismissal complaint the Tribunal must only determine whether a reasonable employer could have reasonably determined that the Claimant deliberately completed parts of section A because she was trying to provide an employer's reference. The Claimant said it was a mistake on her part, and she was only ever intending to provide a character reference. Mr Keen on behalf of the Respondent decided that it was a deliberate action by the Claimant.

182. The Tribunal noted that the text message from [H] at 8:23am on 13 November 2024 which requests the reference is explicit that what is needed is a 'character reference' i.e. a personal reference. [H] also says that she already has two references from her former employer (which would appear to satisfy the requirement for 'employer references').

183. In the text at 8:15pm the Claimant states:

> *"It also wants to know absences, dates of any disciplinary meetings, etc… Do you want me to go down as a character reference instead?"*

184. The Tribunal concludes that the most likely explanation for this wording at 8:15pm is that the Claimant is confused by the content of the template she has received given the previous text at 8:23am stating that she would be providing a character reference. This is consistent with the Claimant's evidence that she was confused by the completion instructions. It is also noticeable that the Claimant again explicitly suggests that she should provide a 'character reference'.

185. The Claimant sent the reference to the new/prospective employer in non-work time on a Sunday evening.

186. The evidence before Mr Keen was that the Claimant hadn't responded to other reference requests for [H], so the only reference she replied to was where she was asked to provide a character reference.

187. Mr Keen's evidence (which was consistent with the disciplinary hearing notes within the hearing bundle) was that he was influenced by the fact that the Claimant sent the reference for [H] using her work email address. However, in answer to the Tribunal as to whether the Respondent informed staff that personal references should not be sent from work email addresses, he said that he could not say if staff had been told whether they should not send

personal references from a work email address. He also said that if reference requests were received into a work email address, then he accepted that logistically it would be easier for staff to send the response containing the reference from the same email address. Therefore, the use of the Claimant's email address should only have carried a little weight.

188. Mr Keen was also influenced by the fact that the Claimant put her job title down. However, all referees were asked to provide their job title because it was part of the declaration sign off for all referees, so this should not have influenced him to determine it was an employer reference.

189. In the context that the Respondent suggested, that Claimant was trying to help [H] to obtain the role, it would be illogical for the Claimant to fail to provide the character reference which [H] had actually requested and instead provide an employer reference which the text showed that [H] did not need because she already had obtained them from a former employer.

190. Mr Keen did not appear to have before him any substantial evidence which suggested that the Claimant was trying to provide an employer reference, except for the reference itself (which was equally explainable as a mistake). However, the disciplinary notes record Mr Keen as saying "*You also state that you saw no reason why [H] could not work with children, but this was not your decision to make and highlights concerns about your professional judgement*" but this question was in the section for all referees to answer and, if the Claimant was providing a personal reference, then it was entirely her decision to make.

191. In the context of the evidence before Mr Keen, the Tribunal finds that no reasonable employer who assessed the evidence impartially and dispassionately would have concluded that the Claimant intended to provide an employer reference.

192. This flawed decision that the Claimant dishonestly provided an employer reference was then 'carried forward' on to other elements of the Mr Keen's decision-making. If the Claimant was providing a character reference in a personal capacity, as a reasonable employer would have found, then:

192.1 She was not acting as an employee and there was no requirement for her to inform or obtain permission from anyone at the Respondent; and,

192.2 the reference given should reflect her own views and did not need to align with the Respondent management's views.

193. When making his decision to dismiss, Mr Keen assessed the Claimant's conduct on the basis that her conduct in providing the reference was inconsistent with part three of KCSIE.

194. However, there was no evidence before Mr Keen that the Claimant had been told that that she needed to read part three of KCSIE or that she had read it anyway so as to be aware of any of the guidance. Therefore, there was no evidence before Mr Keen that the Claimant's failure to act in accordance with part three was a decision by her to disregard the part three guidance on how to deal with references. At worst, it was a lack of awareness of guidance that she had not been asked to read.

195. Mr Keen's appears to accept that the Claimant hadn't been required to read part three of KCSIE and yet he went on to say "*regardless of a person's position it applies to every member of staff*" and "*However, this doesn't mean that the [KCSIE] policy doesn't apply to you because you haven't read it*". The Tribunal considers that it was not fair or reasonable to assess the Claimant by rules and expectations which had never been communicated to her or were not otherwise known by her.

196. The Tribunal also noted Mr Keen's subsequently expressed view that the content of KCSIE extracts "should not distract" the Respondent (which is addressed in detail under the assessment of a fair procedure below).

197. There was no written policy on the provision of references. There were no 'principles' for the giving of references which were clearly communicated to the Claimant and other staff. Once again, it is not fair or reasonable to assess the Claimant by rules and expectations which have never been communicated to her or are not otherwise known by her. As the disciplinary hearing notes recorded, the Claimant "wanted to know how she could be in breach of something she didn't know".

