THE INDUSTRIAL TRIBUNALS

CASE REFS: 14129/18IT
16100/18IT

CLAIMANT: **Emma Walsh**

RESPONDENT: **Belfast Metropolitan College**

DECISION

The unanimous decision of the tribunal is that the claimant had been unfairly dismissed by the respondent.

CONSTITUTION OF TRIBUNAL

Vice President: **Mr N Kelly**

Panel Members: **Mr E Grant**
Mr B Heaney

Representation of Parties:

The claimant was represented by Mr Peter Bunting.

The respondent was represented by Mr Sean Doherty, Barrister at Law, instructed by Judith Blair Solicitors.

Background

1. The respondent is a further education college.

2. The claimant was employed as a lecturer from September 1995 to September 2019.

3. Following an investigation and disciplinary process, the claimant was dismissed for gross misconduct.

4. The claimant first appealed internally. That appeal was dismissed.

5. The claimant then appealed to an independent appeal panel (IAC) of the Labour Relations Agency (LRA). That appeal was upheld.

6. The respondent did not implement that finding of the IAP and confirmed the dismissal of the claimant.

7. This is a claim of unfair dismissal under the Employment Rights (Northern Ireland) Order 1996. The claimant alleges automatically unfair dismissal on the ground of non-compliance with the statutory dismissal procedure, procedurally unfair dismissal and substantively unfair dismissal. The claimant seeks re-instatement and/or compensation.

8. This was a hearing in respect of liability only.

RELEVANT LAW

Unfair Dismissal

9. The proper approach for an Employment Tribunal to take when considering the fairness of a misconduct dismissal is well settled and was considered by the Court of Appeal in ***Rogan v South Eastern Health & Social Care Trust [2009] NICA 47***.

10. Article 130 of the Employment Rights (Northern Ireland) Order 1996 provides:-

> *"130-(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –*
>
> *(a) the reason (or if more than one, the principal reason) for the dismissal and*
>
> *(b) that is either a reason falling within paragraph (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
>
> *(2) a reason falls within this paragraph if it –*
>
> *(b) relates to the conduct of the employee,*
>
> *(4) where the employer has fulfilled the requirements of paragraph (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
>
> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case."*

11. The Court of Appeal in ***Rogan*** approved the earlier decision of Court in ***Dobbin v Citybus Ltd [2008] NICA 42*** where the Court held:-

*"(49) The correct approach to [equivalent GB legislation] was settled in two principal cases – **British Home Stores v Burchell [1980] ICR 303** and **Iceland Frozen Foods Ltd v Jones [1983] ICR 17** and explained and refined, principally in the judgements of Mummery LJ, in two further cases **Foley v Post Office** and **HSBC Bank PLc (formerly Midland Bank) v Madden reported at [2000] ICR 1283** (two appeals heard together) and **J Sainsbury v Hitt [2003] ICR 111**.*

*(50) In **Iceland Frozen Foods**, Browne-Wilkinson J offered the following guidance:-*

"Since the present state of the law can only be found by going through a number of different authorities, it may be convenient if we should seek to summarise the present law. We consider that the authorities establish that in law the correct approach for the industrial tribunal to adopt in answering the question posed by [equivalent GB legislation] is as follows:-

(1) the starting point should always be the words of [equivalent GB legislation] themselves;

(2) in applying the section an industrial tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the industrial tribunal) consider the dismissal to be fair;

(3) in judging the reasonableness of the employer's conduct an industrial tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;

(4) in many, though not all, cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, and another quite reasonably take another;

(5) the function of an industrial tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair; if the dismissal falls outside the band it is unfair."

*(51) To that may be added the remarks of Arnold J in **British Home Stores** where in the context of a misconduct case he stated:-*

"What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a

reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, it must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the employer who manages to discharge the onus of demonstrating those three matters, we think, who must not be examined further. It is not relevant, as we think, that the tribunal would themselves have shared that view in those circumstances. It is not relevant, as we think, for the tribunal to examine the quality of the material which the employer had before them, for instance to see whether it was the sort of material, objectively considered, which would lead to a certain conclusion on the balance of probabilities, or whether it was the sort of material which would lead to the same conclusion only upon the basis of being "sure", as it is now said more normally in a criminal context, or, to use the more old fashioned term such as to put the matter beyond reasonable doubt. The test, and the test all the way through is reasonableness; and certainly, as it seems to us, a conclusion on the balance of probabilities will in any surmisable circumstance be a reasonable conclusion."

12. In ***Bowater v North West London Hospitals NHS Trust [2011] EWCA Civ 63***, the Court of Appeal considered a decision of the Employment Appeal Tribunal which had set aside a decision of an employment tribunal. The employment tribunal had determined that a remark made by a nurse in an Accident & Emergency Department was not a sufficient basis for a fair dismissal. Lord Justice Longmore stated at Paragraph 18 of the decision that:-

> *"I agree with Stanley Burnton LJ that dismissal of the appellant for her lewd comment was outside the range of reasonable responses open to a reasonable employer in the circumstances of the case. The EAT decided that the ET had substituted its own judgment for that of the judgment to which the employer had come. But the employer cannot be the final arbiter of its own conduct in dismissing an employee. It is for the ET to make its judgment always bearing in mind that the test is whether dismissal is within the range of reasonable options open to a reasonable employer."*

He continued at Paragraph 19:-

> *"It is important that, in cases of this kind, the EAT pays proper respect to the decision of the ET. It is the ET to whom Parliament has entrusted the responsibility of making what are, no doubt, sometimes, difficult and borderline decisions in relation to the fairness of dismissal."*

13. In ***Fuller v London Borough at Brent [2011] EWCA Civ 267***, the Court of Appeal again considered a decision of the Employment Appeal Tribunal which had set aside the decision of an employment tribunal on the basis that the employment tribunal had substituted its view for the decision of an objective reasonable employer. Lord Justice Mummery stated at Paragraph 7 of the decision that:-

> *"In brief the council's case on appeal is that the ET erred in law. It did not apply to the circumstances existing at the time of Mrs Fuller's dismissal the objective standard encapsulated in the concept of the 'range or band of reasonable responses'. That favourite form of words is not statutory or mandatory. Its appearance in most ET judgments on unfair dismissal is a reassurance of objectivity."*

At Paragraph 38 of the decision, he continued:-

> *"On a proper self-direction of law I accept that a reasonable ET could properly conclude that the council's dismissal was outside the band or range of reasonable responses and that it was unfair. If, as I hold, the ET applied the objective test, it did not err in law and there was no ground on which the EAT was entitled to set it aside or to dismiss Mrs Fuller's claim."*

14. In ***Salford Royal NHS Foundation Trust v Roldan [2010] IRLR 721***, the Court of Appeal again considered a decision of an Employment Appeal Tribunal which set aside the decision of an employment tribunal on the ground that that Tribunal had substituted their judgment of what was a fair dismissal for that of a reasonable employer. At Paragraph 13 of the judgment, Lord Justice Elias stated:-

> *"Section 98(4) focuses on the need for an employer to act reasonably in all the circumstances. In **A v B [2003] IRLR 405**, the EAT (Elias J presiding) held that the relevant circumstances include the gravity of the charge and their potential effect upon the employee. So it is particularly important that employers take seriously their responsibilities to conduct a fair investigation where, as on the facts of that case, the employee's reputation or ability to work in his or her chosen field of employment is potentially apposite"*

> *"In **A v B** the EAT said this:- 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 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 enquiry should focus no less on any potential evidence that may exculpate or least point towards the innocence of the employee as he should on the evidence directed towards proving the charges against him."*

15. The Court of Appeal in Northern Ireland further examined the approach that a tribunal should adopt in claims of unfair dismissal in the case of ***Connolly v Western Health & Social Care Trust [2017] NICA 61***.

In that case, a nurse, who was on duty in a hospital ward and who was experiencing the symptoms of an asthma attack, used a Ventolin inhaler from the locked ward stock. She had intended to replace it with another inhaler which would have been supplied to her on her own prescription. She had not sought prior permission to use the hospital's inhaler; she had not approached any doctor in the hospital for assistance; she had not attended the Accident & Emergency Department for assistance. She did not disclose the use of the inhaler until her next day on duty two days later. It was not in dispute that there had been misconduct on the part of the claimant in using a prescription only medicine which was part of hospital stock. The issue in all of this was whether the misconduct had been sufficiently serious to ground summary dismissal for gross misconduct.

16. The WHSCT had been concerned that the claimant had intended to replace the inhaler from her own supply. That would have broken the chain of supply within the hospital and in the employer's view would have presented a serious risk to the health of patients. The employer was also concerned that the claimant had sought, in response to the disciplinary proceedings, to stress that Ventolin had not been a controlled drug (although it had been a prescription only drug). The employer felt the claimant still believed that her conduct was permissible in certain circumstances and that therefore the behaviour could recur. The claimant was summarily dismissed for gross misconduct.

17. This case was the subject of two separate appeals to the Court of Appeal. However, the later appeal is the one relevant to the present case. It was a split decision. The minority decision, reached by Gillen LJ, found that the tribunal decision had been correct, in that it had held that there had been a fair dismissal for gross misconduct. The hospital rules had made it clear that '*misappropriation*' of drugs was a potential offence. The claimant had not notified any other member of staff of her use of the inhaler before using it or for the rest of that shift. She had attended work for her next shift some two days later and had only then informed her manager that she had used the Ventolin inhaler from ward stock.

18. In essence, Gillen LJ determined that the decision to summarily dismiss the claimant in all the circumstances of the case had been a decision which a reasonable employer could reasonably have reached, even if may not have been the decision that the tribunal or the court would have reached, had it been determining the issue at first instance.

19. After citing the usual authorities, Gillen LJ approved the following statement in the tribunal's findings:-

> *"It may not re-hear and re-determine the disciplinary decision originally made by the employer; it cannot substitute its own decision for the decision reached by that employer. In the case of a misconduct dismissal, such as the present case, the tribunal must first determine the reason for the dismissal: that is, whether in this case the dismissal was on the basis of conduct and must determine whether the employer believed that the claimant had been guilty of that misconduct. The tribunal must then consider whether the employer had conducted a reasonable investigation into the alleged misconduct and whether the employer had then acquired reasonable grounds for its belief in guilt. The question is not whether the tribunal will have reached the same decision on the same evidence or even on different*

evidence. The tribunal must then consider finally whether the decision to dismiss was proportionate in all the circumstances of the case."

20. Gillen LJ then noted that the tribunal had determined that the employer had been concerned by the use of the prescription only inhaler from the ward stock which had been kept under lock and key, the claimant's intention to replace that inhaler with an inhaler from her own supply and that she knew the use of such medication was wrong. The tribunal had determined that the employer had held a genuine belief in gross misconduct which had been reached on reasonable grounds following a reasonable investigation and that it was not for the tribunal to substitute its own opinion or penalty for that of the employer in the circumstances of this case. Gillen LJ determined that:-

> *"49. I consider that there is no basis upon which this court could consider that this conclusion was plainly wrong or that it could not have been reached by any other reasonable tribunal. Taking a prescription drug from under lock and key for the appellant's own use is clearly an extremely serious matter which no hospital can or should tolerate. Not only was the appellant well aware that this was prohibited behaviour but it could easily have been avoided by seeking assistance from A and E or the duty doctor.*
>
> *50. It was not unreasonable to conclude that this was aggravated by her failure to report the matter until two days later. Moreover it was perfectly reasonable for the Panel, made up of employees of the Trust well versed in Trust procedures and policies, to take the view that intent to personally replace it infringed the pharmacy supply chain. Frankly it scarcely requires an expert to inform the court that decisions to replace prescribed medications in principle should not be taken at this level irrespective of how simple an exercise in replacement in individual instances may appear to be."*

21. Gillen LJ concluded:-

> *"57. Whilst this may not necessarily have been the conclusion that this court would have reached had it been hearing the matter at first instance, I find no basis for substituting our view for that of the Panel and the Industrial Tribunal hearing this matter. I therefore dismiss this ground of appeal."*

22. The majority of the Court of Appeal in ***Connolly***, Deeny LJ and Weir LJ, reached a different conclusion. Firstly, they concluded that the decision of the respondent to dismiss the claimant, in all the circumstances of the case, was not a decision which a reasonable employer could reasonably have reached. Secondly, it determined that the decision of the industrial tribunal was '*plainly wrong*'. That second decision is based on the facts of the ***Connolly*** decision and on the view taken by the majority of the Court of Appeal in relation to the wording of the tribunal decision in that case. The first decision, and the approach taken by the majority to the objective standard of reasonableness, is of primary importance to the present decision.

