EMPLOYMENT TRIBUNALS

Claimant: Mr D Dee

Respondent: Suffolk County Council

HEARD AT: Bury St Edmunds **ON**: 23rd, 24th 25, 26th, 27th, 30th & 31st January 2017
1st & 2nd February 2017
8th February 2017

BEFORE: **Employment Judge Postle**

REPRESENTATION

For the Claimant: Mr Khan (Counsel)

For the Respondents: Mrs Sheppard (Counsel)

RESERVED JUDGMENT

1. The Claimant was unfairly dismissed.

2. The Respondents were in breach of contract.

REASONS

1. The Claimant brings three main claims to the Tribunal, the first that he was unfairly dismissed, secondly that he was wrongfully dismissed, and thirdly, the Respondents were in breach of contract.

2. As agreed at a previous Hearing before Judge Laidler on 19th September 2016, the claims give rise to the following specific issues:

   2.1 What was the principal reason for dismissal?

2.2. The Respondents contend that the principal reason for dismissal was a reason related to conduct as alleged in allegations 1 to 3 set out in the "outcome of disciplinary hearing letter" dated 26th June 2015;

2.3. The Claimant contends it was in relation to appropriate steps that he took to protect himself or other persons in danger in circumstances of danger which he reasonably believed to be serious and imminent, contrary to section 100(1)(d) of the Employment Rights Act 1996.

2.4. Further did the Respondents act reasonably in relying on this as a sufficient reason for dismissal?

2.5. Did the Respondents have a genuine belief in the misconduct?

2.6. Was this belief based on reasonable grounds?

2.7. Did the Respondent carry out as much investigation as was reasonable?

2.8. Was the dismissal procedurally unfair as set out in paragraphs 44 of the grounds of complaint?

2.9. If the dismissal was procedurally unfair would the Claimant have been dismissed in any event?

2.10. If the Claimant was unfairly dismissed, should there be a deduction for contributory fault. In relation to contributory fault:

a. The Respondent says it will not rely on allegation 4 and 5 as set out in the "outcome of disciplinary letter" dated 26th June 2015:

b. The only other allegations of contributory fault are those arising from matters relating to allegations 1, 2 and 3 and/or any findings of fact made by the Tribunal behind those allegations.

2.11 In relation to the breach of contract claim:

a. Was the model disciplinary procedure 2002 contractually binding as between the parties?

b. If it was, did the Respondent act in breach of paragraph 5.9 by dismissing the Claimant before the determination of his appeal against the dismissal?

c. The Respondent contends that the model disciplinary procedure was not contractual. In the alternative the

Respondent submits that it was duty bound to apply its current 2014 model disciplinary procedure with regard to notice of dismissal as the 2002 procedure was not in compliance with the school staffing regulations of 2009.

d. In relation to wrongful dismissal, quite simply, did the Respondents wrongfully dismiss the Claimant by dismissing him without notice?

3. In this Tribunal we have heard evidence on behalf of the Respondents from Mrs A Jones, a Strategic Officer in Education and Learning Service, Mrs Chevin, Chair of the Governing Body (disciplinary), Mr P Davis, HR Manager, Miss C Norris, Chair of Governing Body (appeal), and Mrs L. Wragg, HR Service Manager. All those witnesses giving their evidence through prepared witness statements, Mrs Jones also providing a supplemental witness statement.

4. The Claimant gave evidence as did his partner, Miss C Pickard, again, both through prepared witness statements. The Tribunal also had the benefit of three lever arch files in relation to the bundle of documents consisting of 1,358 pages.

5. The Tribunal has been greatly assisted by the written submissions of both Counsel for Claimant and Respondent; the Claimant's Counsel, consisting of 50 paragraphs which Mr Khan went on to develop orally before the Tribunal, and Mrs Sheppard's written submissions consisted of 92 paragraphs. Mrs Sheppard responded orally to some of the submissions made by Mr Khan.

6. As both Counsel's submissions are in writing, no disrespect is intended, the Tribunal does not intend to rehearse them as they are in writing and therefore for all to see.

7. It is important to note that during the course of those submissions, counsel has referred to a number of authorities, these being three from the EAT, namely: -

i) Mr T Singh v DHL Services Ltd, September 2013

ii) A v B November 2002

iii) Secretary of State for Justice v Mr Mansfield, March 2010.

8. In addition to the above Court of Appeal cases, namely, *London Ambulance Service NHS Trust v Small* [2009] IRLR 553 and *Crawford & Another v Suffolk Mental Health Partnership NHS Trust* [2012] EWCA 138.

The Law

9. The starting point is the Employment Rights Act 1996 dealing with general fairness under section 98 which states as follows:-

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

10. In establishing the reason for dismissal it is for the employer to show that misconduct was the reason for dismissal. The E.A.T. in *British Home Stores v Burchell* [1980] ICR 303 indicated there was a threefold test. That is, the employer must show:

- It believed that the employee was guilty of misconduct,
- It had in mind reasonable ground upon which to sustain that belief,
- At the stage which that belief was formed on those grounds, it had carried out such investigation into the matter as was reasonable in the circumstances.

11. This means that the employer need not have conclusive direct proof of the employee's conduct only a genuine and reasonable belief, reasonably tested.

12. What I as a Tribunal must be clear, is whilst the case itself of Burchell was decided at a time when the burden of proof was on the employer to show not just the reason for dismissal but also that it acted reasonably in treating that reason as sufficient grounds to dismiss the employee. Since that case was decided, the onus on the employer to show reasonableness was removed by section 6 of the Employment Act 1980 and the Employment Appeal Tribunal has therefore cautioned the application of the Burchell test without reference to this change. Which may lead a Tribunal into error in respect of the burden of proof.

13. Therefore, when considering the above, it is only the first of the three aspects of the Burchell test identified above that the employer must prove. The burden of proof in respect of the two other elements of the test is neutral.

14. When assessing whether the Burchell test has been met the Tribunal must ask itself whether what occurred fell within the range of reasonable responses of a reasonable employer. The range of reasonable responses test applies in a conduct case to both the decision to dismiss and to the procedure by which the decision was reached. What I cannot do is substitute my view as to whether the decision to dismiss was fair and reasonable.

15. In addition to the above in also reaching my conclusions on all matters I must have regard to the ACAS code which deals with general fairness and best practice to be followed when dealing with the disciplinary process. In relation to delays and the length of suspensions which has become a feature of this case and whether the internal investigation should have been deferred pending the outcome of the criminal proceedings.