198. In particular, employees should not ordinarily be dismissed for a first occasion of breaking rules or requirements which have not been communicated to them or are not otherwise known to them. (Hence why many if not most disciplinary rules provide lists of conduct that may amount to gross misconduct.) Yet this is what happened here.

199. Mr Keen also relied upon section 4.1 within the Code of Conduct which described a requirement that all staff should avoid any conduct which would lead to any reasonable person to question their motivation and intentions. It also included reference that staff should discuss and/or take advice promptly from their line manager or another senior manager over any incident that may give rise to concern.

200. Whilst both of these elements are undoubtedly good advice, they are so wide, vague and subjective that they provide little meaningful direction to staff about what they should or shouldn't do. As such they do not provide in themselves a justification for a finding of gross misconduct.

201. Mr Keen adjudged the Claimant to have breached example number 18 of gross misconduct in the Respondent's Disciplinary Policy: Acts or omissions that would expose the school or the Respondent to criticism or cause reputational damage. This category is too wide, too nebulous and too subjective to provide the type of forewarning required to guide employee conduct in a meaningful way. The concept of exposure to criticism would arise in a school on a regular basis given the difficult decisions that have to be made by staff day in and day out.

202. Mr Keen decided that the Claimant had breached example number 12 of gross misconduct in the Respondent's Disciplinary Policy: Obtaining a job by lies or deception or omission in the course of selection procedures or assisting another person to do so. However, Mr Keen appears to have disregarded the important evidence from the text exchange on 13 November 2024 without a reasonable basis for doing so. Therefore, he did not have reasonable grounds for this belief.

203. At the disciplinary hearing Mr Keen had before him the text message on 13 November 2024 in which [H] asks the Claimant to provide a reference. This was in the bundle, and the Tribunal was referred to the document by the parties many times.

204. It is clear from that text that [H] explicitly informs the Claimant that she had been honest with her new/prospective employer about the circumstances of her recent termination stating, "*For my new job I have been really honest with them about what's been going off and they are willing still to take me on roll."*

205. If those circumstances were already known to the new/prospective employer as [H] explicitly told the Claimant, then the Claimant's non-reference to the disciplinary could not mislead the new/prospective employer about the circumstances because it was already aware. The Tribunal could not see any evidence before Mr Keen at the hearing which would enable a reasonable employer to conclude that the Claimant had actually misled the new/prospective employer.

206. Mr Keen specifically stated that he believed that the Claimant lied by omission. In terms of the question relating to disciplinaries this too was a flawed analysis. The question "*Does the applicant have any disciplinary action on their file or are they subject to an investigation or disciplinary hearing?*" gave two options for response "yes" and "no". An absence of an answer did not imply that there had been no disciplinaries, just as a failure to provide an answer did not imply that there had been disciplinaries. Mr Keen's conclusion was not reasonable.

207. For the reasons explained above the Tribunal determined that Mr Keen did not have reasonable and objective grounds at the time he made his decision on which he could form his belief that the Claimant had committed the alleged misconduct.

Was that belief held following as reasonable an investigation as was warranted in the circumstances?

208. The Tribunal noted the reasonable size and administrative resources available to the Respondent as a Multi Academy Trust comprising 17 primary and secondary schools, with several layers of senior leadership including not just Headteachers/Principals but also Executive Principals and the Respondent Trust's Directors above them. The Tribunal also noted the existence of a dedicated HR function containing multiple HR professionals which was led by an experienced Director of HR. The Tribunal set its expectations of what was 'reasonable' according to that context.

209. The Tribunal was satisfied that the Respondent carried out a detailed and thorough investigation. In essence, the key issues to be investigated were the content of the reference written by the Claimant, the procedure the Claimant followed when providing the reference, and her intentions when doing so. Mr Smith's investigation appeared to address these topics thoroughly. The Claimant accepted in cross examination that whilst she had concerns with the process, the investigation was thorough.

210. Mr Smith's presentation of the evidence within the investigation contained two material errors. Mr Smith stated that: "Miss Jenkins said that stated that that she saw no reason why [H] could not work with children, but she stated this in the capacity of the employer under section A ..." but his was incorrect, the Claimant made the statement within section C). Mr Smith also told the disciplinary hearing that [H] was referred to the DBS but

1. The Tribunal assessed the investigatory flaws in the round as per **Taylor** (above). The emphasis that the Respondent put on the fact that section A was for employers elevated the effect of this error. The procedural defects in the Mr Smith's presentation of the investigation report were not so significant as to be material to the assessment of reasonableness as per **D'Silva** and **Sharkey** (both above). The investigation was within the range that would be expected of a reasonable employer with the administrative resources of the Respondent in the circumstances of this case as per Hitt (above).

Did the Respondent adopt a fair procedure (within the range of reasonable responses)?

211. The Tribunal considered the reasonableness of the whole procedure, including the decision to dismiss, again doing so by assessing the procedure in the round as per **Sharkey** (above).

