EMPLOYMENT TRIBUNALS

Claimant: **Mr H Howlett**
Respondent: **Michael Hall School Limited**

Heard at: **London South (in person)**
On: **15, 16 April 2024, 2 – 6 Sept 2024**

Before: **EJ Harley**

Representation:
Claimant: **Mr Kennan, (Counsel)**
Respondent: **Ms Laxton (Counsel)**

JUDGMENT

The claimant was unfairly dismissed by the respondent. His claim is well founded and succeeds.

REASONS

1. The claimant was employed as a teacher by the respondent, an independent school, from 1/9/2015 until 4/12/2021. The claim concerns his dismissal on the basis of gross misconduct in respect of alleged safeguarding incidents, the first concerning the wearing of masks by his class at a school talent show during the Covid-19 pandemic, the other concerning the administration of an educational trip he arranged. The claimant alleges that their process was substantively and procedurally unfair. The respondent's defence is that the investigation was reasonable, the process was fair, the dismissal fell within the band of reasonable responses and was therefore reasonable in the circumstances.

Issues

2. The issues to be determined here are as follows:

Unfair dismissal

- Was the claimant dismissed?
- If the claimant was dismissed, what was the reason or principal reason for dismissal? Was it a potentially fair reason? The respondent says the reason was conduct.
- Did the respondent genuinely believe the claimant had committed misconduct. In deciding whether there were reasonable grounds for that belief it will ask
    - at the time the belief was formed had the respondent carried out a reasonable investigation;
    - whether the respondent otherwise acted in a procedurally fair manner;
    - whether dismissal was within the range of reasonable responses.
- In considering the latter (if there was misconduct) did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that

reason as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

PROCEDURE

1. The case was listed as a five-day liability hearing in person before me in April 2024 but having commenced and heard evidence from one witness, issues emerged on day two regarding the production and contents of disputed text messages. After hearing applications I agreed to reluctantly adjourned the matter, issued a Case Management Order and re-listed the matter.

2. At the relisted hearing I was supplied with an electronic bundle and paper copy bundle prepared by the Respondents comprising 542 pages of evidence, plus electronic and paper witness statements. Supplemental witness statements were supplied for a number of respondent witnesses at the outset of the trial which were admitted without challenge. In addition I accepted evidence-in-chief from a fifth claimant witness. Additional documentation was supplied during the hearing. I was supplied (at my request) with the following: a copy of the Disciplinary Policy (which was not in the bundle); a risk assessment document cited in evidence (the one produced was dated 8 Oct 2020); two undated documents outlining generic plans for a "Covid safe" show; a document outlining the ethos of the school. In addition I was supplied with a re-typed version of the investigation interview prepared by the claimant reflecting amendments agreed by the respondents. As one of the issues here concerned mask wearing in schools during the pandemic I was concerned to establish the prevailing Government guidance for educational establishments at the relevant time for reference and context (October 2020). The parties accepted that the guidance referred to here[1] was the applicable guidance.

3. All witnesses in the case appeared in person, I offered to accommodate any necessary adjustments. All witnesses were cross-examined by Counsel and were asked additional questions by me. Some witnesses (identified below) appeared under witness summons (WS), and I am grateful to them for assisting the tribunal by complying with the summonses. On Day 1 I heard evidence from Ian Caldwell (HR Business Partner, employed on fixed term contract to assist with school restructure), on Day 2 we adjourned as outlined above. On Day 1 of the relisted hearing I heard evidence for the Respondent from Karen German (HR Manager, Investigation Officer) and Liz James (Business Manager). On Day 2 from Liz James, Tali Michaels (Trustee, heard appeal) and Sue Kirby (Trustee, chaired appeal), closing the respondents case. On Day 3 I heard evidence for the claimant from Renata Harkness, (WS) (a Teacher, now Deputy Head for Upper and Middle School), Emmeline Hawker (WS) (Lower School Assistant Principal) and the claimant. On Day 4 I heard from the claimant, from Kate Valentine (parent, former Kindergarten Assistant at the school), Hannah Trybowska (parent). On Day 5 I accepted evidence in chief from James Kilfiger (WS) (Teacher), the claimant's case was then closed, and I heard submissions from both parties. The tribunal is grateful for the assistance of all the witnesses in this case, and their time.

FACTS

4. I have made the following findings of fact. Where I have reached a finding where there was conflicting evidence, it is because I preferred that party's evidence. Where I have not referred to a matter put before me it does not mean that I have not considered it, merely that it was not relevant to my conclusions, or that it pertained to an issue not captured in the issue list.

5. The claimant was employed as a teacher by the respondent under a contract from 27 May 2015. The respondent is a privately funded, fee-paid school following the ethos of Waldorf Steiner movement. The School's Ethos is that the school is *"…dedicated to harmonising the physical, emotional and spiritual aspects of each of our pupils in a way that gives them the confidence, resilience and insight to make a positive difference in the world throughout their lives."* It places equal emphasis on the arts, crafts and intellectual attainment, encourages initiative, asserts its 'teaching gesture' is to remove obstacles, and asserts that it recognises teaching to be a path of learning for teachers, and that it felt a responsibility towards pupils, parents, teachers and support staff. An important aspect of the Steiner educational approach is that the school aims to maintain a dedicated

[1] https://dera.ioe.ac.uk/id/eprint/36297/1/Guidance%20for%20full%20opening_%20schools%2010%20sept-%20GOV.UK.pdf

teacher/pupil relationship over a period of years – in the case of the junior school pupils retaining the same teacher from age seven for an eight-year period.

6. The claimant's contract provided for a disciplinary procedure and required employees to be familiar and comply with school policies and procedures. His job description included maintaining clear records in accordance with statutory and school requirements, maintaining good discipline, and liaising with colleagues and parents. The School's code of conduct specifically provided for dismissal without notice for gross misconduct, which included among examples a "…serious breach of our safeguarding procedures, code of conduct or any other serious breach of our policies and procedures; theft;….". It also mentioned dishonesty: that any form of dishonesty will be regarded as gross misconduct, and that it "..does not matter if any amount of money at issue is small. The School regards any dishonesty by employees as gross misconduct which will usually result in dismissal."

7. The claimant was dismissed after an investigation and disciplinary process concerning two separate incidents initially characterised as safeguarding incidents. One related to an educational trip, the other related to mask wearing by his class at a school event. The events in question here took place in 2020 in the context of the Covid-19 pandemic, between the end of the first, and the beginning of the second national lockdown. Lockdown restrictions were easing, and schools were open. I will deal with these incidents in date order.

8. At this specific point in time the school was facing challenges: it was rated "inadequate" by OFSTED in 2019. It was facing financial challenges to the extent that a cost-saving restructure was commissioned by management. On the recommendation of Mrs German, the HR manager, the school had secured the services of Mr Caldwell, a CIPD qualified HR professional experienced in corporate restructuring. The recently appointed principal Mr Farr had come from a mainstream education background, and his appointment had changed the management structure. He was described by witnesses for both parties as an authoritarian leader, unsympathetic to the Steiner ethos. Mr Farr's tenure as principal was short and, per the OFSTED accounts, chaotic. While initially enjoying the support of the management team, the respondent's witnesses disclosed raising whistleblowing complaints and grievances against him. Tensions spilled over, evidenced by an emergency OFSTED inspection in December 2020 triggered by safeguarding complaints. It later emerged that Mr Farr himself made a safeguarding complaint against his own school, according to trustee Ms Michaels, who was closely involved in the process and was acting as Safeguarding Trustee. A full OFSTED report from March 2021 covering the period with which I am concerned revealed that the leadership team had "…not acted as a collegiate team. Formal grievances have been lodged by… the school's leadership team. Allegations of bullying behaviour, collusion between members of the council and members of the school's leadership team, are not rare…it is clear that the school has not been led well in recent times." Parents had complained about Mr Farr's treatment of their children, questioning children here without adult witnesses or parental consent. I heard evidence from Mrs German and the School Manager Mrs James that there were also tensions between themselves and teaching staff who they considered treated them disrespectfully, as "admin".

9. Mrs Harkness, now a Deputy Head in the school, described aspects of Mr Farr's behaviour as being so disturbing that she resigned from her position in September 2020. She rescinded her resignation at a meeting on 9 October with Mr Farr and Ms Hawker but was taken back on the condition set by Mr Farr that she would have to take on more teaching work, despite no other teaching staff having left the school. Both Mrs Harkness and Ms Hawker said that Mr Farr remarked at the meeting that three teachers "needed to watch out as they didn't know what was about to hit them". One of the teachers he named was the claimant. While 'needing to watch out' and suggesting something was 'about to hit them' are open to interpretation, it is reasonable to interpret a statement of this nature from an employer in an official meeting discussing staffing, as a threat. This threat was made 13 days before the claimant's suspension.

TRIP

10. The first incident concerned an educational trip planned and undertaken by the claimant as teacher and 'group leader', under the school's Educational Visits Policy. The claimant was alleged to

have failed to follow the policy, and by failing to do so caused a significant safeguarding incident by taking some pupils on a trip for which their parents had not provided consent.

11. The school's published Educational Visits Policy was intended "…to ensure that the safety of pupils, employees and others is managed to minimise risk as far as practicable…". It provided that the School would ensure that all visits are approved by the Educational Management Team (later the Senior Leadership Team, "SLT"); that a person would be nominated to coordinate educational visits with that person to be trained in the role of Educational Visit Coordinator (EVC); that Group leaders (teachers) were to be trained and experienced to lead visits, all visits to be planned, adequate insurance to be in place, parents be notified of all visits and given the opportunity to withdraw their child from any particular school trip or activity, and consent be obtained from parents for all visits. As to responsibilities, it provided that:
- the **Group Leader** (teacher) was required "to complete all relevant Educational Visits documentation, including risk assessments and consent forms…" and "…to provide reasonable notice to the Health and Safety Advisors to allow them to assist in completing agreed tasks";
- the **Health and Safety Advisor** was required to carry out the duties of the Educational Visit Coordinator (EVC), to "coordinate all educational visits to ensure procedures are complied with and all documentation is completed" , to liaise "to ensure the approval requirements for each visit are clearly communicated" and provide support and guidance to the Group Leader;
- the **Educational Management Team (SLT)** was required to consider the suitability of all proposed educational visits, to sign off all documentation (including risk assessments) prior to approval, and to approve all school trips.

12. The Claimant was by 2020 experienced in organising educational trips, having organised at least 8 such trips, The practice on consents prior to 2019 was that teachers collected signed paper consents from parents prior to individual trips. Teachers completed risk assessments and secured the accompanying documentation outlined on them which included paper parental consents. During 2019 a system of electronic consents was introduced, and an officer Ms Stephenson was employed as Health & Safety Officer to introduce and administer the system to collect pupil information (which included medical consents, parental consents for visits, and other necessary information), with the intention of removing administrative burden from teachers. The system was called iSAMS. From that point on paper consent forms were no longer the means of recording parental consent, and the consents were no longer being submitted to, or collected by, teachers. In addition teachers did not have access to the online consents. The iSAMS process, a safeguarding protection, was not captured either in the Educational Visits policy document, or any other policy or governance document. I saw one email from 2019, from a Ms Monks which said:

"In an attempt to streamline our process and at the request of Health and Safety and First Aid an electronic trip consent form has been added to the parent portal. This will be updated annually and held by H&S for risk assessment purposes. This means that you will no longer have to collect paper copies annually, though I suspect that you may need to help chasing them up if they are not forthcoming. All parents have been asked to complete this… All entries will be put on iSAMS so that they can be reported on easily. If you are organising a trip and you want to check if pupils have the correct permissions please speak to Sarah, Saskia or Blanca[2] who all of whom have access to the Sanitorium Manager module in iSAMS…. "

13. As to who was responsible for the lack of any guidance or policy on electronic consents, the failure to update the visits policy, or for the operation of iSAMS generally - Mrs German stated that the creation of Health and Safety Policies was Ms Stephenson's job. The School Manager Mrs James line-managed Ms Stephenson but said that as this related to a *teaching activity* this would in fact have fallen under "teaching". Mrs James denied that she had any responsibility for this policy. We had no evidence from Ms Stephenson. This was a safeguarding and data tool and relying on it had clear Health and Safety implications for the school. The information contained in it included pupil and parental data, medical consents and other sensitive data. The existing visits policy outlined roles and governance responsibilities for SLT, and corporate responsibilities the school was required to fulfil.