23. Deeny LJ stated that:-

> *"Reaching a conclusion as to whether the dismissal is fair or unfair 'in accordance with equity and the substantial merits of the case' as required by Article 130(4)(b) would appear to involve a mixed question of law and fact."*

24. Deeny LJ then cited the well-known paragraph in ***Iceland Frozen Foods Ltd v Jones*** (above) which sets out the '*reasonable responses*' test. He went on to quote further from that decision to include the following:-

> *"Although the statement of principle in **Vickers Ltd v Smith [1977] IRLR 11** is entirely accurate in law, for the reasons given in **N C Watling & Company Ltd v Richardson [1978] ICR 1049**, we think industrial tribunals would do well not to direct themselves by reference to it. The statement in **Vickers Ltd v Smith** is capable of being misunderstood so as to require such a high degree of unreasonableness to be shown that nothing short of a perverse decision to dismiss can be held to be unfair within the section. This is how the industrial tribunal in the present case seems to have read **Vickers v Smith**. That is not the law. The question in each case is whether the industrial tribunal considers the employer's conduct to fall within the band of reasonable responses and industrial tribunals would be well advised to follow the formulation of the principle in **N C Watling & Company Ltd v Richardson [1978] ICR 1049** or **Rolls Royce Ltd v Walpole [1980] IRLR 343**."*

25. Deeny LJ then pointed out that gross misconduct justifying dismissal must amount to a repudiation of the contract of employment by the employee:-

> *"So the conduct must be a deliberate and wilful contradiction of the contractual terms."*

26. Deeny LJ stated that:-

> *"The facts as found are that she [the claimant] took five puffs of this inhaler when undergoing an asthmatic attack, without permission. The tribunal accepted the Appeal Panel's view that this was aggravated by her failure to report the matter until two days later.*
>
> *It seems to me that, even taking into account the delay, for which an explanation was given and was not rejected as a finding of fact, that cannot constitute 'deliberate and wilful conduct' justifying summary dismissal. Her terms of employment do not seem to have expressly prohibited such a use. The Code of Conduct is ambiguous at best on the topic. If she had asked the Ward Sister for permission before she used the inhaler and the Sister had refused her permission and she had nevertheless gone ahead and had used it one might have had the sort of act of disobedience contemplated by the Court of Appeal in **Laws v London Chronicle Limited**. That would have been a deliberate flouting of essential contractual conditions, ie following the instructions of her clinical superiors. But that is not what happened here. Furthermore, I agree with the statements in Harvey … that dismissals for a single first offence must require the offence to be particularly serious. Given the whole list of matters which the employer included under the heading of*

Gross Misconduct it is impossible, in my view, to regard the nurse's actions as 'particularly serious'."

27. Deeny LJ stated:-

> *"For this court to approbate the tribunal's decision upholding as within a reasonable range of responses the summary dismissal of an employee from her chosen profession on these facts without any prior warning as a 'repudiation of the fundamental terms of the contract' would be to turn language on its head. Employment law is a particular branch of the law of contract. With statutory interventions it has, of course, developed a character of its own. But any dismissed employee opting to go into a court of law and claim damages for breach of contract at common law against an employer who had summarily dismissed them for using a Ventolin inhaler while suffering from an asthmatic attack and delaying two days in reporting that, particularly when it was their 'first offence', could be tolerably confident of success before a judge, in my view."*

28. Deeny LJ held further that:-

> *"The interpretation of what, in this jurisdiction, is Article 130(4)(a) of the 1996 Order has been fixed by a series of appellate courts over the years, ie that whether an employer acted reasonably or unreasonably is to be addressed as whether an employer acted within a band of available decisions for a reasonable employer even if not the decision the tribunal would have made. That test, expressed in various ways, is too long established to be altered by this court, and in any event has persuasive arguments in favour of it. But it is necessary for tribunals to read it alongside the statutory provision of equal status in Article 130(4)(b), ie that that decision 'shall be determined in accordance with equity and the substantial merits of the case'. … ."*

29. The statutory test of unfairness in Article 130 of the 1996 Order (and in its predecessor) is in simple terms, and should be straightforward. It is difficult to see why it has generated such an extended discussion in case law over the last 40 years. The words of Article 130 comprise the only statutory test of unfairness. The formulation of the '*band of reasonable responses*' test, variously worded in different decisions, cannot be a substitute for the proper application of the statutory test. It may best be regarded as a double-check to be applied to ensure that, in applying the statutory test, the tribunal has avoided substituting its own views, on what it would have done in the relevant circumstances, for the decision of the employer. In other words it is, as the Court of Appeal (GB) stated in ***Fuller*** (above), a '*reassurance of objectivity*'.

It is therefore important to remember that the '*reasonable responses*' test, although long-established as pointed out by the Court of Appeal in ***Connolly*** (above), appears nowhere in the statute. This is a statutory tribunal whose function is to apply the statute. Non-statutory wording or non-statutory paraphrasing of the statutory test can only be of assistance where it is remembered that it cannot substitute for the statutory test which sets out the remit and the function of the tribunal. In ***Iceland*** (above), it was stressed that the starting point should be the words of the legislation. In ***Connolly*** (above) the Court of Appeal

(Northern Ireland) emphasised the importance of applying the statutory test as set out in the words of Article 130(4)(a).

30. There is no difference between the formulation of the legal principles expressed in the majority judgment and in the minority judgment in the case of ***Connolly***. The detailed formulation of those principles set out by Gillen LJ at Paragraph 28(i) – (xvi) of the decision covers, in full, the procedure which should be adopted by an industrial tribunal in assessing the fairness or unfairness of a misconduct dismissal. It is not disputed or challenged in any way in the majority judgement.

31. In ***Reilly v Sandwell Metropolitan Borough Council [2018] UK SC16***, the Supreme Court looked at a case of alleged unfair dismissal. The facts of that particular case are not of assistance to the present matter. However it is notable that Lady Hale, the President of the Supreme Court stated;

> *"the case might have presented an opportunity for this court to consider two points of law of general public importance which have not been raised at this level before."*

The first point is not of relevance to the present matter. However, Lady Hale described the second point in the following way;

> *"nor have we heard any argument on whether the approach to be taken by a tribunal to an employer's decisions, both as to the facts under section 98(1) to (3) as the Employment Rights Act 1996 first laid down by the Employment Appeal Tribunal in* ***British Homes Stores Limited v Burchell [1978] ICR 303*** *and definitively endorsed by the Court of Appeal in* ***Foley v Post Office [2000] ICR 1283,*** *is correct."*

She went on to state;

> *"Even in relation to the first part of the inquiry, as to the reason for the dismissal, the* ***Burchell*** *approach can lead to dismissals which were in fact fair being treated as unfair and dismissals which were in fact unfair being treated as fair. Once again, it is not difficult to think of arguments on either side of this question but we have not heard them."*

32. Lady Hale went to state;

> *"34. There may be good reasons why no one has challenged the* ***Burchell*** *test before us. First, it has been applied by Employment Tribunals, in the thousands of cases which have come before them, for forty years now. It remains binding upon them and on the Employment Appeal Tribunal and Court of Appeal. Destabilising the position without a very good reason would be irresponsible. Second, Parliament has had the opportunity to clarify the approach which is intended, should it consider that* ***Burchell*** *is wrong, and it has not done so. Third, those who are experienced in the field, whether acting for employees or employers, may consider the approach is correct and does not lead to injustice in practice.*
>
> *35. It follows that the law remains as it has been for the last 40 years and I express no view about whether that is correct.*

33. Therefore, while the Supreme Court recognised the long standing of the ***Burchell*** test, and pointed out the significant difficulties inherent in challenging that non statutory test at this stage, it did, rather pointedly, indicate that they were not expressing any view about whether the non-statutory test is correct and they stressed that they had not heard any argument in relation to that point. At the least, the Supreme Court questioned whether the "reasonable responses" test should be challenged at the final appellate level.

Automatically Unfair Dismissal

34. The Employment (Northern Ireland) Order 2003 ('the 2003 Order') set out a standard dismissal disciplinary procedure which is still in force in Northern Ireland although it has been abolished in Great Britain. That procedure consists of three steps. The first step is that the employer must set out in writing details of the employee's alleged misconduct which have led the employer to consider dismissal or disciplinary action and the employer must send that statement to the employee and must invite the employee to attend a meeting to discuss the matter. There is therefore a requirement for a written disciplinary charge and an invitation to a meeting. The second step is that the meeting must take place before disciplinary action is taken and the employee must have a reasonable opportunity to consider his response to the disciplinary charge. After the disciplinary meeting the employer must tell the employee of his decision and must notify the employee of his right of appeal against the decision. The third step is that the employee, if he wishes to appeal, must be invited to a further appeal meeting at which his appeal will be heard and after which he will be informed of the employer's final decision.

35. Article 130A of the 1996 Order, as amended by the 2003 Order, provides:-

> *"(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if –*
>
> > *(a) one of the procedures set out in Part I of Schedule 1 to the Employment (Northern Ireland) Order 2003 (dismissal and disciplinary procedures) applies in relation to the dismissal,*
> >
> > *(b) the procedure has not been completed, and*
> >
> > *(c) the non-completion of the procedure is wholly or mainly attributable to failure by the employer to comply with its requirements.*
>
> *(2) Subject to Paragraph (1) [tribunal's emphasis], failure by an employer to follow a procedure in relation to the dismissal of an employee shall not be regarded for the purposes of Article 130(4)(a) as by itself making the employer's action unreasonable if he shows that he would have decided to dismiss the employee if he had followed the procedure."*

36. The statutory procedure comprises 3 stages.

37. Step 1 requires:

> *"(1) The employer must set out in writing the employee's alleged conduct or characteristics, or other circumstances, which lead him to contemplate dismissing or taking disciplinary action against the employee.*
>
> *(2) The employer must send the statement or a copy of it to the employee and invite the employee to a meeting to discuss the matter."*

38. Step 2 requires:

> *"(1) The meeting must take place before action is taken, except in the case where the disciplinary action consists of suspension.*
>
> *(2) The meeting must not take place unless –*
>
> *(a) the employer has informed the employee what the basis was for including in the statement under paragraph 1(1) the ground or grounds given in it, and*
>
> *(b) the employee has had a reasonable opportunity to consider his response to that information.*
>
> *(3) The employee must take all reasonable steps to attend the meeting.*
>
> *(4) After the meeting, the employer must inform the employee of his decision and notify him of the right to appeal against the decision if he is not satisfied with it."*

39. Step 3 requires:

> *"(1) If the employee does wish to appeal, he must inform the employer.*
>
> *(2) If the employee informs the employer of his wish to appeal, the employer must invite him to attend a further meeting.*
>
> *(3) The employee must take all reasonable steps to attend the meeting.*
>
> *(4) The appeal meeting need not take place before the dismissal or disciplinary action takes effect.*
>
> *(5) After the appeal meeting, the employer must inform the employee of his final decision.*

40. Article 130A(2) can only be regarded as a clear legislative provision intended to discourage claims of unfair dismissal by unmeritorious claimants simply on the basis of technical breaches in procedure. There was initial controversy within GB as to whether or not that provision applied solely where the employer had failed to comply with general fairness in relation to procedure or whether it also applied

where there had been a failure to follow the statutory three step procedure described above.

41. Where Article 130A(2) applies, it has the effect of overturning the House of Lords decision in ***Polkey v AE Dayton Services Ltd [1988] ICR 142*** which itself had overturned the ruling in ***British Labour Pump Co Ltd v Byrne [1979] ICR 347***. Where that part of the Article applies, an employer can argue that, despite failure to follow a procedure, the dismissal was fair because he would have dismissed the employee even if the procedure had been followed.

42. In two 2006 decisions, the EAT considered the GB equivalent of this provision. In ***Mason v Governing Body of Ward End Primary School [2006] IRLR 432***, it concluded, inter alia, that the equivalent GB provision did not apply to breaches of the statutory dismissal procedure and that it reversed ***Polkey*** to a limited extent only. In ***Alexander v Bridgen Enterprises Ltd [2006] IRLR 422***, the EAT concluded that the equivalent provision applied to a situation where there had been a breach of any procedure which the tribunal considered the employer ought to have complied with.

43. In the later decision of ***Kelly-Madden v Manor Surgery [2007] IRLR 17*** the EAT returned again to this issue and concluded that the GB equivalent provision applied to any procedure which the tribunal felt that the employer ought to have followed and that it reversed ***Polkey*** to that significant extent. However, the EAT made it plain that it did not apply to cases where there is a wholesale breach of procedures or where there was a breach of the statutory three step procedure. It stated:-

> *"As Section 98A(2) makes clear, it is not open to an employer who is in breach of the minimum statutory procedure to contend that, even if he had complied with them, the result would have been the same. This is of course an important limitation restricting the scope of the* ***Polkey*** *reversal because the effect is that fundamental procedural defects are likely to involve a breach of statutory procedures and cannot then be saved by the sub-section."*

The position therefore is that in circumstances where the employer has not followed the minimum statutory procedure, the reversal of the ***Polkey*** doctrine does not take effect.

In such circumstances the employer cannot argue that the dismissal was fair: he cannot dispute liability. He can however deal with issue of remedy by:-

(1) relying on ***Polkey*** (which has not been reversed) and by arguing for a percentage reduction in compensation to reflect the chance of dismissal; and

(2) applying the principle of contributory fault arguing for a reduction in the basic and compensatory award by the percentage which is just and equitable.

A ***Polkey*** reduction and a contributory fault reduction can often reach the same result by a different route.

44. In the ***Kelly-Madden*** decision, the Employment Tribunal had also reached an alternative conclusion that any compensation payable should be reduced by 100%

on the grounds of contributory misconduct. The EAT concluded that a finding of a 100% contribution was not sustainable in view of the tribunal's criticism of the employer's regulatory and administrative procedures and the tribunal's recognition that this failure on the part of the employers had contributed to a relevant lack of communication which was in part to blame for what had occurred in that particular case. Of course, that EAT decision does not mean that a reduction in compensation of 100% could never be appropriate. That will depend on the circumstances of the individual case.

45. The 2011 Labour Relations Agency Code on Disciplinary and Dismissal Procedure in Section 1 provides guidance in relation to such procedures.

It states, in particular, in relation to appeals under Step 3 of the statutory procedure

> *"- where possible, arrange for the appeal to be dealt with by a more senior manager not involved with the earlier decision".*
>
> *[Tribunal's emphasis]*

In paragraph 50, it states:

> *"A more senior manager not previously involved with the case should hear the appeal. Where a person at the most senior management level has already been involved with the case and there is a manager of the same status who has not, the appeal should be heard by the latter. In the event that neither of these is possible and the same manager who took the disciplinary action, unavoidably, has to hear the appeal, that manager should act as impartially as possible".*
>
> *[Tribunal's emphasis]*

46. In paragraph 63, it provides:

> *"When drawing up and apply procedures, employers should always bear in mind the requirements of natural justice. - Employees should be given the opportunity to challenge the allegations before decisions are reached -".*

47. In paragraph 64, it provides:

> *"Good disciplinary procedures should:*
>
> - *give employees a chance to have their say before management reaches a decision."*

48. The EAT in ***Khanum v Mid-Glamorgan Area Health Authority [1978] IRLR 215*** stated that, in relation to disciplinary hearings, there are three basic requirements:

(i) the employee should know the nature of the accusation against him;

(ii) the employee should be given an opportunity to state his case;

(iii) the panel should act in good faith.

In that case the disciplinary panel which heard from the employee made the decision to dismiss.

49. The respondent referred to ***Kisoka v Rydedale Day Nursery UKEAT/0311/13*** as authority for the proposition that there is no absolute rule of law that an employer must always implement an appeal finding. The ***Kisoka*** decision referred to a first appeal set up by the employer; although this comprised individuals who were not employed by the respondent. This appeal was the internal appeal in effect. Crucially the statutory three step procedure did not apply in that case. The appeal decision was stated to be "final". It was not merely a "recommendation" as submitted by the respondent in the present case. The employer in ***Kisoka*** decided not to implement the decision which had been described as "final". The EAT determined that the statutory test was paramount and upheld the dismissal. That case was determined on its own particular facts and in the absence of the three step statutory procedure. It did not refer to procedural unfairness and is, in any event, not binding in this jurisdiction.

PROCEDURE

50. The first claim; 14129/18IT, was lodged on 30 September 2018. In that claim, the claimant alleged both unfair dismissal and public interest disclosure detriment and named three respondents. An application for interim relief, which had also been made by the claimant, was refused because it had been lodged outside the seven day time limit specified in Article 163(2) of the Employment Rights (Northern Ireland) Order 1996.

51. A great deal of time and effort appears to have been expended in October and November 2018, with the claimant seeking to object to the respondent's choice of solicitors and also with the claimant stating that her claim had only been for interim relief; the part of the claim that had clearly been out of time and which had been refused.

52. In November 2018, the claimant sought to add six additional respondents to her claim.

53. The response to the first claim was lodged on 2 November 2014 on behalf of the first respondent (the only current respondent) and second and third named respondents. At that stage, the respondents had not been notified of the potential for six additional respondents who were officially joined to the action on 19 November 2018. The responses from the fourth, fifth, sixth, seventh and eighth respondents were lodged on 4 December 2018.

54. The solicitor acting for the respondents applied for an extension of time within which to lodge a response on behalf of the ninth respondent who was at that stage absent on sick leave. That extension of time was granted. The claimant objected to the extension of time. It is unclear why that objection was made by the claimant, given the ill-health of the ninth respondent. It was, at best, a pointless objection which only added to costs and delay. That objection was rejected. The response from the ninth respondent was lodged on 2 January 2019. All claims were resisted by the respondents.

55. The claimant had lodged a second claim of unfair dismissal; 16100/18IT on 24 October 2018, even though she knew at that stage that she already had an existing claim of unfair dismissal. The second claim also alleged breach of contract in various respects. The second claim also named nine respondents. It is difficult to understand why the claimant felt the need to lodge a second lengthy unfair dismissal claim and why she lodged that second claim alleging unfair dismissal and breach of contract against nine respondents, when it had been clear to her that her only employer and the only person with whom she had a contractual relationship had been the first-named respondent. The addition of the second, third, fourth, fifth, sixth, seventh, eighth and ninth respondents to claims of unfair dismissal and breach of contract had been entirely unnecessary. Again, it only added to costs and delay.

56. In any event, responses were lodged on behalf of the first eight respondents on 4 December 2018 and the time limit within which a response by the ninth respondent was to be lodged was extended because of her ill-health. Again, the claimant objected to that extension of time and that objection was rejected.

57. The claimant engaged then in lengthy correspondence objecting to several matters, including what she alleged had been *"premature"* Notices from the respondents and further objections to the solicitors who were acting on behalf of the respondents. Again those objections were pointless and only added to costs and delay.

58. On 5 February 2019, Mr Bunting came on record for the claimant. Shortly thereafter and after a great deal of time and effort had already been expended, the claimant indicated that she wished to withdraw the second claim (16100/18IT) in its entirety and also that she wished to withdraw her claims in the first claim (14129/18IT) against the second, third, fourth, fifth, sixth, seventh, eighth and ninth respondents.

59. A Case Management Discussion was held on 15 April 2019. The claimant was represented by Mr Bunting. The respondents were represented by Judith Blair Employment Law Solicitors.

60. The claimant withdrew both claims against the second, third, fourth, fifth, sixth, seventh, eighth and ninth respondents. The claimant also withdrew all her claims other than her unfair dismissal claim. It appears that, for some reason which is not immediately apparent, both claims of unfair dismissal proceeded to hearing against the first respondent.

61. Directions were given in relation to the interlocutory procedure and the witness statement procedure. Even though this had been an unfair claim, it was listed for 11 days in total including one full reading day. While there may have been several witnesses, the number of witnesses was not unusual in an unfair dismissal claim. It is difficult to see why that length of hearing was required by the parties. Furthermore, the issue of the claim for reinstatement was not addressed at all by the parties in that Case Management Discussion.

62. Perhaps inevitably, heated correspondence continued between the parties thereafter. Several matters were raised, including potential costs applications, discovery difficulties, and the claimant objecting to one of the respondents' witnesses.

63. A further Case Management Discussion was held on 4 September 2019. Nothing concrete appears to have emerged from that Case Management Discussion and a further Case Management Discussion was arranged for 4 October 2019. Further heated correspondence continued between the parties.

64. At that further Case Management Discussion on 4 October 2019, further Directions were given in relation to Discovery and a Witness Attendance Order was granted to the claimant in respect of a Mr Darren Crothers requiring his attendance for the full ten days of evidence which had been directed on 15 April 2019.

65. Yet another Case Management Discussion was held on 21 October 2019. Further Directions were given.

66. At that stage, there had been four Case Management Discussions in an unfair dismissal case. That unfair dismissal case had been listed for 11 days with one full reading day. The issue of reinstatement had not been raised by the parties in the Case Management process. A mass of paperwork had been generated. A year had gone by since the claims had been lodged and nothing had been resolved.

67. The first day of the 11 day hearing which had been directed to be a reading day was cancelled. A Case Management Discussion was heard on the morning of that day. The timetable for the hearing was altered. It was directed to proceed for a maximum of five days in the following week commencing on 4 November 2019. The Witness Attendance Order in respect of Mr Crothers was reduced to one specified half day. The timetable for cross-examination of each witness was discussed and agreed. On that basis the parties were advised that it was probable the matter would only take three days to hear. The hearing was directed to deal with liability only. The parties were reminded that where reinstatement had been sought, the nature of the evidence required in relation to that application for reinstatement is different to the evidence required to determine liability and that it would be more appropriate for a separate remedy hearing to be arranged, if required, where reinstatement had been sought by the claimant.

68. The claimant gave evidence on her own behalf using the witness statement procedure. A witness statement was presented from a Ms Katherine Clarke, a trade union official. Ms Clarke did not attend the hearing to swear her statement or to be cross-examined. Mr Darren Crothers attended on foot of a Witness Attendance Order sought by the claimant.

69. The following witnesses gave evidence on behalf of the sole remaining respondent:

    (i) Dr Jonathan Hegarty;

    (jj) Catherine Burns;

    (iii) Maureen Walkingshaw;

    (iv) Brian Doran;

    (v) Sharon Martin;

(vi) Gillian Magee.

M/s Martin and M/s Magee were not cross-examined.

70. The hearing proceeded on 4th, 5th and 7th November 2019.

71. The parties were directed to provide written submissions by 21 November 2019. Oral submissions were heard on 29 November 2019.

The claimant provided submissions on time to the tribunal and to the respondent. Mr Doherty was involved in several ongoing hearings in the tribunal and the respondent's submissions were regrettably and unavoidably delayed as a result, Mr Bunting was afforded a further opportunity to submit further submissions by 25 December 2019.

RELEVANT FINDINGS OF FACT

72. The claimant was employed as a lecturer in the respondent college from September 1995.

73. Her contract of employment stated at paragraph 24.4 under the heading *"personal conduct"*:

> *"You will be expected to conduct yourself responsibly and not bring the College into disrepute – however the College affirms that you have freedom within the law to question and test perceived wisdom relating to curriculum matters and to put forward ideas about curriculum matters without placing yourself in jeopardy of losing your job and privileges at the College."*

The claimant accepted in cross-examination that, when she tested or questioned curriculum matters, she had been supposed to do so in a responsible way.

74. The College had a harassment policy which was in fairly standard terms. To the extent that it had been necessary to put this in writing, the policy stated that the College was *"committed to promoting a good and harmonious working environment where every employee is treated with respect and dignity and in which no employee feels threatened."*

75. There had been a history of conflict between the claimant and her line manager, Ms Maureen Gillespie. Ms Gillespie had complained of harassment by the claimant in or around 2016. The facts and detailed particulars of that complaint are not relevant to the present case.

76. In or around June 2016, the College had been contemplating initiating a disciplinary process against the claimant, arising out of the complaint lodged by Ms Gillespie. The claimant's trade union and the respondent College, working together, tried to resolve the differences between the claimant and Ms Gillespie and tried to avoid progressing the disciplinary action.