212. As stated above, the Tribunal had noted the size and administrative resources available to the Respondent as set out above. The Tribunal's expectations of what was 'reasonable' were set against this context.

213. In accordance with **s. 207 of the Trade Union and Labour Relations (Consolidation) Act 1992**, the Tribunal took the ACAS Code of Practice into account in determining the question of whether the Respondent acted in a procedurally fair manner.

214. The Claimant asserted that the Respondent's policy was out of date. However, it appeared to be a reasonable policy, and it was not inconsistent with the ACAS Code of Practice on disciplinaries and grievances No 1 (the

"ACAS Code of Practice"). The Tribunal determined that his procedural defect was not sufficiently impactful on the fairness of the process as whole so as to make the process unfair and it did not render the dismissal unfair as per **Taylor (above)**.

215. The Claimant also asserted that she had been treated inconsistently with male colleagues. Whilst the Claimant did not fully assert or evidence this at the hearing, the Tribunal records that it found that the situations which she described were not actually similar and there were notable differences in the situations to justify why an employer may have applied a different process or sanction. Therefore, those other situations did not support a determination that the decision was inconsistent as per **Hadjioannou (above)** when applying the 'range of reasonable responses' test to consistency as per **Smith (above).**

216. The Claimant found the process of being suspended and escorted off the premises was deeply upsetting to her because she valued highly her sense of integrity. However, the Tribunal accepted the Respondent's evidence that the suspension was a legitimate and reasonable step in the circumstances where the Respondent was considering the possibility of termination for gross misconduct and particularly where the Respondent reasonably believed that the alleged misconduct may have related to safeguarding. This is consistent with normal expectations in that context, even though it is still inherently upsetting for those to whom it happens.

217. The Tribunal noted the following elements of the overall process:

217.1 The Claimant was denied the ability to meet with her accompanying individual and prepare for the investigation hearing. Having to meet in the car park just 15 minutes before the hearing. This mean that she was not able to discuss the issues and plan with her accompanying individual. As a result, the Claimant was not reasonably prepared to answer the allegations against her at the investigation meeting

217.2 Mr Smith made factual errors on important issues in his investigation presentation to the disciplinary hearing panel.

217.3 Mr Keen was appointed as the person to chair the disciplinary hearing even though:

217.3.1 Mr Keen had been part of the panel which decided to dismiss when the Claimant was the supporting individual who attended alongside with H during H's disciplinary process.

217.3.2 Mr Keen and the Claimant held strongly opposed views on the context in which H's conduct occurred. Mr Keen knew that the Claimant strongly disagreed with his decision as part of the panel.

217.3.3 The Claimant was agitated by the Respondent's lack of action in respect of multiple more senior male leaders allegedly sending explicit images to a more junior female member of staff which she considered unfair and discriminatory. This issue arose in the disciplinary hearing when the notes record that the Claimant questioned "*why the person who sent the photos had not been disciplined and made a claim about sexual discrimination at the Academy and it was worrying*" and "*why nothing had been done about it*", that "*through [H]'s disciplinary she felt that women and men were treated differently.*"

217.3.4 This amounted to criticism of the panel including Mr Keen who dismissed [H] but (in the Claimant's view) took no action against the more senior male leaders of staff who had sent these images to a more junior female member of staff.

217.3.5 Mr Donald, a director of the Respondent, wrote to Mr Irons on 4 March 2025 and copied to Mr Keen (and Ms Tricarico) before the formal investigation had even started stating "*There was, **of course**, no reference to any disciplinary outcome or safeguarding risk" (emphasis added). This language* suggests an existing expectation by Mr Donald as one of the Respondent's most senior leaders, that the Claimant would not refer to [H]'s disciplinary issue.

*217.3.6 In his conclusion section entitled 'Decision' Mr Keen wrote: "The actions you have taken **and the opinions you have shared regarding [H]'s dismissal** have caused the panel to have serious concerns around your professional judgement and integrity." (emphasis added). This explicitly reveal that the Claimant's views on Mr Keen's decision to dismiss [H]'s* influenced Mr Keen's decision on the disciplinary allegations against the Claimant .

217.4 Mr Keen's also revealed his views on several topics in a note for himself preparing for the appeal hearing. In these he stated:

"Should not be sidelined or distracted by grievances, SAR requests, a picture of dbs certificate, KCSIE extracts, text messages and Ofsted complaints – these only confirm the utter breakdown of trust and confidence between the employee and employer"

217.5 This demonstrates that Mr Keen held the view that the text message evidence which explicitly demonstrated the type of reference the Claimant was asked for and which she believed she was providing (which was central to the allegations) as something which should not distract the Respondent in its decision-making.

217.6 It also demonstrates that Mr Keen also viewed the KCSIE extracts on which the Respondent's allegations had always been based and which the Claimant repeatedly stated she had never been asked to read, as something which should not distract the Respondent in its decision-making.

217.7 It also shows that Mr Keen viewed the Claimant's use of her statutory right to submit a subject access request, the Claimant's use of the Respondent's grievance procedure to raises concerns about her treatment, and complaints made to Ofsted in accordance with their reporting procedures (which he believed came from the Claimant but the Claimant disputed) "*confirmed the utter breakdown in trust and confidence*".

217.8 Although this written note was created by Mr Keen in preparation for the appeal hearing which took place one month after his decision to dismiss the Claimant, most of the issues he referenced were relevant or live at the time when he chaired the disciplinary hearing. The Tribunal determined that it was more likely than not that this note reflected Mr Keen's mindset at the point when he made his decision to dismiss Claimant.

218. Given all of the above in paragraph 217, contrary to Mr Dilaimi's submission, the Tribunal determined that it was more likely that Mr Keen was biased (whether knowingly or not). This was not simply because he had been part of the panel in [H]'s disciplinary but because in the Tribunal's view:

218.1 Mr Keen was too closely involved in the circumstances of [H]'s dismissal, and, too personally invested in the strongly opposing views on the context in which [H]'s conduct occurred to make an impartial and dispassionate decision on the disciplinary charges against the

Claimant when the disciplinary charges related to the same opposing views.

218.2 Mr Keen had also been exposed to the views or Mr Donald as a director of the Respondent who had indicated that it was obvious that the Claimant would not refer to [H]'s disciplinary outcome.

218.3 Mr Keen's viewed the Claimant's exercise of her employee right to raise a grievance and her statutory right to make a subject access request etc. as demonstrating that the relationship of trust and confidence had utterly broken down.

218.4 Mr Keen's perception that key elements of evidence such as the text messages of 13 November 2024 and the relevant extracts of KCSIE could be 'distractions' persuades the Tribunal that his involvement and strongly opposing views to the Claimant was impacting on his decision making in the disciplinary hearing.

218.5 As stated above under the heading '*Was that belief on reasonable grounds …?'* Mr Keen made a number of factual decisions in the hearing which were not supported by the evidence before him. This indicates that a factor other than evidence was influencing him to decide against the Claimant. In the Tribunal's determination the most likely explanation for this given his lack of contact with the Claimant except for [H]'s disciplinary hearing, is his strongly held opposing view to the Claimant on that case.

219. In view of the Respondent's size and resources the Tribunal considers the failure to appoint a different manager who was not impacted by the issues above was outside the range of reasonable processes as per **Hitt (above)**. This procedural flaw was sufficiently impactful on the fairness of the process as whole so as to make the process unfair, and it did render the dismissal unfair as per **Taylor (above)**. Doing so would still have allowed Mr Keen to provide his awareness of the Claimant's strongly held perspective on [H]'s dismissal to the decision-making process as a witness.

220. The Respondent's failure to allow the Claimant's accompanying individual to meet earlier in a suitable space reduced the important role of companion as to that of being present as an emotional support. In view of the Respondent's size and resources the Tribunal considers the failure to allow the Claimant to meet with her accompanying individual earlier and in a room rather than in a car park to prepare properly for an investigation which could and did end her career with the Respondent and for which the Respondent stated that she may be reported for safeguarding failures is a serious flaw.

221. Furthermore, the hearing took place at a time when the Respondent knew that the Claimant had been unwell and was experiencing serious family issues (she had just returned from a period of sick leave). These circumstances increase the value of and the need for the full use of a companion and time to plan. The Tribunal considered the Respondent's restriction of the companion role to be outside the range of reasonable processes as per **Hitt (above).** This procedural imperfection was also sufficiently impactful on the fairness of the process as whole so as to make the process unfair and also rendered the dismissal unfair as per **Taylor (above).** In the circumstances and the gravity of the potential consequences the investigation meeting should have been delayed to allow proper and private preparation between the Claimant and her companion. The Tribunal accepts Mr Dilaimi's submission that this particular element of unfairness would only have led to a delay of up to two weeks.

222. The Claimant was critical of the Respondent's handling of her grievance. However, the Tribunal is satisfied that the Respondent allocated the issues raised within the Claimant's grievance dated 25 March 2025 between the disciplinary hearing and a separate grievance hearing reasonably to reflect the natire of each element. This was also in accordance with the **ACAS Code of Practice** (paragraph 46). This approach was within the range of reasonable responses which a reasonable employer could take as per **Hitt (above)**.

Was the decision to dismiss a fair sanction, i.e. was it within the range of reasonable responses open to a reasonable employer when faced with these facts?

223. The Tribunal was careful to ensure that it did not determine whether it would have dismissed the Claimant if it were in the Respondent's position and substitute its own decision. Rather it determined whether the Respondent's decision to dismiss fell within the band (or range) of reasonable responses open to an employer in the particular circumstances of the situation as per **Small (above)**.

224. The Tribunal considers that the factors relevant to the reasonableness of the sanction were:

224.1 Within the education sector, references are regularly used and relied upon.

224.2 The importance of safeguarding within educational setting.

224.3 References play an important role in particular in identifying concerns relating to suitability and safeguarding.

224.4 Misleading an employer (whether deliberately or accidentally) in the education sector could have serious consequences not just to the employer but also to other staff and to the students being taught.

224.5 As Mr Dilaimi submitted, an employer operating an educational establishment, like the Respondent, has a legitimate reason for being strict on references.

224.6 The Claimant provided a poorly completed reference for [H] which meant that a recipient could conceivably (but wrongly) construe it as an employer reference from the Respondent and therefore that could impact upon the Respondent's reputation.

225. Considering the above factors the Tribunal determined that the Respondent's decision to dismiss the Claimant for the reference which she compiled and then provided on 17 November 2024 was harsh for a single occurrence (as the Claimant submitted) but it would still be just within the range of reasonable responses which a reasonable employer in that situation could have decided upon as a sanction (as Mr Dilaimi submitted).

If the Respondent did not dismiss fairly, would the Claimant have been dismissed in any event and/or to what extent and when?

226. The Tribunal must consider whether any adjustment should be made to any compensation on the ground that, if the Respondent had followed a fair process when dealing with the Claimant's case, the Claimant might have been fairly dismissed, in accordance with the principles in the case of **Polkey (above)**.

227. In its submissions, the Respondent invited the Tribunal to find that that the Claimant's award should be reduced but did not specify a percentage. The Claimant did not explicitly address this issue in her submissions.

228. The Tribunal finds that, if the Respondent had carried out a fair procedure and taking into consideration all the relevant factors, it could have fairly dismissed the Claimant for the potentially fair reason of Some Other Substantial Reason relating to the reference she provided on 17 November 2024. This is because the Claimant compiled and provided a poorly completed reference for [H] to an educational employer, which meant that:

228.1 the recipient could conceivably (but wrongly) construe it as an employer reference from the Respondent and therefore that could impact upon the Respondent's reputation,

228.2 she stated that H was "*extremely professional in all aspects of her roll* [sic]" when the Claimant knew she had been dismissed for sharing and discussing sexually explicit images with colleagues, and

228.3 she did not refer to [H] being dismissed for safeguarding related reasons because she wrongly restricted this to safeguarding issues applicable only to children.

229. Dismissal would have been a reasonable option available to a reasonable employer in such circumstances, taking into account the factors summarised above and the importance of references within the education sector (as described in detail above).

230. The Tribunal considered whether this particular Respondent would have fairly decided to dismiss in accordance with **Hill (above)**.

231. The Tribunal also determined that if a manager who was not personally involved and invested in the background context as set out above had made the decision, then it was likely that the Respondent would have decided to dismiss the Claimant because of:

231.1 the importance of safeguarding within the education sector;

231.2 the important role which references fulfil as part of the measures intended to assist with safeguarding (as illustrated by the contents of part three of KCSIE);

231.3 the fact that [H] had been dismissed for gross misconduct in showing and describing sexually explicit images to her professional colleagues in her professional work setting;

231.4 the lack of sufficient care by the Claimant when filling in parts of the reference for [H] (as set out above); and

231.5 the Respondent's fundamental disagreement with the content of the reference provided for [H] by the Claimant.

232. The Tribunal concluded that if the Respondent had postponed the disciplinary hearing so as to ensure that the Claimant did have a reasonable opportunity to prepare for the hearing with her accompanying individual then that decision to dismiss would have occurred two weeks later than the decision by Mr Keen was made and communicated.

233. The Tribunal then considered by how much the Claimant's compensation should be reduced. Taking into consideration all of the factors outlined above, the Tribunal finds that there was a 100% chance that the Claimant would have been fairly dismissed by this Respondent after a fair process at the point when that decision could fairly and reasonably be made. That point was two weeks after the decision made by Mr Keen (for the reasons explained above).

If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable or blameworthy conduct?

234. The Tribunal must also address the issue of contributory fault.

235. In his submissions Mr Dilaimi invited the Tribunal to find that that the Claimant's basic and compensatory awards should both be reduced by 100%. Again, the Claimant did not explicitly address this issue in her oral submissions.

236. The Tribunal may reduce the basic and/or compensatory awards respectively for culpable or blameworthy conduct in the slightly different circumstances set out in sections 122(2) and 123(6) of the Employment Rights Act 1996 respectively.

237. The Tribunal adopted a systematic approach when considering whether there was a proper basis for a deduction to the basic or compensatory award: first, it identified the conduct which is said to give rise to possible contributory fault; second, it decided whether that conduct is blameworthy; third, (for the purposes of assessing a reduction to a compensatory award under section 123(6) only), it considered whether the blameworthy conduct caused or contributed to the dismissal to any extent; and fourth, it decided to what extent it is just and equitable for each award to be reduced.

(i) The relevant conduct

238. The relevant conduct was that:

238.1 the Claimant compiled and provided a reference for [H] in which she wrongly filled in part of the reference which was clearly reserved for employers to use to provide an employer reference so that a recipient could conceivably (but wrongly) construe it as an employer reference from the Respondent and therefore that could impact upon the Respondent's reputation;

238.2 the Claimant stated that [H] was "*extremely professional in all aspects of her role*" when [H] had been dismissed for gross misconduct in showing and describing sexually explicit images to colleagues in her professional work setting; and

238.3 the Claimant stated that there were no safeguarding issues when, as stated above, [H] had been dismissed for gross misconduct in showing and describing sexually explicit images to professional colleagues in work setting.

(ii) Is the conduct blameworthy?

239. The Claimant described herself as an experienced teacher with approximately 18 years of experience. The Tribunal concluded that regardless of any knowledge of the specific contents of part three of KCSIE, the Claimant would know more generally that references play an important role in recruitment within the education sector and they play an important role in safeguarding so she should take care when providing a reference.

240. Within the disciplinary hearing the Claimant said that she found the reference completion instructions "*confusing*" and she "*hadn't read the form properly*". However, the Tribunal found the instructions to be relatively clear, and straightforward. The instructions were clearly marked on the reference itself. If the Claimant found the instructions confusing then, knowing the importance, she should have paused and clarified the instructions so that she was sure before sending the reference. She should not have guessed which elements to fill in for such an important process; it was a guess that proved to be wrong.

241. The Claimant admitted in evidence that she made a mistake when she filled in the reference. She also accepted in cross examination that her actions in relation to the reference had been blameworthy, but she said the Respondent was also responsible. The Tribunal determines that the Claimant's completion of the reference without proper care and attention as described above when references play such an important role in recruitment within the education sector is culpable and blameworthy.

(iii) Did the conduct cause or contribute to the dismissal?

242. The Tribunal finds that the Claimant's conduct did cause or contribute to the dismissal because it was this very conduct for which the Claimant was dismissed (albeit on a flawed basis).

(iv) If so, would it be just and equitable to reduce the Claimant's basic and/or compensatory award?

243. The Tribunal determined that it would be just and equitable to reduce the Claimant's basic award in all the circumstances of the case because the Claimant's conduct was a material pre-dismissal cause of the resultant unfair dismissal. (The details of the percentage of that reduction and the reasoning are addressed below under 'Remedy'.)

Remedy

244. The Claimant did not wish to be reinstated or re-engaged, so the primary remedy for an unfair dismissal was not considered further.

What basic award is payable to the Claimant if any?

245. The starting point for calculating the Claimant's basic award is based upon 2 years of service with the Respondent, using the age-based multiplier of 1.5 and gross weekly pay (subject to the cap of £719 applicable on 25 April 2025) as follows:

2 x 1.5 x £719 = £2,157

Would it be just and equitable to reduce the basic award because of any culpable or blameworthy conduct of the Claimant before the dismissal? If so to what extent?

246. As stated above, the Tribunal had determined that the Claimant conduct regarding the reference was blameworthy as she herself accepted.

247. In respect of the basic award, the Tribunal determined that the Claimant's blameworthy conduct was significantly responsible for the dismissal as a result of her conduct in paragraphs identified above but the Respondent was equally responsible due to the significant flaws in the process.

248. There is also a significant chance that a different decision-maker who was less personally involved in the background issues and the strongly held opposing views that remained would have taken a less harsh decision. Taking all that into account, in accordance with the proportions suggested in **Hollier (above)**, the Tribunal determined that it would also be just and equitable in the circumstances of this case to reduce the basic award by 50%.

249. Therefore, the basic award actually payable becomes £1,078.50

If there is a compensatory award, how much should it be? The Tribunal will decide:

What financial losses has the dismissal caused the Claimant?

250. The Claimant's dismissal caused her loss of earnings. Whilst the Claimant also referred to legal fees and estate agency fees arising from a property sale which she withdrew from following her dismissal she decided not provide any evidence of that loss even when given a further period prior to the reconvened hearing in which to do so.

251. The Claimant's net financial loss from the loss of her job with the Respondent was £555.03 per week for the first 9 weeks. Thereafter the loss was £101 per week for until December 2025 when the Claimant stopped work to care for a family member. At that point the loss of wages was no longer caused by the unfair dismissal.

252. The Tribunal would award £400 to the Claimant to reflect her loss of statutory rights.

For what period should the Claimant be compensated?

253. For the reasons explained above, the period for which the Claimant should be compensated (known as the compensatory award) is split into two periods:

1. Period A - a period of two weeks referable to the failure to allow the Claimant to fully utilise the support of her chose companion at the investigatory stage.

2. Period B - the period after Period A until December 2025 when the Claimant resigned from a replacement role to provide support to her family.

Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed or for some other reason?

254. This has been addressed above in the section under the subheading 'If the Respondent did not dismiss fairly, would the Claimant have been fairly dismissed in any event and/or to what extent and when?'

If so, should the Claimant's compensation be reduced? By how much.

255. For the reasons explained above, the Claimant's compensatory award for the period after the two week period is reduced by 100% on the basis that this

Respondent employer could and would have dismissed the Claimant if it had gone through a fair process.

Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

256. In this case, which concerns a complaint of unfair dismissal arising from the Claimant's dismissal for misconduct, the relevant ACAS Code of Practice is Code of Practice No 1 on Discipline and Grievance procedures.

Did the Respondent or the Claimant unreasonably fail to comply with it?

257. Neither the Respondent nor the Claimant failed to comply with the ACAS Code of Practice.

If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

258. The Tribunal did not need to address this question given its earlier finding.

Was the Claimant's dismissal to any extent caused or contributed to by any culpable or blameworthy conduct? If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?

259. As set out above, the Tribunal determined that in the circumstances of this case there were two separate periods of loss caused by different features of the unfair dismissal which each had a different nature. As a result, the Tribunal determined that the two different periods should be assessed separately so as to be just and equitable in respect of each period and the underlying cause.

Period A - two weeks to reflect a failure to facilitate proper companion support at the investigation hearing

260. As set out above, the Tribunal decided that any decision by the Respondent on whether to dismiss the Claimant should have been taken two weeks later than it was taken as a result of postponing the investigation hearing to allow the Claimant to prepare properly with her companion. The Claimant's blameworthy conduct did not contribute to the Respondent's failure to allow the Claimant's companion to provide their full role which caused the need for this two week period.

261. For this reason, the Tribunal determined that it would not be just and equitable to reduce the value of that two week period because the contributory fault did not cause or contribute to that period of loss. The 2 week Period A is not subject to a reduction.

Period B – the remaining period up to December 2025

262. In respect of the ongoing losses after that two week period, the Claimant's blameworthy conduct described above was a significant cause for the dismissal at that point and therefore for the losses that arose from that point. An equal cause was the Respondent's flawed process and the lack of

guidance, training or consistency on who could complete references and in what circumstances. Therefore, in accordance with the proportions suggested in **Hollier (above)**, the Tribunal determined that it would ordinarily be just and equitable in the circumstances of this case to reduce the compensatory award after the two week period by 50%.

263. However, the Tribunal noted that the effect of the 'Polkey' reduction on this period of loss after the two weeks was already 100% for the reasons set out above. The Tribunal considered it appropriate to restrict the total reduction to this element of the compensatory award to 100% to avoid injustice and to ensure that the outcome was just and equitable as per **Rao (above).** The Tribunal also noted the overlap in the factors relevant to both a Polkey reduction and a contributory fault reduction and decided that it would also be just and equitable to restrict the overall reduction on this period of loss to 100% to ensure there was no double counting as per **Attrill (above)**.

264. Therefore, the Tribunal considers it just and equitable in the circumstances of this case to reduce the compensatory award for Period B by 100%.

265. As such there is no purpose to making detailed financial calculations of the financial losses for Period B because it is reduced by 100% to zero.

Does the statutory cap apply?

266. The amount of compensation awarded above means that the relevant statutory cap applicable at the time of the dismissal does not apply to limit the amount of compensation payable.

Remedy calculation

267. The basic award payable to the Claimant (£2,157.00) is reduced by 50% because of the Claimant's conduct before the dismissal. This means £1,078.50 is payable

268. The Claimant caused or contributed to the dismissal by blameworthy conduct, and it is just and equitable to reduce the compensatory award payable to the Claimant:

1. Compensation for Period A (£1,515.50) is reduced by 50% so £757.75 is payable.

2. Compensation for Period A is reduced by 100% to zero.

Application of the Employment Protection (Recoupment of Benefits) Regulations 1996.

269. Attached to this Judgment are guidance notes which explain the application of the Employment Protection (Recoupment of Benefits) Regulations 1996.

270. The prescribed amount is the compensatory award up to the date of hearing £757.75 as described above. (This is that part of the compensatory award

which relates to compensation for past loss of earnings between dismissal and the hearing determining remedy.)

271. The prescribed period is 25 April 2025 to 1 December 2025. (The prescribed period is the period from the date of dismissal and ending with the earlier of the date when losses end or the date of the remedy hearing.)

272. The amount, if any, by which the monetary award for unfair dismissal exceeds the prescribed element is £1,078.50.

Wrongful dismissal / Notice pay

273. The text exchange between H and the Claimant on 13 November 2024 is set out above.

274. The statements that [H] had been really honest with her new/prospective employer about what's been going off referred to her recent dismissal. [H] stated that she already had two references from her former employer and now the new/prospective employer wanted two character references. By character references the Claimant understood this to be a personal reference in contrast to an employer's reference.

275. Following the guidance in **Ivey (above)**, the Tribunal determined that the Claimant's knowledge or belief as to the facts was that:

275.1 [H] had requested a character reference and the Claimant submitted a character reference (even though she mistakenly completed some elements of the sections applicable to employers);

275.2 The Claimant did not answer the question regarding whether there had been any disciplinaries by ticking either 'yes' or 'no' box; the Claimant did not state or imply that there were no disciplinary issues;

275.3 When the Claimant stated that she would reemploy [H] she was providing her personal opinion on whether she would support reemployment rather than claiming that she had personally employed [H].

275.4 The Claimant gave an honest assessment of the Claimant's technical abilities and skills.

275.5 The Claimant did not believe that [H] was unsuitable to work with children on the basis that the issues which led to [H]'s dismissal do not concern children, and also, the Respondent had not deemed it appropriate to report [H] to the LADO or to the DBS.

275.6 When the Claimant signed the declaration on the reference, she did so viewing safeguarding as a statement about the safeguarding of children only and she believed that there was no reason that [H] should not work with children.

276. Following the second part of the guidance in **Ivey (above)**, the Tribunal then applied the objective standards of ordinary decent people and determined that whilst the Claimant had lacked care when completing the reference her conduct when completing and returning the reference (as described above) was more likely to be viewed as honest than dishonest.

Did the Claimant do something so serious that the respondent was entitled to dismiss without notice?

277. When determining a wrongful dismissal/breach of contract complaint, the Tribunal makes a different decision regarding the dismissal than it does when assessing an unfair dismissal complaint. In a wrongful dismissal/breach of contract complaint, the Tribunal decides for itself what the Claimant did and whether that amounts to a repudiatory breach of the contract of employment so that the Respondent is entitled to dismiss summarily (i.e. without giving notice if paying in lieu of notice).

278. For the purposes of determining the wrongful dismissal/breach of contract complaint, the Tribunal assessed all the relevant circumstances as set out above in the findings of fact. The Tribunal concluded that the Claimant did not provide an employers' reference, and she did not deliberately provide a dishonest reference.

279. It did so based upon the Claimant's evidence to this effect which was corroborated by the key documentary evidence relevant to the Claimant's purpose in providing the reference. This was the text message from [H] quoted and analysed in detail (above) which specifically requested a character reference, and which stated that the new/prospective employer was aware of the circumstances of her termination from the Respondent. This was also consistent with the Claimant later declining to provide other references for [H] because she wanted the Claimant to provide an employer's reference. It was also consistent with the Claimant sending the reference for [H] to the new/prospective employer on a Sunday evening which is not working hours, which is also consistent with her performing this task in a personal capacity.

280. The Tribunal accepts the Claimant's evidence that she was providing a personal character reference for the reasons set out above based on the evidence and analysis described above. As she was doing so in her personal capacity, the view that mattered was her own, not the Respondent's. The Tribunal accepted the Claimant's explanation or motivation for why she answered as she did.

281. As stated above the Tribunal did find that the Claimant took insufficient care in how she completed the personal reference for [H] with the result that it was a recipient could conceivably (if wrongly) construe it as an employer reference from the Respondent and therefore that could impact upon the Respondent's reputation.

282. The Tribunal also found that the Claimant provided a statement which was misleading in respect of [H]'s professionalism. The Claimant thought that [H] was professional when performing her tasks with children. However, the

Claimant's reference did not say that; it stated that [H] was *"extremely professional in **all aspects of her role**"* (emphasis added). Interacting with colleagues in the Academy is an aspect of her role, but [H] had been dismissed for showing and describing sexually explicit images to colleagues in her professional work setting. The Tribunal accepts the Claimant's evidence that this was not intentional, and she had been unwell in the 4 weeks previous to giving the reference experiencing dizziness and headaches which may have affected her concentration. It may have been accidental, but it was nevertheless misleading.

283. The Tribunal determined that giving a poorly completed character reference which contained an accidentally misleading statement in a personal capacity did not amount to 'a deliberate and willful contradiction of the contractual terms' of her employment so as to amount to a repudiatory breach as per the guidance in **Sandwell (above)**.

If so, how much should the claimant be awarded as damages?

284. The value of the damages awarded is the amount that would put the Claimant in the same position as if the contract had been terminated to Claimant's was not paid for that notice period.

285. The parties agreed that the Claimant's notice period was set out in clause 23.2 of her contract of employment, i.e. one month's notice.

286. The parties agreed that the Claimant's was not paid for that notice period.

287. The Respondent should pay to the Claimant the value of her notice period. The value of that notice period is £3,283.58.

Approved by:

Employment Judge Ost

2 November 2026

JUDGMENT SENT TO THE PARTIES ON

.....08 November 2026.....

.....Farhan Sheikh.....

FOR THE TRIBUNAL OFFICE

Notes

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

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are

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

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

Case Number: 6027335/2025

Claimant: Amanda Jenkins
Respondent: Creative Education Trust

ANNEX TO THE JUDGMENT
(MONETARY AWARDS)

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.