16. Firstly I remind myself that the ACAS code recommends that if a suspension with pay is considered necessary it should be as brief as possible and be kept under review. It should also be noted that the Court of Appeal commented in the *Crawford* case to which I have been referred to that even where there is evidence supporting the employer's investigation, suspension "should not be a knee jerk reaction and it will be a breach of the duty of trust and confidence towards the employee if it is".

17. Again, the ACAS code suggests that any investigations should be carried out without unreasonable delay. The code emphasizes the importance of establishing facts, putting allegations to the employee promptly before recollections fade. In *RSPCA v Cruden* [1986] ICR 205, again an EAT case, an unjustifiable delay of seven months before disciplinary proceedings were commenced against an RSPCA

Inspector, made an otherwise fair dismissal unfair, even though the employee suffered no prejudice.

18. With regard to intervening Police investigation, the employer's investigation may be hampered where the alleged misconduct is the subject of a Police enquiry. However, that is not necessarily a valid excuse for delay in completing the disciplinary procedure. Much will depend on the individual circumstances of the case. In A v B, to which I have been referred, an employee was suspended in mid 1997 and a disciplinary hearing did not take place until December 1999. Taking account of the fact that the Police investigations took place between October 1997 and October 1998, such delays were held by the EAT to be grossly improper. However, in another case when an allegation against an employee became part of a wide ranging Police investigation into allegations of ill treatment of inmates at a prison, a delay of two years did not render the dismissal of the prison worker unfair where full written evidence had been taken at an early stage.

19. Finally the ACAS code stresses that employers should keep an open mind when carrying out an investigation, their task is to look for evidence that supports as well as weakens the employee's case. If disciplinary action results in dismissal and there is an indication that the employer has prejudged the outcome, that can be enough to make the dismissal unfair.

20. The fact of criminal proceedings does not automatically entitle the Respondent employer to defer an internal investigation and disciplinary hearing, given the fact that the criminal burden of proof will be entirely different to that which is required in the workplace.

<u>The Facts</u>

21. The Claimant commenced his employment at the Cedars Park Primary School on 28th October 2013 as Head Teacher. He had been employed by Suffolk County Council in various teaching roles since September 2003. The Claimant's first performance review appraisal with the Governing Body on Thursday 3rd April 2014 (94) concluded

> "At the time of this performance review the Head Teacher had been in post for just over 6 months (there was a typing error suggesting 4 weeks). Appointed Governors took the opportunity to acknowledge how quickly the Head Teacher had settled into the new role and began to build positive relationships. . . The Governors felt that good progress had been made over the last 4 months over the whole breadth of school activities. Relationship with parents was particularly positive and the preparation for Year 5 was progressing well. Overall progress was generally on target and the quality of teaching was improving. The Governors felt that this was a very positive start for the Head Teacher."

23. When the Claimant commenced his employment with the Respondents he was given a copy of the Respondent's disciplinary procedure (182 – 195). No other disciplinary procedure was provided to the Claimant and thus this procedure should have been the applicable procedure. The policy document is recorded as being updated 2002. Indeed this procedure was confirmed as being the applicable procedure by Mr Davis when he wrote to the Claimant on 14th April 2014 enclosing a copy of the School's disciplinary procedure which was indeed the 2002. In that procedure at paragraph 3.3, it does state that "suspension will not be unnecessarily protracted" (185).

22. That procedure also stated at 5.9 (188). . . "any appeal lodged against a termination that he or she shall cease to work at the school must be decided before the Director of Education is instructed to dismiss the employee".

23. It is worthy of note that a School's Governing Body's relationship with a Head Teacher is an unusual one. On the one hand the Head Teacher has to follow the direction of the Governing Body and on the other hand the Head Teacher has to be left to carry out his job without too many constraints from a Governing Body. Guidance on the relationship and the roles between the two has been published by the Department of Education (168 – 173). Of relevance is the recommended decision matrix for Cedars Park (174 – 177) which deals with many things but relevant for the purposes of these proceedings, the requirement for suspending the Head Teacher be taken by the full Governing Body because it is "level 1" decision (174).

24. It had been agreed by the School, in or about February 2014 that Child A, a 9 year old girl, who had spent time in the 'pupil referral unit', should be transferred to Cedars Park Primary School. There was a behaviour plan in place, albeit dated October 2012, some 14 months out of date. No explanation has been given as to why the behaviour plan had not been updated (783). The child was also subject to a School Action Plus and was under the care of Child and Adolescent Mental Health Teams (124). The behaviour plan indicated the child had "high levels of anxiety that culminates in being violent towards her friends, withdrawal from lessons, dangerous climbing on furniture, rolling on floor, refusal to follow reasonable requests, visible anger and/or distress". The plan went on to describe what triggers the above, warning signs and interventions to avoid such as shouting or raising voice, physical restraint unless immediate risk of self-harm or harm to others, use of quiet room only as a last resort.

25. In discussions prior to Child A's transfer to Cedars Park, it had been agreed the child would need an authority figure within the school to speak with her. It had been agreed the Claimant would be that authority figure. Although the Claimant had been involved in the child's move and had, had a meeting prior to the child's move so was aware of

the general behaviour of the child, the Claimant accepted he had not read her behaviour plan. Clearly that would have been relevant insofar as it was up to date in noting the interventions to avoid.

26. All staff are required to undergo various types of training in relation to the safeguarding of children, restraint and de-escalation techniques. At 1354 of the bundle there is Cedar Park School's training record and, confusingly, that refers to safeguarding children training being required every three years. The Claimant's last training in that field was 8th April 2011 and to the Claimant's mind his training would have been up to date. However, if you are the Senior Designated Person (1358) for child protection, refresher training is required every two years. That should and ought to be made clear on the School's training record.

27. There is also another training session, known as Schoolsafe which deals with de-escalation and restraint techniques which it requires all staff to undertake. It would appear the Claimant has not attended that training during the course of his time with the Respondents. It is surprising that, that was not picked up in his application for employment at Cedars Park. The Respondents clearly need to tighten up their procedures in consideration of applications for positions within the authority that requires relevant training to ensure that the relevant training has been acquired.

28. On 3rd April 2014, Child A was attending a class with other children and was being taught music by a Student Teacher, Mr Brooks, assisted by Mrs Bate, a Teaching Assistant. The actual class Teacher, Mrs Munns was in the staff room. During the lesson another child had approached Mrs Bate crying, telling her that Child A had hit her hand with a plastic pen pot. Mrs Bate checked the child's hand. There appeared to be no mark. Mrs Bate asked Child A about the incident and Child A said she was sorry. The lesson therefore continued. Mrs Munns was later to return to the classroom to see the children perform music they had been learning. Mrs Bate had informed Mrs Munns that there had been an incident between Child A and another child. Apparently the Claimant had indicated previously that he wanted to be informed of any incidents involving Child A. Mrs Munns therefore went to find the Claimant to inform him of the incident. On the way to the classroom Mrs Munns discussed with the Claimant a previous incident. It was agreed the Claimant would talk to Child A outside the classroom and reiterate behaviour in the school (662).

29. Apparently when Mrs Bate had returned to the classroom she could not open the door, it had been locked, the door was then opened and she was informed that Child A had locked the door. However, by the time Mrs Munns and the Claimant reached the classroom the door in question had been unlocked. This was not the only door to the classroom so it was not impossible to vacate the room.

30. Apparently on arrival at the classroom the lesson was continuing and Child A was seated at a desk. The Claimant stood at the door and called to Child A to come out of the classroom. The child replied, "No" and put her head down. This may have been repeated. Thereafter the Claimant approached Child A, bent down to the child, spoke in her ear asking her to come with him outside the classroom. The Claimant repeated his request for the child to come with him and she again put her head on her hands. There is some dispute in that the Claimant says the child flicked her wrist at him, or arm at him, though Mrs Munns and Mrs Bate say they did not see the movement. Child A remained seated. At that point the Claimant took hold of the child's right arm whereupon it seems likely that the child tried to slide away. The Claimant then lifted her out of the chair, placing his arm round her waist in a horizontal position and carried her out of the classroom. Child A was becoming upset. She started to struggle, kicking out and scratching the Claimant. Apparently she was now crying. Outside the classroom the Claimant put the child down on her feet but retained hold of her arm and asked her words to the effect, would she walk nicely. Her response was, "No", whereupon the Claimant picked her up again, put her back under his arm and carried her down the ramp outside the classroom. Once again, the child was struggling and trying to break free from the Claimant. The Claimant proceeded to the work room with the child and put the child down on her feet, whereupon the child collapsed and rolled on her side. Apparently three witnesses allege that the child had either been dropped or bundled to the floor, that seems unlikely, a fact that the magistrates commented on as being inconceivable, not to mention the fact that if Child A had have dropped at a height of three foot, the child would clearly have sustained injury. Thereafter the child then crawled across the room and proceeded to hit the photocopier. The Claimant then reprimanded the child, the child curled up in a ball on the floor and was crying. A few minutes elapsed whereupon the Claimant asked Child A to help him set up chairs for a Parent's Evening which she agreed to do. After about 15 minutes Child A had calmed down and was responding well. The Claimant then requested that she come to his office with him which she did.

31. Once in the Claimant's office, the Claimant requested Mrs Knight, the Office Manager, to accompany him whilst he spoke to Child A. Child A was reprimanded about her behaviour in class, and was told he, the Head Teacher did not expect her or anyone else to behave in the manner she had. He then asked if Child A knew why she had been excluded from her previous school and if anyone had explained it. The child shook her head. The Claimant went on to say and (the Claimant accepts this was said) that he as Head Teacher was very powerful, in fact, more powerful than the Police, he controlled everything that went on in the school and could stop the Police coming into the School, how money was spent, what she ate, what books she read and what she wrote, where she went and who with. The fact that he as the Head Master could exclude her from class and make her work in a room of her own, away from other children whom she might hurt if she

continued to throw tantrums. Child A apparently sat quietly throughout according to Mrs Knight's account (729). The Claimant then took Child A back to the class where she apologised.

32. After the incident, the Claimant telephoned the child's mother to inform her there had been an incident and her child had been removed from the classroom. Apparently the Claimant did not inform the mother that he had to restrain the child physically by picking up the child and removing her from the classroom.

33. Mrs Munn felt it appropriate to text the Deputy Head, Mrs Morrison, expressing her concern about the incident between Child A and the Head Teacher. The following morning, Mrs Morrison spoke with the staff members concerned. They were asked to write accounts of what happened (107 – 112). Apparently Mrs Knights, of her own volition, made a note of the events of the day during the evening of 3rd April which she later typed up (113).

34. On 4th April Mrs Morrison questioned the Claimant as to whether he had logged the incident in the behavioural log. The Claimant had not done so as he thought Mrs Munns had done it. However, the Claimant did fill out the behavioural log (730) in which he recalled the incident. Mrs Morrison was concerned about the report made by various members of staff and she therefore visited the Chair of Governors, Mr Knights, to discuss and provide the statements made.

35. In turn Mr Knights took advice from the Respondent's HR department who in turn took advice from Mrs Jones, a Strategic Officer with the Respondents responsible for Education and Learning Service. She provides advice to teachers and governing bodies, particularly with regard to safeguarding and management of allegations of abuse. In accordance with the Local Authorities Managing Procedure (633 – 646) which comes from the statutory guidance contained in the Working Together to Safeguard Children 2013, the matter was referred to the local authority designated officer (LADO) for what is described as a strategic meeting to discuss the way forward and whether an investigation should take place. This meeting took place on 10th April (minutes 123 -129). That meeting was attended by Mrs Bedford, Safeguarding Manager, Mrs Jones, Mrs Leigh, Strategic Manager, a representative from Suffolk Police Force, Mr Knights, Chair of Governors and a minute taker. At the meeting the incident was described from the statements from the Teachers, what was not offered was the short statement of events provided by the Head Teacher in the behaviour log. The meeting notes record the summary of the allegation at 128 and an action plan was discussed (128), the Police were to contact the parents, a joint investigation to be undertaken if this was wanted by Child A's parent, Mrs Jones to contact the parents, Mr Knights and Janice Leigh to suspend the Claimant, the Police to follow up with witnesses even if they did not make a statement.

36. What the above meeting does not decide or the Police do not indicate, and there is no evidence produced that the Police requested this, that any internal investigation could not proceed at the same time as the Police investigated or considered action. Nowhere is there in the bundle or could Mrs Jones or any other witness confirm categorically that Suffolk Constabulary had asked the Respondents specifically not to conduct their investigation until the outcome of the Police's or the outcome of any criminal trial.

37. It is correct under the Suffolk Safeguarding Children's Board under 10.6,

> "The Senior Manager should inform the accused person about the allegation as soon as possible after consulting LADO. However, wherever a strategy discussion is needed, or it is clear that Police or Children & Young Persons Service may need to be involved, that should not be done until those agencies have been consulted and have agreed what information can be disclosed to the person. If the person is a member of a union or a professional organisation he should be advised to seek support from that organisation".

What is not clear is when these organisations had been consulted why the Claimant could not have been told at the suspension meeting the exact nature of the allegation which was referred to at the LADO meeting, namely,

> "Mr Dee was informed that Child A had displayed some problem behaviour in class. When he went to the room she was sitting quietly. He pulled her out of the class and carried her across the Foyer to his room. This was witnessed by several members of staff who were sufficiently concerned to make complaints."

38. Under 10.7 of the above procedure, it specifically refers to,

> "In cases where a Police investigation is necessary, the meeting should also consider whether there are matters which can be taken forward to a disciplinary process in parallel with the criminal process or whether any disciplinary action needs to wait for completion of the Police enquiries under and/or prosecution."

39. From the notes of the meeting of LADO that does not appear to have been addressed, namely whether an internal investigation should proceed with a view to a disciplinary process in parallel with the criminal process. Nowhere is that addressed in the minutes.

40. What was clear from the meeting is those present felt the Claimant should be suspended, believing that the allegation was of such a

serious nature, which is in accordance with the policy (paragraph 11.2, at 643).

41. The Claimant was called to a meeting on 11th April. In attendance were Mrs Jones and her manager, Mrs Leigh. Mr Knights, the Chair of the Governors, it is quite clear, did not attend until some 20 minutes into the meeting. It is not clear whether Mr Knights' actually formally suspended the Claimant or whether this was done by Mrs Leigh in conjunction with Mrs Jones. Whatever be the case it does appear that it was not in accordance with the Governing Body's decision planner previously referred to, in that the suspension of the Head is a Level 2 decision requiring a committee of the Governing Body (151). There is no evidence before this Tribunal that that took place in accordance with the procedures. What is clear and accepted by the Respondents, in suspending the Claimant they merely told him that an allegation had been made, a strategy meeting had been held, and there was Police involvement. For those reasons they were unable to provide any detail of the allegation against the Claimant. They also indicated that after the Police investigation whatever, the outcome, there would be an internal investigation.

42. The Claimant was interviewed by the Police some time in May and charged with common assault. The Claimant pleaded not guilty and the trial took place at Suffolk Magistrates Court on 23rd and 24th September and was found not guilty. At this stage no internal investigation had been commenced by the Respondents.

43. What is clear, Mrs Jones attended the Magistrate's Court on both days and made notes, the prosecution called seven witnesses. Mrs Jones throughout the two days of the hearing seemed to align herself very much with the prosecution and the Police Officer attending on behalf of the prosecution. Perhaps with hindsight and reflection Mrs Jones might consider that action inappropriate and should have conducted herself in a more neutral manner as a note taker.

44. The Claimant's Counsel notes of the bench's reasoning for finding the Claimant not guilty were as follows,

> "We have discussed this case in our retiring room in four sections. Firstly we found that Mr Dee was reasonable in his belief that there were serious problems because Mrs Munns had collected him and he believed she had left her class to do so, as well as the background of the deterioration in behaviour and his knowledge of her behaviour (Child A) at previous schools. That belief was concerned in Mr Dee's mind when he found the classroom door was locked.
>
> Secondly, in the class room we found that Mr Dee made a quiet request for Child A to come out of the classroom. He moved and asked again. He perceived an arm movement, he felt that

allowing Child A to go under the table would lead to escalation and needed to be removed. We found that he used reasonable force to remove her.

Outside on the ramp he set Child A down to comply with him. She refused so he scooped her up fearing she would run off. We found that reasonable force was used.

Finally in the workroom, there was no evidence of injuries too and we found it inconceivable that teachers, having seen Child A dropped on the floor would not approach Child A to see if Child A was injured, also one of the witnesses said that she saw Child A later and she was seen to be fine."

45. One appreciates that this decision was reached in a criminal court. What is clear is that the magistrates did not accept some of the evidence provided by the prosecution witnesses. Notwithstanding this robust decision in finding the Claimant not guilty, the Respondents nevertheless proceeded with the internal disciplinary process.

46. Therefore, following the Claimant's acquittal the Chair of the Governors, Mr Knights (married to Mrs Knights, one of the witnesses) on behalf of the school's governing body instructed Mrs Jones to commence an investigation. Was she the right person to carry out the investigation bearing in mind her robust views against the Claimant as seemingly put forward by her at the LADO meeting. Mrs Jones wrote to the Claimant by letter of the 30th September (278-279) informing him that the outcome of the Magistrates Court hearing did not have the effect of lifting his suspension and informing him that the school must consider its own internal disciplinary procedures. The letter makes no reference to any review of the process of suspension or the outcome of the Magistrate's Court hearing by the Governing Body. One would have thought that would have been prudent. The letter set out in vague terms three allegations namely: -

"

- Used unreasonable and excessive force in removing a pupil from a classroom on 3rd April 2014 breaching the safeguarding procedure.
- Have been responsible for bullying, harassment and intimidation of staff which was reported during the court hearing.
- Not treated a pupil with dignity, built relationships rooted in mutual respect and observed proper boundaries appropriate to your professional position."

47. No further detail was given other than to say the Claimant had demonstrated professional misconduct, breaching teacher standards and personal professional conduct. It did not say what teacher's standards had been breached, nor did it give any detail of the sudden

addition of new allegations relating to bullying and harassment other than to say they had come out of court.

48. On 14th October, Mrs Jones interviewed eight witnesses on the instructions of the Chair of Governors. She also interviewed a further four witnesses on 16th October. What is clear for reasons best known to the Chair of Governors, Mrs Jones or the Respondent, made no attempt to contact the trainee teacher Mr Brooks who was present during the incident. In fact no attempt whatsoever was made, the only reasoning was, we didn't know where he was!

49. In the intervening period, the Claimant's trade union officer, Mr Glover, wrote to Mr Knights questioning the first allegation about using unreasonable and excessive force and reminding Mr Knights that the Magistrates had found that reasonable force in both removing Child A and outside the classroom had been accepted and requested this allegation be withdrawn. The union was also objecting to Mrs Jones undertaking the role of investigating officer as they perceived she would not undertake the role in a neutral manner.

50. The response from Mr Knights (1052) on 17th October, simply to say, and was correct, that in employment law there was a different burden of proof and the investigation would consider the school procedures for dealing with such incidents. He was not prepared to remove Mrs Jones as investigating officer.

51. On 17th October Mrs Jones invited the Claimant to a fact finding meeting for 24th October. The meeting was postponed due to the unavailability of the Claimant's trade union representative. When Mrs Jones wrote to inform the Claimant of a new date, 6th November (318) the Claimant was informed, further allegations of professional misconduct and negligence were to be added namely: -

> "
> - Have failed to follow statutory guidance in relation to safeguarding and safer recruitment (without any detail).
> - Having failed to act within the statutory frameworks which set out your professional duties and responsibilities (again without any detail)."

The letter simply was vague in its tone.

52. The fact finding meeting proceeded on the 6th November with the Claimant's union representative (minutes 706 – 721). At the meeting the Claimant was asked for the very first time to respond to the allegations which were now to be detailed. The Claimant was then invited to a further fact finding meeting on 25th November (420), however, by this stage the Claimant's mental health was suffering and the Claimant's union representative advised that the Claimant was not well enough to attend that meeting at this stage. On 15th December

the Claimant's Trade Union representative confirmed the Claimant still remained unwell. It was during this period there was a possibility of the Claimant resigning which Mr Davies and HR were keen to proceed. What happened to that is unclear as the resignation never took place. Mrs Jones decided not to wait for a further fact finding interview with the Claimant which was clearly inappropriate. The Claimant's representative was informed on 19th December that Mrs Jones was therefore going to write up her investigation report without a further meeting with the Claimant. Given the matter had been delayed so long it seems rather odd that Mrs Jones was now keen to proceed in concluding her report without waiting for the Claimant's health to improve and without medical evidence to make an informed decision as to whether one could wait further for the Claimant's health to improve and time scales.

53. It was agreed around 15th December with the Claimant's Trade Union representative that he would be referred to Occupational Health (431). Mr Davis confirmed that he would start the referral process, not withstanding the Claimant was not seen by Occupational Health for another seven and a half weeks and is unclear the reason for delay. The report from Occupational Health (465) confirmed the Claimant was not yet fit to attend a disciplinary hearing.

54. In the meantime it was clear that Mr Davis around 31st December had received the draft report from Mrs Jones (435). It is quite extraordinary, nothing seems to have happened with that report, or at least there is no email trail or other evidence until 10th February when Mr Knights writes to the Claimant confirming that he had received and read the investigatory report, he had reviewed it with another governor and that the matter should proceed to a disciplinary hearing (467). Quite why at that stage when the matter was to proceed to a disciplinary hearing the report could not have been sent to the Claimant's representative remains a mystery. Mr Davis' response to that was "we typically do things that way, it is custom and practice, we only send it out when we decide a date for a disciplinary hearing".

55. A further Occupational Health referral clearly had been made and after consultation with the Claimant's GP it was agreed that around 27th March that the Claimant was ready and keen to proceed to a disciplinary hearing and indeed was sensible to proceed to a disciplinary hearing (480).

56. On 1st April, the Claimant's trade union representative emailed Mr Davis indicating the only days he was available were 23rd and 24th April and would keep these dates free. Other than that the first two weeks in May. Mr Davis responded on 1st April saying that 23rd April was possible, the 24th was not but gave no reasons. He asked what dates needed to be avoided in the first part of May. On the same day 1st April, the Claimant's Trade Union representative responded saying he could do 6th and 7th May and would pencil these in. In the meantime

the Claimant was expressing concern that he had still not been provided with the final confirmation of the accusations given that they had been amended previously and had not seen a copy of the investigator's report to the governors.

57. In the meantime the Claimant's solicitors have requested by letter – 16th April various policies, witness statements and the investigator's report, this was met with effectively a blank refusal by Mr Davis (494 - 495). With further correspondence on these issues in April (Mr Knights) responded by letter.

58. On 30th April the Respondent provided a copy of the disciplinary policy. However refused at that stage to provide the disciplinary investigation report and the witness statements that had been taken, simply saying they would be provided in due course when a hearing date is established. He also confirmed they would not allow legal representation at the hearing. In the meantime there were still further difficulties over coordination of a disciplinary hearing between the Respondents, the Governors and the Claimant's trade union representative. In the early part of June, the trade union representative was not available. A further application was made by the Claimant solicitors for legal representation at the disciplinary hearing, that was subsequently refused.

59. Finally arrangements were made for a disciplinary hearing on 18th June. On 27th May the Claimant is notified of the disciplinary hearing, the venue and finally provided with a copy of Mrs Jones' investigatory report with some 400 pages included. The letter inviting the Claimant to the disciplinary hearing set out the five main allegations, it has to be said in vague terms. The letter confirmed the hearing panel would comprise of chairman and two other governors. The letter also confirmed the procedure to be followed at the hearing was to be found at schedule 2 of the schools Disciplinary Procedure, a copy of which had been enclosed with the documentation containing the investigatory report.

60. This was despite the fact as early as 10th February 2015, Mr Knights had written to the Claimant confirming that he had received and read the investigatory report, reviewed it with another governor and decided that the matter should proceed to a disciplinary hearing.

61. The Claimant then prepared a detailed written submission and provided additional documents to be read at the disciplinary hearing. These were provided to the panel of three governors on the morning of the hearing. The panel did take a short adjournment to read the Claimant's submissions at the start of the disciplinary hearing and apparently read the remainder of the documents overnight between the first and second day of the hearing.

62. The school's Disciplinary Procedure provides that a disciplinary hearing is heard before a panel of governors and the procedure is set out in a model disciplinary procedure found at 631. That is the investigating officer, Mrs Jones presents the case, calls witnesses. The Claimant and his Trade Union representative then have an opportunity to question those witnesses. The Claimant and his representatives then present his case. They can call witnesses but none were called.

63. The hearing lasted for three days. The hearing concluded on the third day around 11am and the governors then spent the rest of the day deliberating and reaching their decision although there are surprisingly no notes of their deliberations and one gets the feeling from Mr Davis' evidence that he had a greater input into the decision making process than he'd have the Tribunal believe. Mr Davis function should be merely to advise on procedure and policies. The Tribunal believes he went beyond this, giving his opinions on outcomes.

64. What is clear during the course of the hearing is that the Claimant accepted that he did "go too far" by saying to the child that a Head Teacher was more powerful than the Police and accepted his words should have been better chosen (1100). The Claimant also accepted during the course of the hearing that he was not familiar with the child's behaviour plan (1101). He further accepted (1104 – 1105) that he might have acted differently had he have known child A's behaviour plan. When questioned about safeguarding of children and appropriate restraining methods (1105) he failed to answer. In relation to the bullying allegation he seemed to accept there appeared to be a perception by his colleagues of his behaviour, but questioned why it had never been raised before, either with him or directly to the governors.

65. In relation to the actual incident regarding Child A and the use of reasonable force, the Claimant said when he arrived at the Classroom Child A had not sat down, and he thought she had just hurt another pupil. The fact Child A had locked the door in his mind changed the situation. Originally he was on his way just to speak to Child A and did not intend to remove her from the classroom. When Child A refused to follow the Claimant's instructions to come to the back of the class and speak to him matters escalated. The Claimant reported that when Child A refused to stand up and refused to come with him he realised he had to do something and wanted to get the child out of the classroom as soon as possible to avoid disruption. Having removed the child by lifting her whilst the child was kicking and scratching his main concern was getting the child out safely and he didn't believe he lost his temper at any stage. He felt that his instruction to Child A was done in a reasonable voice. The Claimant believed that Child A was a destructive child, and removing her as quickly as possible, was in fact the best thing to do. At the time, he genuinely thought it was the best way in his judgment. The Claimant did accept that other teachers in that situation may have made a different judgment. The Claimant

stated that he put Child A down as soon as possible and then she simply rolled over onto her side and Child A was never dropped.

66. Contrary to what the Claimant had said other witnesses for the school suggested the manner and methods used by the Head Teacher were unreasonable, excessive and that was the theme coming out of all the witnesses who were interviewed by Mrs Jones.

67. The Governors, having reached their decision at the end of the three day hearing, the Chair of Governors Ms Chevin communicated orally her/the panels summary views to Mr Davis and these were then committed to writing by him in a draft letter of dismissal (1068 H to K). That was sent by Mr Davis on 24th June at 18:43 P.M. and Ms Chevin replied the following day at 06:09 A.M. confirming that she was happy with the contents of the letter and the allegations and outcomes. She merely wanted advice regarding a return slip that was to be enclosed in the letter. She made no other amendments.

68. The letter of dismissal was sent to the Claimant without amendment on 26th June dealing with each allegation (1128 – 1132). The Governors' conclusions were that when the Claimant entered the classroom on 3rd April 2014 Child A was not behaving in a manner that required the use of force, there was no need to restrain the child, they felt that rather than being a last resort the Claimant appeared to have had only the briefest conversation with the child in question before making a decision to remove the child from the classroom. The Governors felt strongly that the technique used; that of picking up and carrying out a struggling child via doorways and down the ramp was grossly irresponsible and posed a significant risk of harm to the child. The Governors were also concerned that Child A had specific requirements of which the Claimant was either unaware or had disregarded on 3rd April. That in itself the Governors felt led to the situation escalating with unnecessary force used to bring about the child's removal from the classroom, and was excessive in the circumstances. This in turn led to a significant loss of dignity for Child A, and the way that the Claimant spoke to the child following the incident was inappropriate. The Governors also noted the impact of the Claimant's actions on the child's welfare as apparently reported by the mother. They concluded therefore that allegations 1, "that unnecessary and excessive force in removing a pupil from the classroom on 3rd April 2014 breaching safeguarding procedures", and allegation 3, that the Claimant had breached the Teacher's Standards (Part 2) "Personal and Professional conduct, in that he had not treated the pupil with dignity, built relationships rooted in mutual respect and observed proper boundaries appropriate to your professional position" amounted to gross misconduct and justified summary dismissal.

69. In relation to allegation 4, and 5 namely; failed to follow statutory guidance in relation to safeguarding and safer recruitment, failed to act within the statutory frameworks which set out professional duties and

responsibilities were both upheld. On balance the Panel felt allegations 1, 2 and 3 amounted to gross misconduct, and allegations 4 & 5 amounted to misconduct.

70. In relation to the bullying and harassment allegation (No 2) they believed the allegations as reported by the staff were genuine and accepted the Claimant was unaware of the impact of some of his actions. Although upholding the allegation they concluded that this would not have amounted to a dismissal if that was the only allegation. The letter of dismissal contained the Claimant's right of appeal.

71. On 7th November the Claimant's trade union representative lodged the appeal (1178). The basis of the appeal was:

"

- Allegations 1 and 3 should have been withdrawn from the disciplinary hearing,
- And should now be withdrawn from the findings by the appeal panel.
- Therefore the sanction against the findings of 2,4 and 5 should be less than dismissal and/or in the alternative in the sanction against all findings 1 to 5 be less than dismissal. "

72. The letter went on to confirm they were not seeking a rehearing of the case, did not require attendance of witnesses and confirmed the procedure as they understood it, that would be followed at an appeal hearing.

73. The appeal was also heard in accordance with the policies and procedures by a panel of three Governors. The Chair being Mrs Norris. Once again during the course of the appeal hearing the Claimant accepted (1307) that if he had read the child's behaviour plan that would have made him more professional in the way he dealt with Child A. The Claimant also accepted there were other ways he should have dealt with the situation. He accepted that he now wished he had acted differently and accepted had not followed all of the procedures regarding safeguarding and restraint techniques (1309). He did accept the findings of the disciplinary panel with regards to the bullying and harassment allegations and confirmed he was not seeking his teaching career back. He also admitted, as he had done at the Magistrate's Court hearing the language he had used when he spoke to Child A after the incident, was not appropriate. He did accept the findings of the disciplinary panel in respect of allegations 4 and 5 and accepted he took some responsibility for those matters. The Hearing lasted a full day. It clearly was a lengthy and detailed appeal. On each of the allegations which the appeal hearing considered again, taking account of the Claimant's mitigation, they could find no evidence to justify reaching a different decision from that of the original hearing's panel and therefore rejected the appeal. The letter setting out their reasoning is dated 30th September signed by the Chair (1286 – 1290).

74. In the intervening period there was some dispute about notice and pay pending the appeal hearing. This follows the letter of 29th June from Mrs S Cook (1134) (Corporate Director Children and Young Peoples Services) confirming the dismissal by the Chair of the Governors, formally the terminating the Claimant's employment without notice and advising the last day of employment with the school was 26th June 2015. By letter of 30th June (1135) the Claimant's union representative wrote to Mrs Cook amongst other things stating,

> "The action against Mr Dee has followed the Model Disciplinary Procedure (2002) as set out at page 28 in bundle A, used by Mrs Jones at Mr Dee's hearing. This policy clearly states in paragraph 5.9 that "any appeal lodged by an employee against a determination that he or she shall cease to work at the school, must be decided before the Director of Education is instructed to dismiss the employee".
>
> "I will therefore be grateful if you would explain:
>
> 1. Why Sue Cook was instructed to dismiss Mr Dee before any appeal has been set or heard contrary to your own policy as set out below?
> 2. Why Mr Dee has been dismissed before any appeal has been set or heard contrary to your own policy as set out above?
> 3. Why the local authority ceased paying Mr Dee his salary?"

75. On 8th July Mr Davis, HR Manager replied (1143),

> "In respect of your three questions raised:
>
> 1. I can confirm that it is custom and practice in Suffolk County Council for the dismissal letter (i.e. that issued by Sue Cook) to be issued within 14 days of a written instruction from the governing body that an employee should cease to work at the school.
> 2. See above.
> 3. The local authority has made arrangements to pay Mr Dee his salary up to and including the date of the letter from Sue Cook i.e. 29th June.
>
> The Local Authority will not be withdrawing the letter of 29th June unless an appeal is successful in overturning the Governor's decision communicated on 26th June 2015."

76. The position of the Respondents remained the same.

<u>Conclusions</u>

77. It is patently clear that the reasons for the Claimants dismissal was a reason related to his conduct. That conduct being that the Claimant used unnecessary and excessive force when removing a pupil from classroom on 3rd April breaching safeguarding procedures and had breached the Teacher's Standards (Part 2; Personal and Professional Conduct). Particularly that the Claimant had not treated the pupil in question with dignity and had not observed proper boundaries appropriate to the Claimants position as Head Master.

78. In those circumstances clearly the three fold Burchell test applies. Did the respondent believe that the Claimant was guilty of the misconduct. Did it have in mind reasonable grounds upon which to sustain that belief. At the stage at which the belief was formed on those grounds had the respondents carried out as much investigation into the matter as was reasonable in the circumstances. I must therefore confine my consideration of the facts to those found by the respondent at the time they took the decision to dismiss.

79. It is true that the Claimant accepted under cross examination that the disciplinary panel consisting of three governors were entitled to reach conclusions that they did reach, whether reached by them or with the assistance of Mr Davis the tribunal will never know. However, that was the decision that apparently the panel of governors reached and they set it out in their decision letter on the basis of the evidence before them.

80. It has never been suggested that Mrs Chevin or Mrs Norris respective Chairs of the disciplinary hearing and appeal hearing did not believe that the Claimant was guilty of the misconduct that they subsequently found against him. Their belief followed a three day hearing at which the Governors themselves heard live evidence, not only from the Claimant but also witnesses to the incident on 3rd April and further arguments at a one day appeal hearing.

81. It is therefore easy to conclude that the governors plainly had reasonable grounds upon which to form their conclusions. The Claimant accepts that he failed to read the child's behaviour plan and therefore was unaware of the individual needs of Child A.

82. It is true that Department of Education advice document on the use of reasonable force does expressly state that force can only be used on a child with special needs, but the judgement on whether to use force should not only depend on the circumstances of the case, but also on the information and understanding of the needs of that pupil (792). On the Claimants own evidence his judgement was plainly not based upon the specific needs of Child A because he was unaware of Child A's specific need having failed to acquaint himself with the behaviour plan, albeit that behaviour plan was somewhat out of date.

83. It is also true that the Claimant accepted under cross examination that the method he used to restrain the child was not a recognised restraint

technique taught by School Safe. He accepted that it was important for any staff to have training before they attempt to restrain children. The evidence before the Governors was, there was no evidence of the Claimant having completed the appropriate training (albeit the time period was somewhat confusing). When the Claimant was asked to explain to the Governors his knowledge of safe restraint techniques he was unable to respond.

84. The Claimant further accepted before the disciplinary hearing that had he had training he would have been aware that in establishing whether force was necessary you must consider whether all other options have been explored and exhausted before. (796) The Claimant further accepted during the disciplinary process that there were other things he could have done other than restraining the child. Clearly the Claimant had not explored or exhausted other options. The Claimant accepted that force should be used as a last resort. Given the above and what the Claimant said at the disciplinary the Governors had reasonable grounds upon which to conclude that the restraint of this child was unnecessary and excessive.

85. The panel of Governors at the disciplinary hearing were also informed that Child A's incident was witnessed in whole or in part by other members of staff – four teachers and one teaching assistant, and possibly a student teacher. Whilst it is accepted that their accounts are not entirely consistent the theme of what happened is a constant theme running through those statements. Those members of staff believed what they had seen was inappropriate. The panel of Governors at the disciplinary hearing had the opportunity to hear live evidence from those witnesses, and those witnesses were questioned by the Claimant and his Trade Union representative. The panel of Governors were therefore able to assess the credibility of all witnesses. The conclusion reached by the panel of Governors from the witnesses was that it was not necessary or appropriate to remove the child in the way that the Claimant did on the 3rd April. Witnesses had described that they couldn't believe what they were seeing (Mrs Snow), they had been shocked that it happened so quickly with no time given to calm down (Miss Becker), Mrs Swallow commented that "in all her teaching career I've never seen any teacher physically carry a chid in the way Mr Dee did. I have in the past undertaken handling training and have never been taught a technique that resemble that" that was a common theme amongst the teachers who witnessed the incident that it was something surprising, shocking or unnecessary.

86. The disciplinary panel concluding that the Claimants conduct justified dismissal is clearly within the range of reasonable responses for the governors to decide to dismiss the Claimant on the basis of their findings. It is true that such conduct goes to the heart of the Head Teacher's responsibilities in safeguarding the children in his care. It is accepted that the Claimant expressed regret and reflected that he

would have done things different with hindsight however, that is not the point. The point is what he did on the day in question.

87. The appeal panel hearing the case for a whole day. They did not accept the Claimants explanation that his decision to lift the child and carry Child A out of the classroom was the best way to minimise the risk to the child, to other pupils or to the Claimant. Nor did they accept that the Claimants approach was an appropriate was to deal with the disruption. They concluded that the act removing the child in the manner in which the Claimant did was dangerous and irresponsible and far from minimising the risk created a significant risk of harm to the child and others.

88. A lot has been made during the course of this hearing about the fact that the Claimant was found not guilty of assault in the Magistrate's Court in September. It is of course entirely true that criminal proceeding are an entirely separate process looking at a different question of law and an entirely different burden of proof.

89. As to whether or not there was a reasonable investigation, and whether process leading up to the disciplinary and delay was a reasonable process the tribunal was troubled by this. Firstly, whether the suspension was lawfully carried out and whether it was in breach of the respondents own policies. The fact of the matter was the suspension was for a period of fourteen months that may well have impacted (the length of delay) on the Governors when reaching their conclusions. Was it likely after such a period of absence from the school that they were not to find the Claimant guilty of misconduct and therefore dismiss or whether in reality he was ever likely to be returned as Head Master. There was the question of whether the suspension was carried out in accordance with the rules of the Governing Body. The respondents say that technically if an urgent decision is required the decision to suspend could be made at the level it was. However, the suspension matrix guidance suggests that as it is an important decision it should be done by a Committee of the Governors, and in this case it was not and was carried out seemingly by representatives of the respondents who were not Governors, Mr Knights a Governor joining the meeting some twenty minutes later to effectively endorse the suspension decision.

90. We then have a LADO meeting before the Claimant was even asked to give his account of what happened. Mrs Jones at that meeting did not share the Claimants account in the incident log. Furthermore the suspension appears never to have been reviewed by the Committee of a Governing Body throughout the fourteen months. It would have also been only natural for people to gossip about the absence of the Head Master for such a long period of time and there must have been exchanges between Governors concerning the continued suspension of the Head.

91. Had Mrs Chevin the Chair of the panel of Governors at the disciplinary hearing over the period of time of suspension consciously or otherwise had her thinking towards the Claimant being shaped.

92. The Tribunal also had concern over the transparency of the charges that were put to the Claimant at the suspension meeting, effectively he was not told and left guessing for months and although it has been said that the Claimant should have put two and two together there is no reason why the Claimant could not have been given more detail at that meeting given the allegations were being put at the LADO meeting.

93. Furthermore, there is no evidence that the Police prevented the respondents from commencing their internal investigation at the same time as the Police investigation was being undertaken. The Tribunal did get the underlying feeling that the respondents hoped that the Claimant would be found guilty at the Magistrate's Court and then that would be sufficient for the respondents to proceed to a dismissal fairly quickly or for the Claimant to resign at that stage.

94. The Tribunal also had concerns whether the investigator Mrs Jones was entirely impartial. It would appear that she had a closed mind that the Claimant had behaved improperly in removing the child she indeed went on to express that view without qualification in the LADO meeting on the 10th April. Tribunal repeats for reasons best known to Mrs Jones she withheld the Claimants account in the behaviour log from the LADO meeting. In effect she allowed a one sided view to be reached at that meeting and was happy to accelerate the decision to suspend the Claimant.

95. At the Magistrate's Court hearing there was some concern as to whether Mrs Jones was sufficiently distanced from the prosecution. She clearly liaised with the Police before and during the Magistrate's trial, and she appeared to express a one-sided sympathy with the child's family at the hearing and also with the prosecution witnesses.

96. Mrs Jones final report appears to offer a slanted summary of the evidence and is not a neutral presentation. It is to be noted that the Claimants Trade Union representative who objected to her appointment as investigator and despite this Mr Davis/Mr Knights refused to remove her notwithstanding the fact there would have been other alternatives to investigate the matter.

97. There is also some concern that during the course of the investigation there was no attempt made to interview the student teacher who had been in the classroom throughout the incident with Child A. The respondent's reasoning for this was rather weakly we couldn't find him. It frankly beggars belief to suggest that a Local Authority had lost contact or were unable to trace a student teacher who had been training/teaching in one of their schools.

98. What is of concern is that the investigator in concluding her report went far beyond collating evidence or fact finding. Indeed she suggested and advocated particular conclusions on the charge (603)

> "The Investigating Office concludes that, on the balance of probabilities and taking into account the frameworks within which staff in schools are expected to conduct themselves, Mr Dee has used unnecessary and excessive force in removing a pupil from a classroom on 3rd April 2014 and that this amounts to serious professional misconduct."

When questioned on this Mrs Jones felt that she was entitled as an investigator to reach this conclusion. It does then question whether in the light of that report a panel of Governors with no prior experience of disciplinary processes or trained would come to a different conclusion.

99. The tribunal also repeats that it does have some concern as to whether the disciplinary panel reached their conclusions on their own, there is no notes of their deliberation or whether they simply followed the conclusion of the investigator with the help of Mr Davis from HR who was at the disciplinary hearing and quite clearly played a greater part than he'd wish us to believe.

100. Taking all these matters into account the dismissal was procedurally unfair.

101. In relation to the breach of contract there appear to be three stages.

102. The 2002 procedure appears to be contractual in that when the appointment letter was sent to the Claimant on the 9th October (88) that enclosed a page 95, and 100 and 101 Conditions of Employment of Head Teachers (extract from School Teachers pay and conditions document 2007) which referred to the respondents disciplinary, capability and grievance procedures which relates to the model disciplinary procedure at 184 to 194. In the documents provided to the Claimant at the time of his employment appears to incorporate that policy into the Claimants contract. Indeed that is what Mr Davis of HR believed in his oral evidence in the tribunal in that he said I agreed to honour the 2002 model disciplinary procedure. It is then under that procedure Paragraph 5.9 (188) that state:

> "A decision that any employee shall cease to work at the school may only be taken at an appropriate Committee (or Individual) empowered to do so under the School Government Regulations in force at the time. The Director or Education is entitled to attend any meeting of the Government Body or its Committee which may determine that an employee shall cease to work at the school. The Director of Education will dismiss an employee on the instruction of the Committee (or Individual) who has the power to issue such an instruction. Any appeal lodged by an employee against determination that he/she shall cease to work at the school must be decided before the Director or Education is instructed to dismiss the employee."

103. The letter of dismissal at page 1132 provides right of appeal and therefore the Claimants employment should not have been terminated until the appeal had been determined. The respondents were clearly in breach.

104. The respondents argued that they were duty bond to follow the 2014 procedure which states otherwise, however the 2014 procedure cannot simply be introduced unilaterally it must be agreed by both parties and was never even sent to the Claimant. Indeed in June 2015 when the Claimant was dismissed these Regulations had been in force for some 5 or 6 year and therefore it must be seen as a capricious decision to change from the 2002 policy to 2014 policy notwithstanding the fact that Mr Davis of HR had said that they would stand by the 2002 policy at the outset. Therefore it is clear the respondents were at the time in breach and the dismissal letter sent out by Mrs Cook should not have been sent out confirming the decision until after the appeal. The Claimant was therefore entitled to be paid during that period.

105. The Claimant has a pleaded case that the reason for his dismissal was not the allegations set out by the respondent in respect of the restraint of Child A on the 3rd April but rather in relation to appropriate steps he took to protect himself or other persons in danger, in circumstances of danger which he reasonably believed to be serious and imminent contrary to Section 100 (1) (e) of the Employment Rights Act 1996.

106. It is true that the Claimant has never advanced this case during the course of the hearing, it was never put to either Mrs Chevin or Mrs Norris that, that was the real reason for the claims dismissal and not the allegations as set out in the dismissal and appeal letters.

107. In any event it is true that on the Claimants own account of the incident on 3rd April 2014 when he encountered a nine year old child sitting quietly at a desk that he could never have reasonably believed that he or others were in serious or imminent danger. The Claimant was never dismissed for that reason and that claim is so far as it's still advanced dismissed.

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Employment Judge Postle, Bury St Edmunds.
Date: 2 May 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS