



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E Campbell

**Respondent:** The Church of God Prophecy Trust

**Heard at:** Bristol (By Video Hearing Service) **On:** 15, 16 and 17 February 2022

**Before:** Employment Judge Halliday

## **Representation**

**Claimant:** Ms Johns, Counsel

**Respondent:** Mr Wood, Counsel

# RESERVED JUDGMENT

1. The claimant's claim for unfair dismissal does not succeed and is dismissed.
2. The claimant's claim for breach of contract does not succeed and is dismissed.

# REASONS

## **Claims and Issues**

1. In this case the claimant, Mr Campbell, claims that he has been unfairly dismissed, and brings a claim of breach of contract for his notice pay. The respondent contends that the reason for the dismissal was gross misconduct, that the dismissal was fair, and that there has been no breach of contract.
2. The issues that fell to be determined in this hearing were those agreed at the preliminary hearing on 6 July 2021 as follows.

*Unfair Dismissal*

- 2.1. What was the reason for dismissal? The respondent asserts that it was a reason related to conduct which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996
- 2.2. Did the Respondent hold a genuine belief in the claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances?
- 2.3. The claimant has indicated he challenges the fairness of the dismissal as follows:
  - 2.3.1. the respondent suspended the claimant when he was already de-facto suspended, demonstrating that the respondent was merely following a tick box exercise; and
  - 2.3.2. the respondent included allegations relating to insubordination which the claimant was able easily to disprove, demonstrating that the investigation was unreasonable and uncomprehensive; and
  - 2.3.3. the respondent had no evidence which showed that the claimant had prohibited females from preaching, indeed the witness statement of the female Minister at the Bath Church confirmed this; and
  - 2.3.4. the allegation for which the claimant was dismissed was based upon rumours, however the respondent had used no witness evidence of these rumours; and
  - 2.3.5. the respondent sought witness evidence from two individuals who had left the respondent's congregation on bad terms 10 years prior to the disciplinary process. This shows that the respondent had purposely sought the opinions of those that were biased and had no intention of allowing the claimant a fair hearing; and
  - 2.3.6. the respondent failed to obtain a witness statement from any member of the claimant's congregation at the Bath Church except from a Minister. This omission demonstrates that the respondent was unwilling to undertake a comprehensive investigation, especially considering some of the allegations related to the claimant chairing his personal views with his congregation; and
  - 2.3.7. at the disciplinary hearing the panel prevented the claimant from reading from a piece of Scripture which was key to his position, thus the respondent prevented the claimant from setting out his case and showed that the decision to dismiss was premeditated, as there was no interest in providing the claimant a fair hearing; and

- 2.3.8. the respondent failed to consider the claimant's witness evidence that he had not discriminated against females, and it made the decision to dismiss with no evidence of misconduct; and
- 2.3.9. the disciplinary hearing report concluded that the allegation of prohibiting females the opportunity to teach had led to a breakdown in trust and confidence between the claimant and the respondent. The report then jumped to the conclusion that this was gross misconduct with no justification. This allegation was merely given the label "gross misconduct" to enable the respondent summarily to dismiss the claimant, when in actual fact the claimant was dismissed for a breakdown in trust and confidence, which demonstrates that the process was flawed and that the respondent undertook a witch-hunt; and
- 2.3.10. the respondent failed to take into consideration the claimant's mitigation of 33 years' service and/or his unblemished disciplinary record; and
- 2.3.11. the respondent made no serious consideration of alternatives to dismissal, and the respondent noted that there was little confidence that the claimant would make fundamental changes, however there was no evidence of this and no opportunity had been given to the claimant to make any changes.
- 2.4. Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?
- 2.5. Did the respondent adopt a fair procedure? The claimant's challenges to the fairness of the procedure are noted above.
- 2.6. If it did not use a fair procedure, would the claimant have been fairly dismissed in any event and/or to what extent and when?
- 2.7. If the dismissal was unfair, did the claimant contribute to the dismissal by culpable conduct? This requires the respondent to prove, on the balance of probabilities, that the claimant actually committed the misconduct alleged.

*Wrongful Dismissal – Claim for Notice Pay*

- 2.8. What was the claimant's notice period? The claimant asserts that he was entitled to a reasonable period of notice which amounts to one year. The respondent asserts that any reasonable period will be limited to three months, and in any event that the claimant is entitled to the statutory minimum period of 12 weeks.
- 2.9. It is accepted by the respondent that the claimant was not paid for his notice period.

2.10. Was the claimant guilty of gross misconduct or did he do something so serious that the respondent was entitled to dismiss without notice?

### The Proceedings

3. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by Video Hearing Service. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in an indexed agreed bundle of 373 pages. I was also provided with a chronology of events; a list of key people involved and a reading list highlighting key documents.
4. I have heard from the claimant, and I have heard from Mr Wilson, who chaired the disciplinary hearing and Mr McCalla, who chaired the Appeal hearing, both bishops with the respondent.
5. There was a limited degree of conflict on the evidence, and I found all witnesses to be credible and consistent in their evidence. I have heard the witnesses give their evidence and I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
6. Having heard the evidence and listened to the parties' submissions I reserved my decision, and this is the reserved judgment with reasons reached following that hearing.

### Findings of Fact

7. The respondent is a Pentecostal church operating as a registered charity with approximately 100 employees and 65 churches in the UK. The claimant was ordained as a minister in 1986 by the respondent and took up a position as Pastor at the respondent's local church in Bath.
8. The start date of the claimant's employment is disputed as he commenced his duties on a self-employed basis before moving to employed status. I find that his continuous employment commenced on 30 September 1995 as specified in the contract of employment signed by the claimant on 11 April 2016. By this time and for some considerable time previously the claimant's role was that of Senior Pastor.
9. Ministers are reappointed every two years at the Church Convocation. The claimant's contract provides that: "*the place of work is as determined by the Regional Overseer,*" .... and further that it "*may be changed from time to time*". However, this mobility clause was not exercised by the respondent in relation to the claimant and the claimant was the Senior Pastor at the church in Bath at all material times.
10. The contract also provided for "an annual appraisal" and for "reasonable notice" to be provided by the respondent on termination of employment.

11. The contract contains details of a process for dealing with Ministerial breaches in line with scriptural guidance but does not set out a disciplinary policy to apply to breaches of obligations as an employee. It does set out a grievance procedure.
12. As Senior Pastor the claimant's duties, as recorded in the job description attached to the contract, included providing "spiritual leadership to the local congregation" and "responsibility for preaching, teaching and discipleship".
13. I was referred to various extracts from the Ministry Policy Manual. This provides (inter alia) that:
  - 13.1. matters of biblical doctrine, theology, ethics and polity should be referred to the Assembly Committee for Biblical Doctrine and Polity;
  - 13.2. women are to be acknowledged in the preaching ministries of the church;
  - 13.3. private and public offenses should be dealt with differently in a disciplinary context;
  - 13.4. any accusations made against a minister must be verified by two or more witnesses (1 Timothy 5:19) and no witness should be accepted who is known to have ill-will toward the accused.
14. I was also referred to extracts from a document entitled "Working towards Equity" which contains the Respondent's disciplinary policy and includes a non-exhaustive list of gross misconduct offences.
15. In August 2017, the claimant attended a Pastoral Development Review/ Appraisal.
16. On 6 April 2019, the claimant emailed Bishop Veira, (copied to Bishop Morris), asking to meet saying, "*there were a number of matters I need to discuss with you*".
17. After an exchange of emails, a meeting was arranged for 16 May 2019. This was in advance of the claimant's appraisal which I accept, as stated by the claimant, had been scheduled for 18 May 2019. In advance of the meeting the claimant was sent an appraisal form to complete and the claimant sent a list of the four matters he wished to discuss being:
  - 17.1. the situation with Ken and Carol and the local church;
  - 17.2. direction of CoGoP;
  - 17.3. role of men and women in CoGoP; and
  - 17.4. holding service on Shabbat (which I understand to mean on a Saturday).
18. Bishop Morris responded indicating his surprise at the matters raised and suggesting that it would be more appropriate to discuss these matters with the National Presiding Bishop, Bishop Powell. Bishop Morris also emailed Bishop Powell on 15 May 2019, referring to the issues that the claimant wished to discuss and stating that: "*we see no benefit in discussing these issues (yet again) with Pastor Errol.*" I conclude that some of these matters had previously been discussed between the parties.

19. On 15 May 2019, Bishop Powell, sent an email to Bishop Veira and Bishop Morris. The claimant relies on this email as evidence that there was a predetermined plot to remove him. I do not find that this is the case. The email contains a reference to “*the articulated concerns showing evidence as to [the claimant’s] direction of travel*” and to the claimant “*being in breach of his contractual responsibilities*” and “*being in conflict with the CoGoP polity and doctrine*”. However, I find the email merely evidences the concerns that were felt by the respondent and have been shown throughout the evidence before the Tribunal, that there was a potential doctrinal split between the claimant and the respondent relating to the position of women in the church and worship on the Sabbath.
20. A meeting was held on 13 June 2019 between the claimant, Bishop Powell, Bishop Veira and Bishop Morris. The issues raised by the claimant were discussed. For the purposes of these proceedings, the relevant issue is the one that the claimant was dismissed for, namely the role of women within the respondent. I accept the notes of the meeting set out the gist of the discussion on this point and specifically that the claimant felt the church was insensitive in its transition to increase the role and scope of women in ministry (which centred around them being empowered to administer the sacraments). I find that the claimant asked for a copy of the relevant documentation setting out the basis for the church policy on this issue and that the claimant was given permission (and not directed) to write to the Biblical Doctrine and Polity Committee to request these documents.
21. In the letter sent to the claimant by Bishop Powell dated 14 June 2019 confirming the outcome of the meeting, the claimant was also asked to submit his personal exposition to the Committee.
22. Bishop Powell, also referred to “*anecdotal evidence*” around an “*alleged practice of not permitting women to preach in the presence of men at the local church in Bath*”. Bishop Powell referred to the fact that he had asked a closed question as to whether or not the claimant permitted women to preach, but that the claimant chose not to answer. I find that a refusal to allow women to preach to men would not have accorded with the respondent’s doctrinal position which was that women are permitted to preach to both men and women. The claimant was informed that this was a serious matter given the very clear policy and position of the respondent. The claimant was informed that there was “*no latitude for any pastor...to pursue their own policy*”. The claimant was informed that Bishop Powell would arrange a further meeting before 30 July 2019. The claimant was also directed to deal with a number of other reporting issues.
23. A further letter was sent by Bishop Powell on 26 June 2019. From this letter, it appeared that Bishop Powell expected the claimant to acknowledge receipt of his earlier letter to the claimant and to complete the necessary actions set out in that letter by 30 July 2019, but I accept that this was not a deadline which had been agreed with the claimant. I find that it was the date by which Bishop Powell wished to meet with the claimant again to resolve the issues raised.

24. The claimant relies on the fact that in the Appendix to the letter of 14 June 2019, he was only required to undertake three administrative actions (which he subsequently did) and had been offered the opportunity to write to the Biblical Doctrine and Polity Committee but could not be required to do so as it was a personal prerogative. I accept that there was no unambiguous instruction to the claimant to take further action (other than comply with the reporting requirements). However, I find that the issues raised by the claimant were of significant concern to the respondent and that this had been clearly communicated to the claimant. I also find that all parties were aware that the biennial convocation was scheduled for 18 August 2019; that the claimant's appraisal should have taken place by then; and that the claimant's re-appointment to his role as Senior Pastor at the church in Bath was to be considered at the Convocation. It is therefore surprising that the claimant took no action to progress resolution of the issues he had raised before he went on holiday from 27 June until early August 2019.
25. Bishop Powell chased the claimant for a response again on 26 July 2019 and the claimant responded explaining he was out of the country and would respond on his return.
26. On 7 August 2019, Bishop Morris emailed the claimant to arrange to meet with the claimant and the local church with Bishop Veira on 11 August 2019 to "*discuss this matter and its serious implications*" and offered to meet with the claimant first. Due to a family crisis this did not prove possible. In the email exchange, the claimant referred to the email he had sent to Bishop Powell from Jamaica and Bishop Morris misunderstood this to mean that a substantive response had been sent (which it had not). The claimant also asked for copies of policy documents, the disciplinary and grievance procedures and "*the means of resolving matters which cannot be settled internally*" The meeting with local church members was put on hold.
27. On 11 August 2019 the claimant emailed Bishop Morris and asked for clarification as to whether he was under investigation or if there was a disciplinary process. He again requested copies of relevant documents. He emailed Bishop Powell on the 12 August 2019 suggesting the meeting on 13 June was held under "*false pretences*" as the issues he wished to discuss were not discussed in the meeting; querying the imposition of a deadline for him to respond to the letter of 13 June 2019 and indicating his view that the proposed visit from Bishops Morris and Veira as Regional overseers "*changed everything*" and that he would not be responding until he had received the information he requested.
28. On 14 August 2019, the claimant submitted the reports which had been requested in the letter of 13 June 2019.
29. On 15 August 2019 Bishop Powell sent an email to the claimant confirming that: "*the number of pending issues [had] left [him] with no alternative but to defer the announcement of a pastoral appointment for Bath during the National Convocation on 18 August 2019, until such time as all matters have been resolved.*" The claimant was expressly assured that the deferral of a pastoral appointment did not impact his license as a minister. He was also asked to

address his requests for documentation to the office manager at the corporate administrative office.

30. The claimant responded to say that he would inform the congregation that he has been suspended. I do not find that the deferral of his appointment was in effect a suspension. It was made clear to the claimant that although he was not appointed to a church as pastor, his license as a minister continued. I also do not find that at this point there was anything untoward in the respondent's actions. I find that the respondent was seeking to understand the claimant's position on the doctrines he had identified to them as an issue and the extent to which, and the reason why, they did not accord with the church's doctrines.
31. The deferral was confirmed in a letter dated 22 August 2019 and the claimant was advised that the last day of his appointment at the Bath church was 31 August 2019. He was also informed that Bishop Reid and Bishop Veira would attend the church at Bath on 25 August 2019 to inform the church of the claimant's deferment and for there to be a hand-over the church to them. The fact that this did not affect the claimant's employment was re-iterated and he was informed that future appointments would be discussed in due course.
32. The meeting with the membership of the church was duly held on 25 August 2019 and the expressed purpose of the meeting was to tell the congregation that the claimant had not been re-appointed. Questions were understandably asked as to why and the response given was that no further information could be given pending further meetings with the claimant. Reference was made by church members in the meeting to this not being the usual process when a pastor stepped down and to this feeling hostile. Members expressed their support for the claimant and the claimant clarified that it was he who had referred to his deferral as a suspension and that the respondent had not. The claimant handed his duties over to Bishops Veira and Reid and the claimant carried out his last duties as Pastor for the local church in Bath on 31 August 2019.
33. There were further exchanges between the parties in relation to the correct procedure for raising a grievance, the right to be accompanied at a review meeting, and a convenient date to meet. After the meeting was rescheduled several times, a review meeting was held with the claimant on 26 September 2019. In the final letter inviting the claimant to the meeting, Bishop Powell referred back to the four issues initially raised by the claimant at the 13 June 2019 meeting and explained the purpose of the review meeting was to follow up on those issues, discuss the deferral of the pastoral appointment to Bath, discuss the motive for the claimant incorrectly informing church members that he had been suspended; and outline next steps and actions.
34. These points were all discussed at the meeting on 26 September 2019 and the outcomes of the discussions recorded in a letter sent to the claimant on 27 September 2019. In relation to the role of men and women in the church, the claimant confirmed that he had chosen not to write to the Biblical Doctrinal and Policy Committee (BD&P Committee) as this was his prerogative and his personal writing. The respondent's position was that this was the process set up to engage the world-wide membership of the respondent with doctrinal or



administrative changes or questions. The same point was made in relation to his general concerns about the direction of the respondent, namely that he should engage with the BD&P Committee. The letter confirmed that it was these issues that needed to be addressed before the claimant's appointment could be confirmed and that his failure to engage with these issues following the meeting on 13 June 2019 had impacted on the reappointment process on 18 August 2019. I find that this was the case and that the respondent had genuine concerns about the divergence between the claimant's beliefs and the accepted view of the respondent in relation both to the role of women in the church and the Sabbath, and further and specifically, that there were genuine concerns about his failure to engage in discussion via the BD&P in order to resolve these differences. I note that the claimant feels that he was not given the opportunity to discuss these matters with the bishops, by which I understand him to mean a bible based discussion, but I accept that in this situation where the views were strongly held by the claimant in opposition to the respondent's doctrinal position it was appropriate to require him to engage with the Committee expressly constituted for that purpose.

35. The letter also referred specifically to the anecdotal evidence provided in relation to the fact that women were not permitted to minister to a mixed congregation at Bath. The stated outcome was that this matter was to be investigated.
36. Prior to the review meeting on 26 September 2019, the claimant had indicated his intention to raise a grievance and given the seniority of the individuals involved had queried the process. He had been advised by Bishop Powell to send his grievance to Bishop Reid.
37. On 4 November 2019 the claimant submitted a formal grievance to Bishop Reid with detailed grounds.
38. On 15 November 2019 the claimant was suspended from his duties pending a disciplinary investigation into:
  - 38.1. Denying females the opportunity to preach and teach when men are present;
  - 38.2. The inability to minister in harmony with the teachings and polity of the respondent in word and conduct;
  - 38.3. Deliberate and serious perversion of sound doctrine; and
  - 38.4. Insubordination.
39. The claimant was informed that he would continue to be paid and that his employment continued. He was advised that the investigation would be carried out in accordance with the Disciplinary Policy and Procedure in the Ministerial Manual and the ACAS Code.
40. On 12 December 2019 the claimant was invited to a disciplinary investigation meeting to be held on 17 December 2019 with Pastor Alan Hush in relation to these four allegations. I find that Pastor Hush had had no prior involvement with the matter and was appropriately independent.

41. In relation to the first allegation, for which the claimant was ultimately dismissed, reference was made to this being a breach of the Ministerial Policy Manual which provides for women having a preaching ministry and to it being a potential breach of the Equality Act 2010.
42. In relation to the allegation of insubordination, this was identified as the failure to attend review meetings.
43. On 13 December 2019 Bishop Graham heard the claimant's grievance,
44. The disciplinary investigation meeting with the claimant was held on 17 December 2019 and all the allegations were discussed. In response to the question about the role of women as ministers, the claimant confirmed that he did not have a view but knew what the scripture said and that he wanted to discuss it, as did his members. He confirmed that women in his congregation felt they should not do certain things. The claimant was asked if Lois Francis, (a female minister at the Bath church), preached before the entire congregation. The claimant confirmed that she did not and referred to the structure of services in place in Bath which the parties agree was: first Sunday the claimant preached; second Sunday men and women's ministries were held; (so the men and women separated, and Lois Francis could teach, but the service structure meant it was only to the women); third Sunday was a youth service; fourth Sunday the claimant taught. Where there was a fifth Sunday, the claimant said that "we would visit them, and they would visit us". As confirmed by the claimant in his evidence, I find that this meant that women did not in practice at all material times preach to men in the Bath church.
45. In his evidence the claimant explained that this service structure had been in place for a considerable time, and I accept that he had not introduced it, although it had been changed slightly with the introduction of the men's ministry at some point.
46. I also find that the local church's position on women preaching to, and teaching men had been reached following a 2-year bible study program, initiated by a church member who had questioned the correct interpretation of scripture in relation to women being placed in authority over men. I accept the claimant's evidence that this had occurred in the late 1980s. I find that the claimant's personal belief and that of many of his congregation, is that women should not preach to or teach men and I further find, as confirmed by the claimant in his oral evidence, that for at least the last 15 years, a woman had not in fact preached in the Bath church to men. I further find that the structure of the church services facilitated this. This is not in line with the respondent's doctrine which is that women can preach to and teach men.
47. The claimant was asked whether if Lois Francis asked to preach, he would allow her to. The claimant confirmed that he would, but that he would not be present due to his scriptural belief that women should not preach to or teach men.
48. Pastor Hush also interviewed Bishop Morris, Bishop Veira, Carol Renton and Kenneth Renton, two former members of the Bath church, and Lois Francis. In

her interview, Lois Francis was first asked about the scriptural position on the role of women in the church and how it manifested itself in Bath and she responded that this was difficult for her as a woman and a female minister but that she would not contest someone else's scriptural view. She was then asked if she could confirm "*factually*" whether "*if there was a mixed service, ie male and female, a woman wouldn't teach a female only group*". Her response was: "*I wouldn't want to answer that one, can you ask someone else that question as I wouldn't want to run myself into difficulties on this one*". I conclude that Ms Francis was aware of the claimant's views but did not wish to say anything that could be interpreted as detrimental to him.

49. The conclusion of the investigation was that the claimant had a strong view on the role of women in ministry and was aware that this was not in line with the doctrinal stance of the respondent. The recommendation was that there was a case to answer. It was noted on the report that Mr Hush was unable to speak to any current members of the church (other than Lois Francis) in spite of efforts to do so and recommended that the disciplinary panel endeavoured to do so.
50. The grievance outcome was sent to the claimant on 31 January 2020 and the claimant's grievances were not upheld. A number of recommendations were made.
51. On 11 February 2020 the claimant submitted a grievance appeal.
52. On 14 February Pastor Elaine Palmer-Taylor, an Independent HR Consultant, wrote to the claimant to acknowledge receipt of the claimant's grievance appeal and to advise him that following the disciplinary investigation, the matter was to be referred to disciplinary hearing but that the disciplinary hearing would be placed on hold pending the outcome of the grievance appeal. It is apparent from the documents that a Data Subject Access Request was also made on or around this time.
53. The grievance appeal meeting was held on 9 March 2020 by Bishop Rochester, a Trustee of the respondent and a detailed outcome letter sent to the claimant on 22 April 2020. The grievance appeal was not upheld.
54. On 5 May 2020 the claimant was invited to a disciplinary hearing to be heard by Bishop Wilson, remotely due to the pandemic, on 14 May 2020. I accept Bishop Wilson's evidence that he approached the disciplinary hearing with an open mind and with the authority to make an independent decision.
55. The four allegations were set out and the first allegation was re-framed to state:

*"You have prohibited females the opportunity to preach and teach in your local church when men are present. It is alleged that you have reinforced the practice by the way that you have constructed your church services at Bath. The inability of women being able to minister before a mixed congregation is not in line with page 97 of the CoGoP Ministry Manual 2018, the Working Toward Equity Handbook page 18, point 11.7 public breach. You should note that this allegation also amounts to a breach of the Equality Act 2010."*

56. I do not find as submitted on the claimant's behalf that the change in wording from "denying" females the opportunity to teach or preach to "prohibiting females the opportunity to preach and teach" is a material change to the allegations. I find that the claimant understood the allegation was that women were de facto not given the opportunity to preach in the Bath church to a mixed congregation and I find that he was given the opportunity to refute this allegation. I find that the substance of the dispute between the parties in relation to women preaching and teaching had been clear since the 14 June 2019 letter and that the claimant had been informed on this date and subsequently that the respondent considered his actions to be in breach of the Equality Act 2010.
57. The claimant was advised that the outcome of the disciplinary hearing could range from no formal action being taken, to summary dismissal. The claimant was provided with the investigation report and supporting documentation. The claimant was invited to submit any additional documents or to call any witnesses to the hearing.
58. The disciplinary hearing was heard by Bishop Wilson as Chair and Bishop Rowe. The claimant attended with his union representative. The hearing started at 11.00 am and concluded at 3.50 pm and there was a detailed discussion of all of the allegations
59. In relation to the allegation concerning the role of women in the church, the claimant denied issuing a prohibition or informing the women of the congregation that they could not speak. He confirmed that he had never been approached by a woman asking to teach or preach and refused that request. The claimant referred to the bible verse he had sent to Pastor Hush and stated that his opinion came from the bible. He reiterated that if a woman asked to preach, he would allow it but would not be there due to his own scriptural beliefs. He further confirmed that he had never asked Lois Francis, a female licensed minister, to preach and that she had not preached to the whole church in Bath since the bible study took place although had done so previously.
60. In relation to the church services, the claimant explained again, and I have previously accepted, that the structure had not been expressly designed to prevent women from preaching to mixed congregations and in his evidence referred to the fact that the men and women ministries are national arrangements. Bishop Wilson acknowledged in the course of his evidence to the Tribunal that the claimant had not "directly prohibited" women from preaching, but stated that "*Lois Francis was the most capable female preacher [we] have in the country*" and yet she did not preach, and that the claimant had "*created an atmosphere where it was not appropriate for women to speak*" and that a "*threat that the pastor would walk out*" if they did "*becomes a hostile environment*". I accept that these actions created an environment in which women were not provided with the opportunity to preach to or teach men so that they were effectively prohibited from the opportunity to preach to a mixed congregation.
61. There was also a discussion of the potential breach of the Equality Act and specifically that the exemption for segregated worship would only apply when

this accorded with the tenets of the church whereas the respondent did not support a prohibition on women preaching to and teaching men.

62. In response to a direct question as to why he did not uphold the doctrine of the church on this point, the claimant stated that it came down to the scriptures.
63. When asked why he had continued in his role given the self-evident conflict, the claimant responded by saying: "*How do you effect change? You have to remain on the inside*". I accept the respondent's submission in relation to this comment that the respondent genuinely believed that the claimant was only looking to engage in order to seek to change the doctrinal position of the respondent and was not himself open to changing his opinion and I find having heard the claimant give his evidence that this was in fact the case.
64. I find that the claimant had a genuine belief that the bible (I Timothy 2 chapter 11) forbade women from teaching or preaching to men. This was a considered view reached after two years of bible study and one held for over 25 years. I find that there was no reasonable prospect of the claimant changing his mind.
65. I further accept that, as indicated by the claimant, the Bath congregation may well share this view. I find that the congregation would have been aware of the claimant's personal belief and as a respected Pastor that this would have influenced them.
66. The respondent emailed the claimant on 21 May 2020 to request copies of documents referred to by the claimant which had not been provided before or at the hearing. These were then provided by the claimant and considered by the panel.
67. A disciplinary report was produced on behalf of the panel and the conclusion reached was that:
  - 67.1. following two years of bible study, the claimant had concluded that women were forbidden to preach and teach a man;
  - 67.2. this conclusion contravened the doctrines and policies of the respondent
  - 67.3. the claimant did not engage before or during the study with the BD&P Committee or with successive National and Regional Presiding Bishops knowing the emerging view was at odds with the church's doctrines;
  - 67.4. the structure of church services was in line with the respondent's guidelines, but this was being used in a way to prevent women from ministering to the whole church;
  - 67.5. as pastor, the claimant had responsibility to decide who preached.
68. The panel concluded that these practices were de facto sex discrimination as defined by the Equality Act 2010 and the claimant's actions were gross misconduct and warranted disciplinary sanction.
69. The other disciplinary allegations were not upheld.
70. The panel then considered the appropriate sanction. It noted that the situation had continued over 25 years and that doctrinal beliefs were being eroded at the

local level. Rather than a call to action to resolve the doctrinal divergence, the claimant shared the divergent beliefs and did not pro-actively seek to resolve the differences. The attempts to engage with the church leaders to resolve the differences were effectively too little and too late. The panel further concluded that there were fundamental differences between the claimant and the respondent with respect to the doctrine on women and their ability to minister publicly when men were present and little confidence that these views would change. The panel concluded that there has been a breakdown of trust and confidence and that the actions specifically in relation to the breach of the Equality Act, constituted gross misconduct.

71. On 2 July 2020 Bishop Wilson wrote to the claimant confirming the decision to dismiss him summarily from his employment on the grounds that he *“had prohibited females the opportunity to preach and teach in your local church when men are present”*. The letter recorded that no disciplinary sanction was to be issued for the other disciplinary allegations. I do not find that the failure to uphold the other allegations demonstrates that the disciplinary process was flawed as alleged by the claimant.

72. The panel recorded their bewilderment that for the last 25 years no woman had preached or taught at the Bath church when men were present and noted that this had happened under the claimant’s leadership. The letter refers to the claimant’s obligation to uphold the respondent’s doctrine and his failure to do so which they conclude was due to his personal beliefs. Ms Johns submitted on behalf of the claimant that the claimant’s personal beliefs should not be considered in considering the fairness or otherwise of the claimant’s dismissal. I do not accept this submission. The claimant was a pastor in a church and as a spiritual leader, I find that the respondent was entitled to take the claimant’s personal beliefs about women preaching and teaching into account in considering whether he could continue as pastor to a local church as these beliefs inevitably and demonstrably impacted on the way in which the church was run. The letter records the panel’s finding that these practices were de facto sexual discrimination and had led to a breakdown of trust and confidence in the claimant. The letter states that this leaves *“no other choice other than to summarily dismiss you”*. I accept Bishop Wilson’s evidence that by this he meant that the panel concluded after considering other alternatives that there were no other appropriate sanctions given the breakdown of trust in the claimant and not that the panel felt obliged to dismiss the claimant or did not consider other options at all. The claimant was offered the right of appeal against his dismissal.

73. The claimant’s employment was terminated on 2 July 2020.

74. On 3 July 2020 an announcement was made to the Bishops and Senior pastors that the claimant was no longer an employee of the respondent. Ms Johns sought to rely on email exchanges on the 3 July referring to discussions at an SLT meeting in relation to the conclusion of the disciplinary process as evidence that there had been collusion between Bishop Powell and the disciplinary panel. I accept Bishop Wilson’s evidence that there were no such discussions and I find no other evidence to support the contention that the

decision was in any way predetermined. I also do not find that this announcement meant that the appeal outcome was in any way predetermined.

75. The claimant submitted an appeal on 14 July 2020 and the appeal was heard on 24 July 2020 by Bishop McAlla (Chair) and Bishop Atherley, panel member. The claimant was accompanied by his union representative.
76. The claimant raised nine grounds of appeal which were each discussed at the appeal hearing and subsequently further investigations were undertaken, and additional documents reviewed. The claimant was sent a detailed appeal outcome on 7 August 2020 addressing each of his appeal points in turn.
77. *Point 1 – You were dismissed as a Minister of Religion and not a Senior Pastor.* It was clarified that the claimant had been dismissed as an employee.
78. *Point 2 – No person from the local church at Bath had made a complaint.* This was acknowledged, but the finding was that the disciplinary allegations were based on the claimant's own conduct so a complaint from church members was not required and the appeal panel concluded that he was aware of the allegations.
79. *Point 3 – The disciplinary panel used arguments not based on fact to make its decision.* A thorough review of church history was undertaken in relation to the segregated services and this point of appeal was not upheld.
80. *Point 4 – The respondent's procedures were not followed.* It was identified that as the respondent's employment procedures did not deal with conduct issues, the ACAS guidelines were followed and that the Ministry Policy manual deals with ministerial appointment not employment rights.
81. The appeal panel also undertook a detailed review of the overall process followed and considered that it had been fair.
82. The last issue considered under this point was the reliance on the evidence of Ken and Carol Renton as there had been issues around their departure from the Bath church. The appeal letter sets out that the panel had given serious consideration to this point but as the decision was not based solely on their evidence, they concluded there was no detriment as a result of their statements.
83. *Point 5 - Was not proceeded with as it had already been covered.*
84. *Point 6 – The investigation was flawed as it did not encompass the UK Ministry.* The panel were clear that this would in their view not have been a reasonable approach but did explore the occasions on which the claimant had either demonstrated his views, such as walking out of the May 2010 Convocation when a woman was about to preach or had spoken about his views with church leaders. The panel concluded that the matter was addressed on each occasion that the church leadership became aware of him acting inappropriately.

85. *Point 7 – You are afforded protection under the Equality Act 2010 due to the protected characteristic of religious belief.* The panel were unable to identify a separate religious belief.
86. *Point 8 - The Chair of the disciplinary panel is not senior enough.* The panel concluded that the disciplinary appeal panel was appropriately chaired by Bishop Wilson, the Bishop of France, who was a Trustee of the respondent as well as being an employee.
87. *Point 9 – the decision to terminate your employment was unfair.* The claimant raised specifically that he had already been removed from his position by Bishops Veira and Morris at the end of August. The panel concluded that the claimant had not been removed from his office; that he had been informed that this appointment to a church was deferred; and that he was aware given communications between the parties and the fact that he continued to be paid that his employment was on-going. They also concluded attempts to resolve the issues in dispute were hindered by the claimant's refusal to answer direct questions about whether he allowed women to preach and his lack of engagement with the BD&P Committee.
88. Having considered all of the appeal points, the panel did not uphold the appeal and concluded that the dismissal for gross misconduct should stand.

### **Relevant Law**

89. Having established the above facts, I now apply the law.

### ***Unfair Dismissal***

90. The reason for the dismissal was conduct which is a potentially fair reason for dismissal under section 98(2)(b) of the Employment Rights Act 1996 ("the Act"). It is for the respondent to show the reason for the dismissal and that it was a potentially fair one (*Abernathy v Mott, Hay and Anderson* [1974] ICR 323).

91. I have considered section 98(4) of the Act which provides:

"... 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".

92. I have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s.207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 ("the ACAS Code").



93. In applying section 98 of the Act, a tribunal must consider the reasonableness of the employer's conduct, not simply whether it considers the dismissal to be fair. In judging the reasonableness of the dismissal, the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might take one view, and another might quite reasonably take another. The function of the tribunal is to determine in the particular circumstances of each case whether 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.
94. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances and taking the process as a whole. A helpful approach in most cases of conduct dismissal is to identify three elements (as to the first of which the burden is on the employer; as to the second and third, the burden is neutral): (i) that the employer did genuinely believe the employee to have been guilty of misconduct; (ii) that the employer had in mind reasonable grounds on which to sustain that belief; and (iii) that the employer, at the stage (or any rate the final stage) at which it formed that belief on those grounds, had carried out as much investigation as was reasonable in the circumstances of the case. The band of reasonable responses test applies as much to the question of whether the investigation was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss.
95. I have considered the cases of *Post Office v Foley*, *HSBC Bank Plc (formerly Midland Bank plc) v Madden* [2000] IRLR 827 CA; *British Home Stores Limited v Burchell* [1980] ICR 303 EAT; *Iceland Frozen Foods Limited v Jones* [1982] IRLR 439 EAT; *Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR; *Sheffield Health and Social Care NHS Foundation Trust v Crabtree* UKEAT/0331/09; *Taylor v OCS Group Ltd* [2006] ICR 1602 CA; and *Polkey v A E Dayton Services Ltd* [1988] ICR 142 HL. The tribunal directs itself in the light of these cases as follows.

### ***Breach of Contract***

96. The claimant's claim for breach of contract for notice pay is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order") and the claim was outstanding on the termination of employment.
97. If there is no expressly agreed period of contractual notice, there is an implied contractual right to reasonable notice of termination. This must be not less than the statutory minimum period of notice set out in section 86 the Act. For someone who has been employed for over 12 years, this is 12 weeks' notice.
98. An employer is entitled to terminate an employee's employment without notice if the employee is in fundamental breach of contract. This will be the case if the employee commits an act of gross misconduct. If the employee was not in

fundamental breach of contract, the contract can only lawfully be terminated by the giving of contractual notice, or, if the contract so provides, by a payment in lieu of notice.

**I now apply the law to the facts in this case**

99. I have heard oral submissions from Mr Wood and Ms Johns which I have considered in reaching my conclusions.

100. Mr Wood submits that this is a simple case where the claimant failed to follow the respondent's doctrinal teaching and prevented women from preaching to mixed congregations in breach of equality legislation which he states is an act of gross misconduct. He submits that looking at the process as a whole and despite the time taken for the final decision to be reached, the process followed was fair and reasonable and in line with the ACAS Code. He reminds me that it is not for the Tribunal to substitute its views for those of the respondent and says that a decision to dismiss in these circumstances is plainly within the band of reasonable responses open to an employer.

101. Ms Johns addressed me specifically on each of the matters set out in the agreed list of issues and challenged the fairness of the dismissal on each of those grounds, concluding that taking these into account, dismissal was not a fair sanction.

102. I have accepted that the reason for the dismissal was conduct which is a potentially fair reason for dismissal and I find that the bishops who chaired the disciplinary hearing and the appeal hearing, Mr Wilson and Mr McCalla, acted independently, (along with the respective panel members), in reaching their decisions and that each had a genuine belief that the claimant was guilty of misconduct. Both the dismissal and appeal letter set out in detail the findings of the panels and the reasons for the conclusions reached and both gave clear and consistent evidence as to why the decision to dismiss was reached and upheld.

103. On the basis of the claimant's evidence before the Tribunal, I find that Bishop Wilson and Bishop McCalla's belief in the claimant's misconduct was based on reasonable grounds and I further find that the steps taken first by Pastor Hush to investigate the allegations made and subsequently by the appeal panel, were reasonable in all the circumstances of the case.

104. I deal with each of the specific issues raised by the claimant in turn.

105. *Firstly, the respondent suspended the claimant when he was already de-facto suspended, demonstrating that the respondent was merely following a tick box exercise.* I do not find that the deferment of the appointment of the claimant to a church in August 2019 operated as a suspension from his employment. He continued to engage with community events and was still recognized as a minister by the respondent. I also do not find that the deferment is evidence that the disciplinary process was a tick box exercise. I find that Bishop Wilson considered the disciplinary allegations with an open mind and independently.

106. *Secondly, the respondent included allegations relating to insubordination which the claimant was able easily to disprove, demonstrating that the investigation was unreasonable and uncomprehensive.* I conclude that the purpose of the investigation is to present the facts to the disciplinary panel and the disciplinary process must be reviewed overall taking into account the investigation, disciplinary hearing and appeal stages. Neither the investigator nor the disciplinary panel have acted unreasonably merely by reason of the fact that the disciplinary panel in exercising its judgment did not uphold all of the disciplinary allegations referred to it
107. *Thirdly, the respondent had no evidence which showed that the claimant had prohibited females from preaching, indeed the witness statement of the female Minister at the Bath Church confirmed this.* The evidence before the disciplinary panel, confirmed by the claimant in the Tribunal hearing, was that no woman had in fact preached to a mixed congregation for at least 15 years. Lois Francis, in her evidence to Pastor Hush made it clear that she was not prepared to comment on the approach adopted in Bath as it was “difficult” for her. I therefore do not find that Ms Francis’ statement can be relied on by the claimant in support of this contention. I do conclude that there is no evidence that the claimant had expressly verbally “prohibited” women from preaching and teaching but have found that the effect of his known scriptural views as pastor in the Bath church and the structure of the services resulted in the outcome that no woman, including a female minister, had the opportunity to preach to or teach men. I do not therefore find that the lack of evidence of an express “prohibition” as opposed to the creation of an environment where women were not given the opportunity to preach demonstrates a lack of evidence, or results in any substantive or procedural unfairness.
108. *Fourthly, the allegation for which the claimant was dismissed was based upon rumours, however the respondent had used no witness evidence of these rumours.* The reluctance of Ms Francis, a minister, to say anything which could be detrimental to the claimant, leads to a strong inference that other members of the congregation may also have been reluctant to say anything that could be detrimental to a much-loved pastor in a tight knit community. The lack of witness statements does further and in any event become immaterial given the admissions made by the claimant himself in relation both to his religious beliefs as pastor and the practices that these beliefs had engendered in the Bath church.
109. *Fifthly, the respondent sought witness evidence from two individuals who had left the respondent’s congregation on bad terms 10 years prior to the disciplinary process. This shows that the respondent had purposely sought the opinions of those that were biased and had no intention of allowing the claimant a fair hearing.* As concluded above, I find it more likely than not, that current members of the Bath congregation were reluctant to provide statements and therefore I find that it was not inappropriate for former members of the congregation (who were members at the time that the same practices prevailed) to be interviewed. I am also mindful of the fact that the appeal panel gave serious consideration to this point and concluded that there was no detriment to the claimant.

110. *Sixthly, the respondent failed to obtain a witness statement from any member of the claimant's congregation at the Bath Church except from a Minister. This omission demonstrates that the respondent was unwilling to undertake a comprehensive investigation, especially considering some of the allegations related to the claimant chairing his personal views with his congregation. For the reasons set out above, I do not find that this meant that the investigation was inadequate.*
111. *Seventhly, at the disciplinary hearing the panel prevented the claimant from reading from a piece of Scripture which was key to his position, thus the respondent prevented the claimant from setting out his case and showed that the decision to dismiss was premeditated, as there was no interest in providing the claimant a fair hearing. I accept Bishop Wilson's evidence that he was familiar with the scripture (1 Timothy 2: 11-12), which had already been provided to the panel in writing and therefore do not conclude that this prevented the claimant from presenting his case nor that this evidenced that the decision was premeditated.*
112. *Eighthly, the respondent failed to consider the claimant's witness evidence that he had not discriminated against females, and it made the decision to dismiss with no evidence of misconduct. I do not find that the respondent's bishops failed to consider the claimant's evidence either at the disciplinary hearing or at the appeal hearing. The notes of the meetings, the outcome letters and the email exchanges disclosed show that consideration was given to the claimant's arguments. I therefore do not conclude that the decision to dismiss was made with no evidence of misconduct. I am satisfied that the respondent had sufficient evidence to reasonably conclude that the claimant was guilty of misconduct in allowing the Bath church to diverge from the accepted doctrine of the respondent and to create an environment in which women were not allowed the opportunity to preach to a mixed congregation.*
113. *Ninthly, the disciplinary hearing report concluded that the allegation of prohibiting females to teach had led to a breakdown in trust and confidence between the claimant and the respondent. The report then jumped to the conclusion that this was gross misconduct with no justification. This allegation was merely given the label "gross misconduct" to enable the respondent summarily to dismiss the claimant, when in actual fact the claimant was dismissed for a breakdown in trust and confidence, which demonstrates that the process was flawed and that the respondent undertook a witch-hunt. I accept that the disciplinary hearing report does state that the view of the panel is that the action taken by the claimant over 25 years is a breakdown in trust and confidence. However, the report also refers to the conclusion of the panel that the claimant had committed gross misconduct as the claimant had failed to uphold the respondent's policies relating to equality, and specifically the role of women in the church and that meant that the claimant was complicit in acting in a manner which amounted to direct discrimination. I do not find that there was a "witch-hunt" as alleged by the claimant, on the contrary, the claimant was given every opportunity to explain his position.*

114. *Tenthly, the respondent failed to take into consideration the claimant's mitigation of 33 years' service and/or his unblemished disciplinary record. I accept Bishop Wilson's evidence that the disciplinary panel did take the claimant's length of service and clean disciplinary record into account.*
115. *Lastly, the respondent made no serious consideration of alternatives to dismissal, and the respondent noted that there was little confidence that the claimant would make fundamental changes, however there was no evidence of this and no opportunity had been given to the claimant to make any changes. Given the time over which the practice of not allowing women to preach had continued; the fact that the claimant had been provided with the opportunity to engage with the BD&P Committee and had not done so; and that the claimant had indicated to Bishop Wilson that he remained with the respondent with the aim of bringing about a change in the respondent's doctrine on women preaching, I am satisfied that Bishop Wilson was entitled to conclude that an alternative sanction to dismissal was not appropriate as the respondent had lost trust and confidence in the claimant's willingness to uphold the tenets of the respondent's belief system.*
116. I accept that the claimant has a genuine personal belief based on a specific biblical text that women should not preach to or teach men but conclude that given his role as a church leader, the respondent was entitled to dismiss him for creating an environment in which women were not given the opportunity to preach to men as this had created a discriminatory environment in breach of the Equality Act 2010 which did not accord with the doctrine of the respondent. I further conclude that the respondent was entitled to reach the view that this behaviour constituted gross misconduct and that dismissal for gross misconduct was a fair sanction, that is, it was within the range of reasonable responses open to a reasonable employer when faced with these facts.
117. I further find that the actions of the claimant in creating an environment in which women were effectively denied the opportunity to preach to and teach men in accordance with the doctrine of the respondent, was in fact a breach of equality legislation and was a fundamental breach of the claimant's contract of employment with the respondent.
118. In terms of the fairness of the procedure, I have addressed the specific points raised in the list of issues and have further considered if the change in the wording of the allegation or the delay in concluding the disciplinary process has resulted in unfairness. My findings on the claimant's specific challenges to the fairness of the procedure are noted above and I do not find that either the delay, which was caused by a number of factors including the grievance, the grievance appeal and the pandemic, or the change in the wording of the allegation from "*denying*" females the opportunity to preach or teach before men, to "*prohibiting*" females the opportunity to preach and teach in [your] local church when men are present renders the overall process unfair. I am satisfied that the claimant was aware of the fundamental issue that not allowing women to preach or to teach men had been adopted as a point of principle by the Bath church based on their study of the bible and was not in line with the doctrine of the respondent. As Senior Pastor the claimant had been instrumental in allowing this discriminatory practice to develop and continue.

119. If I am wrong and the above procedural issues would have rendered the dismissal procedurally unfair, I am satisfied that had a fair procedure been followed, there would have been no difference to the eventual outcome which would still have been the dismissal of the claimant at the end of the disciplinary process, given the intransigence of the claimant's beliefs and the necessity for the church's bishops to uphold the respondent's accepted doctrine (*Polkey v AE Dayton Services*).
120. In light of my findings, I am not required to decide the extent to which the claimant contributed to his dismissal.
121. Accordingly, I find that bearing in mind the size and administrative resources of this employer the claimant's dismissal was fair and reasonable in all the circumstances of the case, and I therefore dismiss the claimant's claim for unfair dismissal

### **Breach of Contract**

122. I conclude that the claimant's actions in not allowing women the opportunity to preach to or teach men in the Bath church in breach of the respondent's communicated doctrine was an act of gross misconduct and therefore that the respondent was entitled to dismiss the claimant without notice. I therefore dismiss the claimant's claim for notice pay.
123. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraphs 1 and 2; the findings of fact made in relation to those issues are at paragraphs 7 to 88; a concise identification of the relevant law is at paragraphs 89 to 98; and how that law has been applied to those findings in order to decide the issues is at paragraphs 99 to 122.



Employment Judge Halliday  
Dated 13 March 2022

Reserved Judgment & reasons sent to parties: 25 March 2022



FOR THE TRIBUNAL OFFICE