[2] By the time of the incident only one officer (Ms Stephenson) had access to the system.

The policy was out of date, incomplete and did not reflect the (then) current practice. As later emerged SLT staff charged with governance of these visits did not know what the policy required of them, or indeed where to find it. These failings were identified and captured in the subsequent OFSTED report of March 2021. [3] It noted "…leaders currently at the school, *have not acted quickly enough to ensure that arrangements for safeguarding are fit for purpose*."

14. As to the basic mechanics of how the system worked – the respondent offered no evidence as to what the electronic consents looked like, or the processes by which the consents were requested, collated, checked or accessed. Neither Mrs German (the Investigating Officer, who was required to challenge the claimant over not-complying with the policy) nor Mrs James (the School Manager) were able to assist me as to how the issuing of these consent requests worked. The process is unknown, but it seems likely that it was intended that a request would issue from school administration or Ms Stephenson to parents via email prompting them to access the portal and provide blanket permission for school trips for that school year. If a new pupil joined the school their parent was supposedly asked to provide their consent at the point of joining, but in this case two children had no consents of any kind on file, which suggests that this was not happening. I heard evidence that parents did not routinely respond to these electronic requests in any event, and there was anecdotal evidence of the portal being unreliable – the portal was used to post school reports, which parents reported not receiving. What is not in doubt Teachers played no role in issuing these emails.

15. A key aspect of the system's operation was - for reasons unknown and unexplained - that Ms Stephenson had sole access to the parental consents. In order to confirm which pupils had parental consents in place, the teacher had to speak to Ms Stephenson. I was shown no evidence that this was captured in a policy document or given an explanation as to why (if this was in fact to be part of the teacher's ongoing role) this would be. The existing policy required SLT to check trip documentation to authorize a trip – it wasn't established that this was possible, and no provision was made for access in situations where Ms Stephenson was absent.

16. Another aspect of the policy was insurance. Part of the visits policy identified the importance of ensuring trips are properly insured, but no detail offered as to how that was to be achieved. It appears to have been a requirement that confirmation of a valid driver's licence had to be provided to Ms Stephenson in advance of a trip. This was done by the licence holder generating a code on the DVLA website and sharing it with the school. There was no reference in the visits policy to this requirement. It was suggested that not having this confirmation in place would invalidate the terms of the school's insurance. I saw no evidence to support that suggestion. It was no part of the case that the claimant had any points on his licence. The claimant held a special licence enabling him to drive a 17-seater minibus. This issue ultimately formed no part of the disciplinary charges but the failure to supply the code was nevertheless a key element of the case pursued by the respondent before this Tribunal. On one previous occasion the claimant had failed to secure a requested DVLA confirmation in advance of the trip, which caused a delay on the departure while the confirmation was secured. There is no evidence that this requirement was communicated to him in advance of that trip, or that this delay had led to any disciplinary action.

17. On 8 October 2020 (Thursday) the Claimant emailed Ms Hawker, his line-manager and SLT member, advising her of his intention to take his class on a trip to Battle Abbey the following week, using a school minibus. He confirmed he had informed the Health and Safety Officer. Ms Hawker responded in an email on Friday morning (9/10) indicating the faculty could support the trip, providing what is referred to as pedagogical approval for the trip (meaning that it was educationally valid). She followed this up within the hour with a second email noting "this is very short notice" and asking him to confirm who a required second member of staff would be. On Monday (12/10) the claimant responded to Ms Hawker in two emails saying the trip was now provisionally booked for Thursday 15/10, and that a risk assessment had been sent to Ms Stephenson. Ms Hawker in her response reaffirmed the need

[3] "*Senior leaders' oversight of safeguarding is not rigorous enough. This includes those in positions of governance, who have not acted to ensure that the welfare, health and safety of staff and pupils are given the highest priority. In particular, leaders have not ensured that appropriate action has been taken in a timely manner to safeguard and promote children's welfare.*" **OFSTED Inspection report:** Michael Hall School, 18 March 2021

to identify a second adult and asked him to confirm by close on 13/10 who that would be, which he did in an email later that day at 16:22.

18. In a separate email chain on 12/10 the claimant emailed Ms Stephenson, copying in another employee, confirming Thursday as a provisional booking for the trip, that the trip would be 'previewed' at the SLT on Tuesday (13/10) attaching a risk assessment. The risk assessment document was not updated to reflect the abandonment of paper consents or the use of iSAMS. The form stated: *"To be filed with risk assessment: Original Parent Consent forms…"* By this point, parental consent forms were not part of the process. Ms Stephenson responded in an email of 13/10 saying that she is aware that the trip "*still needs to be approved by SLT"* but goes on to say: "…*we need to complete the following if the trip goes ahead. Parental consents required…"*

19. Ms Stephenson in her 13/10 email identifies four pupils not having up to date consents in place. Two were out of date parental consent forms (old style paper forms), and two further pupils for whom no parental consents of any kind were held. It was not explained what efforts, if any, had been made by the school at the start of term to collect parental consents from any of these parents. As to her statement that "we need to complete…" if it was as self-evident as was repeatedly suggested on behalf of the Respondent that it was solely the teacher's job to secure consents I would have expect Ms Stephenson to say unequivocally: "***you*** need…". In the event, no arrangement is communicated by Ms Stephenson to indicate how the consents were to be secured or who was to act on this. Ms Stephenson was employed as the Health and Safety Officer, her role was the running of this system, act as Educational Visit Coordinator (EVC), to ensure all documentation is completed and support the Group Leader. Four consents for one class had not been secured under the systems she administered. The message then states: "Parental Consent hard copy attached". This suggests an assumption on Ms Stephenson's that paper consents might well need to be collected manually on the day. This is not made explicit and assumes that parents would be on hand to sign them – in fact I heard evidence of children travelling to school by public transport and of an incident involving a pupil who travelled to school alone on foot. It was wrong to assume this could be rectified on the morning by the teacher. She then states she needs to complete a driving licence check for whoever was to drive the minibus and asked him to have them "generate a check code through the DVLA". The claimant says that he did not see or read this email at the time. I will return to this issue.

20. At 08:09 on 14/10, the day before the trip, Ms Hawker responded to the claimant via email thanking him for his update, and the updated risk assessment, and wished him "a wonderful trip and tell us all about it at next week's faculty meeting". The claimant consistently stated that he had read this email that this was SLT sign off and assumed it meant that the paperwork was in place. I will return to this issue in my conclusions.

21. Ms Hawkers live evidence was that this email was not her or SLT's authorisation but only an agreement in principle. This was unlikely - given it was for a trip happening the next day. If this was correct, it would have meant that, contrary to policy, SLT had permitted a trip it knew was planned without any documentation check or a final authorisation. Ms Hawker had produced at the hearing an email dated 9 October, where she responded positively to the claimant's proposal of 8 October, which on any fair reading was an agreement in principle to a pedagogically sound trip. In consequence of that earlier exchange, a reasonable reading of the email of 14 October was that she was signing off on the trip in her SLT role, not least because it accorded with the policy, but also because - as she told me - she had sought guidance from colleagues on the policy and followed their guidance. Ms Hawker was aware of the policy's existence and had followed the processes as a teacher, but as a newly appointed leader she had no knowledge of what she had to do as an SLT member authorizing a trip. She did not refer to the policy document and in evidence suggested she had never seen or read this policy document. She had conferred with two SLT colleagues – rather than her boss, Mr Farr - and was advised that this responsibility amounted to ensuring there was a second adult on the trip. This was plainly wrong, but she had approached experienced colleagues for advice and relied upon it. Significantly, one of the two staff she asked was Richard Siddons, deputy head and later the Disciplinary decision maker here.

22. I accept Ms Hawker's evidence that she was unaware of the three steps required of SLT in the policy (initial approval, document check, final sign off), and she had not seen the policy. This was likely a result of an absence of support or training on these key policies. That however does not undo the effect of her email on the recipient. Ms Hawkers' ignorance of the policy cannot absolve her, or the school, of the responsibility it had to parents not to let pupils leave the school grounds without authorisation. The SLT check was in place as a safeguard to avoid such mistakes. At least three SLT members did not know what the policy required of them (Ms Hawker, Mr Siddons, and another). It would be incumbent on anyone organising or signing off on a trip to ensure safeguarding protocols are followed. This policy formed part of the safeguarding regime which had reassured OFSTED in 2019 to say the school had effective safeguarding policies in place. The policy was not followed. It had not been updated to reflect changes in process. The school was not operating the policy in the manner envisaged to protect pupils. It was ineffective. SLT authorised this trip, in the absence of four parental consents being in place, and without their having undertaken the requisite checks.

23. The trip took place on the morning of 15 October, the claimant driving the minibus to and from Battle Abbey. That morning Ms Stephenson was at work. She sent an email to the claimant stating she had not been at work on 14/10, that she understood that the trip had proceeded that day and asked him to confirm that he had secured the missing consents and that a DVLA check should have been completed before the trip took place. The claimant responds on 19 October saying that the forms "should be on their way to you direct from the parents." He confirmed he was happy to generate a DVLA code but "…I did do this for the Dorset trip in February earlier in the yea, so image that it still valid (sic)". Ms Stephenson sent an email on 21/10 to Mrs James stating that, as of that date, three consents remained outstanding. There was no record of Ms Stephenson having raised this issue with anyone in management before 21/10. This was despite becoming aware of the breach in her role as Health and Safety Officer six days previously.

24. Although Ms Stephenson was not at work on 14 October, as Health and Safety Officer she was aware of the imminent trip and the missing consents. There was no record of there being any formal arrangements to deputise the Health and Safety role in Ms Stephenson's absence, or of her making any informal arrangements herself. There was no evidence of Ms Stephenson alerting SLT to any deficiencies in the documentation for the trip on 13, 14 or 15 October, but we did not have the benefit of her evidence on these points. We do not know what efforts, if any, Ms Stephenson made to secure the consents missing from the system which we were told was her sole responsibility to administer on 13 October. Under the policy it was her role to ensure procedures were complied with and all documentation was completed, and to support the group leader to that end. The claimant saw the 14/10 email from Ms Hawker authorising the trip and says he relied on that (I will return to this issue). Whatever the reason for her absence, Ms Stephenson knew that the teacher had no access to the consents, so the claimant had no way of knowing if missing consents had been given or not, without her intercession (if indeed she had taken any action to secure them herself, in her duty to support the group leader). She had no way of knowing whether the claimant had approached parents for consents, or whether they had provided them on iSAMS (as it turns out, he had not) before she returned to work on 15/10. There is no suggestion that she checked or alerted the claimant to the missing consents early that morning before the trip commenced.

TALENT SHOW, MASK WEARING

25. The second issue relates to mask wearing. On 20 October, SLT gave permission for an annual Talent Show to go ahead the following day (21/10). The SLT minutes capture that the attendees were to maintain their 'bubbles' (class groups), bubbles would arrive separately, seating was arranged to separate these groupings and parents would be asked to supply children in classes 6-11 with masks. Two emails were issued that lunchtime by the PA to the Principal. The first was addressed to all teachers, the second to all staff. The first confirmed that all children were to wear face coverings to the show, they had to bring their own, and parents would be sent an email to that effect. Some spare masks would be at the door for those who forget and "obviously those students who cannot wear a face covering due to physical reasons or if they cause them distress will be exempt". The second stated that all students and staff are asked to wear face coverings tomorrow during the show, and "students and staff who cannot wear a face covering for physical reasons or if face coverings cause them distress will be exempt".

26. At this point in time the school did not require mask wearing as a matter of course for staff or pupils. A letter dated 11 September from the school principal Paul Farr to parents setting out the policy stated: *"We will continue to monitor and review the situation and get in touch as changes are required."* In the event, the email to parents informing them of this decision, and requiring pupils to bring and wear masks for the talent show was sent with less than 24 hours' notice.

27. The context for this event was the Covid-19 pandemic. I was shown the school's guidance – "Safe Operating Procedures for managing Covid-19" - issued by Mrs James on 8 October 2020 sent to all staff and including her own headline summary. Mrs James said in evidence she believed that at the time the school's policy was that masks were mandatory unless someone was medically exempt. This was not reflected in the guidance she herself summarised and circulated at the time which explicitly provided that mask wearing was not compulsory. Where there was a requirement for close proximity work, first aid or intimate care "masks/visors" were to be worn, and the teachers were to carry these for this purpose. Mask wearing was to be supported where individuals chose to wear them. This accorded with the national guidelines for education, whereby masks were not encouraged within the classroom where bubbles were established because they were considered to have a negative effect on teaching, but schools had "the discretion to require face coverings for pupils, staff and visitors… outside the classroom where social distancing cannot easily be maintained, such as corridors and communal areas and it has been deemed appropriate in those circumstances". A general risk assessment matrix document was produced during the hearing (also dated 8 October) which confirmed that there was no mandate requiring mask wearing in the school at the time. I find therefore that mandatory mask wearing was not the school policy at this time, nor was it general practice in the school. This makes logical sense, as otherwise there would have been no need for a directive to be issued to parents requiring pupils to bring and wear face masks for the talent show if they were already wearing them as a matter of course. Mrs James also suggested there was a list of those exempt from mask wearing which had been carefully prepared by the staff nurse, but this was contradicted by contemporaneous evidence from Mrs Harkness. I find that there was no exemption list in place at the time.

28. References were repeatedly made, including to the claimant during interview, to Mrs James having prepared a health and safety risk assessment in respect of this event, shared with SLT. Mrs James had not attended the relevant SLT meeting. I saw two generic documents (produced for the first time at this hearing), prepared by the "theatre team" which accord with the contemporaneous description of what SLT were shown on 20/10. They outlined options for running covid safe performances. One was headed "Covid 19 Risk Assessment Form", but it made no reference to this performance, nor gave any assessment of the specific risks this performance posed of the type we might expect a risk assessment to address. These generic documents were not circulated among the staff. The general risk assessment matrix document dated 8 October produced at the hearing explicitly provided that activities that crossed bubbles would not take place and made no provision for this forthcoming event, nor did it offer suggested approaches for such an event. The school decided at an SLT meeting on 20/12, less than 24 hours before the talent show, that it would proceed to bring the school together in one room and that mask wearing would be required. As to the health and safety implications the H&S arrangements amounted to two poorly expressed emails asking people to wear masks unless they could not wear a mask for 'physical reasons' or wearing masks 'caused them distress'. No mention was made of 'medical exemptions'. The risk assessment matrix of 8 October made no reference to mandatory mask wearing, medical exemptions, or exemption lists, nor did it refer to the enforcement of mask wearing. I must conclude on the evidence presented that in fact there was no risk assessment in place or prepared for this event, and therefore there was no 'risk assessment' which the claimant could have contravened.

29. This request for pupils to bring masks was apparently communicated to parents via email later that day (no evidence was supplied to prove this, but it was not disputed). They were told that spare masks would be supplied at the door. At the hearing it was suggested by the claimant that this was not the case, that there were no masks at the door. This was not previously raised as an issue, but there was no evidence to confirm that they were supplied (as Health and Safety officer Ms Stephenson was not interviewed), but I note from her 'report' document Ms Stephenson said, when

offering masks to Mrs Harkness, that she "had some on me", rather than indicating that they were available at the door.

30. Mrs Harkness had raised the exemption issue in an email exchange with the principal on 20/10, the day before the event. She said that she was exempt, a large number of her class were exempt and that as there was no requirement to prove exemption (per government advice) she asked for assurance that she and her class could attend without masks, while remaining within their bubble. Mr Farr responded describing her position as a "controversial standpoint" and asking her not to commit such exchanges to email in future. He said that it was inappropriate to assume exemption for children over the age where they were expected to wear face coverings in restaurants, supermarkets and shops (an irrelevant comparison) and therefore he assumed her class would not attend but would continue with normal lessons. Mrs Harkness responded re-iterating government guidance (that exemptions did not need to be proven) but that as it was her understanding from Ms Hawker that the school would follow government guidance, the class would attend on the basis that the school recognised exemptions. She said that this was not her being controversial, rather she was assisting by highlighting likely parental objections to pupils with exemptions from being required to wear masks in order to attend this event.

31. The talent show was held on 21/10 in the School's theatre. After the performance the Health and Safety Officer Ms Stephenson approached School Manager Mrs James (who had not attended the concert), apparently complaining about members of staff. This is captured in Mrs James email to Principal Farr at 13:21 reporting the account and saying: *"Marina (erroneous reference to Mrs Harkness) and Henry both refused to let any of their class wear masks to the theatre. The whole class was exempt? And Marina accused Sarah of intimidated (sic) students into wearing masks. To my mind they are clearly not 'onboard' with the school's management of Covid-19 and should be told that taking this attitude is unacceptable".*

32. Ms Stephenson sent an email at 14:20 headed "My Report on the Talent Show" where she outlined that she had mentioned to the claimant "…that a number of his students were not wearing masks. He informed that (sic) a number of students felt restricted by them, and they did not need to wear them." An email was sent from Victoria Westlake at 15:51 to SLT, copying in various technicians and Ms Stephenson referring to two class teacher colleagues not observing the ruling regarding wearing masks. It did not name the teachers or elaborate on the details.

FACT FINDING

33. Both these issues emerged immediately after the talent show, on 21/10. Mrs James captured the initial core accusation from an "upset" Ms Stephenson, that two teachers, the claimant and Mrs Harkness, "*did not permit their classes to wear masks".* Ms Stephenson later provided evidence to Mrs James concerning the school trip on 15/10, sending Mrs James emails pertaining to the trip. While it was reasonable for the school to raise these issues with the teachers in question I learned that the normal process was for such issues to be raised by a teacher's line-manager. At this point the claimant's line management was shared between Ms Hawker and another teacher. There is no suggestion that Ms Hawker or the other teacher was sighted or consulted at this stage. The Headmaster Mr Fell was involved - within minutes of being told of the accusation he had secured an account from a subordinate confirming her understanding as to the mask requirements for the show. He then went on to interview pupils about the circumstances without parental consent or another adult being present, taking notes of these accounts. Despite being present at the concert, in close proximity to the claimant's class, he did not intervene to address any perceived issues.

34. The claimant was later informed by a colleague that he was required at a meeting with Mrs James. He had no written warning of this interview or its subject matter, nor was he invited to or offered the opportunity to be accompanied. No email request was issued. Neither Mrs James and Mrs German had line management responsibilities for the claimant, nor had they been at the event. They suggest this was an informal fact-finding meeting and ended with each party later accusing the other of being rude and aggressive. The claimant left the meeting. Mrs James sent an email to Principal Farr outlining an account of what she said had occurred: Mrs German had taken a note, they had attempted to raise concerns regarding mask wearing and his having conducted a trip without

parental consents being in place, he had (according to her account) dismissed these as being neither urgent nor safeguarding issues. In their view his behaviour in refusing to discuss the matters or remaining in the meeting breached the school's code of conduct and Teacher's Standards.

35. When the claimant arrived at Mrs James' office he was met by Mrs James accompanied by Mrs German as note taker. It was reasonable in the circumstances for the claimant to regard this as a formal meeting and the start of a formal process. As to what followed Mrs James and Mrs German registered their unhappiness at the claimant's behaviour in the "informal" meeting, Mrs German going so far as to say she'd never encountered such behaviour ever from a teacher in these circumstances. Despite Mrs James telling her headmaster immediately after the meeting that Mrs German had taken notes, no notes of this meeting were retained or produced.

36. It was suggested in evidence by both Mrs James and Mrs German that the meeting was so short there was nothing of note to capture – yet their own statements and the contemporaneous email suggest otherwise. Mrs German acknowledged she warned the claimant that leaving the meeting for other scheduled meetings would amount to "insubordination", an unusual word to use in the context of an informal chat. When he said he had another meeting to attend Mrs James told the claimant that he would only attend the meetings they told him to attend. These phrases are not indicative of a calm informal meeting designed to elucidate facts. Mrs James complained to Mr Farr of the claimant "*repeatedly trying* to leave the meeting". This does not suggest a short exchange. It gives credence to the claimant's account that he attended the meeting as requested (rather than refusing to attend, as Mrs German later inaccurately informed the Local Authority Designated Officer (LADO), tasked with managing safeguarding complaints), and he complied with the meeting request for a time until it became antagonistic. Mrs Harkness was similarly asked to attend a meeting, but refused until she was accompanied by a witness, on the basis that the tone and approach of the communications from Mrs James was inappropriate. Unlike the claimant she was afforded her request to be accompanied. No further action was taken against Mrs Harkness, despite her not wearing a mask, the majority of her class not wearing masks, and upsetting a colleague by accusing her of intimidating her students.

37. Given their combined view that the claimant's behaviour represented a significant non-compliance with the code of conduct, it is of note that the HR manager did not save her note of this meeting (or indeed any records relating to this whole episode, or of her investigation). Neither Mrs James nor Mrs German raised a grievance about his 'insubordinate' behaviour. Given that this was a teacher displaying angry, aggressive behaviours it should have been recorded in the context of live safeguarding concerns. Nor was the behaviour raised in the investigation or disciplinary meetings, despite his conduct being recorded as part of the reason for the disciplinary process, outlined by Mrs German in her letter of 29 October. In evidence, when challenged as to why she had not complained, Mrs German stated that from her experience in dealing with similar situations with angry staff, making a complaint would enflame the situation. Setting aside that this contradicted the suggestion that this was unprecedented behaviour, the safeguarding of children would demand that behaviour of the type and intensity she claimed had occurred be covered by the requirements outlined in the Keeping Children Safe in Education guidelines. It would have been their duty to do so. They did not. This must draw into question whether their accounts of the claimant's behaviour are credible. I am unable to accept their accounts at face value.

38. This contradiction was echoed in Mrs James' evidence. In her statement she described the claimant (before these events) as 'aggressive', 'intimidating' and that 'he made colleagues and myself uncomfortable'. These would be concerning qualities for someone working in this environment. During evidence however, when it was put to her under oath that these were factors relevant to his dismissal she denied this, saying he was a "good teacher", who they "did not want to lose", as "good Steiner teachers are hard to come by". I struggled to reconcile how someone with the unsuitable traits she outlined in her statement (particularly aggression) at the level where he intimidated adult colleagues, could ever qualify someone to be entrusted with unsupervised time with children who are by definition potentially vulnerable. These would have been safeguarding red flags. I was left uneasy by the jarring terms of this denial, which appeared calculated and pragmatic, and which contradicted the picture of the claimant she had carefully constructed in her statement. It undermined her credibility.

39. Mrs James followed this meeting with an email to the claimant copying in Mrs German re-convening the meeting for 2.35pm the following day (22/10). The claimant did not attend the meeting of 22/10, sending a letter that afternoon to the chair of the Board of Trustees complaining about the high-handed conduct of Mrs James and Mrs German, forwarding same to both of them. Later that day, the principal attended the claimant's home, handing him a letter suspending him on full pay to allow "a full investigation into a safeguarding concern".

40. Mr Farr suspended the claimant on 22/10 on the basis – I must assume, in the absence of any direct evidence - of Mrs German's initial-fact finding. There are no notes beyond the earlier email between Mrs James and the principal as to what the initial fact finding might have consisted of. The letter states that the reason for this suspension is "…to allow the School time to carry out a full internal investigation with regard to a safeguarding concern." I have not been shown what specific information he considered in making this decision, or any notes of his decision-making process. Mrs German sought to assure us that the principal sought and been given assurance as to the decision by Ellis Whittam (their HR legal resource), and that 'everything was shared with them'. No evidence was provided to support this assertion, none was supplied to confirm what was passed by Mrs German to Mr Farr, or to Ellis Whittam, or as to what advice - if any - was sought from Ellis Whittam or on what basis.

INVESTIGATION

41. The Investigation into the safeguarding issues was, it appears, conducted by Mrs German. Mrs German was unable to recall who had appointed her to this role. No records on the point were supplied. Mrs German's approach to her investigation is unclear because we have not been shown an investigation report. Mrs German suggested than she would have prepared an investigation report and 'likely' sent to Mrs James, Business Manager, and that 'everything' was sent to Ellis Whittam, their advisors. Mrs James did not assist us on this front, despite it emerging during the hearing (as a result of her disclosing other documents to the Tribunal via Counsel) that her Michael Hall email account remained live and accessible to her as late as June 2024. Around this time she told me she was granted access to it by Trustee Ms Michaels. This meant she accessed Michael Hall's systems to forward information still stored in her email account (which was being retained, maintained and stored by the Michael Hall School) to her new work account, at another school.

42. Mrs German was involved from the fact-finding stage, and her starting point appears to have been the accusation made to Mrs James by Ms Stephenson, relayed to her on 22/10. Neither Mrs German nor Mrs James had attended the concert, so were entirely dependent on others' accounts. Mrs German indicated that both Ms Stephenson and Ms Westlake had sent information in emails, so I assume she had early access to these, despite these not being addressed to her. She confirmed she did not interview or take statements from the complainant or the potential witness.

43. Ms Stephenson had sent an emailed account of the show to Mrs James on 21/10. Headed "My Report for the Talent Show", she sent it in advance of the initial fact-finding meeting. She outlined non-compliance with mask wearing at the show by two classes - the claimant's class and Mrs Harkness' class.

44. Mrs Harkness' approach here, which was a subject of this complaint, was flagged in detail one day in advance to the Principal. The Principal knew Mrs Harkness was claiming exemption, and that a considerable number of her class would not be wearing masks, and that - knowing the parent body - she anticipated objections from parents. Ultimately by accepting without challenge her position Mr Farr had in effect sanctioned her approach. We do not know if Mr Farr communicated any of this to Ms Stephenson, as neither were interviewed, but the school was certainly aware of this potential issue the day before the event. It appears from the face of her report that Mr Farr did not alert Ms Stephenson to this potential issue. The exchanges between Mr Farr and Mrs Harkness seem to have formed no part of Mrs German's investigation, despite Mrs German having been copied into their exchanges on 21 and 22 October. Mrs German did not interview her, and despite the claimant identifying Mr Farr as a witness Mrs German did not interview Mr Farr either.

45. There was no mention of the claimant not wearing a face covering in Ms Stephenson's report. She said that 'a number of his students were not wearing masks' (so it can be assumed that a number were). This was a significant account, and – given she was not interviewed, nor was asked for a witness statement – this was the only account Mrs German had from the complainant. She did not indicate how many of his class were not wearing masks. It emerged unchallenged during the hearing that a number of the pupils had exemptions. This contemporaneous note makes no reference to the claimant telling her that *he had told his class they did not need to wear masks*. This was a different account to that attributed to her by Mrs James, which remained the charge throughout the process. This important discrepancy should have been tested with Ms Stephenson, to check whether the first account given by an 'upset' Ms Stephenson to Mrs James, was accurate, or in fact related to Mrs Harkness. This document was not included in the Disciplinary bundle. It is never referred to or put to the claimant in either the Investigation or Disciplinary meetings. Mrs German for reasons unknown had no direct contact with Ms Stephenson, the original complainant, despite the clear need to clarify various vague and uncodified aspects of the allegations for which he was to be suspended. It was Mrs Germans role to consider evidence and identify evidence which pointed towards and away from culpability. There is no evidence that she considered or weighed any of these issues.

46. Mrs German cited Ms Westlake's email stating "it is a pity that two class teacher colleagues chose not observe the ruling about face coverings…" They are not named. Mrs German indicated in evidence that Ms Westlake had spoken to her, but that she (Ms Westlake) was "fearful". There was no record of this conversation. She had no evidence as to who these two teachers were.

47. Regarding the trip – again, Mrs German did not speak with Ms Stephenson regarding the trip or the parental consents, either to clarify what happened or the consent process. Mrs German was clear that the educational visits policy was not her responsibility but said that that she familiarized herself with it during the investigation process. There was nothing in the policy about the iSAMS portal, or how the process worked. I saw contemporaneous emails, but no evidence from Ms Stephenson to confirm these were comprehensive, or to give her account of what she did, in particular with regard to sourcing the missing consents. Mrs German did not check or confirm what (if any) contact Ms Stephenson had with SLT on the issues or clarify what – if anything - her role was, in assisting them with assuring the documentation or signing off the trip, as per the policy. It was not established if SLT had the ability without the intercession of Ms Stephenson to check consents themselves. Therefore it is unclear how that SLT responsibility was to be discharged, how this safeguard was meant to work in practice. Nor crucially did she clarify what exchanges she had with the claimant regarding this trip.

48. Regarding parental consent, Mrs German asserted that she was aware that at the time consent was provided by parents online on iSAMS but was not aware that class teachers did not have direct online access to where the consents were held. Access to consents was limited to the Health and Safety Officer (Ms Stephenson), and teachers had to ask Ms Stephenson for the information. Mrs German's assessment was that irrespective of access, teachers had "direct access" to the information – as they had direct access to Ms Stephenson. Neither Mrs German nor Mrs James could assist as to how the issuing of these consent requests worked. In her evidence Mrs James, the School Manager, was entirely unaware the system worked in this way, having assumed the process was paper based.

49. In terms of what was in the policy: in evidence and the investigatory meeting Mrs German asserted that SLT was involved in approving the trip only because of the pandemic. In the meeting when it is suggested that SLT looked at each trip she responds "SLT do not do parental consent, SLT role is regards to Covid regulations". This contradicted the three stage SLT process in the policy and was incorrect. Mrs German did not fairly outline the policy in the meeting, she did not examine with Ms Hawker what she had done in response to the request, or what Ms Hawker understood her role to be. This is troubling, because the policy assigned roles and responsibilities between the teacher, SLT and the Health and Safety Officer and these needed to be considered and weighed in coming to her decision regarding the investigation.

50. It was not established if Ms Hawker had access to the consents, to cross-check the documentation, as per the policy. This was important, not simply because the claimant was accused of not fulfilling his duties, but because the policy required that SLT sign off trips, and a situation had

occurred where pupils left the school without authorisation, arguably as a result of SLT sign off (even if the claimant was solely responsible for not securing the consents). This lapse needed to be captured, understood and learnt from. It was a safeguarding incident, and potentially a disciplinary matter for whoever authorised this trip without parental consent. Either Mrs German did not read or understand what the policy was or closed her eyes to its implications.

51. Mrs German denied that SLT sign off here meant anything beyond the trip being permissible in the context of Covid. Mrs James denied that SLT had signed off the trip here at all, as to do so would have meant everything was in order. If they had, she accepted this would amount to a green light. Mrs James suggested that this had not happened was because SLT were denied the opportunity to do so. That was incorrect. Ms Hawker was aware of the policy and had followed the process as a teacher. She had conferred with two colleagues, including the Disciplinary decision maker here, was given erroneous advice, and approved the trip.

52. The Claimant was invited via a letter dated 29 October to an investigation meeting on 2 November. There was therefore ample time in which for all these issues to be fully considered, questions asked, and interviews held in his absence. The claimant was offered the opportunity to bring 'a colleague of Michael Hall', who could not answer questions on his behalf, and he was required to keep the matter, and anything discussed in the meeting confidential. The meeting took place on the morning of 2 November, with the claimant accompanied by his colleague Mr Kilfiger.

53. Mrs German chaired the meeting with Mr Caldwell, another CIPD qualified HR professional employed as HR Business Partner as notetaker. A non-verbatim note of the meeting was made, and in evidence Mrs German accepted the corrected version produced by the claimant was accurate. Neither the suspension letter nor the invitation outlined or identified the matters under investigation – the suspension letter refers to "a safeguarding concern", the invitation refers to "safeguarding concerns and your recent conduct". In terms of the investigation interview it is striking that, rather than commencing with the interviewer outlining the allegations at the outset, allowing the accused person to understand what they are accused of, Mrs German's own account sees her asking the claimant why he is here, and having him outline the issues he is to be questioned on. This would be poor practice in any interview, but in one conducted by two experienced HR officers it is unprofessional.

54. With regards to the mask wearing issue, the discussion ranged around what he had said, or not said, to pupils, about mask wearing for the concert, whether or not he was wearing a face covering, and his position on what had happened and what he had done about pupils taking masks off in the concert. There was no issue but that some pupils from his class who wore masks to the theatre took them off, and that he had an exchange with Ms Stephenson about this. Most significantly for the Respondent, the claimant made comments regarding what he had said at the outset, which they considered modified the guidance issued by the school. His formulation is in this exchange captured in his corrected version of the transcript: *KG: "We had children who did have masks who didn't wear them. Did you say that they didn't have to wear them?" HH: "Yes, but only if they felt anxious or uncomfortable about wearing it".* This was taken to be a significant departure from what Mrs German described as "the risk assessment". There was no risk assessment. We have the emails from 20/10 mentioning a physical inability to wear a mask or being unable to wear one owing to distress. The thrust of Mrs Germans interventions was that only those recognised as having a medical exemption were permitted not to wear a mask, presumably having been added to a list. There was no evidence to support that, and there was no list at the time.

55. The evidence that the claimant mis-directed his class amounts to what he is reported to have said to Mrs German here. It is suggested that his use of the word 'anxiety' as opposed to 'distress' caused his class not to wear masks. In fact, it was his uncontradicted evidence that those from his class who brought masks wore them from the class to the auditorium. Ms Stephenson's report supports that some of his class were still wearing masks when she observed them. This tends to suggest that he did indeed direct them as he suggested to wear masks to the show, as per the email instructions. As to what occurred in the auditorium, it is evident that Mrs Harkness' class wore no masks, and this appears to have influenced some of his pupils. It is evident that Mrs Harkness regarded herself and a considerable number of her pupils as exempt and importantly that the school at the highest level (the

Headmaster) knew in advance that this was to be the case. In any event I am not persuaded that the words the claimant used were designed or intended to misdirect his pupils, and indeed it appears that the appeal panel implicitly accepted that after speaking with him and reviewing the available materials.

56. It later emerged that Mr Farr had conducted interviews with pupils regarding mask wearing. These unsupervised interviews generated consternation among parents and distress among pupils. I was informed in a troubling account from one parent that her son felt guilty, as he considered that he had been made to play a role in his teacher's dismissal. Mrs German stated in evidence that Mr Farr's process formed no part of her investigation, formed no part of the materials she considered so she did not put them to the claimant, nor was it among the materials she put forward for consideration in the disciplinary process. I later learned that Mr Farr's accounts were included in the appeal papers hand-delivered in brown envelopes to the Appeals panel by Mr Caldwell, her HR colleague. Mrs German explicitly stated in evidence that she did not speak to any children in attendance regarding mask wearing. Her notes of the meeting contradict this. She put to the claimant: *KG: "I was told by students they were not told to wear them (masks), and that Mr Howlett was not wearing a mask".* The claimant denied this accusation. It is unlikely that an experienced HR professional would have invented this exchange with students, so either her contemporaneous note is correct, and she did speak to children (and has not recorded or disclosed this) or she was relying on and referencing the accounts captured by Mr Farr (contrary to what she told me). Either way this exchange contradicts her evidence given under oath to the Tribunal.

57. Mrs German referred in her statement to a previous incident for which caused her concern, which she said the claimant was 'warned about', and which she considered reflected a pattern of apathy on the claimant's part regarding safeguarding, which was detailed in a "letter of concern" on his file. This issue was not raised with the claimant in the investigation meeting. The letter did not appear in the list of documents supplied to the disciplinary hearing nor, if it existed, was it ever disclosed. When challenged on this, Mrs German stated in evidence that this previous incident was "taken into account for the disciplinary", but that because he had been questioned about it before - *before she joined* - there was no need to raise it with him again. This previous incident was not the subject of a disciplinary action. It is of note that she felt sufficiently confident to rely on details of an incident in which she was not involved, had no context for, and which had not led to a disciplinary outcome, without outlining her concerns to the claimant. Denying the claimant an opportunity to contextualise this incident, and without disclosing the document, was unfair. Mrs German also alleged the claimant hit a cabinet violently during the interview, and that she and Mr Caldwell considered pausing the interview. No note was made of this incident, nor of any reaction to it, nor was there a made of the pause. I find the suggestion that two experienced HR officers would fail to record such a noteworthy incident, in the context of a safeguarding investigation, implausible.

58. Mrs German went on to confirm that the issue was considered *in the disciplinary hearing* with Mr Simmonds as it was a preexisting safeguarding concern. This was surprising – as no letter was included among the material sent to the Disciplinary Officer, outlined in the Disciplinary invite letter which Mrs German told me reflected what she submitted to Mr Simmonds, copied to the claimant. Mrs German did not attend the disciplinary meeting but assisted "when asked for advice" (as did Mrs James). According to the notes and claimant this issue was not raised in the meeting. Nor is it in the dismissal letter). I will return to this point.

59. The respondents had set out on the process with the benefit of the email correspondence regarding the trip and talent show. Regarding the trip the claimant took the opportunity to give his account of the events leading to the trip occurring without having four of the attendees parental consents in place. He gave his account of what had occurred: that he had seen and relied on the email of 14/10 from Ms Hawker, and missed the preceding email of 13/10 from Ms Stephenson, he considered that Ms Stephenson had failed to play her part, and he had taken the SLT email as confirmation that everything was in order. Mrs German appears to have been satisfied, without further reference to the policy, Ms Stephenson, or the claimant's points, that her case was secure. I do not have the benefit of her reflections on the matter from the relevant time as they were not provided.

DISCIPLINARY

60. The claimant was sent a letter dated 3 November inviting him to a disciplinary meeting on 5 November to be heard by Richard Siddons, Deputy Head. This was rescheduled for 10 November, and that hearing was abandoned after concerns were raised by the claimant's union representative at the behaviour of Mr Caldwell, who he accused of covertly running the meeting. The meeting was reconvened for 26 November. The hearing proceeded, with the claimant again with union representation. The claimant was formally dismissed in a letter dated 4 December 2020.

61. No witness evidence has been supplied by Mr Siddons, who left the school's employment without notice the day after the principal suddenly left the school. Mr Siddons was not experienced in disciplinary proceedings, and it emerged in evidence that he was assigned this role only after other SLT staff including the principal refused to take part in the process. He was appointed only after it was said 'a conversation' occurred involving SLT and Mrs German. No records exist or were disclosed relating to this, but I was told it was not in the context of a meeting. I will return to this. Mr Siddons was described as having a very close working relationship with Mr Farr in the mentoring sense, they spent long periods of time together according to witnesses, and indeed he resigned within a day of his mentor leaving the school. Mrs German said in her statement that Mr Siddons was happy with his appointment as disciplinary officer, and that "he carried out the role professionally and with due consideration to the facts at the time". With respect, that was a conclusion which Mrs German was not qualified to draw. Ms Hawker, appearing under summons, gave a contrasting account. She described Mr Siddons repeatedly leaving the disciplinary meeting and coming into the shared working area "…extremely stressed, uncomfortable and agitated…" and that he had said to those there that "I am really stressed", "I don't really know what I'm doing" and "I don't know whether this would stand up in Court". I am not relying on the latter comment as having significance beyond it indicating situational anxiety and reflecting a lack of confidence in his ability to perform the role being asked of him,

62. My knowledge of Mr Siddon's approach comes only from the invitation letters, the notes of the interviews he conducted and his decision letter. Firstly, his letter inviting the claimant to the disciplinary meeting was issued on 3 November, one day after Mrs German's investigation meeting. This required that - within less than 24 hours, and within school hours – all the following things occurred: Mrs German considered and drafted her investigation report; she sent it to Mrs James with her recommendations; Mrs James considered the report and reached a decision - either by herself or in consultation with others; having decided to proceed conducted 'a conversation' within SLT – in correspondence, not a self-contained meeting- to identify a Disciplinary officer; having dealt with refusals, identified the disciplinary officer; the disciplinary officer accepted the role, reviewed the papers and - satisfied that the matter was ready to go - prepared and issued the letter. This undermines any suggestion that this was a carefully considered process.

63. The hearing was set for 5/11. It was entirely unreasonable to expect an employee to be able to secure representation to attend such a meeting within such a constrained timeline. It was highly likely (given he was represented at the investigation meeting) that the employee would want representation at the meeting, this would likely require rescheduling, thus causing him anxiety and adding unnecessary extra stress to what was already a fraught situation.

64. The hearing was rescheduled for 10/11, at which the claimant's representative objected to Ian Caldwell's involvement as note taker, on the basis that the union representative believed having observed the panel's behaviour that Mr Caldwell was in fact covertly running the meeting, with Mr Siddons reading out Mr Caldwell's pre-prepared questions. Mr Caldwell admitted to offering guidance to Mr Siddons, while Mrs German revealed Mr Siddons was coaching Mr Siddons in his role. The meeting was abandoned rather than paused to replace one note taker with another. This tends to confirm the suggestion that Mr Caldwell's role was more central to the meeting than note taking, there having been ample administrative support available within the school to take on that role.

65. The disciplinary hearing took place on 26/11, with the Claimant being accompanied, assisted and represented by the union. I have considered the account given by Ms Hawker of what she observed of Mr Siddons behaviour and demeanour on that day. I have also noted that Mrs German and Mrs James volunteered that they provided advice on processes. I already know from Ms Hawkers account

of the advice he offered her on authorising the trip that Mr Siddons did not understand SLT's responsibilities under the visits policy. Considering the interview notes it is evident that Mr Siddons did not study the policy, as he repeatedly adjourns and pauses the interview on this point (the notes are unclear as to how often) to clarify SLT's role in signing off trip documentation. We know that neither Mrs German nor Mrs James were familiar with or understood the policy, SLT's responsibilities, or the mechanics of consents, so they could not provide meaningful or accurate assistance. Despite the breaks no reference is then made to this aspect of the trip issue in the decision letter. There is therefore little evidence that Mr Siddons as decision maker recognised the importance of this issue in reaching a decision, or balanced the responsibilities of the group leader, SLT and the Safety Officer. Nor, if he had done this, is there an indication that having done so found the claimant to be most culpable. It is surprising that having taken such pains over the point in the interview that he did not address it in his decision, to make clear his view, or that he recognised its significance.

66. During the interview he affirms that (even though Ms Stephenson was not at work on 14/10 and had not delegated her role) the teacher could still check the consents. At no point has the respondent suggested that was possible – it was only put that teachers could access this information via Ms Stephenson. But as a matter of logic if Ms Stephenson is not present, and only she can access the restricted area of the portal, the consents cannot be checked. In his decision he states as part of his rationale in upholding the decision that "you could have checked with Sarah in any event to ensure that all consents had been received" but omits the key information that Ms Stephenson was off on 14/10 or reveals any consideration of how he reached that conclusion or how that impacted his considerations.

67. On the show issue he states that the charge that he "directed pupils only to wear masks if they were anxious" was upheld. This very specific allegation – that he had issued a directive, in contravention of health and safety policy, is not probed in his explanation, and was not according to the notes ever put to the claimant by Mr Siddons. In support of the charge he states that staff observed the claimant not wearing a mask. There was no evidence in the material supplied to Mr Siddons by Mrs German to the effect that staff observed him unmasked. He addressed concerns raised that the claimant did not enforce mask wearing among the pupils (some of whom it was acknowledged had taken off their masks in the auditorium) and finds that his failure to enforce the wearing of masks was in breach of a risk assessment mandating mask wearing and was a breach of health and safety in the circumstances, and that the charge was upheld. There was no such risk assessment, or mandatory instruction, or an enforcement requirement. It is not clear how – even if he were not wearing a face covering (which he denied and was not evidenced) or failed to persuade pupils to put their masks on (he stated he repeatedly asked them to do so) that this confirms the charge that *he instructed them only to wear masks if they were anxious.*

68. At no point in the notes does Mr Siddons raise historical issues, nor are they mentioned in the decision letter. Mrs German's volunteered account on oath was that Mr Siddons was sighted on these issues and – according to her - took these other issues into account during the disciplinary. If that was the case why did he not mention them in the decision letter? If this was Mr Siddons decision alone, and he considered previous behaviours to be a key factor, suggesting a pattern of behaviour and justifying dismissal, this would have been recorded in the decision. It would have strengthened the rationale for his decision. I must assume, if I am to accept he was the author of the letter, and that this was his decision alone, that these formed no part of his considerations.

69. Another issue is that Mr Siddons does not (apart from a perfunctory line to the effect that he has considered other outcomes) give any indication that in reaching his decision that the only possible outcome here is summary dismissal of his having assessed and weighed the seriousness of the misconduct, weighed his role or culpability in the misconduct, his work record, service to the school, or the effect of dismissal on his career prospects. I saw no evidence as to Mr Siddon's approach, but there is no evidence that he conducted this exercise, which he was required to do.

70. This was a decision which would likely end the claimant's teaching career. Mr Siddons would have appreciated that as a deputy head. He would also understand, having taken on the mantle of decision maker, that it was his responsibility to oversee a fair process, and to weigh the information

before him, assess the investigation which had been done and give serious consideration to the decision he had to make. That being the case, I would expect there to be detailed notes as to the process he followed, and retained so as to confirm the careful, thoughtful process someone undertaking this work would take, and a decision letter which reflected a process which covered and reflected the important process he had undertaken. These are not present.

APPEAL

71. On 10 December 2020 the Claimant indicated that he would appeal the decision, and an appeal hearing was scheduled for 15/12, via a letter delivered 14/12. The appeal was to be chaired by Sue Kirby, a trustee, assisted by Tali Michaels, another trustee. The claimant emailed on 14/12 to indicate he could not attend. Ms Kirby did not see the email, and the trustees attended the hearing. An emailed letter of 15/12 rescheduled the meeting for 18/12. The letter refers to the claimant having 'not attended' the meeting and offering this as a final opportunity to attend an appeal meeting. While this was not as extreme scheduling as the disciplinary hearing but was an unreasonable notice period for an appeal. There was no justification for this haste - the claimant had already been dismissed. The hearing was rescheduled for 18/12/2020 in a letter of 15/12.

72. It was emphasised here that Ms Kirby led on chairing the appeal, with Ms Michaels using her legal expertise (she is a qualified but non-practicing Barrister) to act as fact-check/question former. It emerged in evidence that Ms Kirby was familiar with the claimant having had previous disciplinary issues, as a result of being party to information as a trustee. She referred in an email response to Mrs Harkness, who raised questions as to the approach taken to the claimant's case, as to having been involved in "all of Henry's cases". It was at no point explained or disclosed to the claimant - when seeking his confirmation that he was content with this panel - that Ms Kirby had been involved, sighted on, or a decision maker in previous incidents involving the claimant. The claimant was not at this or any previous point, subject to existing disciplinary action. At the stage of the appeal, Ms Kirby was being presented as an independent arbiter, reviewing only the decision being challenged, rather than remaking the decision with the benefit of undisclosed information pertaining to other matters.

73. A feature of this case was the allegation that Ms Michaels was biased against the claimant- arising from text messages exchanges revealed by a parent from the school. The exchanges post-dated these events. Ms Michaels was also the claimant's near neighbour, living on the same street. It emerged that Ms Michaels had previously been the victim of poor safeguarding practices in the school as a parent herself, and of a poor investigation conducted by Ms Hawker, the details of which I will not expand on but concerned a male teacher. This had motivated her to become a trustee and improve the situation for others. Part of this saw her supporting but also pro-actively encouraging parents who had been ill-served by the school to make complaints and seeking out potential complainants. The exchanges revealed that Ms Michaels deplored some of the staff (she commented on succeeding in ridding the school of "toxic men") and was actively encouraging and anonymously drafting complaints to the school against staff, including the teacher she had complained about, asking for leads on a "…stinking complaint that could lead to a dismissal" and that "he needs to go". She made no explicit reference to the claimant or his dismissal, despite the invitation to do so by her correspondent. In my view the exchange of greatest relevance here, to these events, was her frank assessment of Mr Siddons. When his resignation was announced, she described him as "Paul Farr's b*tch". Ms Michaels averred this was a flippant phrase, but the meaning in context was plain - that in her view Mr Siddons did as he was told by Mr Farr. This may have arisen from her assessment of what had happened in the claimant's' case, and from further information she was party to as Trustee. In any event, Ms Michaels had formed the view, and was prepared to anonymously contribute to the narrative, that Mr Siddons was not his own man.

74. At the outset of the meeting Ms Kirby criticised the claimant for her failing to read his email of 14/12 as it was sent outside school hours. This was an unfortunate and ill-judged intervention, setting a defensive and critical tone in a meeting where she was expected to approach the matter with an open mind. When I asked her about the process she followed, and which she was clear she led on, she openly acknowledged that she had not considered what appeal approach was being taken (full rehearing vs. reappraisal of the previous process), but it became evident that Ms Kirby considered that

this was purely a re-appraisal of what had gone before, and she agreed with my clarificatory suggestion that there were to be no tertiary issues introduced.

75. However, it emerged from her evidence that she did not in fact approach this simply as a re-evaluation of the decision which had been made but had rather evaluated the claimant 'in-the-round', considering information to which she said she had been privy as a trustee (regarding previous incidents) which were not put during the process, and which she did not put during the appeal, and some of which was wrong. In evidence, Ms Kirby revealed that she had borne in mind that the claimant had previously driven the school bus to Devon without a valid driving licence. That would have been a very serious incident – but it had not occurred. There was an issue with a DVLA code confirming his licence, on a previous trip, causing a delay – quite a different prospect to driving a minibus filled with pupils without a driving licence.

76. It was of considerable assistance to me at the outset of the hearing that in an effort towards transparency Ms Michaels - my not having been furnished with the appeal bundle - confirmed the materials that were supplied to her and supplied a sheaf of some of what she had been passed, which included questions she had prepared. The appeal papers had been supplied in a brown envelope delivered by hand by Mr Caldwell, the officer organising the school's restructure. He had included materials not disclosed to the claimant – including Mr Farr's pupil interviews. Mr Caldwell admitted no role in this part of the process, and he made no reference to involvement in the appeal in his witness statement or oral evidence. He told me he simply took notes in two meetings and then withdrew. This was untrue and added another layer of opacity to this process.

77. Among the papers was an email from LADO dated 10 December acknowledging and quoting Mrs Germans' LADO referral (which I note included a number of inaccurate and misleading assertions) and wherein she took the opportunity to introduce references to previous incidents. LADO in response confirmed a previous incident, highlighting a previous recommendation that the claimant undergo training. This document was not disclosed to the claimant before the appeal. It was important that any previous incidents, if they were to form part of the panel's mind in terms of assessing what should occur, should have been discussed and the claimant given an opportunity to differentiate or explain them. These were evidently in Ms Kirby's mind as she referred to details of a previous incident, the claimant having to undergo further training, and the trip taken without a licence (which had not occurred). Ms Kirby was at pains to underline that she was the prime mover in this decision. That being the case, it was clear that she was compromised by what she knew, or thought she knew, about previous incidents. She had considered inaccurate information and taken into consideration matters which were never put to the claimant. Mrs Kirby indicated that she needed the claimant to show remorse and he failed to demonstrate this. This requirement was not communicated to the claimant, but he suggests that he expressed regret for what had happened. It is not clear why, if she was simply reviewing the previous process for errors, and found none, why a mere expression of remorse would have allowed her to reinstate someone who was found to be a safeguarding risk. If a safeguarding event had occurred, justifying dismissal, and this was a pattern of neglect and irresponsibility, it appears very odd to suggest remorse would move the pendulum from dismissal to a warning. Ms Kirby seems (quite correctly) to have de-prioritised what became 'the health and safety accusation' around masks – but repeated the erroneous assertion that there was a breach of a non-existent risk assessment, and that he failed to enforce mask wearing, without there being a legal basis for his being able to require this, or a school policy promoting it. As to the trips she showed no understanding of the policy, or the SLT role in approving trips, and worked on the assumption that teachers could access consents via Ms Stephenson, while then when challenged with the access issue considered that there were probably very sound reasons why teachers would not be able to access that information (a proposition which I am afraid makes no sense, given teachers were on her formulation expected to ensure pupils had consents in place, and SLT were required to check all documentation before sign off).

78. Ms Kirby upheld the dismissal and sent a letter to that effect in a letter of 22/12/20. As a consequence of the outcome a report was made to the Disclosure and Barring Service (DBS). On 23/02/2021 they declined to add the claimant to a barred list on the basis of the information supplied or the Respondent's findings. The Teaching Regulation Agency having assessed the referral from

Michael Hall stated that having assessed the information submitted in the referral it was determined that the alleged conduct, even if proven, would not meet the threshold to justify the imposition of a prohibition order and as such the matter will not be investigated by the TRA. The Tribunal, while noting these findings, has not been influenced by it in their consideration of the evidence and issues before it, in terms of considering the claims before me.

79. The school was inspected by OFSTED on 18 March 2021 finding the school did not meet all independent school standards. The report is an independent, evidence-based account of the period in question. It outlines the extraordinary circumstances it encountered: the principal suspended by the Board of Trustees (Mrs German confirming he resigned from the post); the Deputy Head Mr Siddons leaving the next day without notice. They found as follows.

- Leadership and management of the school have been unstable… the school's last standard inspection in March 2019, when the school…was judged to be inadequate…
- Formal grievances have been lodged by different members of the school's leadership team. Allegations of bullying behaviour, or collusion between members of the council and members of the school's leadership team, are not rare. ….it is clear that the school has not been led well in recent times.
- Their work with outside agencies is not strong. The designated officer from East Sussex local authority has well-founded concerns about leaders' knowledge and ability to report safeguarding matters in a timely manner.
- Furthermore, local authority officers are concerned that leaders are not fully aware or mindful of the local arrangements to report safeguarding concerns.
- Records of safeguarding concerns are not complete because key staff do not update the school's system to record safeguarding concerns in a timely manner.

UNFAIR DISMISSAL: LAW

80. The Respondent's case is that this was dismissal for conduct (gross misconduct). That is a potentially fair reason under s 98(2)(b) Employment Rights Act 1996 ('ERA'). Section 98 of the Employment Rights Act 1996 (ERA) provides as follows:

> 98(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 –
> The reason (or if more than one, the principal reason) for the dismissal, and
> 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.
> A reason falls within this subsection if it – …relates to the conduct of the employee, …
>
> If the Respondent establishes that reason, a determination of the fairness of the dismissal under s98(4) ERA is required….
>
> 98. (4) In any other case where the employer has fulfilled the requirements of subsection (1) the determination of the question whether the dismiss is fair or unfair (having regard to the reason shown by the employer) – 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 shall be determined in accordance with equity and the substantial merits of the case.

81. It is for the Respondent to show that it had a fair reason to dismiss the Claimant. In a conduct case, for the dismissal to be considered substantively fair the Tribunal must consider three questions (the *Burchell* test)[4] - whether the Respondent's decision makers had a reasonable and honest, or genuine, belief in the Claimant's misconduct; whether there were reasonable grounds for such a belief; and whether the Respondent had carried out a reasonable investigation into the circumstances of the alleged misconduct. The burden of proof is neutral in relation to the fairness of the dismissal once the Respondent has established that the reason is a potentially fair reason for dismissal. The

[4] British Home Stores Limited v Burchell [1978] IRLR 380

Tribunal must determine whether the process followed and the decision to dismiss falls within the range of reasonable responses to the misconduct identified[5]. This test of band of reasonable responses also applies to the belief grounds and investigation referred to.

82. The factors that may inform the standard of reasonableness of investigation vary with the circumstances. An employee being caught in the act or admitting the misconduct requires less in the way of investigation than a case based on inference.[6] In other cases, a relevant factor may be the likely sanction. An allegation likely to lead to dismissal will typically require more by way of investigation than one likely to lead to a first warning. Similarly, the greater the impact and consequences the decision will have on an individual being able to work in their chosen field in the future, the more that will be expected of the investigation. [7]

83. The Tribunal must not substitute its own view regarding the investigation into misconduct or regarding the decision to dismiss.[8] This means that I must decide not whether I would have investigated things differently, but whether the investigation was within the range of investigations that a reasonable employer would have conducted. The test as to whether the employer acted reasonably in section 98(4) ERA 1996 is objective.[9] The Tribunal must assess the reasonableness of the employer and only consider facts known to the employer at the time of the investigation and at the point of the decision to dismiss.[10] With regard to serious cases, where dismissal is likely, guidance on the reasonableness of these investigations is offered in paras 58 – 63 of ***A v B[11],*** where Elias J said at para 60:

"Serious allegations of criminal misbehaviour, at least where disputed, must always be the subject of ***the most careful investigation****, always bearing in mind that the investigation is usually being conducted by laymen and not lawyers. Of course, even in the most serious of cases, it is unrealistic and quite inappropriate to require the safeguards of a criminal trial, but* ***a careful and conscientious investigation of the facts is necessary and the investigator charged with carrying out the inquiries should focus no less on any potential evidence that may exculpate or at least point towards the innocence of the employee as he should on the evidence directed towards proving the charges against him****." (my emphasis)*

84. It is particularly important to test and assess the evidence of an accuser where the consequences will be severe for the employee[12].

85. The Tribunal also notes ***Sneddon v Carr-Gomm Scotland Ltd [2012] IRLR 820***, at para 15, where the Court of Session described the approach to deciding whether the sufficiency of an investigation into misconduct is adequate. This is pertinent in relation to this case, in terms of the analysis that must be undertaken of what was done here: -
"…the tribunal necessarily ***has to examine and consider the nature and extent of the investigations carried out by the employer and the content and reliability of what those investigations reveal before it can reach a view on whether a reasonable employer would have regarded the investigatory process as sufficient in matters such as extent and reliability or as calling for further steps.*** *That decision is essentially one for the assessment of the tribunal, as a specialist, first instance tribunal." (my emphasis).*

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[5] British Leyland v Swift [1981] IRLR 91; Whitbread v Hall [2001] IRLR 275
[6] Gravett v ILEA [1988] IRLR 497
[7] A v B [2003] IRLR 405 EAT, Salford Royal NHS Foundation Trust v Roldan [2010] IRLR 721 CA
[8] Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 Foley v Post Office; Midland Bank plc v Madden [2000] IRLR 82, London Ambulance Services NHS Trust v Small [2009] EWCA Civ 220
[9] Iceland Frozen Foods Ltd v Jones [1982] IRLR 439
[10] W Devis and Sons Ltd v Atkins [1977] IRLR 31; West Midlands Co-Operative Society Ltd v Tipton [1986] IRLR 112
[11] See footnote 10 above.
[12] Salford Royal NHS Foundation Trust v Roldan [2010] IRLR 721, CA, [2010] EWCA Civ 522

86. I was referred to **Ilea v Gravett** [13]and **RSPB v Croucher**[14]. In Ilea it was noted that the nature of the investigation will depend on the admissions made – where there is more emphasis on inference more investigation is likely to be needed (and conversely where there is clear evidence and or admission the less investigation necessary). I am also referred to **Abernethy v Mott Hay and Anderson** [15] - where there is more than one conduct related issue it is wrong to focus on which was the principal one – rather the tribunal should look at the "set of facts known to the employer or, it may be, of beliefs held by him which cause him to dismiss the employee". This case was followed in **Governing Body of Beardwood Humanities College v Ham** [16] where it was emphasised that it is the totality of the conduct in question which is to be considered with regards adequacy of the reason for dismissal.

87. Finally, on the question of sanction, there is always an area of discretion within which a Respondent may decide on a range of disciplinary sanctions all of which might be considered reasonable. It is not for the Tribunal to ask whether a lesser sanction would have been reasonable but whether the dismissal was reasonable.[17] I am reminded by the respondent that my task is to judge the overall fairness of a dismissal by reference to the end-to-end-process, including the appeal stage. Should there be shortcomings in the Investigation or the Disciplinary processes, the overall process can still be considered fair where there is a sufficiently thorough and reasonably conducted appeal process in the context of sufficient evidence of gross misconduct.[18]

CONCLUSIONS

88. Taking the issues in order: *Was the claimant dismissed?*
It is not in dispute that the claimant was dismissed.

89. *What was the reason or principal reason for dismissal?* Was it a potentially fair reason? *The respondent says the reason was conduct.*
The reason given by the Respondent for the dismissal was gross misconduct. Counsel for the Respondent put to the Claimant that he was under a contract which bound him to fulfil particular 'promises', and that failure to meet some of those might constitute gross misconduct, and in those circumstances the employer could summarily dismiss him. The claimant accepted this and that a serious safeguarding breach could constitute gross misconduct. The Tribunal accepts that based on the contemporaneous evidence supplied, considering what was known at each stage and the evidence that the Claimant was dismissed by the respondent for what they considered to be gross misconduct. The law provides that a reason for dismissal related to conduct is a potentially fair reason under section 98(2)(b) of the ERA 1996.

93. However the Tribunal also noted a detail voluntarily disclosed by Mrs German in her supplemental statement, that another teaching colleague she dealt with – someone she stated was caught with stolen school tools (theft from employer – explicitly defined as Gross Misconduct in their code, justifying summary dismissal) – was dealt with by way of a written warning. While these are not identical situations (the one she disclosed being a crime), it is striking that the school was content to retain a staff member guilty of an act indisputably falling within the definition of Gross Misconduct. It confirms that it was not the school's policy to uniformly treat gross misconduct (even unequivocal gross misconduct) as grounds for dismissal.

94*. Did the respondent genuinely believe the claimant had committed misconduct. In deciding whether there were reasonable grounds for that belief the Tribunal will consider:*
1. at the time the belief was formed had the respondent carried out a reasonable investigation;
2. whether the respondent otherwise acted in a procedurally fair manner;
3. whether dismissal was within the range of reasonable responses.

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[13] 1988 IRLR 497
[14] 1984 IRLR 425
[15] 1974 ICR 323 (per Cairns LJ at p 330)
[16] UKEAT /0379/13
[17] Boys & Girls Welfare Society v McDonald [1996] IRLR 129
[18] Taylor v OCS Group Limited [2006] ICR 1602

Reasonable Investigation?

95. To be clear an investigation does not need to meet criminal investigation standards but should be sufficient to establish a disciplinary case to answer. Where the outcome might be dismissal and may impact on a person's ability to continue in their chosen profession, particular care should be taken to ensure the investigation is thorough and fair. It is not my role to revisit a decision and offer suggestions as to how I might have done things better. It is my role to clarify if the employer acted fairly and reasonably on the basis of what the employer knew at the time. Did they gather the relevant information? Did they speak to the people they needed to gather the relevant information? Did they do so without bias? The claimant was suspended to allow an investigation to occur so it was clear from the beginning of this investigation that this was being regarded seriously, and it would have been clear from the policy that a finding of gross misconduct might lead to dismissal. That being the case the investigation had to be of the 'most careful and conscientious' kind and had to look at exculpatory as well as damning evidence. I have therefore considered the quality and extent of the investigation here (so as to apply the Sneddon v Carr - Gomm approach).

96. The Claimant challenged the basis for the Respondent's belief and the disciplinary investigation which underpinned it. The Respondent asserts in submissions that this is straightforward - the Respondent can rely on things the claimant said, and the respondent 'saw'. No HR records were kept or disclosed relating to the initial fact-finding, the investigator's appointment, or the running of the investigation. No investigation report was produced, nor any of the exchanges I would expect to see outlining what should be standard practices in such a process. The lack of this material is troubling and suspicious.

97. As to relying on what was 'seen' at the talent show, a basic requirement here was interviewing the witnesses to the alleged offending behaviour. This was because Mrs German had no knowledge of what had happened, not having attended the show. Confirming and clarifying the (partially contradictory, and incomplete) emailed accounts she had seen from Ms Stephenson, Mrs James and Ms Westlake would have required Mrs German at a minimum to speak formally at least to Ms Stephenson and to Ms Westlake to take their accounts. I saw no material from a witness (irrespective of whether I could test them or not) who was at the concert who said the claimant was not wearing a face covering (one of Mrs German's assertions), or that they heard him misdirect his class, or which pupils – or how many - from his class were not wearing masks. So the respondent could not rely on what they 'saw'.

93. As to what he said, in order for Mrs German to investigate the wrongdoing, she needed to understand how the alleged behaviour offended policy, which she was unclear on, before challenging the claimant in a formal interview. Basic fairness demands that an employee charged with wrongdoing should be clear as to what he is accused of. Nor did she outline or put the charges she was investigating to the claimant. This was perhaps because she had not formulated them, having not secured evidence, researched or understood the policies. No discernible investigatory effort was made by Mrs German in advance of the investigation meeting, nor it seems, afterwards. She put false propositions to the claimant. She put the proposition that the regulations in force governing mask wearing in schools were akin to the regulations for shopping. They were not. She put that a pupil had told her that they were told not to wear masks and that the claimant wasn't wearing one. She explicitly - and on oath - averred that she did not interview or speak to pupils or use, refer to, or rely on Mr Farr's notes. This was therefore an outrageous statement to put to the claimant without evidence to back it up. One piece of evidence which was potentially important, and arguably undermined her position was Ms Stephenson's report, which she did not disclose to the claimant. Reliance was placed on the wording the claimant used in the meeting to suggest he had misled his class. I was not persuaded that the words the claimant reported he used were designed to or were intended to misdirect his pupils and indeed it appears that the appeal panel later accepted that, after speaking with him and reviewing the available materials. In any event the unchallenged evidence – that his class were wearing masks when they arrived at the theatre - tends to support the position that he did encourage those with masks to wear them. What happened later by common account seems to be that some (unnumbered, unnamed, unidentified) pupils having seen Mrs Harkness' pupils without masks followed suit.

94. As to the trip Mrs German did not clarify or understand the policies she was interpreting or probe the missing elements she needed to understand. She did not clarify what had occurred with Ms Stephenson, or how the consents process now worked. Ms Stephenson was central to both of the accusations, they had originated from her, so the failure to interview her, or secure any form of statement from her then or since, is bizarre. Without speaking to Ms Stephenson to clarify the process and the requirements, Mrs German was proceeding without any proper understanding as to what the exact nature of the misconduct here was. A fair investigation would have seen Mrs German approaching Ms Stephenson to understand the mechanics of the consent process. It would also have considered whether Ms Stephenson carried culpability for what had occurred. With regards to the trip, the evidence she relies on is captured in emails, but in evidence Mrs German adopted an obtuse and close-minded approach to the wording of the policy and what she believed it meant, as opposed to what it stated. The questions were broader than her formulation (as she professed it) had determined them to be. She did not identify aspects not codified in the policy, regarding the portal, or what information the claimant, or indeed Ms Hawker had access to when planning or making the decision to authorise the trip. A fair investigation would have seen Ms Hawker asked to explain her role and actions in authorising the trip, to at least understand what had occurred.

95. Information which Mrs German volunteered had informed her decisions was not disclosed or put to the claimant. No investigation report was produced, and no records made or kept regarding her process. I saw no contemporaneous rationale for her approach, no evidence of her decision, or what she communicated, or to whom. I have had to carefully examine what was done to form a view as to whether the approach taken was reasonable. It is my considered view that it was not. It is not the role of the Tribunal to impose an idealized approach on employers or criticise them for missing small details. It is however difficult to evaluate the investigatory efforts in a case where so little information was recorded, retained or supplied. Even taking the investigators account of her actions at its height, this investigation was inadequate, and it was unreasonable for a decision maker to rely on it.

Fair procedure?

96. It is established law that a good disciplinary and appeals process can rectify and overcome the problems presented by a poor or ineffective investigation. Richard Siddons, the decision maker was not available to me, there are no records relating to his appointment, no copy of the pack he was sent, or notes of his deliberations. I am left to assess the quality of the approach he took, on the papers available. He oversaw a process scheduled at a pace which was not ACAS compliant. Without having had the benefit of evidence from Mr Siddon I am reluctant to assume that this breakneck process was his chosen approach (particularly given his acknowledged inexperience). If this was the HR advisors strategy, it was unfair. I would expect conscientious HR advisors to act to ensure that any claimant was given reasonable time to prepare for a hearing of this gravity, in accordance with ACAS guidelines. This was another troubling aspect of this process. The school had the benefit of two HR Professionals at this time. As such there is a heightened level of expectation as to the investigation that would be possible with such a well-resourced organisation, as opposed to one without such skilled assistance. It is remarkable that Mrs German, a CIPD qualified HR did not retain or secure any records from this period. She remained in post at the point this claim was launched so had every opportunity to do so.

97. Mr Siddons was ill-served by the investigation, but there is no evidence to suggest he recognised that let alone felt empowered to address any deficiencies in it. I noted that his advisors on process were Mrs German and Mrs James. Certainly, on the Health and Safety allegation his findings, such as they are, do not address the original allegation. Instead I have a disturbing account of his behaviour from Ms Hawker, I have the claimant's account, I have the notes of the meeting which confirm the repeated adjournments to check basic information (which he should have known or been possessed of as the person leading the disciplinary process), and the notes of the abandoned meeting which point to Mr Siddons acting as someone else's voice asking questions he hadn't formulated and did not understand. We know that even in his own role he was unaware of his own safeguarding duties, given his erroneous guidance to Ms Hawker. When taken alongside his references to witness evidence that didn't exist, citing findings that were not put, his failure to indicate any balancing exercise when assessing elements in the case, or in considering the penalty, this cannot be regarded as a reasonable or reliable disciplinary process. I have noted Ms Michael's unguarded and unflattering assessment of him as Mr Farr's creature. Ms Michaels was an active and well-informed trustee and

was closely sighted on this process and his involvement in it. Ms Hawker remarked on the extreme closeness of the relationship between Mr Farr and Mr Siddons, Mr Siddons evident ambition, and his extreme discomfort with his role here. While I am not prepared to conclude that Mr Siddons was following orders here, I am not convinced having heard this case and reviewed the materials that his letter reflected the process he oversaw, the evidence before him or that this was his decision alone.

98. The law recognises that a full re-hearing is not necessary for an appeal to be valid, but it should consider the fairness of the proceedings below. ACAS requires an appeal to be "dealt with impartially and wherever possible by a manager who has not previously been involved in the case." Mrs Kirby was not independent of the case – she volunteered that she had previously been involved in aspects of this claimant's employment, she was sighted by Mr Caldwell on historical and irrelevant materials, none of which were shown to or put to the claimant, and she took those into account in reaching her decision. She did not critically evaluate review or test the decision below; she did not detect or challenge the shortcomings in the investigation but rather she revisited it and remade it based on irrelevant and inaccurate information. Her approach to this appeal made a bad process worse. Mr Caldwell did not disclose his role in the appeal which (at a minimum) included assembling the appeal bundle and hand-delivering the papers. The bundle included materials to which he had access, and which were not disclosed to the claimant. Ms Michaels did not accept that she was potentially conflicted, rather she was relying on her professional detachment. It did not cross her mind that had the decision gone the other way, she could be accused of bias given her close ties to the claimant (as his close neighbour; his wife taught her child; their children were friends visiting one another's homes). While there were suggestions of Ms Michaels having been biased in the process, she had in fact prepared sensible questions to question the case but seems to have failed to pursue them. Despite the suggestion of Ms Michaels' being biased, there is little to suggest that she influenced the decision here at all, or that she challenged Mrs Kirby's approach, which was partly based on erroneous pre-conceptions. It was Mrs Kirby who brought undisclosed knowledge of previous incidents and used it to find the claimant wanting. Given that there was, according to them, a potentially serious safeguarding failure here, and if something actionable happened the responsibility for that failure would attach to the school (or their insurer), it was telling that the outcome was to sack the teacher and return to business as usual. It was telling that OFSTED in their report bemoaned the schools leadership lack of awareness of safeguarding issues, and the reporting of same. Whenever the iSAMS 'access' issue was raised during the process, the response was for Mrs German, Mr Siddons and Ms Kirby to characterise it as the claimant absolving himself of blame for what had occurred. At no point did any of them recognise that there was an issue here for which the school was (at least) partly responsible and which their systems had (at least) partly caused. While the processes followed throughout this whole process had the appearance of a fair process (letters providing notice of meeting, opportunities for colleagues to accompany the accused and so on), the process itself was mostly undocumented, unmanaged and rushed, and there was a lack of challenge and analysis on the part of decision makers and the appeal panel.

Range of reasonable responses?

99. The mantra 'safeguarding is everyone's responsibility', derived from the statutory "Keeping Children Safe in Education"[19] guidance was repeatedly cited by the respondent's witnesses, in furtherance of the idea that the claimant had failed in his responsibilities. It did not seem to occur to them that this concept cuts two ways. Under the policy in force at the time, the policy all staff were contractually obliged to follow, it was not just the teacher's responsibility to ensure Educational Visit requirements were met – it allocated responsibility to others. Responsibilities were expressly shared between the teacher/group leader, the health and safety officer and the management group. What is more, the policy was not updated to reflect the new system for consents introduced in 2019, a School Management failure which the school attempted at the hearing to pin onto a departed officer. They sought to use the failure to maintain the policies to their advantage and use the wording of a policy which no longer reflected their processes against the claimant. I am not satisfied that the school or its agents fulfilled their roles in the manner parents had a right to expect here. It was clear to OFSTED that safeguarding was not prioritised by management at this time. The approach taken here, despite the clear provisions of the policy, placed full responsibility on the teacher and absolved the SLT

[19] Keeping children safe in education -Statutory guidance for schools and colleges; Dept for Education Sept 2020

member (who authorised the trip), and Health and Safety Officer (who was being paid to run and administer this system, to take the administrative burden from teachers) of any responsibility.

100. This trip happened without parental consents in place. The claimant took on the organization of the trip, something he had done many times before, in pursuit of educational goals. He had successfully attended to this on all previous trips. The difference between these trips was that a dysfunctional new system was in place. I accept as a matter of fact that he could not access the consents and this problem was created by the school. Under the old paper-based system the teacher would be 100% accountable for missing consents, as he collected and held them. Under the new system, while someone else issued and collected them, teachers were - per the 2019 email - expected to assist and 'chase up' missing consents, SLT were expected to confirm everything was in place and approve or sign-off the trip. It is my view, that whether or not he had read Ms Stephenson's email of 13/10, it would have been prudent for the claimant to liaise with her to check what the up-to-date consent arrangements were, albeit in the context of him teaching classes throughout the day. I would have expected him to be reading his emails in the run up to a trip he was running. However Ms Hawker's sign-off represented SLT's final authorisation of the trip. She had failed to fulfil her role in checking the supporting information properly (including the consents) - in no small part because neither she nor her more experienced colleagues knew what they should be doing. The claimant relied on her assurance, as he was entitled to do. The inept and negligent introduction of an electronic system by school management led to a situation where there was no guidance in place, no way for teachers to check consents, or for SLT to double check the consents. Ms Hawker advised that the first thing she did when appointed to a leadership role was to have someone trained in the role assigned to Ms Stephenson (Educational Visits Co-Ordinator) and that they now take responsibility for making these arrangements.

101. The trip issue was arguably a safeguarding matter, but nothing had in fact gone wrong here, and no parents had complained that their children were taken on a trip without their consent. That is not to dismiss the potential significance of the issue but characterising it as a "serious safeguarding incident" does violence to language in Keeping Children Safe in Education intended to encompass incidents such as Child Sexual Exploitation, FGM and Child Criminal Exploitation. This was an exaggerated response to an administrative issue which required calm analysis. The claimant had run trips previously and secured consents on all previous occasions. What was the difference between those occasions and this one? They had introduced an opaque and badly governed electronic system. Parents who had previously provided consents had not updated them, other parents it seems had not been approached at all. Who was really at fault for this? Was this essentially an administrative failure, a system failure? These questions were never considered or weighed – if they were there was no evidence of it having happened. There was no meaningful investigation, the investigator never understood what the policy was, how the process worked, or what had gone wrong. How could she, not having spoken with the person who administered it. This "serious safeguarding issue" led to no change (until Ms Hawker acted later to change the approach). A rational response would have been to interrogate the circumstances and consider the implications It is clear that this did not happen and supports the view that this was not in truth about safeguarding.

102. The involvement and relative culpability of the people with responsibility here was not weighed by the decision maker because - as I saw - Mr Siddons did not understand the policy, nor did those advising him (Mrs German and Mrs James). There was no evidence to support Mrs Germans assertion that Mr Siddons factored previous incidents into his evaluation, tipping the scales towards dismissal. I am not satisfied that dismissal as a sanction - for the incidents presented to Mr Siddons - fell within the range of reasonable sanctions open to a school dealing with a teacher without previous live (or spent) disciplinary issues. This is quite apart from the fact that the charges were not sustained by the unprofessional investigation conducted here. The fact that in deciding the penalty here, the decision maker made no reference to the claimant's record, his length of service, or any meaningful reference to having considered a range of options, leave me to conclude that his was not a fair process. Reviewing the process I am not satisfied that the investigation was reasonable, or that the processes were fair, and consequently there was insufficient basis on which to base a reasonable belief in the claimants misconduct.

103. I was not persuaded that a genuine belief in misconduct warranting dismissal existed here, or that it was what drove this process. I noted the hasty processes, the (apparent) lack of record keeping and the absence of investigation which – taken together with the prescient comment from Mr Farr about the claimant not knowing what was about to hit him - suggest a degree of predestination about this process. There are strong indications that the focus here was not safeguarding. I was told by Mrs James that there had been no threat to class teachers jobs from the restructuring, good Steiner teachers being hard to find. This did not accord with Mr Farr quickly accepting Mrs Harkness' resignation, or his assertion that (in taking her back) she would be required to take on more teaching, unless he knew other teachers were to be dismissed. When asked how the claimant's work was dealt with after his dismissal, Mrs James said that his dismissal created no financial saving as he was replaced, only for it to emerge that he was replaced by reallocating existing staff. This dismissal represented a net saving in cash terms, at a time when the school was actively trying to save money. It also enabled the school to dispense with a teacher the School Manager regarded as intimidating, aggressive and discomforting, and who the HR viewed as insubordinate. The trip incident was used as a bolt-on to the 'mask' issue to justify the dismissal of a member of staff, unpopular with management.

104. None of the three elements of the Burchell Test were satisfied here. The Respondent asked me to rely upon as 'safe' decisions made by two absent witnesses - the principal against whom whistleblowing complains were made by one of their witnesses, and a Deputy Head who walked away from his duties without notice, leaving little trace of his decision-making process. There was no effective investigation here. The disciplinary process was rushed and opaque. Doubts hang over the decision maker's process, competence and independence. The appeal that followed was flawed and compounded, rather than solved, issues from the earlier stages. I am troubled that the school has seemingly not retained key records pertaining to what it presented as a serious safeguarding incident, contrary to requirements of Keeping Children Safe in Education. The process their HR officers pursued created pressure and urgency in an inappropriate manner. This was an unfair process, and the dismissal was substantively unfair.

105. In assessing the dismissal I am required to consider the equity and substantive merits of the case. The claimant lost his job, had his reputation as a teacher damaged, and suffered financial loss. No consequences followed for others who failed in their duties under the visits policy, or failed to maintain policies, or to manage an effective health and safety strategy. Having heard the evidence and observed the witnesses, I consider this dismissal was not simply the result of an unfair process, or an inept investigation lying beyond the band of reasonable responses, but rather was a dishonest and opportunistic enterprise, which did not reflect the averred ethos of this school. One aspect which went unmentioned was the effect this episode had on the children's education. Their parents had paid for Steiner education, an important aspect of which was the ongoing support and development achieved from having the same teacher for a sustained period. This was taken from them. The pupils had no opportunity to say goodbye to their teacher. No reasonable school management would have overseen this process, in the given circumstances.

A hearing will now be listed to consider remedy.

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Employment Judge **Harley**

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Date: 28 October 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

5 November 2024

Case No: 2301618/2021

FOR THE TRIBUNAL OFFICE

P Wing