77. On 1 June 2016, Mr Darren Crothers, the Head of HR emailed the claimant under the heading *"correspondence regarding the way forward"*. That email stated:

"The following were the proposals circulated between the College and Alistair [Donaghy trade union official] which I understand he discussed with you. For clarity, these would be the foundation for moving forward for the new academic year in line with moving to 16/17 as a "clean slate":

- *the current disciplinary process will not be progressed.*

- *The informal support programme process under the auspices of the interim College policy is considered as completed and will remain on file.*

- *We will move on to an appropriate full timetable from September 2016 (timetabling for all lecturers is currently taking place for the next academic year).*

- *New line management arrangements will be put in place – as with all lecturing staff you will report to a CAM. Christine will be your relevant Head of School.*

- *The current grievance will not be progressed. All past grievances will be considered void and not be referred to or used moving forward.*

- *As with any member of staff, you will participate in any and all CPD training that is considered necessary for your development."*

The tribunal concludes that the references to *"a clean slate"* and to all past grievances being "*considered void*" and *"not to be referred to or used"* indicates that the respondent and the claimant had agreed that the existing history of conflict between the claimant and Ms Gillespie was to be forgotten and that it would not be referred to, or relied on, by the respondent in future.

78. On 24 June 2016, the claimant emailed Mr Crothers to state:

Thank you for all your recent help. The points below are accepted".

That email referred to the email from Mr Crothers of 1 June 2016 which was next in the email chain.

79. The claimant currently feels aggrieved at the content of this agreement which she had reached on 24 June 2016 with the College. She alleges that it had not been followed by the respondent College. She further alleges that she had been misled in relation to that agreement and alleges that she had wrongly trusted her trade union. The claimant asserted in cross-examination that she would have read this agreement at the time but would have trusted her trade union. She stated that she would not have queried the terms of the agreement.

80. The agreement had been expressed clearly over a few short lines of text. It is not credible that the claimant had not carefully read and considered that agreement before telling the Head of HR in clear terms that *"the points below are accepted"*. Given the history of acrimonious dispute between the claimant and Ms Gillespie and given the effort expended on her behalf by her trade union and by the College, the tribunal does not accept that the claimant would have entered into this

agreement blindly or without fully and completely understanding its terms. She had taken three weeks before replying; long enough to have read and to have considered and fully understood the terms of the agreement.

81. In any event, the agreement referred to the then current disciplinary process against the claimant and the then current grievance lodged by the claimant. Both were to be discontinued. It stated that all previous grievances would be considered void and would not be referred to or used moving forward. The claimant alleges that previous grievances and the discontinued disciplinary process had been relied on in relation to subsequent grievances but that is disputed by the respondent. The concept of the clean slate which was referred to in the minute of 1 June 2016 would suggest that all the previous grievances and disputes should have been forgotten by both the claimant and the respondent. Both would have started on 24 June 2016 with a *"clean slate".*

82. Nothing in that agreement had prevented the claimant, Ms Gillespie, or indeed the College, raising any further complaints or grievances in relation to subsequent actions and nothing in that agreement had prevented subsequent disciplinary action.

83. Much of the claimant's concern in relation to subsequent complaints and disciplinary action against her centres on her allegation that, when she entered into this agreement by accepting it on 24 June 2016, she had been unaware of another formal complaint which had already been lodged on 8 June 2016 by Ms Gillespie. In essence, she states that she had been conned or misled into signing this agreement when a further complaint had been in existence but had been held back, or held in abeyance, by the respondent.

84. Having listened carefully to the evidence given by the claimant and by Mr Crothers, it seems clear that the claimant and Mr Crothers had met on 13 June 2016, before the agreement had been accepted by the claimant, to discuss timetabling matters. In the course of that meeting, Mr Crothers had raised with the claimant concerns that had been expressed to him about the claimant complaining about somebody else's work to the Quality Unit in the College. The claimant sought in cross-examination to deny that that had been sufficient to enable her to know that Ms Gillespie had raised concerns about her. While it is clear that, in the course of the meeting on 13 June 2016, the claimant had not been told in terms that Ms Gillespie had lodged a formal complaint about her actions in going to the Quality Unit about a course designed by Ms Gillespie, it is also clear that Mr Crothers had raised in clear terms concerns about the claimant's actions in complaining about a course to the Quality Unit. There cannot have been many instances at that time, or indeed at any time, where the claimant had complained about another employee's work to the Quality Unit. The tribunal therefore concludes, on the balance of probabilities, that the claimant knew in the course of the meeting on 13 June 2016 that concerns had been raised about her actions in going to the Quality Unit to complain about the content of a course. She must have known that that those concerns had been raised by, or on behalf of, Ms Gillespie, unless she had raised another complaint at that time about a different course to the Quality Unit. When challenged, she confirmed that she had not raised any such complaint at that time, and she stated that she had known that it had been Ms Gillespie who had raised the matter.

85. That is also confirmed by an answer given by the claimant in the course of an interview in connection with a subsequent investigation. In that interview, conducted on 9 February 2017, the record discloses:

> *"Catherine Brown – you insisted throughout this process you did not know about MG's complaint until September 2016. Why in your questions to DC do you refer to being informally told of the MG complaint on 13 June 2016?*
>
> *EW (the claimant) – he never mentioned complaint, he just asked why I did certain things eg contact Lorraine Lavery (Quality Unit), never said there was a complaint."*

86. The tribunal therefore concludes that, in the course of the meeting on 13 June 2016, the claimant was told that a colleague had been concerned about the claimant visiting the Quality Unit in relation to her course. The claimant had realised that the colleague had been Ms Gillespie. However she had not been told that a formal complaint of harassment had been made and there was nothing in that meeting of 13 June 2016 which would have alerted the claimant to the existence of a formal complaint of harassment. It is surprising that the respondent chose not to be open and clear about the existence of such a complaint.

87. It seems clear that in the course of that investigation (the first of two investigations) to which this decision will shortly turn, the claimant had not disclosed that she had been told, in relatively clear terms on 13 June 2016 that a colleague had been unhappy with her contacting the Quality Unit to complain about her course and that she had known that the colleague had been Ms Gillespie. The claimant therefore had sought to mislead that first investigation. When challenged in cross-examination, she stated that *"I was misled"*. – *"I needed it in an upfront manner."*

88. The dispute between Ms Gillespie and the claimant, which gave rise to the disciplinary procedures leading the claimant's dismissal, centres upon an events course which had been designed by Ms Gillespie as the claimant's line manager. In short, the claimant had complained to Ms Gillespie's line manager and to the Quality Unit of the respondent College that she had been concerned about the content of that course and concerned that it had been an NVQ course for which the College did not have examining authority. Ms Gillespie took the view that the claimant had been seeking to undermine her as a continuation of their previous dispute and the claimant took the view that she was doing no more than challenging *"perceived wisdom"* in relation to the curriculum.

    It is clear that Ms Gillespie viewed the new incidents as part of and a continuation of the previous dispute. However Ms Gillespie had not been part of the agreement on 24 June 2016. She had not agreed to forget about the previous dispute and not to refer to it again. The respondent seems to have regarded the new incidents in the same way and not as incidents to be viewed in isolation without an historical context.

89. The latest instalment of the saga commenced on 24 May 2016. Mrs Gillespie sent the claimant a friendly email which as her line manager, notified her, that she would be the co-ordinator for the new events course. That course was identified as a level 3 course. There was no mention in that email of an NVQ and no indication

whatsoever that the course had been an NVQ course as the claimant later sought to allege.

90. The details of that proposed course would have been in the prospectus produced by the College. The claimant would have had ready access to that prospectus. That prospectus would have made it plain that the course was not an NVQ course. The claimant did not at any stage check the prospectus. She stated in terms, in the course of her cross-examination, that *"I did not use the prospectus"*.

91. On the same day, 24 May 2016, approximately one hour later, and without checking the prospectus or making appropriate enquiries, the claimant wrote to Mrs Gillespie's line manager, Mrs Brown, copied to Mrs Gillespie, in the following terms:

> *"I feel we do need to have some discussion on this new course as I feel there are going to be massive issues/problems based a lot on feedback from other colleges with bundling.*
>
> *1. If you have weak students that struggle we are not asking them to do mandatory units both on hospitality and tourism to achieve any type of qualification – massive workload with 15 pieces of hospitality in one unit.*
>
> *2. The management of quality will be complicated as you have three sets of EV plus it will have to be standardised meaning the schools from hospitality, full-time hospitality and this course will have to be one batch. The events do we have an EV or system in place as this comes under NVQ [Tribunal emphasis]*
>
> *3. The hospitality mandatory units X 2 for customer service are best taught linked with food service. Have we provision and capacity/staff to do this in the Linen Lounge? A student expectation will be some practicable work/assessment.*
>
> *4. The students enrolled already have level 3 diploma T and T so they already have ABL if they are allowed to have this within the structure – Edexcel Regulations plus is there is an issue with FLUs as they will not be attending.*
>
> *5. With such a wide teaching team required it becomes very complicated.*
>
> *6. I feel we need to ensure the course is going to work. In theory this is a good idea but I would be inclined to run quite simply another level 3 cohort of Travel and Tourism with the unit delivery combinations to ensure all students do succeed with some form of qualification and let students know that in year 2 that subsidiary diploma in hospitality may be an option. I can show you what other colleges had done. The Event Award would be additionality or more units for the diploma.*
>
> *I do not want to be negative but I do not want the same problems repeating themselves. I feel we need to meet face to face."*

92. There would appear to have been no grounds at this stage for the claimant to have stated that the proposed course was an NVQ course. There also appeared to have been no grounds, or least insufficient grounds, for the claimant to have assumed within the period of one hour, and without any appropriate research, that there would be *"massive problems"* with the course. It also seems clear that, although the claimant had stated on the face of the email that she did not want to be negative in relation to the proposed course, that had been precisely the purpose of her email.

93. The claimant was asked in cross-examination why she had sent this email undermining Ms Gillespie's proposed new course direct to Ms Gillespie's line manager, Mrs Brown, and not direct to Ms Gillespie. Ms Gillespie had after all been the claimant's line manager and any such email should have been sent direct to Ms Gillespie as a response to her earlier email. The claimant in cross-examination accepted that she had sent the email of 24 May 2016 direct to Ms Gillespie's line manager, Mrs Brown, and stated that this had been *"as I was instructed to do"*. That proposition had also been put forward by the claimant in the course of the first harassment investigation. She had maintained that she had been instructed by HR to write to Mrs Brown and not to Ms Gillespie. The claimant had been instructed in an email of 9 March 2015 not to correspond directly with Ms Gillespie or to copy any such correspondence to her. Correspondence was to be sent direct to a Kevin Lavery. That instruction was for the course of the earlier investigation which was still current on 24 May 2016 and was still in place until agreement was reached on 24 June 2016.

94. However, that email of 24 May 2016 was not sent to Kevin Lavery, as instructed, and it was copied by the claimant to Ms Gillespie despite the clear instruction to the claimant not to copy correspondence to Ms Gillespie.

95. The tribunal concludes that the claimant's actions in writing direct to Ms Gillespie's line manager, and copying that email to Ms Gillespie, had simply been a continuation of her earlier dispute with Ms Gillespie. The claimant's attempts to rely on an instruction from HR as a justification for this action was simply an attempt to misrepresent the facts.

96. The claimant accepted that she had a *"not good"* working relationship with Ms Gillespie and that that had gone back for some years. The claimant also accepted that she had negative views of Ms Gillespie's abilities. It is clear that the agreement reached on 24 June 2016 had been unsuccessful in restoring the working relationship between the claimant and Ms Gillespie.

97. On the same day, again one hour after her previous email to Mrs Brown, the claimant sent another email. This time the email was sent directly to Mrs Gillespie with a copy to Mrs Brown. That tends to undermine the claimant's suggestion in cross-examination that she had been instructed by HR to write direct to Mrs Brown and not to Mrs Gillespie. That email, again prepared by the claimant without adequate time for research, or consideration, put forward a suggestion for an alternative course to that prepared by the claimant's line manager.

98. The claimant continued at this stage to take the view that this proposed course was or probably was, an NVQ course for which the College did not have authority. There were absolutely no reasonable grounds for such a belief. The claimant had

failed to consider the matter properly and had failed to look at the prospectus which would have been the primary document that she should have consulted. In fact, the claimant went further at this stage. She went to a Ms Lorraine Lavery who was in charge of the Quality Unit. That unit was responsible for ensuring that all courses provided by the College met certain quality standards.

99. On 7 June 2016, Ms Lavery emailed Mrs Gillespie, copied to Mrs Brown, to state:

> *"Emma (the claimant) has popped in to see me with a leaflet for a new BTEC L3 combining Hospitality and Events and Travel and Tourism. Are you planning to run a BTEC L3 NVQ in events as part of it? Have you applied for approval for this? We do not have approval for any NVQ with BTEC and it is a totally different assessment process with a different standards verification process which will require training for both the team and me to support them."*

100. On that same day, Mrs Lavery, having consulted with Ms Gillespie and Mrs Brown, emailed Ms Gillespie to state:

> *"Thanks for coming up to confirm that it is not an NVQ. We now have approval secured for you. Emma totally misrepresented the qualification to us and we have wasted the last hour plus on a wild goose chase."*

101. The only conceivable explanation for the claimant's dogged pursuit of her misconceived concerns about this course was an attempt on her part to continue her long running dispute with Ms Gillespie. When challenged in cross-examination as to the basis for her stated concerns about the course, she confirmed that she had never looked at the prospectus to check whether it had ever been proposed that this would be an NVQ course. Instead she stated she had *"a college leaflet"*. Ms Lavery, in her email of 7 June 2016, referred to a *"leaflet"*. That leaflet has never been positively identified to the tribunal. The claimant asserted in cross-examination that the leaflet *"should"* had mirrored the prospectus. The claimant further confirmed that she had not googled the course content. Instead, she had gone over everyone's head to contact the Quality Unit direct to express her stated concerns about the course being an NVQ course.

102. It is not clear, on the evidence before the tribunal, what "leaflet" had been produced by the claimant to the Quality Unit. It would appear possible, that the *"leaflet"*, which the claimant had produced to Mrs Lavery as evidence of her concerns about Ms Gillespie's proposed course being an NVQ course, had in fact been an options document proposed by a Mrs Casey in respect of an entirely different course. That document had clearly been identified as an options document and equally clearly identified as a course proposed by Mrs Casey and not by Ms Gillespie. If that had been the "leaflet", it is entirely unclear why the claimant had chosen to produce this to Mrs Lavery as *"proof"* that Ms Gillespie's course was an NVQ course.

103. It is also possible that the "leaflet" had been a document which was a general Edexcel level 3 NVQ document which had been entirely unrelated to Mrs Gillespie's course. The claimant denies that this had been the document. The respondent suggested it had been.

104. Although neither party referred to this in the course of the hearing, there is a further document at page 916A of the bundle which referred to a course in "Event Management". That document does not refer to a NVQ qualification.

105. The bottom line, whatever "leaflet" had been produced by the claimant to the Quality Unit, was that her concerns had been entirely unjustified and unsupported by any proper consideration or research.

106. It appears extremely odd to this tribunal that a lecturer of some 27 years' experience and well used to courses being proposed and being run by the College, would not have gone straight to the prospectus to query any issues regarding the status of that course, if indeed the claimant had genuinely held any such concerns.

107. In any event, on the same date, 7 June 2016, Ms Lavery emailed the claimant directly with a copy to Ms Gillespie. That email was headed under subject as: *"NVQ risk raised today not valid"*. The body of the email stated, "*the programme is not an NVQ as per your steer today and is not the spec you signposted me to today. The new Events programme is a QCF programme and we have permission to run it. It is assessed in the same way as other BTEC QCF programmes. Please ensure you are fully aware of details before you raise courses with me again as a risk*."

108. When the claimant had received that email, anyone, except perhaps the claimant, would have realised that she was being ticked off by the Quality Unit for wasting their time with groundless suspicions. When it was put to the claimant in cross-examination that she had either acted irresponsibly or that she had acted deliberately to cause trouble for Ms Gillespie, the claimant denied those suggestions. She went on to repeat, as she repeated continually throughout her cross-examination, that *"I asked Ms Gillespie twice for a meeting. I am entitled to a meeting."*

109. It was put to the claimant in cross-examination that, after the receipt of Mrs Lavery's email, she would have had no cause to have had any further concerns about the course. The claimant refused to accept that proposition. She stated she had still been very concerned and very worried.

110. The tribunal concludes that she had had no rational basis for her concerns about the course at any stage, but particularly after receiving the email of 7 June 2016 from Mrs Lavery.

111. On 8 June 2016, Ms Gillespie made a formal complaint about the claimant under the College Harassment Policy. She wanted to pursue this complaint formally. She did so on the basis that previous informal procedures have not ended satisfactorily. Ms Gillespie complained that the claimant had attempted to disrupt a new qualification which she had created ie the level 3 course in Events. She stated that the claimant had given wrong information about the course to senior managers and to the Quality Unit. The claimant had alleged that it had been an NVQ course when it clearly had not been such a course.

112. The claimant wrote an email on 14 June 2016 to Mrs Brown which was not copied to Ms Gillespie. In that email she made suggestions in relation to Ms Gillespie's course. She suggested in particular that that course be *"scrapped"*.

It was clear that, on 14 June 2016, the claimant had already received the rather terse email from Ms Lavery on 7 June 2016 which had basically told her not to continue wasting the time of the Quality Unit in relation to her concerns about courses. Yet some seven days later she continued in her relentless pursuit of this course which had been put forward by Ms Gillespie.

113. It was also clear that by 14 June 2016, the claimant had already had the meeting on 13 June 2016 with Mr Crothers and, at that point, had been aware that Ms Gillespie had been concerned about her actions in approaching the Quality Unit. The tribunal is concerned that, given the history of the relationship between the claimant and Ms Gillespie, and given the fact that she had clearly been told that the course had not been an NVQ course and given that her previous concerns had been rebuffed, the claimant had continued in this vein. It is difficult to construe her actions as actions motivated by any genuine concern about the nature of the course, rather than as a continuation of her personal dispute with Ms Gillespie.

114. When all this was put to the claimant in cross-examination she stated *"I don't see why it would have caused any distress to Ms Gillespie"*. That is not credible. The claimant had been directly criticising the work of Ms Gillespie to her line manager and to the Quality Unit. The claimant would have known the effect that would have on Ms Gillespie.

115. The harassment and bullying policy required that the alleged harasser (the claimant) should have been notified of the complaint within ten days. That provision in the policy is important. It allows complainants and alleged harassers to deal with a complaint when memories are fresh and it prevents complaints being delayed and being allowed to fester. This did not happen in the present case in relation to Ms Gillespie's complaint of 8 June 2018. The complaint was *"stayed"* with the agreement of the HR Department. There was no provision within the policy to allow complaints to be *"stayed"*. While the claimant had clearly been alerted on 13 June to the fact that Ms Gillespie had been unhappy that the claimant had contacted the Quality Unit, she had not been notified that a formal complaint had been made under the policy. It had therefore been *"stayed"* and held in abeyance by the respondent while the claimant reached the agreement on 24 June 2016.

116. On 1 September 2016 some three months after the complaint had been lodged, Mr Keith Smith a member of the HR Department met with Ms Gillespie to confirm details of her complaint. There was no suggestion or evidence that the HR Department, or indeed the Governing Body, ceased to operate over the summer months.

117. The respondent appointed Ms Colette Bowman-McAllister to be the investigator in this matter. This was, initially, an harassment investigation rather than a disciplinary investigation. The terms of reference for the independent investigation required the investigator to:

> *"Identify substance to the allegations made ie substantiate or disprove the allegations as appropriate".*

However, under paragraph 4.18 of the Harassment Procedure of the respondent it was then used as a disciplinary investigation report.

118. The claimant alleged that Ms Bowman-McAllister had been biased and that she should not have been appointed because of her relationship with the College solicitor. The claimant sought to cross-examine Ms Bowman-McAllister on the nature of that relationship but that was not permitted by the tribunal. Any such relationship is not relevant to this claim.

119. It seems clear that Ms Bowman-McAllister had demonstrated no bias or bad faith. However, one issue in this case relates to the validity of her selection and appointment as an investigator. Another issue was whether she had introduced historical matters which should have been ignored as part of the "*clean slate*" agreement.

120. The harassment procedure at paragraph 4.5 stated in connection with the appointment of an investigating officer that:

> *"In exceptional circumstances, if an investigating officer cannot be sourced internally, the College must consider the involvement of an individual, from within the sector, who has received appropriate training and is acceptable to the complainant."*

It seems plain that Ms Bowman-McAllister had at some stage in the past lectured in the Institute for Legal Studies. However that cannot be regarded as being *"within the sector"*. The Institute for Legal Studies is not within the further education sector. While the investigating officer had acted properly and could not properly be accused in any sense of bias or of improper conduct, her appointment had not been strictly in accordance with the internal harassment procedure. There was no evidence of exceptional circumstances which had prevented an internal appointment and, in any event, no evidence that Ms Bowman-McAllister had been *"within the sector"*. It is another example of the respondent failing to follow procedures.

121. The claimant was interviewed on 12 January 2017 by Ms Bowman-McAllister. The claimant was assisted by her trade union representative Mr Donaghy.

122. In the course of that interview, the claimant maintained that she had been the victim in all of this; not Ms Gillespie. The alleged that the formal complaint of 8 June 2016 had been a counter-claim by Ms Gillespie in continuation of the historic differences between the claimant and Ms Gillespie. Ms Gillespie had been seeking retaliation.

123. Mrs Bowman-McAllister informed the claimant that she would not be investigating historic matters in this case and the claimant accepted that that was fair. The claimant complained in particular that she had received a *"sharp email"* from Ms Gillespie on 24 May 2016. That was the email which appears at page 438 in the bundle. That email had been entirely friendly and professional. There had been nothing *"sharp"* about it. The fact that the claimant had described it as such in the investigation, and the fact that the claimant had confirmed in the course of that investigation that she had been offended by that email, is instructive. The tribunal cannot understand how anyone could rationally have been offended by such an email from her line manager.

124. Even at this stage, at the time of the investigation interview, the claimant still maintained that she had not been happy with the course prepared by Ms Gillespie. She stated that she was not confident that it would achieve the required standards of retention and success rates. She stated she did not want to be involved in Ms Gillespie's course.

125. The claimant accepted in cross-examination that in the course of this harassment investigation meeting she had blamed Ms Gillespie for being under investigation and that she had not accepted that she had done anything wrong in relation to Ms Gillespie. When asked if she could have done anything different or whether she had any remorse about what she had done, she stated that she had no remorse. She repeated again that she had asked for a meeting. When it was put to her in cross-examination that she had been making herself out as the victim, she stated in response *"I am the victim"*.

126. In the course of this investigation meeting, the claimant was asked if she had suggested in relation to this course that it had been an NVQ course. She confirmed that she had done so. She stated that she had *"assumed it was an NVQ, I did not check with Maureen Gillespie or Christine Brown that the course was NVQ."* The notes in relation to the investigation meeting are clear and had not previously been challenged by the claimant. When this extract was put to the claimant she complained, for the first time, that the notes were not accurate. She stated that it had been the way the notes had been recorded. It is unclear what point the claimant was seeking to make at this stage. It was clear from the contemporaneous records that the claimant had alleged and had alleged repeatedly that the course had been an NVQ course for which the College did not have examining authority. It was also clear from the claimant's own previous answers that she had not made any checks with anyone in relation to whether or not the course had really been an NVQ course. She had, in particular, not taken the simple and obvious step of checking the prospectus. It is therefore entirely consistent with all of that, that she had stated in the course of this investigation meeting that she had *"assumed"* it had been an NVQ. There had been nothing else to support that view, other than an assumption on the part of the claimant. The *"leaflet"* to which the claimant has referred has not been positively identified and has not been produced at any stage by the claimant. When this matter was pressed further in cross-examination the claimant asserted that these had not been the notes of the note taker. There was absolutely no evidence for such a proposition. A note taker had been present during the interview. These notes had been typed up and had been presented as those note taker's notes. No previous objection had been raised by the claimant. In cross-examination she felt entitled to assert *"those aren't Patricia's notes"*. The tribunal concludes, on the balance of probabilities, that the notes were the note taker's notes and that they were accurate.

127. The claimant was given the opportunity to provide a written submission to the first investigation. She did so at some considerable length over 14 pages. It is notable that in that written submission the claimant put forward the suggestion that Ms Gillespie should be retired. The written submission stated:

> *"Solution: Ms Gillespie was open that she was offered VES academic last year 2016 but outlined she would take this year if available. The college could use discretion and offer it to her with departure end of January 2017 to coincide with annual leave entitlement, new semester and financial year.*

Ms Gillespie would receive around £75,000 which needs to be considered in relation to the current costs her behaviour has caused in terms of management time, employment of part-time tutors and legal fees (investigator)."

The tribunal finds it frankly incredible that the claimant adopted such an approach to this matter, given the history of all of this. The claimant at one point in her written submission had stated that:

"MG her own worst enemy in the workplace and does not accept responsibilities for her own actions."

It seems to this tribunal that it is the claimant who has some difficulty accepting responsibility for her own actions.

The claimant received a comprehensive investigation report at the conclusion of this investigation. It is clear that the allegations made by Ms Gillespie had been upheld by the investigator. The investigator had concluded that the claimant had bullied Ms Gillespie and she recommended disciplinary proceedings. She also recommended that the appropriate category of offence was gross misconduct. The claimant received that report on 3 March 2017. She confirmed in cross-examination that she had read through that document.

128. That report set out in detail the level of upset felt by Ms Gillespie as a result of the claimant having bullied her in the workplace. When that was put to the claimant in cross-examination, she stated that she felt Ms Gillespie had been lying. She referred to the one email on 29 June 2016 in which Ms Gillespie had stated that she had been looking forward to seeing her. On that basis, the claimant concluded that she had not caused Mrs Gillespie any offence. She stated again that *"I am the victim"*. She stated that she did not believe her actions had had any impact on Ms Gillespie.

129. It was put to the claimant that she had shown no insight and that she had expressed no remorse for her actions. The claimant responded that she had done so and that she had apologised. That had been a brief one word apology which had been sent to Mrs Lavery and then copied to Ms Gillespie. When it was put to the claimant that she had been apologising to Mrs Lavery, she stated *"I put both of them on it"*. The tribunal unanimously concludes that this had been a half-hearted apology at best, primarily directed to Ms Lavery, and that the claimant has never demonstrated any remorse for her actions towards Ms Gillespie.

130. The claimant had read the investigation report on, or shortly after, 3 March. Some 12 days later the claimant again raised this matter in another email. At that stage, she had known that it had not been a NVQ course. That had been confirmed with her by Mrs Lavery. She had had the benefit of the investigation process and the full investigation report. It did not slow the claimant down at all.

131. In that email of 15 March 2017 the claimant wrote directly to Ms Brown stating that Ms Gillespie had given her a set of slides which had included references to an NVQ. She stated:

"I will leave with you as I am not sure this was picked up with the assessment method which confused me."

That reference was to a document which the claimant had had in her possession since May the previous year. It is apparent to the tribunal that the claimant simply could not stop herself criticising Ms Gillespie and the course designed by Ms Gillespie.

132. The next day on 16 March 2017, Ms Gillespie emailed Ms Brown to stated:

"I am not sure why Emma is getting involved at this late stage and given the past investigation of her behaviour towards me. I regard this as more of the same – ie discrediting my work to managers by planting a seed of doubt."

133. Later on 16 March 2017 Ms Gillespie wrote to the respondent's HR Department to state:

"*I am upset because Emma is starting up the same behaviours of going to my line manager to impact on my level 3 Events course. I see her last email as an attempt to wrongly demonstrate I used the wrong course specifications to set up a PEAG last year and plant yet another seed of doubt. I also see this as an attempt to perhaps explain her approach to the quality team last June with concerns about the wrong qualification. It is a feeble attempt to justify past actions. The barrister has clearly stated Emma "can't resist complaining about Ms Gillespie" and today demonstrates more of the same. There is a recommendation that Emma does not work with me again in any capacity. Can she be told to completely remove herself from having any comment to managers in my areas of work as I do not want to have any further dealings with her I believe her motives are intended to further harass me behind the scenes."*

134. When it was suggested to her in cross-examination that she had been unable to help herself and that she had continued to harass Ms Gillespie following the investigation report, the claimant stated that she did not agree with the investigation report. She alleged the investigator had refused to accept her evidence. She stated she had been isolated on her own. She had been unfairly blamed and with no "*power of defence*".

135. A second harassment investigation was undertaken by the respondent in relation to that email of 15 March 2017. Mrs Bowman-McAllister was again appointed to conduct that investigation. The outcome of that investigation was that Ms Gillespie's complaint of harassment in relation to that email was upheld and a disciplinary action was again recommended.

DISCIPLINARY PROCEDURE

136. On 12 June 2017 the respondent wrote to the claimant advising her again of the outcome of the two investigations which had upheld complaints of harassment against her.

137. In relation to the first investigation the following disciplinary charges were laid against the claimant:

"1. That you have subjected Ms Maureen Gillespie to bullying and harassment through the following actions;

(a) that on 24 May 2016 the tone and content of your emails to Ms Gillespie and Ms Brown in which you referred to an alternative course to that arranged by Ms Gillespie were inappropriate and

(b) that on 7 June 2016 you made allegations to Ms Lorraine Lavery regarding the level 3 Events, Principles of Managing Events Programme, arranged by Ms Gillespie causing Ms Gillespie to be questioned by the Quality Unit and having to justify the course that she had arranged.

(c) That on 14 June 2016 you emailed Christine Brown referring to an alternative course to that arranged by Ms Gillespie and enclosing a draft letter to prospective students."

138. In relation to the second harassment investigation the following disciplinary charge was laid against the claimant:

"That you have subjected Ms Maureen Gillespie to bullying and harassment through the following action;

(a) your email dated 15 March 2017 was inaccurate, designed to undermine and upset Ms Gillespie, intended to cause doubt about Ms Gillespie's abilities to her manager Ms Brown and to undermine Ms Gillespie's level 3 Events course."

139. The letter made it clear that these matters could be deemed to be gross misconduct and could result in the claimant's dismissal. The claimant was advised that she would be informed of the arrangements for the disciplinary hearing under separate cover.

140. The claimant prepared a written submission for that disciplinary hearing. In that written submission the claimant alleged that she had been the subject of *"sustainable defamation of character and slander by Ms Gillespie".* When challenged in cross-examination, the claimant maintained that she was the victim and that she had evidence to support that proposition. She stated that she had asked for a meeting twice and that she had been lulled into a false sense of security.

141. In a further document before that disciplinary hearing the claimant stated:

"Consideration needs to be given to the fact that MG (Ms Gillespie) is in the latter stages of her career.

MG was the one that starting going to HR which is the betrayal of trust not EW (the claimant)."

142. It was put to the claimant in cross-examination that she had wanted Ms Gillespie out of her job. The claimant stated that she had not wanted Ms Gillespie out of her job but that Ms Gillespie had been in the later stages of her career and that she had wanted to retire. The tribunal would have thought that if Ms Gillespie had wanted to retire, it had been for Ms Gillespie to instigate that process. It had not been a matter which should have been suggested by the claimant in relation to her line manager, particularly when it had already been determined at that point that the claimant had harassed that line manager.

143. The disciplinary hearing proceeded on 28 November 2017. It was heard by five members of the Board of Governors ie Mr Brian Wilson, Ms Wendy Langham, Ms Catherine Burns, Mr Seamus Dawson and Mr Sam Snodden. In attendance were a Mrs Martin from HR, the investigating officer Ms Bowman-McAllister and a note taker.

The claimant was accompanied by a union representative who stated that she was there in a supportive capacity.

The respondent was represented by Dr Hegarty.

144. The claimant argued that the panel asked questions simply "*for the crack of it".* She stated that the panel were not genuinely trying to understand the case. She argued that the panel had prejudged the situation and that they were not interested in her defence.

145. The hearing began at 17.20 pm and finished at 22.15 pm. That was a hearing of almost five hours. The claimant was given a full opportunity to respond to the disciplinary charges. Because she had indicated that she had been suffering from dental pain, she was allowed to make her submissions first in case she needed to leave early. In the event, she remained throughout the hearing. This had been the third occasion on which the hearing had been rescheduled to accommodate the claimant.

The claimant challenged the investigation reports prepared by Ms Bowman-McAllister. She alleged that she had been "hoodwinked" into the agreement in June 2016, when a further complaint had been made against her. She should have been told of that complaint before 22 June 2016. She denied that she had bullied or harassed Ms Gillespie.

Dr Hegarty responded to the claimant's submission and was questioned by the panel.

146. On 5 January 2018 the respondent wrote to the claimant with the outcome of that hearing. That set out those findings over 10 pages in some detail.

147. The panel concluded that the claimant's actions had amounted to gross misconduct and that she had committed the misconduct that had been set out in Ms Bowman-McAllister's reports of 3 February 2017 and 16 May 2017. The panel therefore recommended, rather than decided, that the claimant should be dismissed from her post.

148. At this point the panel's procedure becomes somewhat unusual and difficult to reconcile with the statutory three step procedure. That had been a disciplinary hearing which had reached a conclusion. That conclusion was not implemented. Instead it was sent as a recommendation to the governing body of the respondent for its consideration. A meeting of that governing body was to take place on 9 January 2018. Seven Governors were present. That was the hearing at which the decision to dismiss was ratified. The claimant was not present at that meeting. That meeting did not include the five Governors who had taken part in the initial disciplinary hearing. Those seven Governors had not had the opportunity to hear or to question the claimant. The chair of the initial disciplinary hearing, Mrs Burns, gave a presentation to the seven Governors and then left the room while those Governors made the decision whether or not to accept the recommendation to dismiss. The entire meeting, including the deferral of standing items and the presentation from Mrs Burns took approximately one hour and twenty minutes.

    The claimant was not in attendance and had not been allowed to make any form of submission to this meeting.

149. That full meeting ratified the dismissal decision.

150. On 11 January 2018 the claimant was advised that the decision had been ratified and was advised of her right to appeal against that decision.

151. Again at this point the procedure becomes even more unusual. The dismissal did not take effect until the conclusion of any appeal.

152. The claimant was ultimately advised that she had two forms of appeal. One was to the Governing Body, which would comprise members who had either recommended dismissal or had ratified that recommendation. The second form of appeal was to an independent appeals committee set up by the Labour Relations Agency.

153. The first form of appeal, to the Governing Body, was set up under the Articles of Government.

154. Article 60 stated:

> *"The Governing Body, after consultation with staff representatives and with due consideration to the requirements of employment law, shall draw up procedures for the warning and ultimate dismissal of staff and for the appeal by such staff of decisions taken under these procedures."*

    The Governing Body obviously overlooked the reference to "*the requirements of employment law".*

155. Article 65 provided for a "*special committee*" of the Governing Body to hear the initial disciplinary hearing and to prepare a report "*conveying recommendations*" for consideration by the Governing Body.

156. Article 66 provides that the Governing Body "*shall consider the recommendations of the special committee and take such action as it considers appropriate, which may include the dismissal of the person concerned*."

157. Article 67 provides for a right of appeal to the full Governing Body. It also provides for representations by the employee.

158. On 25 January 2018, the claimant's submitted her appeal. She argued that the appointment of Ms Bowman-McAllister as the initial investigator had been incorrect and that she had not been independent. She argued that the investigator had made distorted and subjective comments about the claimant. The claimant further argued that the decision of the special committee on 5 January 2018 had been unfair and unreasonable. She suggested mediation.

159. The internal appeal took place on 28 February 2018 and was heard by six Governors, Frank Bryan, Kate Burns, Jim McCall, John McGrillen, Kathleen O'Hare and Maureen Walkinshaw. It therefore was not a meeting of the full Governing Body and therefore not in compliance with the respondent's Articles of Government. The tribunal was not referred to any part of this Byzantine procedure which would have allowed an internal appeal to be heard by any body other than the full Governing Body

160. The internal appeal dealt sequentially with each of the claimant's points of appeal. The claimant was not present. She had been given the option to attend but had chosen instead to make a written submission.

161. On 15 March 2018 the respondent wrote to the claimant advising her of the outcome of the appeal hearing which dismissed her appeal. The governing body was indicated to have included six members, *"none of whom were involved in the initial hearing"*. The internal appeal panel confirmed her dismissal.

162. The claimant was advised that she had a further right of appeal against this decision to an Independent Appeal Committee set out under paragraph 13 of the Dismissal and Suspension Procedure for Full-Time Teachers in Institutions of Further Education.

163. The Dismissal and Suspension Procedure provides for a right of appeal from a dismissal decision to an "independent appeals committee" (IAC).

164. That IAC comprises an independent chairman, appointed by the LRA and two panel members; one from the management side and one from the staff side.

165. Written submissions are requested and then the parties can make oral representations at a hearing.

166. Paragraph 6 provides:

> *"After considering the decision of the Appeal Committee, the Governing Body shall then decide whether or not to uphold the determination that the teacher should cease to work at the college and notify him accordingly."*

167. Paragraph 13.8 of the Dismissal and Suspension Procedure provides:

> *"The decision of the Appeals Committee shall be final."*

168. The parties provided written submissions in relation to the appeal to the LRA. They also presented oral submissions at the hearing which was held on 7 June 2018.

169. The LRA IAC comprised one management representative, one trade union representative and an independent chair. The panel found by a majority that the appeal against dismissal was upheld.

170. The IAC held:

> *"The appellant was found to be somewhat evasive in answering questions, and this affected her credibility as a witness. However, the majority of the panel found that there were significant matters of procedural and substantive unfairness which fatally affected the overall process and the decision to dismiss the appellant.*
>
> *The appellant and the party who alleged harassment by the appellant, seemed to have had a poor working history. It did not escape the panel's notice that those individuals had never been through a mediation process to resolve those issues. Nor was there was any evidence of effective management by senior managers or HR to secure a satisfactory outcome of these issues prior to July 2016.*
>
> *In any event, by email of 14 July 2016, there appears to be an agreement between the college, the union and the appellant, confirming that the appellant was to drop her grievance (the party alleging harassment was part of that grievance) and in return the college would not proceed through a disciplinary process. In addition, and as part of that agreement, any future issues between these employees would be treated as standalone matters.*
>
> *At this time the party alleging harassment in this case had lodged a formal grievance against the appellant and this was parked for some time somewhat inexplicably. The appellant, and the appellant's union representative were unaware of this formal complaint. The respondent's harassment policy notes that those who face alleges for harassment should be notified of the allegation. The appellant was not. Nor was there any facility within the policy (despite clauses dealing with the speed in which the process is to take place and that complaints which were over three months old cannot be made) for a formal complaint to be stayed, and then reignited. When this complaint was then made live again, the investigator took into account the history between the appellant and the alleged victim of the harassment, when making her decision finding the appellant's behaviour to constitute gross misconduct. The investigator, Ms Bowman-McAllister, confirmed at the hearing that the history between the employees was taken into account as background.*
>
> *This is in contravention of the agreement of July referred to above.*
>
> *In addition, the panel finds by majority, that the acts complained of which the college relies upon as gross misconduct warranting dismissal, would not reasonably have amounted to a dismissal offence by a reasonable employer, if those instances were truly considered without the history, and as standalone instances without prior warnings or a disciplinary history.*

For these reasons, considering the obvious procedural unfairness, the position to dismiss the appellant was neither reasonable nor fair.

The appellant's appeal is upheld."

171. The respondent wrote to the LRA on 30 July 2018 to seek further information about the majority decision of the IAC and, in particular, any notes that might be retained of the hearing.

172. On 20 August 2018, the LRA replied to that request and said the notes were no longer available. The LRA did not seek to explain the decision of the IAC further.

173. The Governing Body [less the governors involved in the initial decision] met on 3 September 2018 to consider the majority decision of the IAC and to reach a decision, for the purposes of paragraph 6 of the Dismissal and Suspension Procedure ie to:

"Decide whether or not to uphold the determination that the teacher should cease to work at the College."

174. The respondent had several concerns about the IAC majority decision; and summarised them to the Governing Body:

(i) The decision had take some seven weeks to issue, rather than the ten days provided in the procedure.

(ii) The decision was a majority decision, rather than a unanimous decision but there was no or insufficient explanation of the minority decision.

(iii) The IAC chairman had minimised the misconduct by saying at the start of the hearing that it was *"about four emails, without addressing the harassment properly."*

(iv) There was no discussion of the *"range of reasonable responses test."*

(v) There had been a finding by the IAC that the claimant had been evasive. There had been no finding in relation to the credibility of the respondent's witnesses.

(vi) There had been a finding that past events had been taken into account by the respondent without evidence to support that finding.

(vii) The claimant had not put forward as a ground of appeal that the respondent had taken into account past matters.

(viii) The IAC had criticised the lack of a mediation process while ignoring that Ms Gillespie had refused mediation and that such a process would not have been possible.

(ix) There were factual inaccuracies. The date of the agreement had been recorded as 14 July 2016, rather than 24 June 2016. Ms Gillespie had been

recorded as part of the original grievances. It had been recorded that the agreement had stated that *"future issues"* would be dealt with as *"standalone matters"*.

(x) The IAC had criticised the complaint of Ms Gillespie on 8 June 2016 being held in abeyance while the agreement had been reached, while the procedure had been *"silent"* on abeyance.

(xi) The IAC had ignored evidence that the claimant had known of Ms Gillespie's complaint when the agreement had been signed on 24 June 2016.

175. The respondent wrote to the claimant on 5 September 2018, stating that they had rejected the IAC decision and had affirmed the dismissal. In that letter, the respondent gave its reasons as:

(i) It had been a majority decision with no details of the minority decision.

(ii) Undisputed evidence (unspecified) had not been taken into account.

(iii) The claimant had been found to have been evasive, affecting her credibility. However it was unclear how this had affected her evidence.

(iv) The decision did not set out *"in any detail"* why the misconduct had not warranted dismissal.

(v) The evidence had not been assessed.

(vi) Mediation had been recommended where Ms Gillespie had refused mediation.

(vii) The hearing had been conducted unfairly. The presentation of the respondent's case had been restricted and undermined.

(viii) No information or notes had been provided by the LRA.

176. Mr Brian Doran, one of the panel members of the IAC (the management member) gave evidence on behalf of the respondent. This was highly unusual and possibly unprecedented. The tribunal has never seen a situation where a member of an IAC has given evidence in this manner, attempting to undermine and criticise the decision of that IAC.

177. Mr Doran had been the Chair of the representative body for the further education sector which included the respondent.

178. Mr Doran criticised the decision of the independent chair of the IAC not to allow Ms Bowman-McAllister to speak at the IAC hearing because she had been a barrister, although a retired barrister who had not, in any event, been engaged as a barrister. He criticised the fact that Ms Burns had had to take over the entire submission for the respondent. Mr Doran had disagreed with the approach taken by the chairman and by the other panel member (the trade union representative).

179. Despite requests from Mr Doran, there had been no panel meeting to discuss the decision. The hearing had lasted the entire day and the decision had not been reached at the end of that hearing. There had been no time for deliberation by the panel when the hearing concluded.

180. There had been a 15 minutes telephone call on 3 July 2018 to reach the decision. Each panel member had given his/her view.

181. On 6 July 2018 Mr Doran received a copy of the final report. He wrote with his concerns.

182. The final outcome report was issued.

183. Mr Doran objected to his view not being included in the final report. He concluded the dismissal had been fair and that the decision of the IAC had been wrong.

DECISION

184. This is a claim of unfair dismissal in which the claimant alleges that she had been:

(i) Automatically unfairly dismissed as a result of the respondent's failure to comply with the statutory dismissal procedure. (Automatic unfairness)

(ii) Unfairly dismissed as a result of the respondent's failure to follow a fair procedure. (Procedural unfairness)

(iii) Unfairly dismissed because the decision to dismiss, in the circumstances of the case, had been unfair. (Substantive unfairness)

The distinction between (ii) and (iii); i.e. between procedural unfairness and substantive unfairness can become blurred. The important issue is the statutory test in Article 130(4) of the 1996 Order.

REASON FOR DISMISSAL

185. The first issue for the tribunal to determine in a case of this type is the reason for the dismissal and, in particular, whether that reason is a potential basis for a fair dismissal for the purposes of the Order.

186. The tribunal unanimously concludes that the reason for this dismissal was conduct; a potentially fair reason for the purposes of the Order. That was not contested by either party. The claimant's conduct towards Ms Gillespie had been the only reason for the disciplinary procedure which led to her dismissal.

AUTOMATIC UNFAIRNESS

187. There is no dispute about the respondent's compliance with the first step of the statutory procedure. The disciplinary charges had been sent to the claimant and she had been invited to a disciplinary hearing.

188. The second step of the statutory procedure is more problematic. The claimant had been invited to a hearing by a special committee of the Governing Body on

28 November 2017. She had had an opportunity to put her case to that special committee. However, the special committee did not determine the matter. It merely made a recommendation, which went to a meeting of the Governing Body on 10 January 2018 for consideration. The claimant did not appear and was not offered the opportunity to appear before that meeting.

189. The meeting of the Governing Body on 9 January 2018 made the decision to dismiss the claimant. It had not simply been a rubber stamping exercise. It could have refused to accept the recommendation in relation to the disciplinary charges or it could have imposed a different penalty.

190. Mr Doherty argued that the second step in the statutory procedure provided by the 2003 Order simply required that *"the employer"* should make the decision and that the employee should be allowed to make representations. He argued, in effect, that there had been no statutory requirement that the employee should be allowed to make representations to the person or persons who actually made the disciplinary decision. According to his argument, it was sufficient if the employee had been allowed to make representations to an initial panel which then did not make the disciplinary decision, which was ultimately made by a second panel, so long as everyone involved could be described as part of the employer. He argued that the respondent had complied in full with the second stage and that it had in fact gone further than had been required by the 2003 Order.

191. This cannot be correct. The statutory procedure, at step two, necessarily implies that the panel before which the employee makes his/her representations is the panel which makes the decision. It cannot be right to argue that the employer fulfils its statutory obligation by having a hearing before a special committee which does not make the disciplinary decision and that that disciplinary decision is then made over a month later by a differently constituted panel in the absence of the claimant. Such a procedure would allow a special committee to recommend a warning and then to have the full Board, or a different part of the Board, order dismissal – or the reverse. To take Mr Doherty's arguments to their logical conclusion, an employer would have complied with step 2 if the employee had been interviewed by a junior official in HR about the disciplinary charges, with the actual decision being made some days or weeks later by a group of managers over drinks in the local golf club.

192. Mr Doherty did not dispute that such a procedure could produce strange and indefensible results. However he argued that the tribunal should only look at what actually happened in this case. That is correct. However what happened in this case was that the claimant was denied the opportunity to make representations to the panel which made the decision to dismiss her. That cannot be regarded as being in compliance with the requirements of step two. That step necessarily implies that the employee can make representations direct to the disciplinary authority that can decide to dismiss her – not that the employee makes representations elsewhere which are then summarised, or filtered, and eventually reported more than a month later to the real disciplinary authority which makes the decision in the absence of the employee and without hearing from that employee.

193. The tribunal therefore unanimously concludes that in relation to the second step of the statutory procedure, the dismissal had been automatically unfair.

194. The third step of the statutory procedure is also problematic. It requires an appeal. As part of the second step, the right to appeal must be notified to the employee. The LRA Code is specific. The general guidance is that an appeal should be determined by someone more senior than the person or persons who made the original decision. It is also recommended that it should be determined by someone who had not been involved in the original decision. It is only where that is not possible that an appeal should be heard by the same person or persons who made the original decision. In practice, this only occurs with very small employers who have a limited number of employees who can hear appeals.

The LRA Code was issued under Article 90 of the Industrial Relations (NI) Order 1992. While the Code is not expressly binding, it has to be taken into account by the tribunal. Article 90(16) provides that:

> *"- Any provision of the Code which appears to the tribunal – to be relevant to any question arising in the proceedings, shall be taken into account in determining that question."*

195. The respondent is a large employer. It also has access to the rest of the further education sector. It had ample opportunity and scope to appoint a person or persons to make the initial disciplinary decision, with sufficient head room to allow a more senior person or persons, who had not previously been involved, to hear any appeal.

196. The respondent chose not to do this. Their witnesses argued that they had been *"bound"* by a collective agreement to adopt this peculiar disciplinary procedure. They appeared genuinely unable to understand that no collective agreement can permit an employer to act outside the law. Collective agreements to pay women lower pay than men did not long survive the Equal Pay Act. It becomes a less attractive argument when it seems clear that the trade unions had wished to renegotiate the rather antiquated collective agreement, hopefully to comply with the requirements of a 16 year old law.

197. The Dismissal and Suspension Procedure allows for what it calls an "appeal" to an IAC. It was not argued by, or on behalf of, the respondent that this had been the third step of the statutory procedure. It had been an extra step; beyond that which had been statutorily required under the 2003 Order. The respondent also argued that the IAC decision had been merely advisory and not binding on the respondent.

198. The tribunal therefore unanimously concludes that in relation to both the second and the third step the dismissal had been automatically unfair. There had been no appeal in any real sense. The Governing Body had made the decision to dismiss. On 28 November 2017, five members of the Governing Body recommended dismissal. On 9 January 2018, seven different members of that Body ratified that recommendation and dismissed the claimant. The "appeal" returned to that Governing Body. Under Article 67 of the Articles of Government, that should have been heard by the full Governing Body. It was not heard by the full Governing Body (not that that would have improved the procedure). On 28 February 2018, six of the seven members of the Body who had ratified the recommendation of the special committee, and who had therefore made the decision to dismiss the claimant, heard the appeal against their own decision.

That offends against the basic principles of national justice. Unless there are special circumstances, which make it unavoidable, no-one should hear an appeal against their own decision. There were no such circumstances in this case and the procedure was blatantly, and unnecessarily, unfair.

199. The information to the claimant after the initial recommendation and then the decision to dismiss hopelessly confused the right of appeal to the Governing Body (which the respondent now asserts was the only real appeal) with the appeal to the IAC (which the respondent now asserts had been merely advisory). It is not surprising that the claimant chose not to attend the appeal to the Governing Body and to concentrate her efforts on the IAC. It would appear that in the period immediately after the hearing before the special committee, and indeed immediately after the meeting of the Governing Body on 10 January 2018, even the respondent had been unsure as to the right to appeal the decision to dismiss. Given the bizarre nature of the process, which requires the piecing together of two separate documents, the Articles of Government and the Dismissal and Suspension Procedure, that is hardly surprising. However the tribunal has already commented adversely on that procedure and the tribunal would have thought that the procedure would have been amended long ago; both to simplify it and to make it compliant with legislation which has been in place since 2003. An educational institution, of all people, should have been able to achieve that simple task. In any event, the respondent was required under step two to notify the employee of a right to appeal for the purposes of the statutory procedure. That means doing so properly. It did not. Even when it eventually decided there were two rights of appeal, it did not state (as it now does) that only the first right of appeal was a real appeal. That first right of appeal did not comply with LRA guidance and was unfair. This had been unnecessary. Members of the Governing Body did not need to be involved at each stage.

The second right of appeal to the IAC was presented as equal to the appeal to the Governing Body. The respondent did not specifically advise the claimant (as it now argues) that it was not binding and that it could be ignored.

200. The first notification of 5 January 2018 to the claimant advising her of the special committee's "*recommendation*" did not advise the claimant of any right to appeal under Article 67 to the Governing Body if the Governing Body had ratified the recommendation. It referred only to "*the right to appeal*" to the IAC.

201. The second notification of 11 January 2018 simply referred to "*the right to appeal that decision*". It stated, "*We shall write to you very shortly with regard to the process by which you will be able to appeal the decision*". That notification suggests one process and one appeal which would have related back to the sole reference on 5 January 2019 to the IAC.

202. The third notification of 17 January 2018 referred to "*two opportunities to appeal*". One opportunity was to the Governing Body under the Articles of Government. The other opportunity was to the IAC, which had previously been notified to the claimant on 5 January 2018.

The letter of 17 January 2018 did not assert that the first opportunity was to the real appeal and that the second opportunity was not really an appeal but merely advisory. In fact, at two points it raised the possibility that the claimant might decide

not to avail of the first opportunity to appeal but to avail only of "*an appeal*" direct to the IAC.

PROCEDURAL AND SUBSTANTIVE UNFAIRNESS

203. This part of the decision will look at those issues not directly covered by the statutory dismissal procedures.

204. The appointment of the investigator did not comply with the requirements of the respondent's internal harassment procedure. There was no evidence to establish that an internal investigator could not have been appointed by the respondent and that the appointment of an external investigator had therefore been necessary. Even if it had been necessary to appoint an external investigator, Ms Bowman-McAlister had not been from the further education sector. Her connection with further education had been tenuous at best.

205. Such disregard of clear internal procedures was bound to create a suspicion of unfairness, particularly when that disregard was not adequately explained and where an obviously misconceived argument was advanced, eg that Ms Bowman-McAlister had given lectures in the Institute of Legal Studies at some time in the past.

206. However, that issue, on its own, is not sufficiently significant to amount to procedural unfairness sufficient to establish an unfair dismissal.

207. The two investigations had primarily been harassment investigations but the terms of reference and the internal procedures meant that the reports were then adopted as disciplinary investigations.

208. The investigator had reached clear findings, in both investigations, in relation to the complaints of harassment. Those findings were then adopted as findings for the purposes of the disciplinary process. That is unusual. Disciplinary investigations usually only determine whether there is a prima facie case or whether a matter is suitable for consideration under the disciplinary procedure. Findings of fact are left for the disciplinary stage.

209. There was a significant element of pre-determination in this case with the investigator taking a significant role in the later disciplinary process, including attending the special committee, the appeal hearing and the IAC hearing.

210. Furthermore, the investigator clearly took into account the previous history of disputes between the claimant and Ms Gillespie despite asserting in the course of her first interview with the claimant that she would not reach findings in relation to that history.

At paragraph 2.2 of the first investigation report, the investigator stated:

> *"There is a substantial history of complaints involving Ms Gillespie and Ms Walsh since 2011. I sought and received substantial historical documentation relating to those matters."*

The fact that the investigator actually asked for and obtained substantial documentation, which she then presumably studied, in relation to historical matters, predating the "*clean slate*" agreement of 24 June 2016, is significant. It is not sufficient for the investigator to assert that these documents simply provided "*context*"; she clearly felt the events between 2011 and 2016 had been relevant and the fact that she took them into account, even as context or background, shows that the clean slate agreement was being disregarded.

The investigator made it plain in the heading to paragraph 10.00 of the first report, that she was considering the complaints of harassment "*in the context only of complaints made by her involving Ms Gillespie*". The use of the word "only" is not significant. The past events were clearly taken into account when deciding that the relevant behaviour had amounted to *"a sustained campaign of harassment*", warranting disciplinary action.

In the second investigation report, the investigator regarded the email of 15 March 2017 from the claimant as a further act in a continuing act of harassment against Ms Gillespie. The investigator again clearly took into account, as "context", the matters which preceded 2016. The "*clean slate*" agreement was again effectively disregarded.

The investigator had therefore looked at the substance of the disciplinary charges, not in isolation on their own facts, but as part of a continuing pattern of dispute. That influenced her conclusions on guilt and potential penalty.

211. The recommendations of the special committee were similarly influenced, as was the initial decision and the appeal decision of the Governing Body.

212. At the first disciplinary hearing on 28 November 2017, there had been extensive discussion of the agreement reached on 24 June 2016 and of its effect. Much of that discussion was instigated by the claimant. Nevertheless, the history of the dispute between the claimant and Ms Gillespie inevitably became part of the discussion.

213. The *"clean slate"* agreement was doubtless well intentioned. However, it proved a pointless exercise; achieving nothing concrete in terms of restoring working relationships but introducing a difficult task for any further harassment or disciplinary investigation; applying a "*clean slate*" and disregarding historical background. The respondent had not been obliged to enter into a clean slate agreement in 2016. Once it did so, it should have been scrupulous in ensuring that a line was drawn after the earlier complaints and that they were completely disregarded in the disciplinary process.

214. The special committee accepted the investigation reports as "*fair and balanced*". Those reports had relied on the "*context*" of the earlier disputes.

215. The presentation by Mrs Burns, on behalf of the special committee, to the Governing Body on 9 January 2018, argued that the claimant's actions had constituted gross misconduct. In that regard, she specifically relied on the attempts by the College and the Trade Union to resolve previous disputes including "*the College's intention to invoke the disciplinary procedure against her*", at the time of

the first three allegations. Again the preceding history of dispute was introduced and the "*clean slate*" agreement disregarded.

216. The notification of 5 January 2018 to the claimant of the recommendation of the special committee concluded on page 7 that the investigator "*was not influenced by the historical information in any way when evaluating the evidence in the current case*". It is difficult to see how the special committee reached that conclusion, given the wording of the investigator's first report where she referred specifically to "*context*". In the IAC hearing, she accepted that she had taken the previous history of dispute into account as "*background*".

217. The appeal to the Governing Body was conducted on 28 February 2018 and considered the claimant's written submission. Again the investigator's reports, which had relied on the context of the earlier disputes, were upheld.

218. The agreement of 24 June 2016 had provided for a clean slate. It did not prevent Ms Gillespie, or the claimant, bringing any further complaints. However the only reasonable interpretation of that agreement between the respondent and the claimant is that the respondent should have disregarded any previous history of dispute. It did not. On that ground, the tribunal unanimously concludes that an unfair procedure had been adopted and the dismissal had been unfair.

219. The clean slate agreement had been reached between the claimant and the respondent on 24 June 2016, when a further formal complaint of harassment had been made by Mrs Gillespie against the claimant. If the claimant had known of that new formal complaint, she would not have entered into the agreement. The respondent had been obliged by its own procedures to notify the claimant of that new complaint within 14 days. It did not do so. Even when Mr Crothers met the claimant on 13 June 2016, and when he indicated that an employee had expressed concerns about the claimant's approach to the Quality Unit, he did not disclose the existence of the formal complaint.

    The assertion of the respondent that the formal complaint had been held *"in abeyance"* is concerning. There is no such provision in the procedure allowing complaints to be held "*in abeyance"*.

    The only explanation for this behaviour is that the respondent had been anxious to secure the "*clean slate agreement*" before the new formal complaint was disclosed to the claimant. It is frankly odd that the respondent did not simply process that new complaint in accordance with its procedures. In any event, while there may not have directly affected the unfairness of the dismissal, it is another example of the respondent's attitude to procedures.

220. The procedural unfairness of the formal disciplinary process is dealt with above in relation to non-compliance with the 2003 Order. It need not be repeated here. However, even if the 2003 Order did not exist, the tribunal would unanimously conclude that the formal disciplinary and appeal procedures had been procedurally unfair and the dismissal would be unfair as a result. It cannot be fair that an employee is not allowed to make representations direct to the disciplinary authority which dismissed her. It also cannot be fair for the internal appeal to be heard by a body which to a significant extent is the same body which made the original

decision to dismiss her, in the circumstances of this case, where a differently constituted appeal body had been entirely possible.

221. The IAC appeal was described as *"an appeal"* in all the correspondence to which the tribunal has been referred. It had all the trappings of an effective appeal; an independent chairman appointed by the LRA and two panel members, a hearing, the opportunity for submissions and a decision.

222. The Dismissal and Suspension Procedure described the decision of the IAC as *"final"*. That suggested that the decision would have had some effect and that it could not be overturned. Yet, in contrast, the same procedure provided that the Governing Body, whose members had previously decided to dismiss the claimant and then to dismiss the claimant's internal appeal, would then get to decide whether the IAC appeal against their own decision would be accepted.

223. In effect, the IAC decision was rendered nugatory and the entire IAC process was rendered a waste of time as far as any dismissed employee was concerned. It cannot be regarded as fair that the same people who had been involved in the decision under appeal (in this case, those persons who had ratified the recommendation of the special committee and those who had heard the internal appeal) would then be given the role of deciding whether an *"independent"* appeal against their decision would stand. That again offends against the basic principles of natural justice.

224. Moving on from the procedural aspects of this dismissal, the tribunal must also ask whether a reasonable employer in all the circumstances of this case, could reasonably have summarily dismissed the claimant in this case.

225. Looking at the series of emails in isolation from the previous history of dispute, and including the claimant's approach to Ms Lavery in the Quantity Unit, the tribunal concludes that no reasonable employer would have regarded these matters as gross misconduct warranting summary dismissal.

226. This had been, if the agreement of 24 June 2016 had been properly implemented, a first offence involving a few emails over a short period of time. The claimant had been a long term employee. No reasonable employer could have summarily dismissed the claimant in those circumstances, if it had genuinely considered only the events covered by the disciplinary charges. As the Court of Appeal stated in ***Connolly*** (above): "- *dismissal for a single first offence must require the offence to be particularly serious*".

SUMMARY

227. For the reasons set out above, the dismissal was automatically unfair and unfair for the purposes of the statutory test in the 1996 Order.

228. A Remedy Hearing will be arranged in due course. A Case Management Discussion (by telephone) will be notified shortly to the parties to make the necessary directions.

Vice President:

Date and place of hearing: **4, 5, 7 and 29 November 2019, Belfast.**

Date decision recorded in register and issued to parties: