EMPLOYMENT TRIBUNALS

Claimant: Mr G Duke

Respondent: The City of Liverpool College

HELD AT: Liverpool **ON:** 22 & 23 February 2018

BEFORE: Employment Judge Shotter

Members Ms HD Price
Mr WK Partington

REPRESENTATION:

Claimant: In person
Respondent: Mrs Skeaping, counsel

JUDGMENT ON RECONSIDERATION

The unanimous judgment of the Tribunal is that the claimant's application for the Judgment to be revoked is unsuccessful and is dismissed. The Tribunal confirms its judgment and reasons promulgated on 15 August 2017.

REASONS

Preamble

1. The claimant applied for reconsideration by email sent 28 August 2017 on the basis that it was in the interests of justice for the Tribunal to reconsider its

Judgment and Reasons promulgated on 15 August 2017 ("the promulgated Judgment") because it had failed to "give proper weight to the facts." He indicated the reconsideration was necessary in order that an appeal could be lodged with the EAT.

2. In addition to the 24-page document setting out the grounds for reconsideration, the claimant has also produced written submissions that ran to 19-pages and made lengthy oral submissions in support of his application, which the Tribunal took into account. The claimant wished the Tribunal to take judicial notice of the fact that he had made an application for EJ Shotter to recluse herself on the basis of bias, which was refused by the Judge earlier whose decision is now being appealed at the EAT. It was pointed out to the claimant the promulgated Judgment and Reason were arrived after a joint decision-making process and the Tribunal was unanimous in respect of this.

3. The claimant's arguments on reconsideration were not always easy to follow; and for this reason, we have attempted to set out and paraphrase our understanding of the arguments without repeating every single point that has been made. We would like to thank the claimant for providing us with copies of all the case law he referred to, and clarifying what paragraphs he relied upon.

The law on Reconsideration

4. An Employment Tribunal judgment can be challenged by seeking a 'reconsideration'. Rules 70–73 of the Employment Tribunal Rules of Procedure ('the Tribunal Rules 2013') contained in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 SI 2013/1237 ('the Tribunal Regulations') set out the procedure for tribunals to 'reconsider' judgments.

5. Rule 70 of the Tribunal Rules 2013 provides an Employment Tribunal with a general power to reconsider any judgment where it is necessary in the interests of justice to do so. This power can be exercised either on a Tribunal's own initiative or on the application of a party. Rules 71–73 set out the procedure by which this power can be exercised. Only a 'judgment' can be reconsidered using this power.

6. There is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation. Reconsiderations are thus best seen as limited exceptions to the general rule that Employment Tribunal decisions should not be reopened and relitigated. It is not a method by which a disappointed party to proceedings can get a second bite of the cherry and they are not intended to provide parties with the opportunity of a re-hearing at which the same evidence can be rehearsed with different emphasis, further evidence adduced which was available before or case law to which the Tribunal had not been taken to, for whatever reason. This is an important

aspect in Dr Duke's application in which he attempts to re-open and litigate evidence heard at the liability hearing.

7. Under rule 70 of the Tribunal Rules 2013, a judgment will only be reconsidered where it is 'necessary in the interests of justice to do so'. This ground gives an Employment Tribunal wide discretion, but it does not mean that in every case where a litigant is unsuccessful he or she is automatically entitled to a reconsideration: it can be used to correct errors that occur in the course of proceedings. It is irrelevant whether a Tribunal's alleged error is major or minor taking into account the overriding objective to deal with cases justly and the interests of justice to both sides. This is also particularly relevant to the claimant's application, as he is attempting to re-argue the case, formulating a number of arguments, both those previously used and new ones, possibly due to his own inexperience.

8. The claimant has made reference to various Articles of the European Convention on Human Rights (ECHR). The Tribunal recognises that interests of justice must be exercised consistently with the right to a fair trial under Article 6(1) ECHR, which is incorporated into UK law by the Human Rights Act 1998, and it has taken this into account.

9. Upon reconsideration of a judgment, the Employment Tribunal (as the case may be) may confirm, vary or revoke the original decision and, if revoked, the decision may be taken again — rule 70.

The claimant's grounds

10. First ground: Burden of proof

10.1 The first ground, burden of proof, was withdrawn at the hearing and there is no requirement to consider this issue. It is notable that the claimant intended to refer to case law and arguments that had not previously been raised at the liability hearing and he continued throughout his application to bring up new arguments on a number of matters, supported by case law to which the Tribunal had not been referred to at the liability hearing. The reconsideration process is not the vehicle by which the claimant can expect to clarify or bring in new arguments. There must be finality in the litigation process.

11. Second ground: Time limit/out of time claim

11.1 With reference to the claimant's reliance on the EAT decision in Hale v Brighton and Sussex University Hospitals NHS [2017] UKEAT/0342/16/LA, a decision that could not have been before the Tribunal at the liability hearing; this was a different argument on time limits to those produced by the claimant at the liability hearing.

11.2 The claimant submitted that the act undertaken by Bill Harrop in asking Laura Firth to report back details of any impromptu meeting was an instruction to monitor which was never rescinded and ended with the claimant's dismissal. This, he argued, can be compared to the situation where the respondent created a state of affairs with reference to disciplinary proceedings as set out in Hale. Consequently, the conduct extended over a period and brought the first claim within the statutory time limits.

11.3 It was the Tribunal's view the decision in Hale can be differentiated from the claimant's case, in that the act by Bill Harrop was a one-off act and not a continuing state of affairs as alleged by the claimant. There was no evidence at the liability hearing that Laura Firth reported back to Bill Harrop on any further impromptu meetings held in the staff room or otherwise. It was not part of a series of actions under the disciplinary process, and is a stand-alone act. Further, this is a new argument that was not put forward at the liability hearing. A reconsideration hearing is not the vehicle by which a disappointed litigant can make good the deficiencies in how they ran the case or dealt with issues such as time limits.

11.4 The claimant also submitted he had taken out a grievance about the instruction to "monitor" that had not been concluded before the ET1 was lodged, and it was unfair for the Tribunal to hold this part of the claim was out of time given the respondent controlled the grievance process timetable.

11.5 The claimant complained that the Tribunal had raised the issue of time limit after all witnesses had given their evidence. He argued; under the overriding objective the Tribunal should have dealt with the issue of out of time claims either at the preliminary hearing dealing with case management or prior to hearing the facts at liability stage on the basis that in not doing so, the Employment Tribunal allowed "costs to rack up." Further, the sift process did not consider it out of time and nor did the respondent apply to have that part of the claimant struck out at any time. The claimant did not accept the respondent's position on this issue was justified, namely, that the approach taken was usual in Tribunals, in that generally, evidence needs to be heard in full before a determination can be made.

11.6 Finally, the claimant argued it was "odd" the out of time point should be "raised" he referred to the costs hearing and indicated the Tribunal's decision to hear all of the evidence before considering time limit issues was incorrect and an error in law.

12 The Tribunal revisited a number of documents, including its notes of the hearing and the claimant's original written submissions when considering this issue. It is notable time limit and jurisdiction was raised as a possible issue by the Tribunal when it became apparent after it had heard all the evidence, that the first detriment alleged by the claimant may be out of time. Accordingly, the position was explained to the claimant who was invited to deal with that issue, which he attempted to do in written submissions.

13 On reading those submissions the issue of time limits in relation to detriment 1 was explained again, as it had become apparent to the Tribunal the claimant had little understanding. He was arguing his amended claim had been accepted by the Tribunal and it must therefore have been in time. The Tribunal took the unusual step of providing the claimant with an IDS Handbook which set out the law on time limits having first obtained the respondent's agreement, and the matter was adjourned to allow the claimant (who had put himself out as experienced in legal matters and the law) time to get his arguments together before making oral submissions. The claimant then proceeded to make oral submissions on time limits, which the Tribunal took into account.

14 It is notable the claimant's submissions on time limits given at the liability hearing related to the date of his knowledge and reasonable practicality. The claimant stated with reference to the note on his file "I only came to know abut it end of October, beginning of November [following] a subject access request, the 4th November 2015 – I wasn't aware of the detriment in June and it was not reasonably practicable to bring the claim. The claimant referred to "S.145(C)" in the IDS Handbook.

15 The claimant at this reconsideration now seeks to bring fresh arguments on this issue in the hope that he will be given a second bite at the cherry so as to persuade the Tribunal to accept it has the jurisdiction to consider the first detriment claim. In addition, the claimant in his reconsideration application seeks to re-argue the evidence; the Tribunal made a finding of fact having heard all of the evidence, that there was no continuing act and the claimant seeks to set this aside. His argument at the reconsideration hearing was the Tribunal was wrong in law on the basis that the request by Bill Harrop to Laura Firth "let me know directly and immediately if there is any repetition please" can only reasonably be interpreted as a request to monitor, this was an ongoing act to dismissal and therefore the claim was within time. The claimant did not argue this point at the liability hearing and reconsideration is not the means by which to bring in new arguments. Paragraph 92 of the Judgment sets out the Tribunal's position.

16 The claimant did not argue previously that as he had raised a grievance alleging that his union activities were being monitored the expectation was that the grievance should have been heard before the ET1 was lodged, and this was a continuing act that brought detriment 1 in time. He submitted the grievance outcome was given on 24 February 2016, and the detriment allegations were "reasonably" included in the ET1. The Tribunal took the view that this was again a new argument, not previously before it. Further, the grievance did not form part of the alleged detriments claim and one therefore questions how it can be a continuing act.

17 In conclusion, the original decision on time limits is confirmed and the claimant's application to revoke this is unsuccessful and dismissed.

18 Third ground: Lex 57

18.1 The claimant averred the Tribunal had erred in its consideration of the evidence before re-arguing what facts the Tribunal should have arrived at and did not. The claimant complained the Tribunal gave no weight to the fact Bill Harrop conducted no investigation before he arrived at view employees had been involved in unlawful union activity.

18.2 The claimant maintained the Tribunal had erred in law, in logic and in its interpretation of the facts in a number of ways, for example, in suggesting that as the Lex 57 were all treated in the same way (i.e. because no disciplinary actions was taken against any of them) that the actions of the respondent were reasonable. He stated the Tribunal had shifted the burden of proving that the unlawful actions were lawful on the claimant instead of confining itself to making findings of facts.

19 It was difficult for the Tribunal to follow the claimant's argument, and he appeared to be seeking a re-hearing and going over his version of the evidence as opposed to the Tribunal's findings of facts reached after it had heard from all the witnesses, decided on whose evidence it preferred and taking the claimant's views into account. The Tribunal considered all of the written and verbal evidence, and gave reasons why it preferred that given on behalf of the respondent to that of the claimant. Bill Harrop had adopted a pragmatic approach and he was not disregarding statutory or contractual requirement in that course of action as now alleged by the claimant.

20 The claimant attempted to clarify his position in oral submissions, maintaining the Tribunal had "just accepted" Elaine Bowker's and Bill Harrop's word with no evidence to support it, and had then substituted opinions for facts. In short, the claimant's argument appears to be thus; if Bill Harrop truly believed it was unlawful he was duty bound to investigate every person to whom a letter was sent and dismiss the claimant during his probation period. Repeatedly throughout oral submissions the claimant referred to Bill Harrop's "propensity" for ignoring statutory obligations and disciplinary procedures, and argued that his credibility was undermined by this "propensity".

21 The Tribunal found Bill Harrow, an experience HR professional who enjoyed a working relationship with the unions, intentionally did not to go down the disciplinary and investigation route at the time. Instead he chose the less draconian and destructive path of having a discussion with the upper echelon of the union with whom he had established a relationship over a period of time. It may be the case the claimant, through his inexperience, fails to recognise and/or misunderstood what happens in industrial relations within the workplace as evidenced at the liability hearing and this reconsideration; it is "normal" industrial practice for management and unions to talk and avoid a damaging course of investigations, disciplinary hearings and appeals which all take up time when a quiet word could resolve the situation more satisfactory.

22 The claimant also submitted "lecturers are not like other employees, they have freedom other workers do not have," and referred the Tribunal to S.202(2)(a) of the Education Reform Act, and Sorguc v Turkey, the latter to which the Tribunal were taken to at the liability hearing, and found it was not relevant. The Tribunal remains of this view and paragraph 119 in the promulgated Judgment dealt with this point. The claimant's position appears to be that as a lecturer he can say and do whatever he perceives to be justified or appropriate as long as it is not what he regards to be unlawful. The Tribunal took the view that its assessment on freedom of speech and the LEX 57 protest/demonstration within that context, was not relevant to the issues before it, and had the respondent investigated and disciplined individuals (as suggested by the claimant) it was possibly at that stage freedom of speech may well have been an argument the claimant could have put forward. As there was no investigation or disciplinary this is irrelevant.

Fourth ground: Facebook incident

23 The claimant in oral submissions agreed this was not part of the claim but went to Bill Harrop's credibility and "propensity" to ignore academic freedom and legislation. The claimant argued he was disciplined and this goes to the credibility of Bill Harrop and the respondent wished to silence any debate. The claimant maintained the Tribunal was wrong in law and was bound to follow the law and give academic freedom weight.

24 These arguments were duly considered and dealt with at the liability hearing. The Tribunal took these arguments into account when it arrived at its findings of facts, and reconsideration is not the means by the claimant can re-argue his point in order to further persuade the Tribunal to accept them and reject the respondent's arguments. The Facebook incident was not an alleged detriment and whether or not it gave rise to issues of academic freedom was irrelevant to the claimant's claims. The Tribunal made it clear at the liability hearing it would not be entering any academic discourse on academic freedom, and the Tribunal remains of this view at the reconsideration hearing.

25 Fifth ground: Trade union detriment 1- s.146(1)(b) TULR(C)A 1992 Impromptu union meeting

25.1 In written submission the claimant referred to undisputed facts that he discussed union issues with members in their lunch break and this was considered to be "inappropriate" by Bill Harrop and Laura Firth. The claimant maintained the Tribunal had substituted its own opinion for the facts as no investigation had been carried out i.e. it should have found without an investigation the respondent was not in a position to conclude that a union meeting in the lunch hour with staff present who did not want a union meeting was inappropriate.

25.2 The problem for the claimant was that no disciplinary action was taken or even considered. The Tribunal took the view, after hearing the evidence at

liability stage, there was no requirement for an investigation Bill Harrop having taken the decision that following complaints made by staff concerning the impromptu union meeting during lunch break in the staff room, to have an informal discussion with Nina Doran on the basis that she would then communicate on such matters to the claimant and Ms Cody.

25.3 The claimant also complains the Tribunal erred in law when it concluded there was no requirement for the individual names of the disgruntled employee(s) who complained to be obtained and divulged for the claimant. The claimant, finessing his argument, relies upon Article 6 HRA 1998, the respondent's grievance policy and procedure and bullying and harassment policy, submitting they were contractual obligations in law which had been breached by the respondent's actions.

26 The Tribunal found no grievance or complaint of bullying and harassment was raised by the disgruntled employee(s) who were unhappy with an ad hoc union meeting taking place in their lunch hour, and therefore no formal investigation was required. The matter was dealt with informally in yet another attempt at good industrial relations. It is not for the claimant to insist on an investigation when no grievance has been raised. Accordingly, there was no requirement for the names to be divulged to the claimant and that was the Tribunal's finding following the liability hearing.

27 The Tribunal understands that the claimant's argument to be; if he was holding a legitimate union meeting in the staff room in his lunch time with people who may or may not be union members present, then Bill Harrop should have done more to establish the facts in the case. The claimant's view was that he was entitled to hold a meeting to discuss union matters in his own time. Bill Harrop's position was that it was outside agreed protocols, people complained, he took the view it was inappropriate and communicated this to Nina Doran. If Nina Doran had not believed the claimant had gone outside agreed protocols one would expected Bill Harrop to have been challenged by her, and he was not at the time or subsequently. The evidence before the Tribunal was she had discussed the matter at least with Carol Cody. There was nothing for Bill Harrop to investigate.

28 The claimant argued the note on the claimant's personnel file was a sanction. The Tribunal did not agree; a note that something has happened is not a disciplinary sanction. The reference in the note to the effect that should the claimant repeat his behaviour in the future he could face a disciplinary is not a disciplinary sanction. The Tribunal did not accept this was a disciplinary sanction, formal or informal as maintained by the claimant at the reconsideration hearing. It is acceptable industrial practice for the head of HR to contact a senior union official to discuss and clarify how union activities are or are not carried out at lunch time in a staff room. It is not unusual for a note to be placed on personnel files. This is practical industrial relations practice in the real world, and underlying communications between employers and unions.

29 The claimant further submitted for the first time the word protocol must be given its Oxford Dictionary meaning and Bill Harrop, who was duty bound to provide the claimant with copes of the protocol, had made them up to deter the claimant when carrying out union activities. The Tribunal took the view not all protocols need to be in writing, and the claimant's arguments concerning not being provided with any written protocols were not entirely clear; the claimant as a union official could have himself approached Nina Doran concerning agreed protocols, written or otherwise. The Tribunal found in turn Carol Cody had discussed the matter with the claimant. Nina Doran was not called to give evidence on behalf of the claimant.

30 All of the remaining submissions and observations made by the claimant were an attempt to re-argue the case put forward at the liability hearing and there is no requirement for the Tribunal to deal with each and every point. It considered the claimant's submissions at liability stage and came to the findings of fact as set out, and for example, it did not find Laura Firth had been asked to "covertly monitor two union officials on a regular basis."

31 Sixth ground: Contract of Employment University of Salford

31.1 The claimant argued that the Tribunal had accepted the contract between himself and the University of Salford was fixed term. The claimant alleged the Tribunal had then went on to say the contract was extended which the claimant denied was the case. He submitted the Tribunal should have restricted itself to S.97 (1)(c) of the Employment Rights Act by looking at the "black and white of the contract."

31.2 The claimant maintained the contract did not extend beyond the 31 May 2009 as it had not been renewed, the Tribunal had substituted its opinion for the facts in this matter and could not draw the conclusion that the claimant had "lied" on his application form. The claimant maintained in the application form he was "simply stating the conditions, the black and white of the contract." He clarified that the Tribunal should deal with the "black and white of the contract and ignore everything that took place after 31 May 2009", and go on to conclude the claimant had not "lied" on the basis that the fixed term contract had not been extended and he was not paid beyond 31 May 2009.

31.3 The claimant also submitted the Tribunal 's conclusion that the claimant had lied was at odds with the decision made by Simon Pearce, and the Tribunal was referred to page 481 in the agreed liability bundle which it considered again. The claimant argued that the references to "misleading and dishonest" by Simon Pearce were at odds with the Tribunal's findings that the claimant had not told the truth. The Tribunal did not agree that Simon Pearce's reference to the claimant made "it very clear" that the claimant was dismissed for withholding important information" as submitted by the claimant. The letter ran over 5-pages that included a reference to Simon Pearce finding the investigation conducted by Damien Kilkenny was

"extremely thorough." He also wrote "I am entirely satisfied you were dismissed summarily for gross misconduct…this was not the reason given on your application form…I conclude that you did deliberately mislead the college when completing your application form…you did withhold important information regarding the reason that your employment at Salford University ended which I considered to be misleading and dishonest. This conduct amounts to a serious breach of the duty of trust and confidence."

31.4 The claimant reiterated his arguments that had been before the Tribunal at the liability hearing that there was no obligation for him to disclose the summary dismissal, and there was no express or implied term asking him to confirm whether he had been dismissed. The Tribunal was again referred to Basildon Academies v Amadi & Fox UKEAT/0342/14/RN, which it dealt with in the promulgated judgment and reasons at paragraphs 114 and 115.

32 The contract issue is a key matter for the claimant, and the Tribunal has visited its findings in detail. The Tribunal found the claimant was issued with appointment letters dated 23 October 2008 and 9 March 2009 with an end date of 31 May 2009 at the latest. The claimant issued ET proceedings on 5 October 2009 in respect of his dismissal on 6 August 2009. Had the claimant's last day of service been 31 May 2009 his application would have been substantially out of time. The judgment of the ET makes it very clear the claimant was an employee up until his summary dismissal on the grounds of gross misconduct.

33 A number of documents were before Simon Pearce acting in his capacity as dismissing officer, including a letter from the University of Salford dated 31 July 2015 confirming the claimant had been dismissed and the Employment Tribunal's reserved judgment in case number 2410442/2009 promulgated on 16 November 2011. The Reasons recorded by a claim form received 5 October 2009 the claimant brought a claim of unfair dismissal following his dismissal by the respondent on 6 August 2009. Simon Pearce concluded the claimant's employment must have come to an end on 6 August 2009 and not 31 May 2009.

34 The claimant's job applications stated; "Please answer truthfully. If any information is found to be false at any point in the future it could result in disciplinary action." Under "work history" the claimant set out the University of Salford 2007-2 and 2009-8, 2009-2 to 2009-8. Both show termination (for whatever reason) at August 2009 and not May 2009. Under "reasons for leaving" the claimant set out; "part time position with annually renewable contract wasn't renewed by employer." The claimant made no mention of the 31 May 2009. The claimant intends that the Tribunal, unlike Simon Pearce who made the decision to dismiss, ignore all of this information, and concentrate exclusively on his written contract. This is unrealistic and wrong in law. The written terms of the contract did not reveal the true picture. Further, all of this information was before Simon Pearce and the appeal hearing officer when they decided to dismiss and confirm the dismissal. The Tribunal, having heard the oral evidence and considered the contemporaneous documentation, was

satisfied with their motivation and the lack of any causal connection to the claimant's union activities.

35 In oral submissions the claimant maintained a written contract can only be extended in writing, and there was no oral agreement that the contract was extended by 31 May 2009, therefore the contract did not extend to 6 August 2009. The claimant's argument made no sense given the factual matrix.

36 Ss.95(1)(b) and 136(1)(b) ERA provide that an employee will be treated as dismissed if he or she is employed under a limited-term contract and the contract expires by virtue of the limiting event without being renewed under the same terms. The position is therefore that where an employee's fixed-term contract expires without being renewed, this amounts to a dismissal for the purposes of unfair dismissal, on the claimant's argument this would have been 31 May 2009.

37 The facts do not support this view. If the claimant's fixed term contract ended on 31 May 2009 in accordance with the contract, how could he then be dismissed on 6 August 2009? The Tribunal does not know how the fixed term contract was extended with the effect that there was no break in continuity of service until the claimant, on his own admission, was dismissed in august 2009. Clearly, there was no gap that breaks continuity between the contracts because the claimant was able to issue proceedings for unfair dismissal. It is well-recognised that continuity will similarly be preserved if an employee is dismissed (i.e. on 31 May 2009) and then promptly re-employed. A contract can be extended in a number of ways, including a contract rolling over by the actions of the parties. Had Salford University simply decided not to renew the claimant's contract on 31 May 2009 the effective date of termination would have been 31 May 2009 and not the 6 August 2009, the claimant would have been either out of time or without sufficient continuity of employment, He was neither, and it was reasonable for those managers from the respondent hearing the claimant's arguments on this to reach the conclusion that he was not telling the truth; they had incontrovertible documentation by which to do so.

38 The claimant repeats the unconvincing arguments heard at the liability hearing and ignores the detailed findings, including those on the issue of credibility, made by the Tribunal. The Tribunal cannot turn a blind eye to all of the relevant facts in this case, and more importantly, the respondent took into account the fact that the claimant had confirmed his annually renewable contract with Salford had not been renewed in August 2009 when his dismissal was unconnected with the expiry of a fixed term contract.

39 <u>Seventh ground: Partial suspension</u>

39.1 The claimant submitted that the question for the Tribunal was whether partial suspension was a reasonable step under S.97 of the ERA, the Tribunal had erred in law because there was no contractual provision for

partial suspension and the Tribunal had given the respondent the green light to act ultra vires.

39.2 The claimant further argued suspension of his access to the IT systems caused him a detriment and the Tribunal had given no weight to this, paragraph 99 of the promulgated Judgment was irrelevant and it had wrongly concluding that supervised access could have been requested when it was limited to full suspension only.

39.3 The claimant also submitted the Tribunal should not have accepted there was an economic advantage because there was none, suspension was meant to be a neutral act and motivation of financial gain was contrary to law and the Disciplinary Procedure. This was a new argument brought by the claimant.

39.4 Finally, the claimant argued the Tribunal was wrong to accept Kath Marshall's evidence that suspension was necessary for the protection of the respondent at face value because there was no evidence the claimant was a threat. The Tribunal had failed to ask itself what was in the mind of Kath Marshall and Bill Harrop when they acted ultra vires, breached procedures and acted in breach of his Human Rights.

40 The Tribunal did not accept that the S.97 ERA issue was the question it should have asked itself; it considered whether the claimant had been caused a detriment not having access to IT whilst on holiday, and the respondent's motives for partially suspending the claimant concluding there was no causal connection with the claimant's union activities. The Tribunal accepted the reason given by the respondent that they made the decision on the basis that the claimant was using his holiday entitlement and they did not need to suspend fully as neither he nor students were on the college premises. This saved the respondent money in that the claimant, who was on holiday, then used up his holiday entitlement.

41 The claimant submitted the Tribunal had given no weight to the fact that his union activities on a day-to-day basis had been impacted. The claimant was on holiday and he gave no evidence to the Tribunal as to how his union activities had been affected; the claimant made a broad-brush allegation. The Tribunal found there had been no detriment, and even if it was wrong on this point, it found the claimant failed to establish causation given the factual matrix set out in the promulgated Judgment.

42 The claimant raised similar arguments to those he had presented the Tribunal with at the liability hearing, which the Tribunal does not intend to consider again. He referred to the decision in Simon Agoreyo v London Borough of Lambeth QB/2017/0022 arguing both suspensions were a "knee jerk" reaction and a default position. The problem for the claimant was this; even if the suspension was the respondent's default position and/or a knew jerk reaction (which the Tribunal did not find) the claimant was suspended directly as a result of the

Salford University summary dismissal coming to the attention of the respondent, and there was no causal connection with his union activities.

43 Mrs Skeaping on behalf of the respondent, addressed the claimant's argument that suspension was not a default position; she submitted before suspension the respondent accessed the information, established it was the claimant, wrote to the University of Salford and looked at the claimant's job application. The Tribunal reached its findings of facts by reference to the supporting contemporaneous documents and oral evidence as set out paragraphs 95 onwards of the promulgated judgment.

44 The Tribunal revisited its notes dealing with the motivation behind both suspensions. It noted under cross-examination at the liability hearing Bill Harrop was questioned on the suspension and whether the claimant posed a threat to students, to which Bill Harrop stated he was not aware the claimant posed a threat to students, but "you may have felt bitter and aggrieved and act maliciously towards the college." In Bill Harrop's letter of 14 August 2015 referred to at paragraph 65 of the Tribunal's judgment, there is a reference to the claimant at the investigatory meeting stage causing a breach of trust and confidence. The Tribunal accepted the evidence of Bill Harrop that his concerns were legitimate, the suspension was thought about and considered, it was not a knee jerk reaction and his belief that it was a neutral act. The fact the partial suspension was economically beneficial for the respondent did not undermine the fact it was a neutral act. The Tribunal remained of the view the suspensions had no causal connection with the claimant's union activity; they followed from his alleged act of gross misconduct and the view taken by Bill Harrop as to how the claimant would react being investigated and possibly disciplined, and the risk to the respondent, was one open to an experienced head of HR.

45 Finally, on this point, the claimant maintains the Tribunal gave no weight to the act of suspension rendering the claimant unable to keep in contact regularly with union members or attend legitimate trade union meetings on the respondent's premises, without the claimant giving any evidence of meetings and contact which he was unable to take part in. The clear evidence before the Tribunal is that the claimant could have requested supervised access, for example, to the IT system and he did not. Theoretically, a suspension could affect an employee and their duties as a union official and even had the claimant established he was caused a detriment, the insurmountable problem was one of causation. In short, the claimant was suspended as a result of a gross misconduct allegation being investigated and taken to a disciplinary hearing; there was no causal connection with the claimant being a union member and/or his union activities. The claimant submitted the Tribunal should ignore as irrelevant the fact that there was 20 or so other union official carrying out union duties, including Carol Cody. The Tribunal did not agree. The fact that there were active union officials carrying on with their daily union duties formed the backdrop of the factual matrix; they were able to do so because they had not committed a possible act of alleged gross misconduct.

Eight ground: Confidentiality

46 With reference to the claimant's arguments on the first breach of confidentiality, the Tribunal found it difficult to understand how there can be a breach of confidentiality when it is not disputed the information was out in the public forum.

47 The claimant is asking the Tribunal to re-hear evidence and submissions on this point, which was dealt with at length in the promulgated judgment including paragraphs 101 onwards. The Tribunal revisited Carol Cody's letter dated 16 September 2015 and Bill Harrop's response on 17 September 2015 in which he referred to the respondent "dealing with an allegation of potential dishonesty which impacts potentially on Gary's duty of trust and confidence."

48 The claimant's position is regardless of what information was out in the public arena, he was owed a duty of confidentiality by Bill Harrop, who should have ignored the fact that Carol Cody was copying correspondence to a number of union officials. Mrs Skeaping submitted that the law is clear; once the information was out in the public domain there cannot be a breach of confidentiality. The claimant correctly notes the Tribunal were not referred specifically to any law, or cases. The claimant also did not refer the Tribunal to any law. His view was that matters should remain confidential even if they are out in the public domain in accordance with the terms set out in his contract of employment.

49 The Tribunal's general understanding is that information, once it is out in the public domain, may no longer need to be kept confidential. If the Tribunal is wrong on this point and confidentiality was breached, the Tribunal found there was no causal connection between the Bill Harrop's letter of 17 September 2015 and the claimant's union activities. The Tribunal accepted Bill Harrop's explanation as set out in paragraphs 101 -103 of the promulgated Judgment. Even if the Tribunal took Bill Harrop's motivation at the highest and inferred he wished to besmirch the claimant in the eyes of the union; there was no evidence the claimant was caused detriment because the information relating to the allegation of gross misconduct was out in public including the union officials who were copied in to the email by Bill Harrop.

50 With reference to the second breach of confidentiality, the claimant re-argued his position, maintaining in short, the Tribunal erred in law in that under English law termination of the contract does not release either party from their duties to perform contractual obligations that accrued post termination, even if one party was in breach of contract. The claimant relied on the analogy of wages still being owed and payable after dismissal, and submitted that a contractual disciplinary procedure extended until the time when the appeal was satisfied. It must therefore follow a duty of confidentiality also extended and the Tribunal were incorrect in law when it concluded the duty of confidentiality ended on the claimant's dismissal for gross misconduct when he was found to be in fundamental breach of the implied term of trust and confidence.

51 In oral submission the claimant stated that the Tribunal should have asked itself what was in the minds of Elaine Bowker, Bill Harrop and Angela Cox, the appeal manager. It did, and made the findings set out in the promulgated Judgment.

52 The Tribunal does not intend to repeat its judgment on this point set out in paragraphs 104, 105 and 106. In short, as a matter of law the claimant was in fundamental beach of contract, the breach was accepted by the respondent who found the claimant guilty of repudiatory conduct justifying summary dismissal. At no point did the Tribunal imply or say the respondent's reputation trumped the claimant's right to confidentiality, as now maintained by the claimant; such a matter was irrelevant to the Tribunal's consideration.

HR involvement

53 The claimant criticises Kath Marshall for carrying out some preliminary fact finding to establish whether there was anything to investigate. The claimant has not shown that he was caused any detriment by Kath Marshall's involvement. In the Tribunal's experience it is not unusual for HR to be involved in preliminary investigation before the investigation process is under way, in order to establish whether an investigation should take place. Kath Marshall, who did not carry out the investigation, wrote to the claimant on 5 August 2015 inviting him to attend an investigation meeting with Damien Kilkenny concerning a "potentially serious issue…" It is not unusual for an experienced HR person to advise throughout the process, and it is not unusual for HR to start the process off. Damien Kilkenny was the investigating officer, not Kath Marshall as set out in the promulgated Judgment.

54 The claimant argued the second breach of confidentiality "concretised" his unfair dismissal which would not be put right on appeal. The claimant, who was bringing a claim of automatic unfair dismissal only, was again revisiting issues explored in the liability hearing, following which the Tribunal reached the conclusion and facts set out in the promulgated Judgment, which it does not intend to revisit or repeat.

55 In short, the claimant is attempting to re-argue his point that a conspiracy had taken place, and the Tribunal should have inferred from the respondent's breaches of the contractual disciplinary policy, its statutory obligations, breaching the claimant's Article 6 & 8 rights under the HRA, its knowledge of the law and access to legal advice, with higher managers "straying into areas of culpability," and the Tribunal ignoring all of this evidence by finding in favour of the respondent. The claimant is seeking to use this reconsideration as a means to re-argue his case, bringing in new matters and rehearsing the evidence. It is in the interests of justice to both for this litigation to be final, and the claimant's application for the Judgment to be revoked is unsuccessful and dismissed. The Tribunal confirms its judgment and reasons promulgated on 15 August 2017.

56 At the end of this hearing it was brought to the Tribunal's notice that the claimant, a home owner, has not disclosed information relating to equity in his

house, ostensibly on the basis that it breaches the human rights of his wife, despite being so ordered by the Tribunal. At the costs hearing listed for 7 March 2018 the parties will be expected to deal with this and the effect it could have on the Tribunal's decision if it were minded to award costs, how those costs could be assessed with justice to both parties in mind. The claimant was made aware by the respondent that it seeks to adduce evidence concerning the valuation of the house he owns, and he may wish to produce some evidence of this himself. For the avoidance of doubt, the Tribunal's order that the claimant disclose what equity he has in the matrimonial home remains in force pending submissions.

Employment Judge Shotter
1 March 2018