EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr B Plaistow	v	Secretary of State for Justice

Heard at: Cambridge

On: 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24 May 2018;
Resumed on: 1, 2, 3, 4, 8, 9, 10, 11 October 2018;
Continued on: 22, 23, 24, 25, 26 October 2018, (no parties in attendance);
6 December 2018, (no parties in attendance).

Before: Employment Judge Ord

Members: Mrs M Prettyman and Mr B Smith

Appearances

For the Claimant: Miss N Braganza, Counsel (throughout)

For the Respondent: Mr T Sadiq, Counsel (dates in May);
Mr J Allsop, Counsel (dates in October)

JUDGMENT

1. The claimant was the victim of direct discrimination because of the protected characteristic of sexual orientation, contrary to sections 13 and 39 of the Equality Act 2010 when,

    1.1 he was regularly called ‘poof’ and ‘gay’ by PO H and PO Puttock;

    1.2 he was given an absence warning following an incident on 18 February 2015, during which he was injured in the course of his duties;

    1.3 PO H called the claimant a ‘poof’ in or about July 2015 outside House Unit 2 at HMP Woodhill;

1.4 in or about July 2015 and regularly thereafter, was called a 'poof' and 'vermin' by PO H;

1.5 in July 2015, PO H pointed his finger into the claimant's face and slapped him;

1.6 in August 2015, PO H squirted a bottle of water at the claimant;

1.7 in September 2015, PO H pushed the claimant from behind into a desk in the manager's office at House Unit 2;

1.8 his grievance, raised with Richard Vince in October 2015, was not investigated;

1.9 he was told by SO Wallbank in November 2015 that he would "put [the claimant] on his arse";

1.10 on 4 December 2015, PO Haige screamed at the claimant, grabbed his face and dug her fingernails into his face; and

1.11 when CM Laithwaite called the claimant a "poof", on January 2016.

2. The claimant was the victim of harassment related to the protected characteristic of sexual orientation contrary to sections 26 and 39 of the Equality Act 2010 when,

2.1 PO Puttock, after the claimant's arrival at HMP Woodhill, regularly asked the claimant if he was gay;

2.2 he was asked by CM Laithwaite to disclose his sexual orientation during the course of a discussion as part of the claimant's induction at HMP Woodhill;

2.3 the MHP logo on his work bag was coloured pink in or about July 2015;

2.4 on the occasion in July 2015 when PO H pointed his finger into and slapped the claimant's face, CM Laithwaite failed to intervene thus condoning the conduct;

2.5 in July 2015, CM Laithwaite grabbed the claimant's arm causing bruising and told the claimant he was causing "too many problems", including complaining about his treatment at Woodhill;'

2.6 his work bag was again coloured pink on 4 December 2015; and

2.7 when a pink “fairy” cake was smeared inside his work bag on 4 December 2015.

3. Those acts of discrimination and harassment were part of a continuing series of acts.

4. The claimant made the following written complaints, each of which was a protected act within the meaning of s.27 of the Equality Act 2010,

4.1 his grievance, raised with Richard Vince in October 2015;

4.2 his letter to Andrea Leadsom MP dated 11 October 2015; and

4.3 his grievance sent to Michael Spurr and Carol Carpenter on 11 March 2016.

5. As a result of those protected acts, or one or more of them, the claimant was victimised, contrary to sections 27 and 39 of the Equality Act 2010 when,

5.1 the respondent pursued an allegation of gross misconduct against the claimant; and

5.2 the claimant was dismissed for gross misconduct.

6. The claimant made protected disclosures, as defined by section 43A of the Employment Rights Act 1996 when,

6.1 he sent a grievance to Richard Vince in October 2015;

6.2 he wrote letters of grievance to Michael Spurr and Carol Carpenter on 11 March 2016;

6.3 he wrote to Michelle Jarman-Howe on 31 May 2016;

But the claimant did not suffer detriment for, nor was he dismissed for the sole or principle reason that he made such protected disclosures.

7. The claimant was unfairly dismissed.

8. Save as set out above, the claimant’s complaints are not made out and are dismissed.

REASONS

BACKGROUND

1. The C was born on 2nd May 1978. He began employment as a Prison Officer on 28th July 2003. He was transferred, at his request to H.M.P. Woodhill ("Woodhill") on 7th September 2014. He was summarily dismissed on the stated ground of gross misconduct on 9 August 2016 having been suspended on 11th January that year.

2. The claimant complains that whilst he was employed at HMP Woodhill he was the victim of discrimination and harassment. He relies on the protected characteristic of sexual Orientation. He complains that he suffered detriment for having made protected disclosures, was victimised for having done protected acts and was unfairly dismissed. He says his dismissal was also an act of discrimination and/or victimisation, and/or automatically unfair as he was dismissed for the sole or main reason of having made protected disclosures.

3. The claimant has presented two claim forms. The two cases were consolidated at an earlier stage. In relation to the first claim he commenced early conciliation on 19 March 2016, his early conciliation certificate is dated 19 April 2016 and he presented his claim on 18th May 2016.

4. In that claim form he brought claims of direct discrimination, harassment, and victimisation. He relied upon his suspension on 11January 2016 and having been called a "poof" by the custody manager (Ms Laithwaite) that day as the final acts of a continuing series of acts beginning on or almost immediately after his transfer from Bullingdon to Woodhill.

5. The claimant began early conciliation in relation to his second claim on 4 November 2016. His early conciliation certificate was issued on 15 November 2016 and his claim was presented on 15 December 2016. In that claim he complained of detriment for having made protected disclosures, victimisation for having done protected acts dismissal for having made protected disclosures or having done protected acts, direct discrimination on the ground of (actual or perceived) sexual orientation, harassment on the same ground, unfair dismissal and a denial of the right of accompaniment. He also identified that as a result of the alleged acts of discrimination he had suffered personal injury.

6. The respondent denies all the claims.

THE ISSUES

7. The parties agreed a list of issues for determination by the Tribunal which were considered by the Tribunal and agreed. They are set out here:

7.1 Time Limits (Equality Act 2010 s123)

7.1.1 Whether the alleged acts of discrimination, to the extent that they occurred more than three months prior to the claim being presented, constituted a continuing course of discrimination;

7.1.2 Whether, if the tribunal finds there was no continuing act of discrimination, it is just and equitable to extend time.

7.2 Time Limits (Protected Disclosures)

7.2.1 Whether the claimant presented his claim to the tribunal before the end of 3 months beginning with the date of the act complained of or, where the act is part of a series of similar acts, the last of them;

7.2.2 If not, was it reasonably practicable for the claim to be presented before the end of 3 months and if not, was it presented within a reasonable time thereafter.

7.3 Direct Discrimination (Sexual Orientation) (s13 Equality Act 2010)

7.3.1 Whether, because of the claimant's orientation or perceived orientation the respondent treated the claimant less favourably than it treated or would have treated other persons, the claimant relying on the following alleged incidents:

7.3.1.1 Immediately after commencing work at HMP Woodhill at the start of September 2014 PO Puttock regularly asked the claimant if he was gay, because of his haircut;

7.3.1.2 In around mid-September 2014 at the claimant's induction meeting, CM Laithwaite asked the claimant about his sexuality;

7.3.1.3 POs Puttock and H shortly thereafter and on a very frequent if not daily basis called the

claimant a “poof” and “gay” because of his clothing;

7.3.1.4 Following an incident on 18 February 2015 an absence warning was placed on the claimant’s file by CM Laithwaite;

7.3.1.5 In July 2015 the HM Prison logo on the claimant’s prison bag was coloured pink;

7.3.1.6 CM Laithwaite not replacing the claimant’s prison bag, despite repeated requests made to her in approximately the last week in June 2015;

7.3.1.7 In about July 2015 PO H calling the claimant a “poof” outside House Unit 2;

7.3.1.8 In around July 2015 and regularly thereafter PO H called the claimant a “poof” and “vermin” inside House Unit 2;

7.3.1.9 Just before a morning briefing in July 2015 PO H pointed his finger into the claimant’s face and slapped him in the face. Staff present including CM Laithwaite failed to intervene to stop PO H;

7.3.1.10 In July 2015 on his entering CM Laithwaite’s office, she grabbed the claimant’s arm with force which caused bruising and told the claimant that he was “causing too many problems” including complaining about how he was being treated at Woodhill;

7.3.1.11 In the first week of August 2018 PO H squirting a bottle of water in the staff office, House unit 2;

7.3.1.12 In the second week of September 2015, PO H pushing the claimant from behind into a desk in the manager’s office, House unit 2;

7.3.1.13 Richard Vince failing to investigate the claimant's grievance dated October 2015;

7.3.1.14 In November 2015 SO Wallbank telling the claimant he would "put him on his arse";

7.3.1.15 On 4 December 2015 the claimant's prison bag being re-coloured pink;

7.3.1.16 On 4 December 2015 PO Haige screaming at the claimant regarding a list of prisoners the claimant had provided her with, grabbing his face and digging her fingernails into his face;

7.3.1.17 On 4 December 2015 a pink 'fairy cake' being smeared across the inside of the claimant's prison bag;

7.3.1.18 On 7 December 2015, PO Adams, Johnson, Punter and O'Dell failed to assist the claimant in relation to prisoner A

7.3.1.19 On 11 January 2016 CM Laithwaite called the claimant a "poof";

7.3.1.20 On 1st June 2016 Governor Griffin and Governor Marfleet pursued disciplinary action against the claimant for alleged gross misconduct; and

7.3.1.21 On 9 August 2016 being dismissed by Governor Griffin for alleged gross misconduct.

7.4 Harassment (on the characteristic of sexual orientation) (s26 Equality Act 2010)

7.4.1 Did the respondent harass the claimant by engaging in unwanted conduct related to sexual orientation, which had the purpose or effect of violating the claimant's dignity, creating a hostile, degrading, humiliating or offensive environment for the claimant. The claimant relies on the incidents recited at paras 7.3.1.1 to7.3.1.3; 7.3.1.5 to 7.3.1.17 and 7.1.3.19 above.

7.5 Victimisation (s 27 Equality Act 2010)

7.5.1 Did the following amount to a protected act or acts

7.5.1.1 The claimant's letter of 12 June 2016 to Andrew Selous, MP, Head of the Prison Service;

7.5.1.2 The claimant's grievance raised in October 2015 with Richard Vince, Deputy Director of Custody ("DDC");

7.5.1.3 The claimant's grievance raised with HR on 11 March 2016.

7.5.2 Whether, because they were protected acts or because he respondent believed them to be protected acts, was the claimant subject to the following detriments, or any of them, when the respondent:

7.5.2.1 On 1st June 2016, pursued disciplinary action against the claimant for alleged gross misconduct;

7.5.2.2 On 22 May 2016, having received a copy of the claimant's grievance, by CM Laithwaite saying to the C "what do you think you are doing putting in a grievance against the staff?"

7.5.2.3 Dismissed the claimant for gross misconduct

7.6 Protected Disclosures (s 43 Employment Rights Act 1996)

7.6.1 Did the following amount to protected disclosures made by the claimant:

7.6.1.1 His grievance of October 2015 sent to Richard Vince?

7.6.1.2 His report to the police of an alleged assault on him by Prisoner A on 8th December 2015?

7.6.1.3 His letter to Michael Spurr, Chief Executive, national Offender Management Service ("NOMS") dated 11 March 2016?

7.6.1.4 The claimant's grievance to HR of 11 March 2016?

7.6.1.5 The claimant's letter to Ms Jarman-Howe of 31st May 2016?

7.6.2 Were any such disclosures made in the public interest

7.6.3 Did the claimant reasonably believe that the information therein tended to show one of the relevant failures under s43B (1) of the Employment Rights Act

7.6.4 Were the disclosures made to the claimant's employer

7.6.5 Was the claimant subject to detriment on the grounds that he had made a qualifying disclosure when:

7.6.5.1 He was suspended on 11 January 2016?

7.6.5.2 The decision, post suspension, to parade the claimant through HMP Woodhill in full view of prison staff, taking his keys and ID card off him and escorting him to the exit gate?

7.6.5.3 He was required by Governor Davies to call in every week to 'check in'?

7.6.5.4 Governor O'Connor failed to interview Prisoner Auntil 3 March 2015 regarding the incident on 7 December 2015?

7.6.5.5 Governor O'Connor failed to investigate the actions of PO Adams?

7.6.5.6 Governor Marfleet failed to inform the claimant that his transfer request to Bullingdon had been approved?

7.6.5.7 Governor O'Connor told the claimant on 17 March 2016 via his Trade Union representative that he would be allowed to transfer out of Woodhill if he admitted that he had assaulted Prisoner A and that if he did not he would be dismissed;

7.6.5.8 On 13 April 2016, the claimant received transcripts of his interview with the Respondent from Governor O'Connor, and was allegedly advised that he would only receive the remaining evidence against him when the matter went to a formal hearing (which the claimant says is evidence that the Respondent had made a pre-judged decision to take disciplinary action against him);

7.6.5.9 Governor Griffin on 1 June 2016 'upping' the allegation to gross misconduct;

7.6.5.10 On 1 July 2016 Governor Griffin refused to delay the disciplinary hearing set for 7 July to allow the claimant to review the evidence against him and/or to be accompanied by a trade union representative;

7.6.5.11 On 5 or 6 July Governor Griffin refused to reconsider delaying the disciplinary hearing from 7 July;

7.6.5.12 Ms Jarman-Howe refused to provide the claimant with the CCTV footage as requested by him on 29 July 2016.

7.6.6 Was the reason, or the principle reason, for the claimant's dismissal that he had made protected disclosures (contrary to s103A Employment rights Act 1996)?

7.7 Unfair Dismissal (s.94-98 Employment rights Act 1996)

7.7.1 Was the reason, (or if more than one the principle reason) for the claimant's dismissal, conduct?

7.7.2 If so, was that dismissal fair within the meaning of s.98(4)?

7.7.3 If the dismissal was procedurally unfair, had a fair procedure been followed, what was the prospect of the claimant being dismissed in any event?

7.7.4 If the dismissal was unfair, did the claimant contribute to his dismissal by his own culpable conduct, and if so to what extent?

7.8 s.10 Employment Relations Act 1999

7.8.1 Did the respondent allow the claimant the right to be accompanied by a Trade union representative or fellow worker at the disciplinary hearing on 7 July 2016?

7.9 The respondent, at the conclusion of the hearing, made the following concessions in relation to the issues above:

7.9.1 That the second and third alleged protected acts (7.5.1.1 and 7.5.1.3 above) amounted to protected acts (subject to the claimant not acting in bad faith);

7.9.2 That the alleged qualifying disclosures (other than the allegation at 7.6.1.2 above) did amount to protected disclosures subject only to the claimant having a reasonable belief as set out in s43B Employment Rights Act 1996.

8. Up to the first morning of the hearing the Respondent maintained the 'statutory defence' under s109 of the Equality act 2010 when this defence was withdrawn.

9. In closing the respondent, through counsel, confirmed that in relation to the fairness or otherwise of the claimant's dismissal (including the issue of procedural unfairness) they did not have a positive case to advance in relation to the issues identified at numbers 17 and 18 above (i.e. as regards the fairness of the dismissal under s98(4) of the Employment Rights Act and/or in relation to the question of whether, if the dismissal was procedurally unfair, what was the prospect that a fair procedure would have resulted in the claimant's dismissal.

THE HEARING

10. This case was originally listed for 12 days from 8th to 24th May 2018 (the Tribunal not sitting on 11th May). The case ultimately took a further 13 days in October 2018 (7 days – 1st to 11th October- to complete the evidence, a day for submissions (12 October) and 6 days for deliberations (22-26 October and 6 December) which excludes the time spent to prepare and promulgate the judgment.

11. The reason why this case took so long was almost entirely due to three matters.

12. First, the respondent had failed and continued to fail right up to and beyond the end of the first 12 days of the hearing (at which point the matter was adjourned from May to October this year) to give full and proper disclosure of documents to the claimant. We will identify in this judgment our concerns in this regard as they emerged but they included non-disclosure of obviously relevant documents, disclosure of two versions of what were purportedly the same document without explanation and the inappropriate redaction of documents. Over 150 pages of documents were disclosed during this hearing, none of them could be considered anything other than relevant.

13. Second, in relation to the respondents witnesses the preparation that had been made (or not) before they gave evidence (a number of the respondent's witness had had not, according to their sworn evidence, been made aware of the allegations that the claimant made and had not been directed to relevant sections of the volumes of documents which were before the tribunal) caused some delay. This was compounded by the approach taken to questions posed in cross examination, and from the tribunal. We have commented on the evidence as appropriate below, but (with the exception of Governor Kerr) all the senior officers of the respondent who gave evidence before us were guilty of obfuscation and gave evasive answers to often the most simple of questions. All of this resulted in this case occupying more time than it should have done.

14. Third, even in the face of admissions on oath by the respondent's witnesses, a refusal by the respondent to concede any point of any issue before the tribunal, meaning that all matters had to be put to a series of witnesses.

15. The Tribunal heard from the following witnesses:

16. The Claimant;

17. Governor Robert Davis, (Governing Governor of Woodhill at the relevant time);

    Governor Neil O'Connor, (who conducted the investigation into the claimant's alleged misconduct);

    Olivia Kerr, (Head of Residence and Services, Woodhill and thus the claimant's functional head – his line manager's manager);

    Governor Norman Griffin, (the dismissing officer, Governing Governor, HMP Frankland);

Governor Nicola Marfleet, (now Governing Governor, previously Deputy Governor, Woodhill);

Michele Jarman-Howe, (Executive Director, Public Sector Prisons (South), who commissioned an investigation into the claimant's grievance of May 2016);

Victoria Laithwaite, (Custody Manager ("CM") at Woodhill and the claimant's line manager);

Richard Vince, (DDC, High Security Estate and Appeal Officer re the claimant's dismissal);

Governor Ian Blakeman, (Governing Governor, HMP Bullingdon who investigated the claimant's complaints re bullying and harassment in May 2016);

Lee Wallbank, (at the time Supervisory Officer (SO) at Woodhill, now CM);

Thomas Punter, (Prison Officer ("PO"), Woodhill);

Melissa Hunt, (HR Business Partner);

Lesley Haige, (PO, Woodhill);

Robert Puttock, (PO, Woodhill);

Paul Adams, (PO, Woodhill);

Andrew Johnson, (PO, Woodhill);

Thomas Punter, (PO, Woodhill).

One officer (PO "H") did not give evidence but features heavily in the alleged incidents about which the claimant complained. In the light of his not giving evidence before us he is identified only as PO H.

18. In addition, the tribunal viewed the CCTV of the incident on 7 December 2015, which records the act of alleged gross misconduct and was referred to a large bundle of documents which was added to during the hearing.

19. Counsel for each party made closing submissions both written and oral, and the Tribunal records its' thanks to all Counsel in this case for assisting the Tribunal to navigate this case.

THE EVIDENCE and the TRIBUNAL'S FINDINGS OF FACT

20. Based on the evidence presented to us we have made the following findings of fact. Where it is appropriate to do so, we identify in these findings the issues which we had during the course of the hearing with certain witnesses and how that has led us to preferring the evidence of one witness over another or others.

21. The claimant is a bi-sexual male.

22. The claimant had worked in the Prison Service from 28 July 2003, first at Feltham (a prison and young offender's institution), then at Bullingdon (a category B/C prison) before transferring to Woodhill (a high security, category A prison) on 7th September 2014. The two changes of location were at the claimant's own request, to advance his career. he considered that working with high security/ category A prisoners would advance his learning and help his career. He had previously worked in a unit where all prisoners were serving life sentences whilst at Bullingdon.

23. The claimant described category A prisons as housing the most violent, dangerous and disruptive prisoners in the system and that evidence was not challenged.

24. The claimant said that from the earliest days of his time at Woodhill he was asked if he was gay by colleagues, on the basis, as he understood it, of his haircut which he described as "spiky, similar to a mohawk" whilst others were mainly bald or had shaved heads whilst PO H had a "shaved, army [style]" cut. He specifically identified POs H and Puttock as being involved in these early matters (and thereafter).

25. The various respondent witnesses who were asked about this all said that there was "good natured banter" between colleagues. PO Puttock said the claimant would "have his leg pulled" about dying his hair. Although he said the claimant "joined in and gave as good as he got" he gave no example of this whatsoever. SO Walbank said there was "banter among staff" and that "the subject in [the claimant's] case was usually his hair" (although he did not say what the other matters were). PO Adams referred to "banter" on the wing. Like the others he admitted that comments were made about the claimant's hair and claimed that this was because there was still grey showing, to which the claimant replied that PO Adams was "only jealous".

26. The claimant also referred to comments about his clothes. Whilst all POs would, (as PO Puttock pointed out), wear the same uniform, the claimant

said he was more careful about his uniform than others, with well pressed shirts and polished shoes. This was not challenged.

27. There was, therefore, by common agreement, discussion about the claimant's appearance. The respondent's witnesses all deny that the words "gay" or "poof" were used towards the claimant, but the claimant says that they were.

28. On balance, we accept the claimant's version of events in this regard, and find as a fact that even in the earliest days of his time at Woodhill he was subject to comments regarding his hair and his general personal presentation which included the use of the words "gay" and "poof" and which, whilst they might be considered "banter" by the officers who gave evidence about this matter, were directed at the claimant and which related to the issue of sexual orientation.

29. In making that finding we have particularly considered the following:-

30. First, the unchallenged evidence of the claimant that he altered his appearance early in his time at Woodhill – he stopped dying his hair black, (and instead chose a dark brown colour), styled his hair differently whilst at work and stopped having his eye lashes tinted.

31. Second, the attitude of the officers, most notably PO Puttock, when asked about these matters. He claimed in his statement that if what he referred to as "the leg-pulling and joking" was (in his view) in no way offensive or discriminatory he would have "sought to put a stop to it immediately". He also claimed, however, that he spoke to the claimant "not too long after he had joined [the wing]" to talk to him "about the banter on the team and checking that he realised it was simply part of welcoming him into it" which, he said, the claimant "assured [him] that he did". This begs the question, which the witness did not explain, why such a discussion (which the claimant denies ever took place, and which evidence we prefer over PO Puttock's, for this reason) was necessary, if the "banter" was good natured, harmless leg-pulling. A number of officers admitted making and/or hearing comments about the claimant's personal presentation and presentation. We are satisfied that they were both motivated by and referred to their perception of the claimant as a homosexual and referred to him as "gay" and a "poof" at this time.

32. During the week of 22 September 2014, the claimant had an induction meeting, or meetings, with Custody Manager ('CM') Laithwaite, who was his line manager at Woodhill. The claimant says that at this time, CM Laithwaite asked the claimant if he was gay, a question which the claimant found 'odd' but which he answered honestly, by stating that he was bisexual. CM Laithwaite denies that this discussion ever took place.

33. We accept the claimant's evidence in this regard and find as facts that this discussion did occur, and that the claimant was asked about his sexuality at a meeting with CM Laithwaite. We so find for a number of reasons. First, it was after this discussion that the acts of others towards the claimant became more intense ("stepped up a notch", as Ms Braganza put it on the Claimant's behalf) which corroborates the claimant's evidence that this discussion both occurred and was then reported to others, and secondly because we have also found that CM Laithwaite was, also guilty of a number of other actions which were detrimental towards the claimant. Further she was an evasive witness who was unwilling to answer even the most basic of questions directly. As an example, when asked about whether a record was kept of discussions with officers absent through injury sustained at work she replied that she had "responsibility to keep in contact" rather than answering the question put. Her statement, to which she swore as true, referred to the log of contacts as containing "full details" of such contacts but she could not explain why the purported call set out below (which the claimant was not asked about at all) was not recorded.

34. In that regard, CM Laithwaite claimed in cross-examination, for the first time, that her record of the incident on 7/12/15 (which was set out in the late-disclosed RIVO report) that the claimant had been assaulted by a prisoner was on the basis of telephone contact with the claimant (although in the log of telephone contact with the claimant whilst he was absent sick, there is no record of such a conversation). It was also a notable part of her evidence that as the claimant's line manager, following her being made aware of an incident involving violence between one of her officers (who was, as a result, absent through sickness) and a prisoner, CM Laithwaite had – on her evidence- no concern or interest in finding out what had happened. Her answer to the question how she and others had come to the conclusion at the time that the claimant was the victim of an assault (and not, as was the stated reason for his dismissal, the person committing an assault) was that she "didn't know" and that it was "nothing to do with [her]". Finally, CM Laithwaite was vague and could not recall details of a great deal of the matters about which she was questioned, including when she had completed an Occupational Health referral, admitted that she had stated on oath that she had not spoken to Deputy Governor Marfleet about the claimant's suspension whereas she was recorded as saying she had done so in a telephone call with the claimant and accepted now that she had.

35. Indeed, overall, we found CM Laithwaite to be an unreliable and evasive witness. As a result, in any area where there was conflict of evidence between her and others, in particular the claimant, unless there was an evidential basis not to do so, we preferred the evidence of others to hers. By contrast the claimant was, we find, a straightforward and honest witness who gave his answers under cross-examination clearly, without obfuscation and honestly.

36. After the claimant had revealed his sexuality to CM Laithwaite, the degree to which the claimant was subject to verbal comments from colleagues increased on the claimant's evidence and began to include physical acts.

37. The claimant said that PO Puttock was the person first involved. He said that others were present and merely laughed along with officer Puttock. One officer (K) was specifically mentioned by the claimant as being present at the time. No evidence form that Officer has been called. The claimant said that the comments related to him wearing a tie in the summer, how his boots were well polished, his shirt ironed and always tucked in and why he wore aftershave while working in a male prison. He said that the comments were made by POs Puttock and H. He also said that the tone changed from "you must be gay" to "you are gay" shortly after the discussion he had with CM Laithwaite, which led him to form the view that she had disclosed the contents of her discussion with him to others, with the other officers not distinguishing between homosexuality and the claimant's bisexuality.

38. No evidence was given by Officer H, and nor was any statement obtained for the purposes of these proceedings disclosed. No explanation for this was given. As a result, a portion of the claimant's evidence was effectively unchallenged. PO H was, however, interviewed by Governor Blakeman when he was investigating the claimant's grievance. It is relevant to note at this early stage, however, that we found that investigation to be wholly lacking in rigour. As we set out later in this chronological fact-finding he failed to follow the procedures laid down in the respondent's policies for the conduct of an investigation, in particular (as all of the witnesses who were asked about this, including Governor Blakeman himself confirmed) he spoke to witnesses either in person or by telephone, retained no notes of those discussions, put a precis of the evidence he had gathered into his report, but nothing more and failed – as he was obliged to do under the respondent's policy – checked with the witness that his record of their evidence was accurate. We therefore approach the contents of Governor Blakeman's investigation report with substantial caution, particularly as he himself accepted several flaws in it.

39. When he was interviewed by Governor Blakeman PO H was accompanied by his wife. Governor Blakeman accepted that he was not aware if she was either another officer or a trade union representative but allowed her to attend in any event. He could not explain why. Although the report refers to interviewing PO H about "the number of serious allegations…against him" they were not, on the evidence presented, set out or answered individually. PO H simply denied any knowledge of any verbal or physical abuse of the claimant, denied ever having a row with the claimant (until he was prompted to recall a specific argument which he then described as "not a big deal") denied any knowledge of the claimant's work bag being

coloured pink and claimed (but he did not set out any detail or give any explanation or examples) to have "a very strong line on supporting gay rights". He admitted to making comments regarding the shorts the claimant wore in the gym and "mak[ing] fun" of them as they were allegedly revealing. Whether or not that is an accurate record of what PO H told Governor Blakeman we cannot say but given other inaccuracies in the report which we identify later in this judgment, we treat this record with caution. We also note that no statement of any sort has been taken from PO H in the period since the claimant presented his first claim in May 2016, notwithstanding the number of allegations and their seriousness which are raised against him and which the respondent has denied occurred, so that there is no evidence which has been tested to gainsay the evidence of the claimant that PO H engaged in conduct and made comments which were pointed in the direction of the claimant, and called him "gay" and a "poof" as a result of his appearance including how he dressed. As a result, we accept the claimant's complaint that PO Hoppit
did do those things, on a regular basis as the claimant alleges and so find as facts.

40. As regards PO Puttock, we also find that he made such remarks towards the claimant on a regular basis. We observed PO Puttock very closely whilst he was giving his evidence. He had admitted engaging in comments about the claimant's appearance, but said that there was a "bar" of acceptability and the comments made regarding the clamant were below it. He did not explain why, if the "banter" was – as he maintained – good natured and below the bar (presumably, therefore, totally harmless) he found it necessary to explain to the claimant (as PO Puttock stated on oath he had) that this was part of "welcoming" him into what he and other witnesses described as a close-knit team. He trivialised, or appeared to trivialise, the matters about which the claimant complained as "good humoured leg-pulling". He admitted not having read the claimant's witness statement in preparation for the hearing, was evasive in his answers (when asked about PO K being present when he was alleged to have laughed at the claimant his reply was "I don't know when Aubrey joined the team" but did not deny it had happened.

41. PO Puttock also gave contradictory evidence. At one stage in crossexamination he denied knowing that the claimant was doing "everything he could" to get out of Woodhill, but admitted he was aware of the claimant seeking transfer at an early stage. Whilst he said that if the claimant found comments unfair he could have asked for them to stop he also accepted that a bully will target weakness and if he or she was aware that comments were "hitting the spot" they would continue.

42. It is however, notable that PO Puttock and others accepted that the claimant was a good officer and that, (ignoring the allegations made in

these proceedings which they denied, if relevant), they had no reason to doubt the claimant's integrity or honesty.

43. PO Puttock claimed that the claimant was, as far as he knew heterosexual because he was (or so PO Puttock believed) having a relationship with a female officer who worked on the prison gate. He said that was "the word in the prison" but accepted that the claimant did not suggest this was the case and when asked why it was the subject of discussion said he had "no idea". We note that exchange as corroborating the view which we formed (based on the use of words such as "gay" and "poof" that the officers with whom he worked could not or did not distinguish between bisexuality and homosexuality (i.e. the claimant "must be" heterosexual if they believed he had a relationship with a woman, however baseless their belief).

44. In the report of his interview with Governor Blakeman PO Puttock said that the claimant was on the "receiving end" of "banter" about his appearance (which is recorded as him being "well groomed"). When asked if this could (presumably in PO Puttock's view) be "conceived as homophobic" he only replied that it was about the claimant dying his hair. He stated the claimant "gave as good as he got" but did not repeat that comment in his evidence to us and gave no example of any comment made by the claimant, either to Governor Blakeman or the Tribunal.

45. On oath, PO Puttock claimed that Governor Blakeman was the first to inform him that the claimant was bi-sexual. There is no record of Governor Blakeman telling PO Puttock this and Governor Blakeman records his own question to PO Puttock being pointed towards 'homophobia'.

46. PO Puttock admitted that there were comments directed towards the claimant as regards his appearance and we find as a fact that he also commented on the claimant's sexuality calling him "gay" and a "poof". The claimant's evidence in this area was clear and consistent, whereas PO Puttock's was designed to trivialise the events about which the claimant complains.

47. The claimant then alleged that in late 2014 (November or December) the claimant was in the rest room when he was joined by PO Puttock, CM Laithwaite and another (unidentified) officer when CM Laithwaite advised the claimant not to make any reports or allegations about the conduct of other officers, otherwise they would in turn submit false reports about the claimant through the internal reporting system making allegations of errors at work and corruption to ensure the claimant lost his job and could be imprisoned. It was specifically suggested that the claimant would be accused of telling prisoners what offences other prisoners had committed. The claimant referred to this as being, in his opinion, a warning not to complain about the way he was being treated and a way of keeping people "in line".

48. CM Laithwaite denies that this conversation ever took place and said that she understood that the claimant had "settle[d] in fine" and that he did not come to her attention, "until he raised the question of a transfer back to Bullingdon, around November 2014".

49. Curiously, the co-incidence of timing between the alleged discussion and the claimant's request for a transfer did not strike CM Laithwaite. Nor – in our view even more curiously - did she, on her evidence, ask why a good officer under her line management, who had apparently settled in well, was seeking a transfer out only 2 months or so after transferring in to Woodhill. According to her statement it was only some time later that the claimant told her that he wanted a transfer because of his father's illhealth, to which her response, rather than anything supportive, was to question why he was therefore doing so much overtime having responded to the initial request for transfer, on her evidence, by saying she would in principle support it but only in line with the needs of the business. We note that in the record of her interview with Governor Blakeman when apparently called to answer serious allegations raised against her, she is reported as saying that the claimant "failed to take ownership" of issues and criticised his failure to submit a sickness excusal form or proof of additional hours he was working at Bullingdon and further that he failed to complain about having his bag coloured in and could have got a new one.

50. It is right to identify at this point the difficulties which the tribunal had with CM Laithwaite's evidence. On a number of occasions, she either ignored the question she was asked and spoke about the issues as she saw them or evaded and did not answer questions. In particular she set out in her statement, the truth of which she attested to, that she was not on duty when the incident on 7th December 2015 happened so that she "cannot comment on any of the details of what happened and why". In fact, CM Laithwaite had significant involvement in the matter. She was the "investigating officer" for the RIVO report, she was the contact for the claimant during his sickness absence and suspension, she had a discussion with the claimant about the disciplinary process and her own experiences when she faced an allegation of fraud (in respect of which she was not aware of the transcript of that discussion which formed part of the bundle) although she excused the lack of reference to this in her statement as something she "must have forgotten". She completed a medical certificate submission form which forwarded the claimant's fit note which referred to him suffering "R wrist injury sustained at work compounding emotional workplace-related stress due to recent incident" but made no enquiry about that notwithstanding that the claimant was under her direct line management. On her evidence under cross-examination she said she had made no enquiry whatsoever about the incident (other than to make an undocumented telephone call to the claimant from which she allegedly gleaned the detail of the event). She also made the Occupational Health

referral which referred to the claimant being assaulted (although she could not say when this was completed) and said that the statement set out by her on the RIVO report that the claimant had been punched several times was also information given by the claimant.

51. The wholesale lack of interest towards how an officer under her direct line management came to be assaulted at work and what was being done in consequence, which is the thrust of CM Laithwaite's evidence in this regard is difficult to understand. During cross examination she claimed not to be able to remember the charge brought against her, which she had discussed in a recorded telephone call with the claimant.

52. Overall, we found CM Laithwaite to be at best unprepared for her appearance before us. Ms Braganza refers to CM Laithwaite's evidence in her statement as being deliberately misleading (indicating no involvement in the matters around the incident on 7th December and what followed when she had been involved) and we accept that characterisation of that part of her evidence. CM Laithwaite was unable or unwilling to answer questions, such that she was told on more than one occasion by the Tribunal to listen to the question being asked and answer it. She was not found to be a reliable witness. Accordingly, in areas of conflict of evidence between her and others, unless there is some evidential support for her version of events we prefer the contrary evidence to that given by her. Her evidence as to her knowledge of the claimant seeking a transfer, for example, is at odds with not only the claimant's but also Governor Marfleet's evidence that he was asking for a transfer as early as October 2014. Governor Marfleet's evidence in chief was that the claimant had asked CM Laithwaite for a transfer at that time, and that "he had barely started at Woodhill and was told verbally that this would not be possible at this stage". Notably, neither the claimant's line manager nor her line manager thought to enquire why the claimant was seeking to leave Woodhill so soon after arrival.

53. We note that the allegation of the threat of false reports is not a specific issue before the tribunal but we heard evidence about it from all three relevant witnesses. Having heard that evidence (PO Puttock's being a denial that he had ever made such a threat) we find as a fact that the threat was made. The subsequent events involving the claimant serve to corroborate this, in particular the way he was treated having raised complaint first within and then outside the prison.

54. The claimant was told by Deputy Governor (DG) Marfleet that he could not have a transfer in October 2014, later that year he asked DG Marfleet to speak to Governor Davis on his behalf as Woodhill "didn't work" for him or with his personal life. He told DG Marfleet, reluctantly, that he wished to care for his father who was unwell, to seek a transfer on compassionate

ground, without success. He said to us that that was one reason to transfer, but not the only reason, and we accept that.

55. In December 2014 the Claimant was referred by CM Laithwaite to occupational Health(OH) with her statement of the reason for the referral being the clamant "suffering with feelings and symptoms of stress due to domestic situation and current place of work not working out". The OH report dated 13 January 2015 referred to the claimant's desire to transfer back to Bullingdon as "reasonable from his and a clinical perspective" but that management had to determine whether this was feasible or acceptable to the business.

56. The claimant made a formal request for transfer on 9 February 2015. Thus, within five months of his arrival at Woodhill the claimant had made two informal and one formal request for transfer out.

57. On 19 February 2015, the claimant began a period of sickness absence when he injured his wrist whilst at work in an incident with a prisoner. He returned to work on restricted duties for a two week period. His last day of absence was 18 March 2015.

58. The claimant had been absent for 20 days, which under the HMP's absence policy, (which has not formed part of the bundle, only the staff guidance document has been disclosed), is said to trigger a first attendance warning.

59. Under the staff guidance document, it is said that "the sickness absence policy does provide line managers with the flexibility to apply discretion to the issue of…warnings" and that the use of discretion requires a valid reason to be stated. Two valid reasons are set out in the guidance. The first is that "the underlying cause of the absence(s) will be short term and line management is satisfied that good attendance levels will be resumed in the near future" and the second is that the issue of a warning would be detrimental to the returning the individual to good attendance levels". CM Laithwaite issued a warning against the claimant on 27 March 2015 after a return to work interview that day.

60. In her statement of evidence CM Laithwaite said she was "aware of the discretion that managers can apply in such circumstances" but that whilst she considered this she "did not believe it was appropriate to apply it" because she "could not be sure that Mr Plaistow's injury would lead only to a short term absence" nor "consider that an issue of a warning would be detrimental to [him] returning to good attendance levels".

61. We note that this warning was given seven days after the claimant returned to work, and half way through a planned period of light duties due to last two weeks after which he would return to full duties.

62. When asked why in those circumstances, CM Laithwaite was not satisfied that this was only a short-term absence she completely altered her stance. She claimed there was an unwritten policy in Woodhill that discretion would not be applied and that all warnings would be issued, after which the employee warned, however unjustly, would complete an excusal form which the governor would approve so that the warning was removed. The purpose of this piece of administrative circumlocution was not explained to us. Why this was not the witness' evidence in chief was not explained to us. How the central policy of HMPS was over-ridden by an "unwritten rule" in a single prison was not explained to us. How an employee not privy to the "unwritten rule" would be aware of this was not explained to us. Finally, when she later gave evidence, Melissa Hunt, HR Business Partner confirmed that the discretion existed, should have been applied and that CM Laithwaite was wrong to issue the warning.

63. We note that no evidence has been adduced of the alleged unwritten policy, not even a demonstration of its' universal application to others as alleged by CM Laithwaite to. Governor Davis, whose policy this was said to be gave no evidence about it at all. He had completed his evidence before CM Laithwaite made the allegation of an "unwritten policy" but was not recalled to confirm her evidence.

64. The warning letter confirmed that the claimant would complete a sickness excusal application for the absence relating to his injury in February 2015 shortly. He did so and the warning was said to be removed from his record.

65. However, when the claimant subsequently applied for posts in other prisons as part of his efforts to leave Woodhill he was told that he had a sickness warning on his file. This happened at HMPs Huntercombe, Springhill, The Mount and Huntingdon. The Claimant subsequently made a subject data access request and found that the warning remained on his file. How and why this warning remained "in play" was not explained by any of the respondent's witnesses other than by alleging it must have been an oversight.

66. CM Laithwaite's explanations for the issue of a warning to the claimant and the non-application of her discretion were confused and contradictory. The claimant has established to our satisfaction that he was warned that action could be taken against him by way of false reporting. He was issued with a warning for attendance which was "wrong" according to the respondent's own HR officer. There was no evidence whatsoever of the policy which CM Laithwaite claimed she was following and it is contrary to the HMPS policy.

Finally, although the warning was said to be removed from the record it clearly was not.

67. On 19 March 2015 Governor Davis refused the claimant's compassionate transfer request. In an email to the Trade union representative assisting the claimant in this application Mr Davis said the claimant, since arriving at Woodhill "hasn't followed the process in submitting a request locally to return and I believe has gone direct to the DDC" and that governor Davis was himself unaware of the reasons behind his uncertainty of where he wants to be; further, that the claimant "needs to understand that these types of requests are only considered in the more extreme circumstances" and that he "personally would not support any request whilst the member of staff is off sick and wouldn't accept anyone in the same position", postulating that that was why the claimant had approached the DDC. When Governor Davis wrote that, the claimant was back at work and was not "off sick". Governor Davis did not explain this error.

68. In his statement Governor Davis corrected himself about the lack of procedure as he confirmed that "it does appear that [the transfer request] was emailed to me on 11 February 2015 …but-for whatever reason- I had and have no recollection of ever seeing it". Thus, we find that the claimant had in fact followed the correct process. This is relevant, because one of the reasons given for refusing his transfer in April 2015 was his failure to do so. The request had been forwarded to Governor Davis by the People Hub Manager within Woodhill.

69. When this was brought to Governor Davis attention, rather than recover the document he had received, he required the claimant to resubmit his request, which was again forwarded by the People hub to him. On receipt of the request at 0945 on 13 April, Governor Davis was able to make a swift and clear decision. He replied to the people hub (Mr Stringer) at 1029 that day, just 34 minutes after the form was sent to him, by saying "let him go, he clearly doesn't want to be here and hasn't got the resilience to last". The first part of that statement was apparent from the transfer request, quite how Governor Davis came to the second part of his reasoning when the claimant had received, as recently as 10th March 2015 an annual rating as "good" he did not explain.

70. The claimant therefore had his transfer request approved by the Governing Governor on 13th April 2015.

71. In the meantime, the claimant had written to Andrew Selous MP, asking for assistance in a letter of 20 March 2015. He was asking for the MP's help as he had been told that his transfer request was with the Governor for approval or signing, (although at this time Governor Davis had on his evidence failed to notice the request form).

72. Governor Davis' email was then amended. In the copy forwarded by Mr Stringer to HR Casework the email was altered so it simply read "let him go". Both versions of the email were copied when sent to Melissa Hunt, but she either did not notice the alteration or ignored it. Governor Davis said he was unaware that the email had been altered, accepted that altering an email from another officer was a matter which warranted investigation and could be a disciplinary matter. Nothing we have seen suggests any enquiry into this has taken place, and we are now naturally concerned about the voracity of the printed documents which are put before us. It was the Tribunal that first identified that there were two versions of the same email. Whether other documents have also been amended before being disclosed as part of these proceedings no-one can state with any degree of certainty, but clearly at least one document has been altered without any explanation and without the approval of the author and as we set out later in this judgment, one has been wholly inappropriately redacted whilst another has been corrupted by the addition of information relating to another officer.

73. The very next day, however, the claimant was told that his application had been refused. In a meeting on 14 April CM Laithwaite and DG Marfleet told the claimant, in the company of his representative, that it was difficult to support his request because he had been working extra hours on rest days and Woodhill was short staffed but that the application could be reconsidered in 3 months if staffing levels had improved. It was said that that the claimant had "got various and numerous people (15) involved in this application" which was said to be "not advisable" as information was being "lost in communication" and that "one person dealing with applications ensures consistency". He was advised to deal through CM Laithwaite as his line manager.

74. When DG Marfleet was asked to identify the 15 people allegedly involved by the claimant in this process she could not identify more than 4. This is telling, because the reason why, according to his evidence, Governor Davis changed his mind about allowing the claimant to transfer (although there is not a single document from him which has been brought to our attention countermanding his instruction to allow the transfer) was because Governor Marfleet told him that the claimant had "raised this matter with many different people causing confusion in the process" (although the problem of delay had lain with Governor Davis who had not "for whatever reason" seeing the transfer request he was sent), which suggested "a general desperation to leave HMP Woodhill" (which prompted no further enquiry or concern from the Governor or his Deputy to understand why). He further was advised by Ms Marfleet, on his evidence, that the claimant had been critical of working practices at Woodhill, that his unhappiness "was generally at the problems caused by lack of staffing" and that he was -whilst seeking transfer to look after his

father- working extra hours and a move to Bullingdon “would not make a huge difference to his travelling distance and time”.

75. In his statement as originally put before the tribunal, it was also stated that the claimant had made an application to transfer to HMP Littlehey seeking a “fresh start” after “all that had happened to him” which Governor Davis postulated was a reference to his suffering injury in February but he had not caused any enquiry into.

76. That part of the statement was withdrawn, because the document referred to and relied upon in support of this statement was also demonstrated to have been corrupted by adding information regarding another PO. The form to which Governor Dais pointed us had had added to it the request from another PO (“F”) who was seeking transfer to Littlehey. This only came to light when an unredacted version of the document was disclosed during the course of the hearing which identified that the document had been corrupted by merging two applications for transfer onto one form. No explanation for this has been provided by the respondent, but the document as originally placed in the bundle gave the impression that the claimant was asking to move to Littlehey when he was not.

77. Further, the reasons set out by Governor Davis as being those which Ms Marfleet relied upon to persuade him to change his mind about allowing the claimant to transfer were in part false (number of people involved, transfer to Littlehey) and in part a serious issue (a “desperation” to leave Woodhill) which apparently did not cause either Governor Davis nor Ms Marfleet to ask “why?”.

78. The credibility of the Respondent’s evidence in this area is sadly lacking. Two documents have been altered without explanation and- as far as we aware – subsequent enquiry. Governor Marfleet and Governor Davis have painted a picture, at the time and in evidence before us, of the claimant which is both wrong and prejudicial claiming that he had not followed a process (he had) and had involved 15 people (he had not). Governor Davis did not explain that the delay in considering the request was down to his own failure to see an email sending the request to him.

79. Although this refusal of transfer is not a matter which gives rise to a specific complaint in the list of issues, the Tribunal found it illustrative of the respondent’s approach to the claimant, who was unjustly and untruthfully criticised by the most senior staff in the prison as part of their reasoning for refusing the previously agreed transfer (both the stated reasons for allowing it remaining) and towards the issue of disclosure, which has been haphazard and has included documents which have been amended and/or altered and/or redacted without any valid explanation or reason.

80. Governor Davis also confirmed that it was on 13th April that he became aware of the claimant's letter to Mr Selous. It was forwarded to him by Ms Hunt on 13th April at 1101, 32 minutes after he had approved the transfer. The decision to rescind had been taken in advance of the meeting between CM Laithwaite, DG Marfleet and the claimant at 1430 the following day. The claimant says that at that meeting he was told not to complain to an MP. Whilst that is not specifically set out in the note of the meeting we accept that it was said; the notes advise the claimant to only deal with CM Laithwaite, which has the same effect. We conclude that the fact that the claimant had written to Mr Selous was an influencing factor in the reversal of the decision by Governor Davis to "let him go". The claimant had raised matters outside the prison, and this was not, we find, acceptable in the minds of the senior managers at Woodhill.

81. Governor Davis also said in his evidence that staff shortages meant that transfers out of Woodhill could not be agreed (referring to Woodhill as a "red" site). He later accepted, however, that Officer F was transferred and that his transfer was approved at or about the same time as the claimants was refused, so that that part of his evidence was simply untrue.

82. The claimant's excusal application was granted by Governor Davis on 21st April 205, but as has been stated above the letter of warning remained on file. In passing, we note that one of the documents enclosed with that excusal form was an "Annexe A". This is a "use of force" form which must, according to HMPS policy be completed every time there is use of force by an officer, and must be completed by all officers involved and all officers who were all witnesses to any such incident.

83. In late April 2015, the claimant was told by DG Marfleet that he was "under investigation" although about or in relation to what is not known. We have seen the sending details only (and not the content of the email) from the claimant to DG Marfleet of 30 April 2015 at 1456 to which she replied at 1740 asking the claimant to "wait until Wednesday [ie 6 May 2015] to give you a formal answer" and states that "[if] the report indicates there is nothing to proceed with then I will fully support you at that point".

84. The claimant's reply puts that into context because he tells DG Marfleet that he "has his name for two next week, I would like to do them if possible, I'm not aware of any investigation. I take it your investigating me, right. Your letting Bullingdon know for whatever reason". In other words, the claimant had shifts at Bullingdon and DG Marfleet was apparently advising Bullingdon that the claimant was under investigation.

85. Her reply just 4 minutes later at 1712 on 1st May began "Ignore me" with several explanation marks. And "I was tired and getting names confused. There is definitely no investigation against you! Promise!"

86. At no time has Governor Marfleet explained by reference to another named officer under investigation how she apparently confused their name with that of the claimant. To advise an officer that they are under investigation when they are not would obviously cause distress and concern. In her evidence in chief Governor Marfleet stated that when this was raised with her she "clarified the position 4minutes later" but this is misleading. We have not seen the emails (if any) which precede the claimant's email of 30th April 2015, we do not know when before that he was told he was under investigation and DG Marfleet suggested waiting a further 6 days to "clarify" before she was challenged again by the claimant on 1st May. Her reply was within 4 minutes of that email but over 26 hours after the claimant's email of 30 April.

87. The claimant says that in June 2015 his HMP issue bag was coloured pink whilst left in the rest room. He did not raise this as a complaint at work until 28th September 2015 when he lodged an intelligence report. The claimant says he tried to remove the colouration but failed, was refused a new bag and thereafter was obliged to use a bag with that discolouration and says that the fact that pink colouring was used was a reference to homosexuality.

88. The respondent has disputed that the claimant's bag was coloured pink in its' pleadings but the claimant produced the bag to Governor Blakeman at his investigation interview and a number of witnesses have confirmed that they have no reason to dispute that his bag was coloured pink. Rather remarkably it was stated that colouring in bags (or attaching items such as a ribbon or a badge to a bag) was commonplace to enable the owner to distinguish their bag from others, possibly implying (but it was never put to the claimant) that he had done this himself. No witness suggested that any other person had coloured their own bag in and then complained about the fact.

We find as a fact that the claimants bag was coloured pink by other staff at Woodhill (identity unknown) and that the bag was coloured pink as a reference to homosexuality. We repeat, notwithstanding that it is largely irrelevant, that those who committed acts of discrimination against the claimant appeared not to draw any distinction between homosexuality and bi-sexuality.

89. On 12th June 2015 the claimant wrote a second letter to Andrew Selous MP. He claims that thereafter the conduct of others toward him, in particular the conduct of PO H and CM Laithwaite worsened. He said that it "cannot be seen as coincidental" that this occurred following his second letter to Mr Selous MP.

90. The respondent disputes that this letter constituted a protected act under s27 of the Equality act 2010. We agree. It does not allege any breach of

the Equality act 2010. It refers to his transfer request, a change of behaviour for the worse after sending the first letter to Mr Selous, his being told not to contact MPs, references other transfers being allowed, not being paid for overtime and his being advised that management would "have it in" for him and falsify evidence against him to have him dismissed. None of this engages matters referable to the Equality Act.

91. The claimant says, however, that following this the behaviour towards him deteriorated further, he complained and alleged that PO H referred to him as a "poof" and "vermin" on an almost daily basis and that on one occasion he and PO H were outside house unit 2 dealing with prisoner movement. The claimant says PO H (who, the claimant told us, is considerably larger than the claimant) leaned over the claimant and called him a "poof" directly into his face. The claimant says he believed PO H was seeking to provoke a reaction but that he simply made no eye contact and kept looking at the ground.

92. In relation to these two allegations the respondent has called no evidence to rebut that of the claimant, who has been described by the respondent's witnesses as a "good officer" and trustworthy. Many of the respondent's witnesses agreed that other than in relation to the allegations in these proceedings which they dispute, they had and have no reason to doubt the claimant's integrity.

93. There has been, notwithstanding the length of time since these allegations were made known to the respondent, no investigation or enquiry into them and no evidence has been obtained from PO H beyond the very brief precis of evidence set out in Mr Blakeman's investigation report.

94. The claimant, throughout his evidence, appeared to the tribunal to be a straightforward and honest witness. He became visibly and genuinely upset when recounting these specific incidents, but answered questions in a straightforward and consistent manner. We accept his evidence in relation to these allegations and find as facts that PO H called the claimant "poof" and "vermin" on a regular basis, which increased after June 2015. We also find that this was a result of the claimant's letter to Mr Selous. He was clearly told in his meeting with CM Laithwaite and Governor Marfleet that he should only deal with CM Laithwaite and no-one else. We also find that CM Laithwaite was complicit in PO H's actions as set out below.

95. The claimant's next complaint is that he was physically struck by PO H before a morning briefing. He says that CM Laithwaite and PO B were also in the room. No evidence has been adduced from PO B. The claimant says PO H started pointing his finger at the claimant's forehead then came closer and started slapping him with the back of his hand. The claimant says CM Laithwaite was laughing at this, and that he "felt as if all my dignity had been taken away". He said he "felt like crying" but knew that would

make it worse. When other officers were heard coming towards the room the claimant says CM Laithwaite moved away but PO H remained sitting next to the claimant although he stopped his attack on him. Officer B was described by the claimant as appearing uncomfortable. At no stage has any evidence been sought by the respondent from PO B as far as we know. CM Laithwaite denied seeing PO H strike the claimant and said she would be "surprised" if he did so as "it is not the sort of behaviour I would expect from him" and would have taken "immediate action" if she had seen any such behaviour including initiating disciplinary proceedings (presumably by some form of investigation). No such action has been taken against PO H nor against CM Laithwaite in relation to these matters.

96. We have already made or views about CM Laithwaite's evidence clear. We are satisfied on the balance of probabilities that this incident occurred as the claimant alleges. CM Laithwaite had already issued the claimant with a warning for attendance which was totally inappropriate and had been part of a meeting where the claimant was told that she and she alone should be the claimant's line of contact for any complaints, but he had again written to Mr Selous MP. Her evidence in other areas has been confused and evasive. We reject her evidence that she was not there when this occurred or that she did not see PO H strike the claimant. We find as a fact, preferring the clear and consistent evidence of the claimant and the straightforward way which he answered questions over many days of cross-examination, that PO H did point at and strike the claimant, in CM Laithwaite's presence and that CM Laithwaite, particularly as she was the claimant's line manager and a more senior officer should have taken the steps she said in evidence she would have done (intervene and institute disciplinary action against PO H). She failed to do any of that, but laughed at the sequence of events.

97. The respondent's reply to the first letter sent to Mr Selous by the claimant is dated 16th June 2016. In her statement of evidence Ms Hunt, the author of the letter, states that she responded, "in a letter dated 16th June 2015" and references the page in the bundle. She does not refer to the letter being misdated and swore to the truth of her statement. The claimant said in cross-examination that he did not get the letter until June 2016. It was not put to him that this was a dating error on the letter. We find as facts, as this is the only scenario that fits the circumstances, that the letter was drafted in 2015 but not sent, and was dated 2016 (in error, by whom is unknown) when it was identified for disclosure in these proceedings. We accept that the claimant did not see it until 2016.

98. On 20th July 2015 Ms Hunt replied to the claimant's second letter to Mr Selous. That letter is correctly dated. Whilst that letter refers to the earlier letter to Mr Selous it does not reference the reply apparently sent only a month before this letter. That letter stated that "we have not approved any compassionate transfers this year as we are a red site and cannot approve

any until our staffing levels improve". That, however, was not true. As we have already recorded Governor Davies had approved the transfer of "F" on 13th April 2015.

99. The second letter to Mr Selous referred to the allegation that the claimant was being "investigated" when he was not, and that that had had a "profound impact" on the claimant's health. The claimant was referred to Occupational Health without any discussion with the claimant as to whether he wished this and whether or why it was appropriate. The claimant declined to attend.

100. The claimant then says that on a date in or around August 2015 he was working alone in the computer room at Woodhill when PO H came into the room, squirted a bottle of water at the claimant and then left, laughing.

101. The claimant recounted this incident with clarity, and again there has been no evidence from PO H, even in statement form. We accept that on the balance of probabilities this incident occurred as the claimant alleged.

102. The claimant alleged that in July 2015 his arm was grabbed by CM Laithwaite with force, causing bruising. He says she told him he was "causing too many problems" including complaining about how he was being treated at Woodhill. The claimant produced photographs showing the bruising which he says was caused in this incident.

103. In submissions (although it was not put to the claimant in crossexamination) the respondent suggested that the photographed bruising was not consistent with having his arm "grabbed" but did not go quite so far as to suggest that the claimant is fabricating this evidence. In any event the claimant was not challenged in cross-examination about the photograph being of some other bruising. We are, in the circumstances of this incident, faced with two entirely contradictory versions of events, CM Laithwaite saying that the incident did not occur.

104. For the reasons already given we again prefer the claimant's evidence to that of CM Laithwaite. To make it clear, we conclude that she was aware at all times that the claimant was being bullied and harassed by other staff who sought to disguise this conduct as "banter", was aware at all times that the claimant was bi-sexual having asked him about his sexuality during an induction meeting, had on the balance of probabilities, as the claimant said, communicated this to other officers and both permitted by acquiescence and engaged in acts of discrimination and harassment as alleged against the claimant. They increased in intensity when the claimant sought to escape from the environment into which he had fallen and when the claimant sought to get help from outside the prison through

communications with Mr Selous and later the Corruption Prevention Unit (CPU).

105. On 19th September the claimant emailed Governor Davis asking for his compassionate transfer request to be reconsidered. He raised, in that email, a number of issues regarding his father being unwell, his not receiving uniform, not being paid for bed watches and complaints about the day to day running of the prison. He welcomed the arrival of Olivia Kerr as head of Residence and Services describing her as an "asset to the prison" and that "no middle manager is going to pull the wool over Governor Kerr's eyes".

106. Governor Davis asked Governor Kerr to go through "leave, PP [payments due] uniform and promotion" with the claimant whilst the issue of transfer was said to be one for Governor Kerr himself and the People Hub.

107. There was a meeting with Governor Kerr as directed by Governor Davis. It took place shortly thereafter and dealt only with the issues identified by Governor Davis as set out above. The claimant says that when he went to see Governor Kerr he was unable to raise other matters because other officers were outside her office, and he was aware they were watching him. He was fearful of raising issues with her in those circumstances. Governor Kerr confirmed that at this meeting the claimant was emotional. She did not dispute that her office had glass panels, or that others were outside.

108. Governor Kerr confirmed that she was asked by Governor Davis to speak to the claimant about "relatively trivial things" and that had she been aware of the matters raised by the claimant regarding bullying and harassment she would have taken steps and would have been "mortified" if she had failed to act on knowledge of such matters. Governor Kerr was a clear and credible witness. We accept her evidence without reserve.

109. On 28 September 2015 the claimant submitted a CPU Intelligence Report (an "IR"). The subject was said to be a "management issue". The claimant, for the first time in writing, set out allegations of having been subject to "inappropriate comments", having been the victim of physical attack by other officers saying, "sometimes they have said they are joking the other times I think they are hoping for a reaction from me" he referred to threats of false reports against him if he went to management, said he had uniform stolen from his bag and had his bag coloured in pink. He said that he had been told information would be put on his file which would prevent him getting a transfer along with a confidential letter to an MP and confidential information about his family.

110. The copy of this document which was originally disclosed to the claimant and formed part of the bundle in this case had the box marked "intelligence assessment" redacted. An unredacted copy was provided and the

contents of that section (completed by the CPU) reads “This is a serious management issue. All details have been passed to Livvie Kerr- head of res – who will speak to officer Plaistow about his concerns. No further corruption Prevention Action required”.

111. Governor Kerr’s evidence was that she did not have this information passed to her and that she had not seen the IR before these proceedings. We accept that evidence. It was claimed by the respondent that the meeting she had with the claimant (which she said was about trivial matters as per governor Davis’ email and which in any event took place before the IR report was received) was in response to this report, which she denied as she said she had no knowledge of it. That evidence is accepted.

112. The redaction of the IR is not explained in any meaningful or plausible way by the respondent. It was said in a letter from the government Legal Department (“GLD”) who act for the respondent to the Tribunal on 3rd October this year that in April 2017 GLD advised the respondent that the document was disclosable. On 25th April, the Head of Corruption Prevention and Counter Terrorism (HCT)advised GLD that he had “discussed the matter with the governor” and that “only the evidence information part of the document” (i.e. the information that the claimant had provided himself) was disclosable as the report itself was “B4” which is an internal classification system meaning that the information was “mostly reliable” and “that information has been received from this source in the past and in the majority of instances has proved to be reliable”(B”) and “cannot be judged-the reliability of this information cannot be judged or corroborated” because it emanates from a single source (4).

113. The basis on which that impacts upon the legal obligations the respondent was under in relation to disclosure were not explained to us at all but it was said that “there is a real risk that the integrity of the reporting system is likely to be compromised if intelligence gathered as part of the IR is disclosed”.

114. No intelligence was gathered as part of the IR and thus that line of argument has no substance whatsoever.

115. Notwithstanding the above the GLD took the view that the document should be redacted “balancing the competing factors” and “adopting a more cautious approach attaching more weight to the respondent’s need to protect its’ intelligence gathering function”. This was then revised after a discussion between the GLD and HCT on 30 April 21018, HCT determining that the matters raised by the claimant were “not really a standards/corruption issue” and “nothing in the IR “betrayed the department’s intelligence processes”.

116. The effect of the redaction, however, was to withhold from the claimant until a very few days before the hearing (if not the first day thereof) the fact that Governor Kerr was supposed to have been charged with investigating these "serious management issues" and that the CPU had clearly been told that she had been when she had not. The failure to give proper disclosure in this matter is in our view inexcusable. The reasons set out in the letter from GLD make no sense when the redacted part of the document is read. Whether any enquiry has been made or will be made into who advised the CPU that Governor Kerr had been instructed in this matter is not known but we draw substantial adverse inference from this matter which we conclude unanimously was designed to hide the truth from the claimant and the Tribunal and to mislead the CPU (whose purpose is to prevent corruption) as to the steps being taken at Woodhill to investigate these "serious management issues".

117. What we find as fact is that the senior managers in Woodhill were determined that the claimant's complaint should be contained within Woodhill, so that the requirements made by CPU were not actioned, Governor Kerr was kept in the dark and no action was taken despite the CPU being told that it had been or was being. All of this was, we find, deliberate.

118. We note in passing that at the time the unredacted document was disclosed, it was anticipated that due to her illness and condition Governor Kerr would not be called to give evidence. The fact that she has given evidence at the resumed hearing has been the most important factor in the Tribunal being able to discover the truth of this matter and her honest and clear evidence has assisted greatly.

119. On 5 October 2015 the claimant was contacted by Brett Stringer, People Hub Manager by email. He was told that if he still wished to pursue a transfer on compassionate grounds he would have to contact the establishment to which he wished to transfer and see if they would take him, after which the Governor of Woodhill would contact DCC to see "if it was feasible to release" but that there was "no guarantee". On 23 October the claimant was told by Mr Stringer that he had to have confirmation from the Governor of the establishment he wished to transfer to in writing after which he would have to resubmit his transfer request with the written confirmation attached. It was subsequently accepted by the Respondent's witnesses that it is not for an officer seeking transfer to do this, and indeed the claimant was later criticised for going "direct" to Bullingdon.

120. On 11 October 2015 the claimant wrote to Andrea Leadsom, MP as a constituent. In this letter the claimant complained about his mistreatment at Woodhill. He referred to his family life and in particular his father, the fact that personal information about him and his family was then spread out within the prion and put on his record; referred to workplace bullying

being “rife” including by management; that he was told to report another officer for something that he had not done, and sign security papers. He also claimed that he was told that if he did not conform reports would be made against him so that he would be sacked or imprisoned. He complained about a lack of confidentiality regarding the consideration of his letter to Mr Selous, and that after he wrote that letter things had got worse for him. He said he was no longer an officer but a “little poof”. He referred to having to get help from ACAS to be paid for overtime worked, referred to his personal possessions and some of his uniform being coloured pink, that he received verbal abuse from several members of staff, had water thrown over him. Ms Leadsom wrote in reply offering the claimant a personal meeting which was re-scheduled from 27th November when the claimant could not attend but it is not clear whether the meeting actually took place.

121. This letter was in the possession of the respondent from an early stage. The claimant had not retained a copy, and had asked for it to be produced. It was not produced until during the hearing in May 2018. No proper explanation as to why this letter had not been produced on disclosure and why or how it was produced so late in the day has been forthcoming. Not only had it not been disclosed as part of these proceedings but it had also not been disclosed as part of the response to the claimant’s Data Subject Access request.

122. On 15 October 2105 the claimant submitted a formal grievance against Ms Hunt for her handling of the letter written to Mr Selous which he said was a complaint and contained personal family information. He complained that the letter should not have been copied to his line manager (CM Laithwaite) and put on his work record. He said he was concerned that the information in the letter “has and will be used against me”.

123. In the section of the grievance form where the complainant is to identify the nature of the grievance the claimant ticked boxes for “management decision” “bullying” and (in the section for “grounds for…bullying” he ticked “sexual orientation”.

124. The grievance was sent to the DDC, Mr Vince.

125. It is accepted by the respondent that subject to the allegation not being made in bad faith this grievance constituted a protected act for the purposes of s27 of the Equality Act and (subject to the claimant having a reasonable belief in the truth of the allegations) a protected disclosure.

126. From the findings of fact, we have already made it is clear that the allegations made were made by the claimant in good faith and that he

reasonably believed them to be true. Indeed, we have found them to be true.

127. On 19 October 2015 Mr Vince's office replied to the claimant saying that as the grievance was raised against Ms Hunt, it should be resubmitted to her in accordance with the staff Grievance policy.

128. That policy states that the person raising the grievance should normally submit it to their line manager and that if the grievance is about the actions of someone not in the direct line management chain then it should be sent to that person It also states however, that f it would be inappropriate for the person identified in that part of the policy to hear the grievance it should be sent to that person's manager "to decide whether they should hear the grievance at stage 1".

129. The claimant was not directed to Ms Hunt's manager, but rather back to Ms Hunt. In cross examination she accepted that it would be inappropriate for a person accused of bullying (whether on the basis of orientation or otherwise) to investigate and hear that grievance. Mr Vince's evidence was that he "did not read this grievance to be in any way being connected with sexual orientation" but he accepted that the claimant had identified that this was part of his grievance and that absent an enquiry or investigation he could not come to any reasonable conclusion that bullying on the ground of sexual orientation was not the or a motivating factor behind the management decision complained of. He failed to explain to us in any way at all why or how- given that the claimant was clearly identifying that he considered the cause of the behaviour about which he was complaining to be bullying on the ground of sexual orientation – he concluded that it was not without making any enquiry whatsoever.

130. The claimant, faced with an instruction that he should present his grievance to the very person he was accusing of actions motivated by bullying on the ground of his sexual orientation did not do so and the grievance was not pursued.

131. The claimant states that he was threatened in November 2015 by SO Wallbank. The claimant says this happened in a staff briefing following the claimant raising a question about staff rotas, SO Wallbank saying "I haven't got a problem putting a prisoner on their arse and I haven't got a problem putting you on your arse". When he was asked about this by Governor Blakeman during an investigation he is reported as being "genuinely upset" by this allegation and saying that he prided himself on looking after staff.

132. In his statement SO Wallbank states that he did not know the claimant particularly well, but that he "always made a bit of an extra effort to ensure that [he] was supported, because I was told that he had not been at [Woodhill] very long" by "checking he was ok". He referred to "banter"

amongst staff, that that "banter" in the claimant's case related to his hair. He alone claims the claimant laughed along with those remarks. He said the claimant joined in with the "banter" but gave no examples. He said he was "devastated" that if what the claimant alleged had happened, the claimant did not come to him about it. He had not noticed the claimant's bag being pink, but said staff "often mark their bags to…identify them". He completely denied making the comment alleged which, he says, if it happened at a staff briefing would have been with staff from both wings and in the presence of the healthcare staff and CM Laithwaite.

133. In cross examination he referred to being part of a "close knit team" and trying to get people to work "with a smile". In relation to "banter" he referred to this involving "everyone" and that he "took the rise out of himself more than anyone". He said comments about the claimant were "usually" about his hair but could not say what else. He could not say when his statement was prepared, he had not seen any draft of the content of his evidence in Governor Blakeman's report and could not recall if Governor Blakeman had advised him that the incident alleged was said to have taken place in a staff briefing (that does not appear in the report).

134. During cross examination, SO Wallbank became evasive in his answers and answered questions by asking questions. He was clearly unprepared for his appearance before us and had not even read the short section of the claimant's statement which specifically referred to him. He referred on more than one occasion to the fact that PO Oates is reported to have told Governor Blakeman that the claimant was paranoid and "bad at building relationships with others" rather than answering questions being put to him about his own conduct. He was an unhelpful and evasive witness whose responses became aggressive, at one stage telling counsel "don't speak to me like that".

135. We must determine, on the evidence presented to us, whether the claimant was or was not threatened by SO Wallbank as he alleges. Having seen how he responded to legitimate and reasonable questions in cross examination, we have concluded that he did make the threat to the claimant as alleged. His approach in the Tribunal hearing was hostile and we prefer the claimant's evidence to his in relation to this matter. We find as a fact that SO Wallbank threatened to "put [the claimant] on his arse.

136. On 9 November 2015, Bullingdon confirmed that they would accept the claimant on transfer, and on 19 November 2015 Governor Davis approved the transfer subject to approval from DDC (Mr Vince). On 23 November Governor Kerr was asking for confirmation as to when the move would be effective as she wanted to advise the claimant that it was soon. We have not been directed to any reply to that email.

137. On 30th November, the claimant chased progress on his transfer with Mr Stringer (people hub) who asked Jo Greenlees (Senior HR business Partner) with a copy to Melissa Hunt. Jo Greenlees replied on 1st December saying, "I have it that a decision has been deferred on this case from the prison". Mr Stringer asked on the same day "from Bulingdon or Woodhill" and Jo Greenless replied "from you [i.e. Woodhill] I think". On the same day Mr Stringer asked Governor Kerr and DG Marfleet whether either of them were aware of a delay in the move, Governor Kerr replying "No"! More than happy for him to go now! Who has deferred this??". Mr Stringer then wrote to Jo Greenlees saying "please see below. I am assuming the deferring must lie with Bullingdon? Could you check for us?"

138. On 7 December the claimant again chased news, this time from DG Marfleet. He said he was aware that other transferring staff had been given dates and asked for news on his move. On 8 December DG Marfleet asked Mr stringer and on the same day he asked Jo Greenlees who replied on 9 December saying, "he is good to go, as I thought it was Woodhill who was making him wait, if Nicky [Marfleet] happy then I will arrange, inform Bullingdon and you can arrange amongst ourselves".

139. On the same day Mr Stringer asked for a date to be arranged; on 10 December Shirley Grant (HRBP, Bullingdon) said "we are happy to take ASAP, 4 Jan? Or is that too soon?" and on 10 December Melissa Hunt wrote "Brett was thinking maybe this Monday if you can?", Mr Stringer replying "yes-good with us after the morning sick meeting with the governor". "Monday" was 14 December.

140. On 10 December Ms Grant sought to check that the claimant was fit to start work on 14 December, she was told that Ms Kerr was trying to make contact with him and then on 10 December Ms Kerr advised that the claimant was "in a bit of a bad way with his hands after he was assaulted trying to restrain a prisoner two days ago" and that she "wouldn't expect him back in the next week or two" as a result of his injures.

141. The explanation for the delay in transferring the claimant after governors' approval on 19 November has not been explained and no-one has offered any explanation why (as appears from those emails to be the case) someone within Woodhill had caused those involved to think there was a reason to defer the transfer nor how this "confusion" arose.

142. The claimant says that he was not informed by the respondent that his transfer had been approved and that he only became aware of that fact when he received a copy of Mr Selous' letter to Ms Leadsom stating that his transfer had been approved. In the list of issues specific reference is made to DG Marfleet not telling the claimant.

143. Governor Marfleet said it would be the people hub and not her that would pass this information on. On 7 December the claimant had emailed Governor Marfleet to say he had an email from Mr Stringer saying his transfer was “moving ahead”. Ms Kerr said she had emailed the claimant on 23 November to meet him and told him then that his transfer had been approved and that “it turned out he already knew.

144. On 8 December, Governor Marfleet said in an email to Woodhill that Woodhill were not releasing anyone before Christmas “but can probably agree a date shortly after that once we’ve heard” although by that time the two prisons had intended to transfer the claimant on 14th December.

145. Governor Marfleet gave no explanation as to the obvious dichotomy between her telling the claimant that no-one was being released before Christmas whilst Governor Kerr and the people hub were working towards a date of 14 December.

146. We find that the claimant was told that his transfer was “moving ahead” but that, for whatever reason, there was a delay caused by Woodhill and in particular DG Marfleet, who erroneously told the claimant that no-one could be released before Christmas which is at odds with what was said those who were supposed to be resolving the issue (in the people hub). We are inevitably led from that to the conclusion that the “confusion” over whether there was a delay in allowing the claimant to transfer was caused by DG Marfleet whose attitude was not to allow transfers before Christmas. The claimant, unlike other transferring staff, was not told a date for transfer at any time even after one was fixed.

147. Nor, inexplicably did anyone from Woodhill advise the claimant that he could move to Bullingdon as soon as he was fit to return to work. That was the apparent reason why his transfer could not be effective from 14th December, but he was not told this, nor was Bullingdon advised that he would be for light duties from 11th January 2016.

148. On 7 December 2015, the incident which ultimately led to the claimant’s dismissal had occurred.

149. That day the claimant was overseeing the handing out of meals to prisoners and the cleaning of the server in House Unit 2. At the relevant time prisoners were taking their pre-ordered meals from the servery and were to return to their cells. PO Adams was locking doors on the ground floor where the servery was and other officers were carrying out the same duties on other floors on the wing. Other than the claimant and PO Adams the only other PO on the ground floor at the relevant time was PO Punter who was on constant watch of a prisoner who was a suicide risk. Two other POs were, on the claimant’s unchallenged evidence, also engaged in the

locking up of prisoners who had received their food, POs Johnson and O'Dell.

150. On the ground floor, other than the prisoners working in the servery under the supervision of the claimant, the prisoners were, bar one, behind their cell doors. One prisoner, prisoner A was not. He had returned to his cell with his food but was not then locked up as he should have been. PO Adams was responsible for ensuring the prisoners were back in their cells.

151. We have seen CCTV footage of the area of the prison at the time of the incident, and leading up to it.

152. Prisoner A was not locked behind his cell door. On the CCTV footage there is no sound. It shows Prisoner A sitting on tables, pacing in an open area, returning towards his cell and then standing under a staircase before returning to sit again on tables in an open area. He is seen returning to the servery area more than once, leaning into the servery door when the swerving hatch was closed and engaging in a discussion with those within the servery and with Prisoner D (who is a wheelchair user and a servery worker). He walked away from that discussion then returns with his arms out and appears to throw his hand out at Prisoner D. The claimant said that at some stage at or before this point he pressed his radio to summon help but none came. He said (and it was not disputed, in fact corroborated) that the radios provided to staff at that time were faulty and/or ran out of power from time to time because they were not properly charged. That was not disputed and we find as a fact that the clamant did seek to summon help via his radio but that the radio was defective.

153. At this point in the incident the claimant intervenes between prisoners A and D. Prisoner A again turns to walk away. The claimant then puts his left arm around Prisoner A's left shoulder (from behind) in an attempt, he says, to restrain the prisoner and ensure that he did return to his cell. Prisoner A breaks from that hold and punches are thrown by him – there is a scuffle at which point 3 other POs emerge and Prisoner A is taken to the ground and restrained.

154. Thereafter many more officers appear. They are engaged in discussion including at least one officer in a lengthy discussion with Prisoner D who was a witness to the entire sequence of events. One PO is seen picking up an object from the floor.

155. The claimant injured his hand in the incident and reported the same to Northamptonshire Police as an assault by Prisoner A. That report was passed to Thames Valley Police and DC Oakman was the investigating officer. The claimant remained absent from work until 11 January 2016 as a result of injuries to his wrist sustained in the incident.

156. During his absence, matters progressed as regards the claimant's transfer. The claimant had, on the day of the incident with prisoner A (but before it) asked Governor Marfleet about progress. He said that others he knew had been given dates for transfer but he had not and that as he had been told his transfer was moving ahead he wanted to know what news there was for him. It was at this stage that the delays/confusion recited above occurred.

157. On 11 January 2016 the C returned to work as he was told by CM Laithwaite that light work had been found for him in the post sorting area. He was still not told that Bullingdon were willing to take him as soon as possible.

158. In the meantime, Governor Curtis and Governor Davis had received an email from DC Winnett Police Intelligence Officer based at HMP Woodhill. That email states:

"Following the incident on Monday 7 December involving Officer Plaistow and Mr A with Mr A showing some aggression. As the altercation moves away from the serving area, Mr A appears to be aggressive to Mr D and Officer Plaistow intervenes by stepping between them.

Mr A is then seen to turn and walk away, it appears at this point Officer Plaistow places his arms around the shoulders of Mr A. This causes Mr A to react and interact with Officer Plaistow. Both appear to exchange blows before Mr A is restrained by other members of staff.

Based on the CCTV, it appears that Officer Plaistow has potentially committed common assault on Mr A.

Therefore, there will be no further action in relation to Officer Plaistow's allegation of assault against Mr A.

DC Oakman has confirmed this with DI Darnell.

DC Oakman will speak to Officer Plaistow on 7 January to update him on this."

159. On 11 January 2016 the claimant reported for work and was walking towards the post room when he passed "Oscar room One" where CM Laithwaite was sitting. As he passed the room he says she said "poof" in his direction. He continued to the post room where no-one was present, he looked for someone to tell him what he should be doing and met a union representative who told him he had to accompany the claimant to the Governor's Office.

160. On arrival Governor Davis told the claimant that he was being suspended on the basis of 2 allegations, one of misconduct being assault/use of unnecessary force and one of failure to perform duty. He was to hand over his identity card and his keys and was taken out of the prion.

161. The claimant has complained about the manner in which he was suspended and "paraded through" the prison, but it was not suggested that a PO would not normally be suspended by the Governing Governor personally, would not have to surrender their keys and ID. Equally, without keys, a PO could not leave the prison, unless accompanied.

162. Pausing there in the chronology we have been told that whenever an incident involving "use of force" takes place in the prison (which this incident clearly was) each officer must complete a "Form A" setting out the events as they saw it. In this case there were 3 officers who came to the assistance of the Claimant, and a number of other officers who were on the scene promptly thereafter including officers who engaged in discussions with Prisoner D.

163. We will return to this later as the production of "Annexe A" forms in this case, including during the course of this hearing, has caused us considerable concern.

164. In addition, the respondent's pleaded case (Response attached to form et3 and dated 21 June 2016 (at which time the Claimant had not received a copy of the police email set out above) states in paragraph 13 that "the police contacted the prison and requested the prison Governor to conduct internal enquiries as the CCTV footage appeared to show the claimant assaulting the prisoner". No evidence of any such request has been produced, either written or orally. That pleading presumably presented on instruction is incorrect and misleading, suggesting as it does that this was not a decision of the prison Governor and/or his senior managers. It does however, give an excuse for Governor Davis to view the CCTV at this stage (as we find he did).

165. In relation to the allegation that CM Laithwaite called out "poof" in the direction of the claimant on 11 January 2016, she denies this allegation. We are therefore left with a choice between preferring her evidence and that if the claimant, and we unanimously prefer the claimant's. As we have previously said, CM Laithwaite was an unreliable witness, her evidence on certain matters varied markedly from question to question and she avoided answering questions. In this case we prefer the evidence of the claimant for those reasons. Accordingly, we find as a fact that the claimant was called a "poof" by CM Laithwaite on 11 January 2016. Given her position in relation to the claimant, we are satisfied that CM Laithwaite would have been aware that the claimant was to be suspended that day and thus may have felt a degree of impunity when acting as she did.

166. Under the respondent's Conduct and Discipline Policy (para 4.9)

> "Investigations which may lead to disciplinary action against a member of staff as soon as possible after any misconduct is alleged or suspected. Commissioning managers must ensure that investigations are conducted within 28 working day time frame unless there are acceptable and justifiable reasons for delay. Any extension of time must be justified and fully documented by the investigating officer and agreed in writing by the Commissioning manager. The member(s) of staff under investigation must be informed in writing of the extension and the reason for it by the investigation officer" (emphasis in the original).

167. In this case the commissioning manager was Governor Marfleet. The investigation should have been completed by 8 February 2016 (28 days from 11 January). It was in fact completed on 26 April 2016.

168. In his witness statement Governor O'Connor acknowledged that "this process took a little time" and that he obtained extensions of time. He did not identify where the extension of time forms were in the bundle of documents but there is a form for extension which bears the date 1 March 2016 (21 days after the due date for completion) and which extends the completion date to 10 April 2016. The document's properties were provided at the request of Ms Braganza and show that the document was created on 30th November 2017 and modified 1 minute and 31 seconds after creation. There is a single letter to the claimant of 10 February 2016 confirming that Governor O'Connor "would hope to have submitted a full report to the Governor by 6th March" and that he was "waiting to interview one member of staff and two prisoners" but would not be able to do so until 25th February due to his own leave. Another extension form is dated on its' face 11 April 2016 and gives a new completion date of 1 April 2016 (10 days before the purported date of the document). The properties of that document show it was created on 27th March 2017 at 09.21.

169. Both documents include a box for completion that states "are any employees suspended during this investigation- if yes submit form CD55 available on my share". The box (notwithstanding Mr Plaistow's suspension) is blank and no CDS5 forms have been seen by us.

170. We find as a fact that these documents were created on the dates shown on their properties, that the purpose of their creation was to give the wholly false impression that contemporaneous extensions had been given for "acceptable and justifiable reasons" at the time of the investigation, when they had not and that the creation of the document in March 2017 (less than 4 months before the final hearing in this case and over 11 and a half months after the date which it bears on its' face) was done to mislead the claimant and the tribunal, no other explanation being forthcoming.

Governor O'Connor referred to their creation as "plugging gaps" and thus in our unanimous view confirming our finding.

171. There is no other explanation or evidence in writing of the reasons for the extensions and why it took so long to carry out the investigation. Governor O'Connor interviewed the claimant on 22 January (11 days in to the 28 day deadline) and on his own evidence had done nothing before that other than view the CCTV footage. He interviewed PO O'Dell on 29 January. He had not conducted any other interviews before his letter of 10 February so one of the "two members of staff" was the claimant. He next spoke to PO Adams on 2nd March. He interviewed Prisoners D, A and E (another prisoner working in the servery) on 9 March. He then interviewed PO Punter on 21 April and PO Johnson on 22 April. Thus his "one member of staff and two prisoners" who were to be interviewed after 25th February were in fact three prisoners and three members of staff. His report was finally submitted on 26th April with a recommendation that "there is enough evidence for this investigation to be tested at a disciplinary hearing".

172. In his own evidence Gov. O'Connor accepted that, contrary to the policies, there was no de-briefing of staff after the incident on 7th December, that there was an absence of Annexe A forms and that therefore the staff and supervising officers were acting contrary to policies. He said this caused him "some concern" and that he asked for the further papers but they were not forthcoming and there the matter rested. He did not refer to these failures nor the absence of the documents in his investigation report. He could offer no explanation for the failures of the officers (which he did not ask them about during his interviews) nor his own failure to investigate the failings and/or disclose them in his report. He said it was not his responsibility to raise the absence of the de-brief.

173. Governor O'Connor accepted that the absence of use of force forms would warrant an enquiry. He accepted that he was "one of the people at fault in this process". The only use of force form completed was completed by PO O'Dell. He also accepted that as far as he was aware no enquiry or investigation had taken place into the failure of the officers to provide their use of force forms, nor into the failure of the supervising officer to carry out a de-brief and collate the forms. He described that as "causing him concern".

174. As a result of the incident on 7th December 2015, Prisoner A was placed on report by PO Adams. Governor O'Connor stated that he was not aware of this and had made no enquiry. He said under cross examination that on viewing the CCTV he did not believe that Prisoner A had assaulted the claimant.

175. Governor O'Connor also accepted that within the documents relating to the incident there should be reports to the Health and Safety Executive,

the nurses' report and other documents relating to reporting the incident. He said he did not request any of them because he did not believe that the claimant was assaulted. He did not believe the claimant's view that prisoner A was "hiding" under the stairs based on his own viewing of the CCTV footage and because PO Adams (whose failure to lock Prisoner A in his cell was never investigated or even raised a question as part of the interview conducted by Governor O'Connor) "saw no concern" (although as PO Adams was not asked about this we fail to understand how Governor O'Connor could come to that conclusion).

176. Governor O'Connor accepted that he had no explanation for his failure to ask POs Adams, Johnson and Punter about their use of force forms, but that he knew they had not completed them.

177. When PO Adams was interviewed he claimed that he was about to lock Prisoner A up when he came out of his cell saying "I aint had my fucking dinner yet". Although PO Adams says he was "surprised" by this "because the shutters were down and it seemed as though feeding had been finished" he simply accepted it and let the prisoner remain outside his cell and took no further notice (continuing to lock the other prisoners' doors on the floor) until he was alerted to the incident involving the claimant when he ran over to the incident. In fact, A had been fed, but he was by then complaining that he had the wrong meal.

178. Governor O'Connor made no further enquiry of PO Adams as regards the earlier build-up to the incident including the prisoner wandering the open area and being under the stairs. In the absence of any such enquiry we do not understand how he could conclude that PO Adams had been unconcerned by the prisoner's presence.

179. PO Adams did advise Governor O'Connor that Prisoner A had previously been found to have hidden the top half of a shovel under his bed. He then described Prisoner A as "a colourful character and…a handful at times".

180. Prisoner D described Prisoner A as deteriorating over the two weeks or so prior to the incident and that "a lot of the staff had said it as well" and that "he was going to kick off at some stage". Whilst he describes the build up to the incident itself in some detail he had not actually seen the beginning of the physical contact between A and the claimant but saw them on the floor with the claimant calling for "staff". He referred to A as having adopted a "threatening posture" and that he had walked away and turned back once before.

181. Prisoner A at first denied threatening the claimant, then admitted that after saying to D that "just because you've got one leg don't think I shouldn't kick you round the wing" (this whole episode was over A allegedly

receiving the wrong meal) he said to the claimant that he should "mash you up as well".

182. He referred to the claimant as having "jumped on his neck" and admitted that he punched the claimant (whose return punches, A said, missed). He claimed that PO Adams "booted" him while he was on the floor. Every relevant witness has confirmed that no action was ever taken about that allegation. He accepted that all the other prisoners were behind their locked doors ("looking out of their flaps"). No enquiry was made as to why PO Adams had not locked the prisoner up, nor whether he had in fact "booted" (i.e. kicked) the prisoner.

183. A was denied sight of the CCTV as apart of his interview. He claimed that the healthcare professional who was sent to see him after the incident was not allowed into his cell to see him. That was also not investigated further in any way. Governor O'Connor could not recall any reason for the delay in interviewing Prisoner A whom he did not speak to until 3rd March 2016. Governor O'Connor accepted that the claimant had not "jumped" on A but that he did not challenge A's description at all either at the time or in his report.

184. Prisoner E described A as having "massive mental health issues" and that he could be "violent on an impulse". He said that he thought the claimant was "definitely in his right to do what he did". He confirmed A had been aggressive towards the claimant and told the claimant to "go fuck himself" and that A was threatening towards E himself, D and towards the claimant who he described as "very placid".

185. It was put to Governor O'Connor that he had offered the claimant (via his trade union representative) a "deal" that if he admitted assaulting prisoner A he would be given a warning and then could transfer to Bullingdon, but that if he did not then he would be dismissed. Governor O'Connor denied this and, when subsequently interviewed by Governor Griffin, so did the trade union representative. We find no such "deal" was offered, but rather that this was a proposal which the union officer was suggesting could be put to Governor O'Connor, if the claimant agreed. The text messages which we have seen indicate that the claimant was unwilling to agree to this,

186. On 11 March 2016, the claimant raised a formal grievance, sending the same to Mrs Carol Carpenter, Human Resources Director at NOMS. He copied this grievance to Michael Spurr, then head of the prison service.

187. In that grievance letter the claimant raised the following issues. First, the fact that he had been asked about his sexuality at the beginning of his time at Woodhill; secondly, that as soon as he had confided in his line manager, he began to receive upsetting and derogatory comments about his sexuality, "pretty much on a daily basis". Third, he listed a series of

acts of physical and verbal abuse he had been put to including the threat that any complaints or allegations would result in falsification of evidence against him resulting in his dismissal and a prison sentence. He confirmed that he had been asking for a transfer since 2014 and gave information suggesting that the reason why his transfer was refused, (because Woodhill was a 'red' site), was not correct and recited the difficulty he had had with the Governor denying receipt of a transfer request despite it having been emailed directly to him.

188. He complained about the fact that he received a warning for attendance at work after being injured in the course of his duties, further, whilst he had been told that it had been removed it in fact remained on his file and further, that he had been denied the opportunity to work overtime in prisons other than Woodhill despite this being normal practice, in his experience.

189. The claimant went on to recite the events of the incident on 7 December 2015. He complained that he was allowed to be in a dangerous situation where his life was being threatened when all other staff had left the situation and did not offer help. He expressed the view that he felt he had been exposed to danger in this way because of his orientation. He complained about his suspension and the way it had been carried out and set out the 'miscellaneous further acts' that he was complaining about, including the failure by Mr Vince to investigate his earlier grievance and the confidentiality by Melissa Hunt in relation to his letter written to Mr Selous in July 2015.

190. On 12 March 2016, Mr Selous wrote to Ms Leadsom following a letter from her to him regarding the claimant. He told her that the claimant's transfer to Bullingdon had been approved. He had clearly not been told, however, about the claimant's suspension.

191. The claimant's grievance, meanwhile, was passed to Ms Jarman-Howe, (then acting as, now Executive Director of Public Sector Prisons (South)), to deal with. Notwithstanding the seriousness of the allegations raised in that grievance, including the act that it was critical of senior managers at Woodhill, Ms Jarman-Howe was, in her evidence before us, critical of the claimant for raising the matter with Mr Spurr and Mrs Carpenter, saying he should have gone to "his line manager, or else, if he felt unable to do so,…the next highest level of management not included in his allegations". As we understand it, by going to HR at NOMS, the claimant was approaching the next highest level of manager above Mr Vince, the highest level person complained about in the grievance.

192. Ms Jarman-Howe did not tell us when she was asked to handle the claimant's grievance, but on 28 April 2016, Mr Vince's office provided a

briefing for her which runs to some seven pages and includes the following notes:

a. First, that the claimant was currently suspended and the prognosis was that he was highly likely to be dismissed for misconduct;

b. Second, that the claimant had submitted a grievance to the DDC office on 18 October, (with a note that this was a Sunday), with Mr Johnstone, the author of the note, saying that he had reviewed the correspondence concerned and, "do not see that Mr Plaistow's grievance would have been an any way merited", and that he was, "advised that his line manager reports being unaware of his sexuality or the bullying that is referred to".

c. Mr Johnstone was proposing that an investigation be commissioned and led by the Governor grade external to the high security state, (presumably Ms Jarman-Howe), which is something that both Mr Vince and Governor Davis are said to have agreed with, (although of course they were two of the people complained of in the grievance).

193. The briefing note was clearly prepared for someone other than Ms Jarman-Howe, initially, but for whom it is not clear. It appears on the basis that there was a draft text forming part of the briefing note for a letter to be sent from Mr Ian Mulholland, (director of public sector prisons), that the note was originally intended for him and may indeed have been sent to him initially. In any event, when Ms Jarman-Howe was commissioned to investigate the grievance, she received this document which included the comments set out above which include prejudicial comments critical of the claimant. In particular, the merits of the previous grievance which had not been investigated at all and establishing an assumed outcome for a disciplinary process which had not progressed beyond the investigation stage. Quite why two of the individuals named and criticised in the grievance should have their consent sought as to how the grievance was to be progressed has not been explained by any witness.

194. Ms Jarman-Howe described the claimant's complaint as set out in his grievance as being "very personal to him" and "one of personal grievance rather than seeking to alert management more generally to the improper, (perhaps criminal), actions of others which might otherwise go unnoticed", rather than as a protected disclosure. It appears not to have occurred to her at any stage that it could be both and the respondent has accepted, albeit at the end of the hearing, that the grievance does amount to a protected disclosure, (subject only to the issue of good faith which on the basis of the findings we have already made is not, we find, in issue). Ms

Jarman-Howe, however, pointed out that the claimant had not followed the whistle blowing procedures as set out in the respondent's policies.

195. Ms Jarman-Howe then went on to say there was confusion as to whether the claimant had raised a grievance given he had failed to follow the grievance policy and complete a form, (GRV1), and as her understanding was that she was being asked to commission an investigation, not hear a grievance. That was her evidence in chief, but she said in crossexamination that the matter was handled as a potential disciplinary issue, not as a grievance.

196. A letter to the claimant from Ms Jarman-Howe of 17 May 2016 confirmed that she had been asked to respond to his letter to Michael Spurr; referred to the NOMS position on bullying and discrimination as one of 'zero tolerance' so that a senior manager, (unnamed), had been commissioned to investigate the allegations. The claimant's concerns for his personal safety were noticed and he was asked to "rest assured" that the investigation would be "handled professionally and with care and sensitivity".

197. In fact, it was not until 19 May, two days later, that a senior manager was commissioned – that was Mr Blakeman, Governor at Bullingdon.

198. Ms Jarman-Howe said in evidence that she had no involvement with Mr Blakeman's investigation, her role was to take receipt of his report and make her own conclusions based on its findings.

199. The terms of reference issued by Ms Jarman-Howe to Mr Blakeman required him to investigate, "the allegations that [the claimant] was bullied and discriminated against on the grounds of his sexuality". And set out the objectives as being to, "establish the facts and present any evidence in relation to the above incident, allegation or complaint in accordance with the conduct and discipline policy".

200. Mr Blakeman also said that he did not understand that he was conducting a formal grievance investigation and highlighted the absence form GRV1m but rather that he was, "commissioned to investigate a series of allegations, with a view to determining whether there was any basis for them taking any disciplinary action against anyone involved", although he interviewed the claimant, "and all the relevant witnesses in much the same way as I would have done in a grievance investigation", but was, "not formally working under that procedure". He had, in his evidence, no human resources support. Page 3 of the form which commissioned Governor Blakeman is missing from the bundle. That would have identified whether or not the relevant line manager had agreed to allow him sufficient time away from his normal duties to complete this

investigation within the time frame, (which would be the same time frame as Governor O'Connor was supposed to be working to.

201. Notwithstanding that, in his evidence and on the basis of the terms of reference given to him which indicate that this was a disciplinary investigation, the report and the findings produced by Governor Blakeman which sets out the, "evidence for and against each allegation", reports in a precis style what witnesses are said to have said in relation to each allegation. In contract to the investigation conducted by Governor Blakeman, into potential disciplinary action to be taken against the claimant, the interviews carried out by Mr Blake were not recorded and transcribed and were not checked for accuracy by the witnesses who were interviewed.

202. Under the respondent's disciplinary policy, the level of an investigation into an incident allegation or complaint, 'must be decided on by the commissioning manager and must be based on a judgment of its nature, seriousness and how much is known about its circumstances'.

203. Further, a member of staff to be interviewed in connection with an investigation must have at least 48 hours' notice of an interview and receive a letter to the person under investigation or letter to witness, must be told before questioning that the interview was part of a disciplinary investigation, be informed that any information emerging may be used in disciplinary proceedings and be given the right of accompaniment.

204. The policy states that, 'a record must be taken of all interviews conducted as part of an investigation, (the record need not be verbatim or take). A typed version of the note must be provided to the member of staff concerned and any comments which they make must be recorded as part of the investigation report'.

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concerned and any comments which they make must be recorded as part of the investigation report".

208. Amongst the people against whom the claimant raised complaint in his letter, which was not being treated as a grievance, but allegedly as a disciplinary investigation, were Mr Vince, (his failure to investigate the earlier grievance) and Governor Davis, (denial transfer). Governor Davis was also the subject of a complaint regarding allegedly being paraded through the prison with people watching and looking, which the claimant described as humiliating and upsetting. Neither Mr Vince nor Mr Davies were interviewed as part of this investigation by Governor Blakeman.

209. Governor Blakeman said that he found the claimant credible at the time he interviewed him. He accepted that he had no evidence that he had checked with those he had interviewed that he had recorded their responses and evidence correctly, although he said that he thought that he did that. He could not provide any emails or other evidence to demonstrate that. He also said that he had training on issues of bullying and discrimination but offered no direct evidence on that matter.

210. He accepted that as well as his own finding the claimant to be credible, he had seen photos of the bruising which the claimant had suffered, copies of letters to members of Parliament giving a detailed account of this use, copies of the grievances raised with Michael Spurr, all of which predated any allegation of a disciplinary offence being raised against the claimant. When asked how he could therefore say as he did on 12 July 2015, having interviewed everyone in connection with the investigation which intended to have written up promptly, there after that he had found, "nothing to substantiate [the claimant's] claims" and was, "certain that almost everything has been fabricated". Which is what he told Ms Jarman-Howe that day. He went on to say that the claimant's behaviour had, "much in common with the advice he is receiving from the Prison Officers Association secretary at Bullingdon whom Governor Blakeman said, "adopt similar tactics when challenged". Governor Blakeman substantiated this by saying that he found the other witness credible.

211. Governor Blakeman sent his report to Ms Jarman-Howe on 27 July 2016. Ms Jarman-Howe considers that Mr Blakeman, "carried out a thorough investigation" and the notes of the interviews he had, (overlooking the requirements of the investigation policy), "supported his findings… that there was no evidence of wrongdoing or a failure to report wrongdoing." She concluded there was no further action to be taken on the complaints of harassment and bullying.

212. Notwithstanding, the terms of the documents submitted by the claimant an headed 'grievance' which included criticisms of Mr Vince and Governor Davis, neither Ms Jarman-Howe, nor Governor Blakeman seemed to note

that those people had not been interviewed and the complaints about them had not been in any way investigated.

213. In her evidence in chief, Ms Jarman-Howe noted Mr Blakeman's doubts about the truth of the claimant's allegations, "considered that the timing after his suspension was deliberate and disingenuous", thus completely ignoring the matters which he had pursued before the incident on 7 December 2015 and before his suspension on 11 January 2016 and ignoring the fact that he claimed his suspension related to those earlier matters. She considered that those issues were serious concerns to raise, (against the claimant), but concluded that, "at this stage there was little purpose in pursuing them: [the claimant] was already subject to disciplinary action and if his aim had been to somehow deflect that by making his allegations, then that had not been achieved."

214. The claimant was told on 1 August 2016 by Ms Jarman-Howe, in writing that she had received the investigation report which concluded that there was no evidence he had been assaulted by any of his colleagues, no evidence that he was abused, threatened or discriminated against on the grounds of his sexuality, or any other reason, no evidence that he experienced less favourable treatment by the detail office, all HR BP at Woodhill and insufficient evidence to suggest that Woodhill is a toxic environment where staff can't speak out and security information is not appropriately managed. As a result, she said that, "no recommendations have been made in the report", and that there was no further action to be taken at that point. She said that she appreciated that the claimant would feel disappointed with the outcome, reminded him of the availability of support through the employee assistance service and said that she was unavailable during August due to annual leave but will be happy to meet the claimant on her return if that would be helpful. A copy of the report was given to the claimant who was dismissed nine days later. At the time, Ms Jarman-Howe sent that letter, as she admitted under crossexamination, she had not seen the letter of 20 March 2015 to Mr Selous, nor the second letter to Mr Selous of 12 June 2015.

215. Ms Jarman Howe also, "did not believe" that she had seen, the CPU report dated 28 September 2015, in either its inappropriately redacted or unredacted form. Further she had not seen the claimant's formal grievance of 15 October 2015, or his email to Mr Vince of 18 October 2015. The photographs of the claimant's bruising had not been seen by her unless they were included as one of the annexes to the report submitted by Mr Blakeman, (they were not). When challenged to accept that without all of this information, she was not in an informed position to take a view as to whether the allegations were well-founded or not, she disagreed saying that there was no evidence suggesting allegations of bullying could be upheld, there were no areas of uncertainty, there was a clear outcome which was unfit. When asked whether she was concerned

that Governor Blakeman had not considered these she said she may well have considered them and it was not for her to consider it, “all anew”, which we find was an admission that she did not considering the completeness of the report at all.

216. One further matter regarding the handling of the claimant’s letter to Mr Spurr and Mrs Carpenter is relevant. The Human Resource support provided to the disciplinary hearing was from Ms Sudderick. She was provided with a copy of the investigation report and was also provided with a copy of Governor Blakeman’s email when he referred to the claimant’s complaint as disingenuous. Email was sent on 12 July and on 21 July Ms Sudderick was asked by Ms Jarman-Howe’s PS whether she was free, “for a phone call” with [Ms Jarman-Howe] on 26 July. The heading of that email is, ‘Ben Plaistow investigation’. We also note that whilst Ms Sudderick was not available to take the call, she said that it was for Ms Jarman-Howe’s office to complete the GRV1, reasons for to generate a grievance case and that the claimant should be invited to a grievance meeting with an HR officer present. The reply to that was that Ms JarmanHowe, “is not aware of any formal grievance” and subsequently that “[claimant] R never submitted a grievance, the allegations were made on treat official correspondence”.

217. This, not only was Ms Sudderick providing HR support to the disciplinary process, but she was being kept informed of progress of the investigation into what she said was a grievance, which Governor Blakeman treated as into a series of allegations that basis in disciplinary action and which in her evidence in chief, Ms Jarman-Howe referred to as a grievance but which in her evidence in chief she said was not a grievance, (in particular because it did not appear on a grievance form, the grievance form that the HR case manager, Ms Sudderick, told Ms Jarman-Howe should be completed by her office so that a formal grievance could be raised. That was never done.

218. Whilst Governor O’Connor was carrying out his investigation, the claimant also contacted ACAS ahead of the presentation of his first tribunal claim. Zoe Martin (HR case manager) received contact from ACAS. On 8 April this was referred to Governor Davis and Melissa Hunt. She first replied to Governor Davis that day saying that “she shouldn’t say this” but that it was “typical of [the claimant] to take this to the highest level right from the outset and he has been spoken to several times about this by Vicky [Laithwaite] and Nikki [Marfleet] before then writing to Ms Hunt on the same day saying that she and the had “no knowledge of any of this until today”. She then wrote to Governor Zoe Martin describing the claimant as having “a tendency to exaggerate the truth to get what he wants. It is very manipulative behaviours. I would share the MP letters and responses with you but it would take too much of your time to go through it all” which comment s she prefaced by saying “I know this is unprofessional”. As a

fact, this was not "the first time" the claimant had raised such issues, as he had set them out in detail in his IR report, as Governor Davis well knew.

219. On that exchange, and we find as a fact, Ms Hunt had, before any investigation had been completed and at or before this time, formed an adverse view of the claimant. In cross-examination she could not justify the allegation that the claimant was prone to exaggeration and by contrast accepted that contrary to her statement in her email Governor Marfleet had not spoken to the claimant about his behaviours.

220. At the same time, she was one of 5 people in receipt of an email from Mark Johnstone who was collating information for a "treat official" correspondence submitted by the claimant (which document was not disclosed until the hearing of this case was well underway) asking for details of grievances raised by the claimant and investigations into them which information was to be kept between the addressees of the email and circulated no wider. As "any local reference to this matter that reaches [the claimant's] awareness could cause reputational damage to all concerned".

221. On 22 April in an email to Ms Kerr and CM Laithwaite Ms Hunt referred to the claimant's statement that he had disclosed his sexuality to CM Laithwaite "on day one" saying "this doesn't seem plausible" without any enquiry or basis for that view. Further, on 28th April 2016 a DCC briefing into the claimant's complaints of discrimination refer to "the incident [on 7 December 2015] was captured on CCTV and the prognosis is that Mr Plaistow is highly likely to be dismissed for misconduct".

222. We note that the author of that report, Mr Johnstone, did not give evidence and that the source of that prognosis was not revealed. Based on his own evidence, the only people who had viewed the CCTV at this stage were the police, Governor O'Connor himself and the claimant. Governor Davis denied doing so. If we accept Governor O'Connor's and Governor Davis'' word, then only Governor O'Connor could have been the source of this prognosis. He had only completed his report two days earlier. We find, however, that this view came first from Governor Davis, who had also viewed the CCTV and had from that point on determined that the claimant should be dismissed.

223. On 28 5 May 2016 CM Laithwaite referred to the claimant as "blatantly lying" in an email to Governor Marfleet (copied to Governor Kerr) and Governor Marfleet replied that CM Laithwaite was "professional" and the claimant as "digging at [her]". By 9 May 2016 Governor Davis had clearly seen the CCTV as Mr Vince described the "advice from the Governor" (who he accepted in cross-examination was Governor Davis) was that "the CCTV evidence is so overwhelming that dismissal is a potential outcome".

224. Governor O'Connor denied being aware of any of this during his investigation. We do not accept that evidence.

225. Based on the evidence which we have heard and recited at length we find that Governor Davis had seen the CCTV at an early stage, had formed the view at that stage that the claimant ought to be dismissed and communicated this to Governor O'Connor, whose investigation was as a result no more than perfunctory. The only other explanation for the wholesale failure of all parties to enquire into and properly investigate the wholesale failure of process at the time of the incident, the allegations of PO Adams "booting" A and thereafter the medical practitioner being denied access to A, the circulation of emails so clearly prejudicial to the claimant, doubting his veracity and describing him as likely to be dismissed before any decision o disciplinary action was taken is wholesale and gross incompetence not only in the investigation stage but also at the disciplinary hearing and appeal. Given the number of individuals involved at a senior level we do not find that to be the case. We find that from the moment Governor Davis was advised by the police that the claimant had "potentially committed common assault on [A]" Governor Davis had resolved that the claimant would be dismissed.

226. Governor O'Connor's investigation report was finally submitted to CM Marfleet on 26 April 2016.

227. First, in his report of the incident he criticises the claimant for not sounding the alarm, but ignored the claimant's evidence that he pressed the button on his radio, which he could not know was defective.

228. Second, he referred to the claimant as having, "grabbed A around his neck with his right arm and tried to take him to the floor", when the claimant used his left arm and it had never been suggested to, or by, either the claimant nor A that the claimant was trying to do this. The claimant maintained he was seeking to restrain the prisoner to ensure A returned to his cell without the claimant being assaulted by him.

229. Third, he claimed that A had thrown punches at the claimant but that they had missed, the only punch which landed being one thrown by the claimant which knocked A to the ground. The CCTV shows no such, "knocking to the ground". A remains on his feet albeit appearing to be unbalanced until PO Adams ran towards him and brought him to the ground, and A's own evidence was that he and the claimant were,

"bent over in a struggle. Obviously, I couldn't see who it was and I started punching out and then – yeah, he's punching me back, yeah but then he stood up and jumped up like he was a boxer, like this, and started jumping

about, and he's took a swing at me and he's completely missed me so I've hit him back".

230. Thus, A's evidence was that he had indeed hit the claimant. Governor O'Connor could not explain why his report said otherwise. His conclusions repeated this error.

231. Fourth, Governor O'Connor criticises the claimant for not securing A behind his cell door, omitting to mention that it was PO Adams who was given that duty for the prisoners on that landing, whilst the claimant was attending to the servery.

232. Fifth, he criticises the claimant for not removing himself from the scene and, "securing himself behind the gate", which the report omits to mention would have left Prisoner D, who had been threatened by A and who was in a wheelchair alone with A.

233. Further, in the analysis of, 'evidence against the allegation', the only thing mentioned is the claimant's statement, when the statements of A himself, D, and E – the servery worker wo described A as being aggressive, said the claimant did what he had to do and described A as, "unpredictable" and having, "massive mental health issues", were not referred to at all.

234. Equally, the investigation was procedurally flawed, with no extensions of time being secured and with Governor O'Connor neither pursuing the absence of, nor commenting in his report on the absence of, mandatory documents, in particular the Annexe A form of every officer involved other than PO O'Dell, the report from the nursing staff involved and the statutorily required documents such as the HSE report and RIVO report.

235. The absence of such documents was said by Governor O'Connor to have, "caused him concern" when compiling his report, but that concern was not expressed at all. When asked why he did not raise these failures of staff and the supervising officer who has a duty to collate and retain documents, his reply was that he did not know. He could not explain why there had been no de-brief after the incident, (as required), but said that to challenge that was, "not his responsibility". The absence of the de-brief is not mentioned in his report. Whilst Governor O'Connor denied that his report was demonstrative of incompetence on his part, he offered no explanation at all for his failure to raise and pursue the absence of essential, contemporaneous documents in his report, nor for the errors and omissions in his report although he accepted under cross-examination that those errors were present.

236. Governor O'Connor in his report recommended that the matter should proceed to a disciplinary hearing. Governor Griffin (Governing Governor, HMP Frankland in county Durham), was appointed by Governor Davis to

act as disciplining officer, after Governor Marfleet had agreed with the recommendation that the matter should proceed.

237. Governor Marfleet's evidence was that she read the report, 'very carefully, and that given the evidence of the CCTV footage, coupled with that obtained in "interview of the witnesses", she agreed with the recommendation. She did not, on that 'very careful' reading note the obvious errors and omissions in the report, nor did she question the absence of documents which she knew were relevant to events of the day and which other officers and the supervising officer were bound to complete.

238. Governor Marfleet obtained the report on 6 April. She advised Governor Davis that the matter should proceed to a disciplinary hearing by a letter dated 12 May which enclosed a 'summary investigation form', signed by her and dated 13 May. On the letter, Governor Davis has hand written his agreement for the matter to progress, dated 16 May.

239. Under the respondent's disciplinary policy, the investigation report, must include, if the investigation has exceeded the 28-day time frame, the justification for the delay and the commissioning manager's agreement. They were not in the report and as we have found, did not exist.

240. Under the respondent's disciplinary policy any decision regarding further action following an investigation must be taken within two weeks of receipt of the investigation report unless there are acceptable and justifiable reasons for the delay. The delay between 6 April and 12 (or 13) May, was not explained in Governor Marfleet's evidence, nor Governor Davis'. The respondent's failure to follow its' own procedures was never explained at all, and was effectively ignored by all witnesses.

241. Under cross-examination Governor Marfleet accepted that she did not know whether A or his cell were searched after the incident as they should have been; that A should have been observed until he was treated medically, (and he was not), that all necessary forms, (Annexe A, etc.), should be completed and kept together but they were not, that there had been no investigation into why A had not been secured behind his door after receiving his food, but was allowed to walk around and stand under the staircase; that there was no log of who had accessed the CCTV as there should have been. None of this, however, caused her to consider after her, 'very careful' reading of the investigation report, to either raise these matters with the investigating officer and ask him to make further enquiries, nor to do anything other than recommend to Governor Davis that the matter should proceed to a disciplinary hearing. Equally, that 'very careful' reading did not bring to her mind the fact that there was substantial evidence in support of the claimant's allegation that he was dealing, alone, with a prisoner who had threatened not only him, but another wheelchair

bound prisoner and that having been the victim of attack in similar circumstances before, was fearful of a repeat. None of this gave Governor Marfleet any concern as regards the thoroughness of conclusions of the report, she accepted the recommendation and the matter, with Governor Davis' approval, progressed to a disciplinary hearing.

242. All of this is important because Governor Griffin who was the disciplining officer, first was the one who determined that the charge the claimant was to face was one of gross misconduct, not merely misconduct, and secondly because he was adamant that he had no 'remit' to question any elements of the investigation report. Errors or omissions in it were, he said, a matter for the commissioning officer, (Governor Marfleet), and not him. He said that, "if it's not in the investigation report even though I know it should be, I am not going to go looking for it because that is not within my remit", and that in relation to the missing documents and evidence, "I made the decision with all that in consideration if I thought that would make a difference, but it didn't".

243. When asked how he knew documents he had not seen would not have made any difference to his decision he was obstructive and challenging towards the claimant's counsel before finally saying he, "took the point". That was one, clear, example of Governor Griffin's attitude when giving evidence. He was unwilling or unable to answer basic questions and in the example given obfuscated for 30 minutes before accepting that it was not possible to say that evidence which had not been seen by him would have made no difference to the outcome of his hearing.

244. He did, however, agree in cross-examination that part of his function, (as set out in the Case Analysis Submission presented to him on 30 June 2016), was to consider, "whether the investigation report produced is to their required standard and if there are any shortfalls" and that, "if so, these should be addressed at the disciplinary hearing".

245. He also accepted his failure to address them made the process flawed, but he denied that this made the process unfair, merely saying that, "it's something that I should have addressed". When asked if he could explain why he did not do so, he said there was no explanation. He told the claimant in the disciplinary interview on 7 July that he would, "hear the evidence presented during the investigation, and the evidence I am hearing, that I will be testing, is only the evidence that has been presented through the investigative process. I will not be considering any evidence that was not presented during that point, during that process" thus effectively circumventing that crucial part of his role as disciplining officer, to determine that the investigation is full and fair.

246. Under the respondent's disciplinary policy, in a section headed, 'Good Practice at a Disciplinary Hearing', the disciplining officer is required, ("[to

enable] the hearing to be undertaken in a fair and logical manner", to ask the member of staff and trade union representative if they have had sufficient time to prepare for the hearing. The claimant's TU rep had only seen the CCTV footage for the first time on the day of the hearing. A previous request for it to be viewed at a time convenient had been refused by Governor Davis. Governor Griffin described that at the hearing as, "out of his control". He refused, as had previously done, to allow the claimant and his representative a further 7 days to prepare, notwithstanding the lengthy delays which had been allowed to exist in the process of investigation and the calling of a disciplinary hearing. The claimant was meeting Mr Sundinser, who was representing him at the hearing for the first time that day and Mr Sundinser had seen the CCTV footage for the first time 30 minutes before the hearing.

247. HR support for the disciplinary hearing was provided by Ms Sudderick. She was also the case officer managing the process around the claimant's grievance which Governor Griffin described as, "not ideal", and then agreed that it was "not acceptable and unfair".

248. Notwithstanding the above, Governor Griffin maintained before us that he had followed the disciplinary process.

249. Governor Griffin accepted throughout that he was aware that Michelle Jarman-Howe had commissioned an investigation into complaints raised by the claimant, said he had no knowledge of the claimant's sexual orientation or that he claimed to be a 'whistle blower' and thus those matters did not influence his decision making process. However, in the statement which the claimant prepared and gave to Governor Griffin at the disciplinary hearing he concluded by saying,

"I believe that this process has been unreasonable and unfair. I am also concerned that the manner in which it has been conducted, to include how I was suspended, to be discriminatory and / or victimisation, (and I have raised a grievance on these terms)".

250. Assuming Governor Griffin, as he was obliged to do, read this statement, it clearly points towards the thrust of the claimant's grievance and we do not find it credible that Governor Griffin would not have made enquiry into these matters to understand the nature of the claimant's complaints particularly those which touched upon the matters surrounding the process which he was at that stage in charge of. Governor Griffin's evidence was that he was aware of things, "going on in the background", but was not concerned to establish what they were. We reject that evidence as not being, in the circumstances, credible.

251. The respondent's conduct and discipline policy gives examples of misconduct including, 'fighting or assault on any other person' and

examples of gross misconduct including, 'assault'. When Governor Griffin was asked how this incident fell within the definition of gross misconduct rather than 'assault on any other person', within the definition of misconduct he could not do so, yet it was he, on his evidence, who classified the actions as potentially gross misconduct.

252. During his interview with the claimant, Governor Griffin was advised that the claimant had not received the audio transcripts of the interviews conducted during the investigation. He was in possession of the transcripts but questioned their accuracy. No steps were taken by Governor Griffin to consider this at all, which – in the light of the transcript of one of the interviews, he had conducted, (with prisoner A), is at the very least, unfortunate.

253. In his questions to the claimant, Governor Griffin limited the discussion to the moments of the incident itself. The build up, (which involved A wandering around when he should have been in his cell, not being locked up by PO Adams, throwing "shadow punches" in the air and walking away from D towards his cell but then turning around and threatening him and then the claimant), was seen by him to be a different incident. He focussed only on the moment where the claimant, "approached Mr A and then where the first physical contact tool place". He did this notwithstanding the investigation report concluding that the whole episode had to be considered as a single event. He gave no explanation at the time, nor before us, why he did this. His approach, unexplained, operated to the disadvantage of the claimant who sought at all times to put his actions into the context of the whole event. Governor Griffin considered earlier build up as "over" before the claimant put his arm around A.

254. The claimant was interviewed on 7 July. The hearing continued on 8 July. Notwithstanding, his reference to only listening to evidence before the original investigation Governor Griffin called evidence from the claimant's previous TU rep Mr Gordon. Mr Gordon said, "there were grounds on the CCTV, which I witnessed, which I saw myself that there was an assault taking place". Governor Griffin's evidence in chief was that in Mr Gordon's opinion, "the CCTV footage clearly showed an assault by Mr Plaistow and that was gross misconduct". In fact, that later point is a gloss, because Mr Gordon throughout his interview referred to his belief that, "this could all have been dealt with as a misconduct issue".

255. Mr Gordon was also asked about whether Governor Davis had offered a 'deal' to the claimant via himself. Although he said that the possibility of an agreed resolution, "was his opinion" Governor Griffin closed down that line of questioning, said that Mr Sundinser was engaging in "semantics" and told him that, "I'm conducting this hearing not you and you need to remember that".

256. That is, we find, illustrative of the approach taken by Governor Griffin and echoed in his approach to his evidence before us. He had interviewed the claimant for over 2 hours in relation to an incident which had taken a matter of minutes, he was hostile in his questioning of the claimant and rejected all of his explanations as to why he did what he did.

257. Governor Griffin ignored the point raised by the claimant that he was being treated differently, (in particular by reference to A alleging he had been "booted" by PO Adams and there being no investigation into this matter), although he said in cross-examination without explanation or any corroborative documents ever being precluded that he was, "assured that there had been", contrary to the evidence of the other witnesses who were asked about this and without saying who had assured him, when and how.

258. He referred to the claimant putting himself between A and D at the time when A was, on his own admission, threatening D as, "invading [A's] personal space"; he referred to the claimant's reaching to A with his left arm as the, "first physical contact" and when the claimant referred to a pushing past him in the servery described, "that incident" as "over". He focused on the claimant referring to having a good relationship with the prisoner in question, saw no relevance in the previous assaults which the claimant had suffered, (notwithstanding that one involved a prisoner walking away and then turning around and hitting him), nor the possession by A some time earlier of half a shovel hidden in his cell; he stated as a fact that there was no evidence that A had, "attacked anybody with a knife or weapon or certainly a member of staff", (although a review of his record would have indicated that he had previously struck another prisoner with a table leg).

259. An indication of Governor Griffins approach is his return to the issue of the claimant, "invading the person space" of A instead of stepping back, (when A was confronting D), which Governor Griffin repeated 5 times during the interview, each time ignoring the claimant's answer that he was protecting D.

260. Further, when the claimant said that in his view at the time A was not going to go back to his cell, Governor Griffin's line of questions were that the claimant did not know that he wasn't going back to his cell.

261. The claimant said he used, "minimal force" by putting his arms around A and calling for staff.

262. Governor Griffin asked the claimant to justify what he did and the claimant replied that A had threatened the prisoners working in the servery, D and himself to which Governor Griffin asked, "has he struck any of them?" which he asked twice notwithstanding that it was clear he had not and noone was suggesting that he had.

263. Governor Griffin also interviewed the following:

a. PO Adams who agreed that the radios were often flat, accepted that everyone was being locked up and that he had not locked A up. He also confirmed finding a weapon in A's cell on a previous occasion, which line of questions was closed down by Governor Griffin saying, "this is not about this incident". PO Adams confirmed that he could not recall if either the prisoner nor his cell were searched after this incident.

b. PO O'Dell who described A as, "been known for assaults" including assaulting another prisoner with a table leg, and described him as, "challenging". He confirmed that the personal alarm / radio, "was not very good" and that at the time A (along with the other prisoners), should have been locked up.

c. PO Johnson who described A as, "challenging" and "an unpleasant individual. He's got a massive history of weapon making. I believe he's in the segregation unit now for assaulting another prisoner with a weapon. He's just a very challenging man who doesn't like the word, "no", he is what he is". He confirmed that neither A nor his cell was searched after the incident, Governor Griffin saying that he thought the reason for A not going to the segregation unit was because it was full.

d. Prisoner A, whose record of interview, like that of the others contained a number of, "inaudible" sections. However, the claimant obtained a copy of the recording. His unchallenged evidence was that all, or a great many of the, "inaudible" sections were both easily understood and helpful to him; in particular A confirmed that he had been asked several times to, "bang up" and had not done so, that he threatened the claimant, described the claimant's actions as, "me personally, what he done was right, really, you know", after saying that he himself should not have been as angry as he was. He also described the claimant as, "an alright officer".

He denied having a history of violence but then admitted, (after it was shown on his record), that he had assaulted a member of staff at HMP Bullingdon which he then claimed was when he was in fact the victim of an assault. He admitted, "going mad at the guy in the wheelchair" and saying to him, "just because you got one leg don't mean I won't kick you around the wing", and told Mr Plaistow that he, "should mash you up as well". A also claimed that things were being put in his food to interfere with his drug rehabilitation.

A further said that he had, “no problem” with what the claimant had done and that if he had been in the claimant’s shoes he would have, “jumped on me sooner”. Whilst he denied having a history of being in possession of weapons, he admitted having been found with razor blades and an exercise yard shovel handle in his cell. He was critical of the claimant for telling him repeatedly to, “bang up”, but accepted that he should have been behind his cell door.

Prisoner A admitted in answer to a direct question from Governor Griffin that he threatened the claimant.

264. The hearing resumed on 25 July. The claimant was given the opportunity to raise any further points he wished. The claimant had not received transcripts of the first two days of the hearing, however, he was told he could not have those at the time.

265. Governor Griffin refused to consider the claimant’s evidence about previous assaults he had suffered when prisoners used weapons against him because such evidence had not been presented to Governor O’Connor.

266. What Governor Griffin did do, however, was cross-examine the claimant about his actions and on several occasions indicated his already formed view that when the claimant said he was acting out of fear of assault at the hands of prisoner A, he could not, or should not have been and that Governor Griffin himself would have dealt with the matter in a different way.

267. DC Winnett was then called to the disciplinary hearing. Governor Griffin said that DC Winnett was, “only here to answer questions about the content of the email”, (from the police dated 6 January 2016), and endeavoured to close down other lines of questioning. However, when he was asked if a prison officer trying to restrain a prisoner would be classed as an assault, he said, “clearly not, no” and when it was put to him that at the time of the incident tempers were high he said, “Oh, I understand completely, yeah, and I think Mr Plaistow has done the right thing to some degree to try to calm things down. You can see clearly before Mr A walking away that it’s quite an aggressive atmosphere going on there with Mr A”, but that on looking at the allegation, (made by the claimant of being assaulted by A), “it appeared that there may have been a very minor common assault which then led to further action by Mr A”. When Governor Griffin brought the line of questions to a close, the claimant complained that he was not being allowed to defend himself.

268. DC Oakman then came to the hearing. He referred to the claimant’s statement to the police about a complaint of being assaulted, “which I’m sure you would have seen”. In fact, it had not been produced but

Governor Griffin raised no question about that at all. He described speaking later to his line manager after viewing the CCTV and them agreeing that the claimant was, "acting with the best of intentions", (which he repeated several times), but that his actions caused, "massive problems" for "realistic prospects of conviction against A". He also said he would, "never have looked at [the claimant] as an offender in an assault as such", and that he did not think that, "any court in the land would say that

what [the claimant] did constituted an assault that was worthy of him standing in front of a criminal court".

269. Governor Griffin adjourned the hearing to await the transcripts of the interviews, (which when they were received contained omissions, which have not been explained), and to consider his decisions.

270. Governor Griffin's evidence was that he considered that he had been, "very lenient" towards the claimant in the way he had conducted his hearing as he had the claimant to, "keep revisiting matters", although, it was he who demanded on many occasions, "the reason why" the claimant acted as he did and refused to accept his explanation.

271. Governor Griffin also limited his investigation, (as he called it, his "remit"), to analysis of the contents of the investigation report. When he was asked what he would do about gaps or failings in that report he said that was the role of the commissioning manager and outside his remit. When asked what safeguard there was if the commissioning manager failed in their duty he said that was not a matter for him although he accepted that at the time he was aware of failings in the investigation.

272. Governor Griffin's conclusions were given to the claimant on 9 August 2016 and confirmed in writing the following day that:

a. Prisoner A had not entered the servery;

b. There was no evidence to support the allegation that A was aggressive towards the claimant;

c. There was no evidence to support the claimant's claims of having feared for his safety or that of another prisoner at the scene, emphasising that A denied, (in Governor Griffin's view honestly), threatening to kill the claimant;

d. the claimant failed to press the alarm bell or retreat, or de-escalate the situation;

e. A had his back to the claimant when the claimant, "grabbed him" and, "furthermore, [the claimant] clearly aimed for [A's] neck";

273. He said that all of these factors pointed to the claimant assaulting A.

274. He further said that, “the boxing style incident that followed …was the simple result of [A] defending himself, (as he was entitled to do), against an assault by Mr Plaistow”, and that the claimant’s further actions of punching A amounted to an unnecessary use of force.

275. When asked for mitigating points, Governor Griffin said that he wanted to hear an admission from the claimant that he had acted wrongly and that the plea on his behalf that, “it could have been handled differently”, in the view of Governor Griffin, “did not take things very far”, saying that, “the problem”, was that, “the CCTV which is completely objective and impartial clearly showed that he had [assaulted A]”

276. Governor Griffin therefore decided that the appropriate sanction was summary dismissal as the claimant had not accepted that what he did amounted to assault, did not recognise that he could have acted differently and had not, “learned from the incident”, as he considered it, “fundamental that HMPPS can have confidence in its officers and how they deal with prisoners in their care”.

277. The claimant appealed against the decision to dismiss and his appeal was to be led by Mr Richard Vince.

278. In his statement, Mr Vince described his involvement in matters concerning the claimant as ‘sporadic’ and said he had no involvement in his day to day management. He said that he knew nothing of the sexual orientation in the claimant’s grievance letter to Michael Spurr dated 11 March 2016. He describes the claimant’s orientation as, “a matter of no concern to me”.

279. Mr Vince also gave evidence to say that the claimant had not followed any whistle blowing procedure and had not made protected disclosures and that if the claimant had done so to him he would have, “taken them seriously and looked into such matters in line with the appropriate procedures”.

280. We note, however, that the claimant’s letter to Michael Spurr was seen by Mr Vince and he did not take the contents of that letter seriously, nor look into it within the appropriate procedures.

281. Indeed, when the claimant submitted a grievance to Mr Vince direct regarding the conduct of Melissa Hunt which grievance indicated that it was raised because of bullying on the grounds of sexual orientation, Mr Vince decided that it was, “actually… About a management decision, not a diversity and equality matter”. The thought that the management

decision had been made as an act of discrimination or bullying on the grounds of sexual orientation did not, apparently, occur to him. His evidence was that he did not read the grievance, "to be in any way being connected to bullying or sexual orientation".

282. His decision was in fact to refer the matter back to back to Ms Hunt to investigate. The justification for having someone accused of bullying on the grounds of sexual orientation, or even whose management decision was being challenged on other grounds, to be the investigating officer into their own alleged wrong doing was sought to be justified by Mr Vince on the basis of the respondent's policy. We find that if the policy had required the matter to be referred to the alleged bully or the persons alleged of mismanagement that would not be a fair or reasonable policy. In any event, however, the policy does not require that step to be taken. It specifically covers circumstances where it would be inappropriate for the line manager to hear the grievance in which case a grievance should be raised with the manager's manager to decide whether that person should hear the grievance at stage 1, although the expectation is that a stage 1 grievance would be managed within the establishment.

283. Mr Vince gave evidence that the claimant's complaint to Michael Spurr, raised various matters, "including allegations of bullying, breach of confidentiality by Ms Hunt, a failure, (by Mr Vince himself), to investigate his earlier grievance, his transfer requests and the ongoing disciplinary proceedings". Mr Vince's evidence was that as the claimant put the alleged bullying down to his bisexuality then, "obviously this was important in that he was alleging a breach of equality and diversity policies, but his sexual orientation per se was of no relevance or interest to me". He goes on to criticise the fact that the claimant did not use the correct grievance form and that he had, "missed every layer of management in the organisation". Ultimately, this matter was referred to Ms Jarman-Howe.

284. In addition to the matters set out above, Mr Vince had also been involved in matters concerning the claimant before conducting the appeal against dismissal. His staff officer, Mr Johnstone, had been asked to deal with the matters arising from the letter to Michael Spurr wrote in an email, not disclosed by the respondents until the course of this hearing, confirmed that the Governor at HMP Woodhill, (Governor Davis), had advised that the claimant was, "odds on for dismissal" notwithstanding that this was before any investigation outcome was to hand on the basis that, "the CCTV is apparently damming (sic)" and that the date for the disciplinary hearing, "is soon but not yet fixed".

285. This email confirms that Mr Johnson's initial view had been expressed to Mr Vince. We find as facts that Governor Davis had already determined that the claimant should be dismissed, as early as 14 April 2016, which was the date of that email, that this view was expressed to Mr Johnson

and subsequently to Mr Vince. Thus, Mr Vince knew in April 2016, before the claimant had even been told that disciplinary action would follow against him, that the claimant was, "odds on for dismissal".

286. On 29 April 2016, Mr Vince had written to Mr Mulholland, Director of Public Sector Prisons, regarding the allegations of bullying and sexual discrimination brought by the claimant when he repeated that whilst the date for the claimant's disciplinary hearing had yet to be set, because interview tapes were being transcribed, "early advice from the Governor is that the CCTV evidence is so overwhelming that dismissal is the likely outcome". That letter is dated three days after the date when the investigation report was complete.

287. Mr Vince denied having had a conversation with either Governor Davis or Mr Mulholland about this matter and said that this letter, sent out in his name and signed by him would have been drafted on his behalf by Mr Mulholland. We do not find it credible that Mr Vince was unaware of the contents of this letter and given that he signed it and that it went out in his name, he was endorsing the contents of it.

288. On the basis, both of Mr Johnston's email which confirms his conversation with Mr Vince and Mr Vince's letter of 29 April, (whoever drafted it), Mr Vince knew, even before the claimant was aware, that he would face a disciplinary charge, that he was, "odds on for dismissal" and the dismissal of the claimant was, "the likely outcome".

289. Mr Vince conducted the appeal hearing on 25 October 2016. The claimant has submitted detailed grounds of appeal. They run to 10 pages of A4. The claimant sets out in the introduction his view that he should not have been disciplined and that his dismissal was unfair and unreasonable. He expressed his belief that he had only been subject to disciplinary proceedings and dismissal because of his sexual orientation and/or as a result of his having raised concerns over the treatment he had endured on the ground of that orientation and referenced the grievances which he had raised. He complained about the pre-hearing process, the investigation procedure, the investigation report, contents of the witness statements, the conduct of the disciplinary hearing and the issues raised in mitigation. He concluded by saying that the whole episode involving prisoner A was, "an unusual, unfortunate event" and that he would, "of course consider any learning points that may arise". He describes it as being, "at worst… a question of judgment on the day, and learning from it, not gross misconduct".

290. Mr Vince opened the meeting by confirming to the claimant and his representative that he had, "no prior knowledge of the case and all he knew was what was in front of him". He also told the claimant that the information he had been "privy to" was the investigation report with

transcripts, and the only part of the evidence he had not seen was the CCTV footage of the incident, thus suggesting clearly that he had no other knowledge of the matter. He said he would look at the CCTV on 26 October, the day after the hearing.

291. As a fact, what Mr Vince told the claimant about his previous involvement in the matter was simply untrue. He admitted under cross-examination that he was aware of a clear view having been taken in relation to the case and to tell the claimant that he had no prior knowledge of the case was not true. He denied, however, that that untruth went to the root of the appeal process.

292. In the appeal, the claimant recited the history of the matter leading up to the incident between Mr A and himself, Mr Vince expressing his understanding that he disciplinary investigation came about, "after the CCTV footage was viewed" (rather than as a result of the police email) and that there was a delay in the terms of reference being commissioned because, "no one was aware of the event until the police had come back and raised the issue of wrongdoing (by the claimant)".

293. Mr Vince did not question how a number of officers could be engaged in a use of force incident, resulting in a prison officer being absent from work as a result of injuries received yet, "no one was aware of the event". One officer followed the correct procedure by lodging his use of force form. To say that no one was aware of the event until the police had reverted to the prison with their view about prosecuting prisoner A is manifestly untrue. There was extensive documentation which was available, (which inexplicably did not form part of the investigation report or the disciplinary process), and which Mr Vince knew ought to be available and all of them indicated knowledge of the event and describe it as an assault by prisoner A on the claimant.

294. When cross-examined about this statement Mr Vince claimed that, "the event", was, "his assault", meaning the assault by the claimant. We find this to be no more than sophistry and obfuscation. Many people within Woodhill prison were aware of the incident long before the police sent their email and none of the relevant documents, but one use of force form, were considered by the investigating officer, the disciplining officer or the appeal officer, nor was their obvious absence questioned. We note that in relation to the absence of these documents, neither Governor O'Connor, Governor Griffin nor Mr Vince gave any explanation whatsoever and when specifically invited to do by counsel for the claimant, could not give any reason.

295. Mr Vince had not viewed the CCTV footage before the hearing and did not view it with, or raise its contents with the claimant at any stage. Rather, he viewed it alone the day after the appeal hearing. Mr Vince also

concluded the hearing by saying that he would be expecting answers to his questions around why the charge moved from being misconduct to gross misconduct, and seek clarification regarding disclosure of evidence, (about which the claimant had complained), He said he would need to speak to the commissioning officer and do further reading and said he may need to meet the claimant again to go through issues.

296. According to his own evidence, Mr Vince viewed the CCTV, but did none of the other matters that he said he would do. He did not speak to the claimant again.

297. Mr Vince sent his decision, to reject the appeal, on 17 November 2016. He said that the claimant had appealed against dismissal because of an unduly severe penalty, that the disciplinary proceedings were unfair and breached the rules of natural justice and that the original finding was against the weight of evidence.

298. As well as rejecting the grounds of appeal, Mr Vince did not address the fact that the claimant had alleged that the entire process against him was because of his sexual orientation and because he had raised complaints. Mr Vince accepted before us that there was no investigation into those matters. Mr Vince also accepted that notwithstanding this was one of the grounds on which the claimant had appealed, he did not make any enquiry of the claimant, (or anyone else), about it.

299. One of the other grounds of appeal was that whilst the claimant had been dismissed, no action was taken against any of the other individuals involved at all, notwithstanding the fact that prisoner A accused officer Adams of “booting” him and that there had been wholesale failures by officers and managers to properly follow the use of force procedural requirements. Mr Vince described that, “not part of the investigation” and did not accept that it affected the fairness of the actions taken against the claimant even though the claimant had repeatedly stated that he had been “singled out” for action and contrasted his treatment to, in particular PO Adams against whom no investigation had made at all.

CONCLUSIONS

300. From the earliest days which the claimant spent at HMP Woodhill he was subjected to verbal (and later physical) abuse based upon his sexual orientation either his actual orientation as a bisexual male or his perceived orientation as a homosexual. We have concluded that those responsible for that abuse did not make any differentiation between the claimant bisexuality and a perception of homosexuality.

301. Initially the abuse was verbal only and was of a questioning nature asking the claimant if he was gay. PO Puttock regularly asked the claimant if he was gay based upon his hairstyle. These were acts of harassment by PO Puttock. Their purpose and effect was to violate the claimant's dignity, to ensure that the claimant knew he was identified as "gay" and create a hostile and offensive environment for him.

302. Shortly thereafter, during a discussion with CM Laithwaite the claimant was asked whether he was gay and he disclosed to CM Laithwaite that he was bisexual. That information was clearly passed on by CM Laithwaite to other members of house unit 2 where the claimant worked and from that time the claimant was identified, in effect, as a person of difference.

303. Several of the respondent's witnesses have accepted that the claimant was the subject of comment because of his appearance and that those comments would be addressed towards the claimant himself. This conduct has been variously described as humour, "banter" or as a process of welcoming the claimant into a "close-knit team".

304. It was wholly unnecessary and inappropriate for CM Laithwaite to have posed the question. We have found as a fact that it was asked and we conclude that its purpose was to identify the claimant as someone "different". From that point on he was perceived as "fair game" for the acts of alleged humour or banter. The question itself was an act of harassment. It was not asked out of concern to ensure that the claimant was protected from any verbal or physical abuse.

305. It was after the discussion with CM Laithwaite that the claimant was subjected to increased and more regular acts of what we find to be verbal harassment which later included acts of physical harassment. We conclude that this was a consequence of CM Laithwaite passing on to others details of the claimant's sexuality, which was not only wholly inappropriate of itself but which led to the "stepping up" of the harassment he received. Not only did the claimant's peer group engage in this conduct, but it was condoned and (by omission) accepted by CM Laithwaite.

306. The claimant was thereafter regularly called "poof" and "gay" by PO Puttock and PO H. They were the ringleaders of the atmosphere of harassment and abuse which he claimant faced. He realised very quickly indeed that he was working in an environment which was hostile towards him, based on his sexuality. He sought, from very shortly after he transferred in to Woodhill, to leave.

307. Several of the respondent's witnesses confirmed that the claimant was subjected to comments about his hair and his appearance. The claimant said he changed his hairstyle as a result of the comments he received, changed the dye he used on his hair from black to a dark brown, stopped

tinting his eyelashes. he said his uniform was usually cleaner and better pressed or ironed than other officers. His boots were well polished. None of this was challenged (except for one comment that everyone "wore the same uniform"). PO Puttock confirmed that the claimant was subject to comments about his appearance, others (including SO Wallbank) confirmed that comments were "usually" about the claimant's hair. The position adopted by the various witnesses that this was harmless "banter" and that it did not "cross the line".

308. In a unanimous view, however, the conduct was unwanted and clearly related to the claimant's sexuality which is a protected characteristic. It had the effect (and we conclude that purpose) of creating an intimidating degrading humiliating and offensive environment for the claimant who reasonably perceive that to be the case. On the claimant's evidence, which we accept, it was regular and continuous throughout the period he was employed at Woodhill. The respondent's witnesses claimed that the claimant himself engaged in "banter" and "gave as good as he got" but none of them could give a single example of any comments allegedly made by the claimant whilst they all agreed that comments were made about the claimant's appearance. SO Wallbank went so far as to say that he reassured the claimant that any comments being made worth the purpose of welcoming the claimant into the unit but could not explain why he needed to do that if the conduct of officers was obviously harmless and received as such.

309. The claimant was regularly asked by PO Puttock about his sexuality, asked again about his sexuality by CM Laithwaite as part of an induction meeting and thereafter frequently called "poof" and "gay" by POs H and Puttock.

310. As early as October 2014, in only his 2nd month of work at Woodhill the claimant was asking Governor Marfleet to help him transfer out of the prison. Whilst the claimant at that stage did not set out the true reason he was seeking a transfer (the abuse he was suffering) it is of note, and not explained, that no one in a position of management within Woodhill appeared to take serious note of the fact that the claimant, who were transferred to Woodhill at his own request to further his career, was anxious to leave so soon after arrival.

311. The claimant tried an informal approach to Governor Marfleet and request that she speak to Governor Davis, Governor Davis in turn refused to support the claimant's compassionate transfer request but subsequently agreed to allow it. That decision was reversed within 24 hours by a combination of Governor Marfleet and CM Laithwaite, who on Governor Davis evidence persuaded him that it would be wrong to allow the claimant to leave.

312. We unanimously conclude that the reason why Governor Davis decision was changed so rapidly was because the prison management, including Governor Davis, Governor Marfleet and CM Laithwaite became aware that the claimant had written to Andrew Selous, MP about the difficulties he was experiencing in transferring out of Woodhill. We come to this conclusion because of the rapidity with which Governor Davis decision changed and because on 14 April, the day after Governor Davis had approved the transfer request and the day when the claimant was told that he could not transfer, contrary to that decision (in respect of which about face there has been nothing in writing shown to us) the claimant was told specifically not to complain to members of Parliament. Further Governor Davis email of 13th April approving the transfer request was tampered with. Whereas the governor had said "let him go, he clearly doesn't want to be here and he hasn't got the resilience to last". His email when forwarded simply said "let him go". We were struck by the lack of concern Governor Davis and every other witness who had this particular matter brought to their attention demonstrated over the alteration of an email sent by the most senior individual within the prison. That is but one example of the actions of others not being investigated whilst the claimant was treated very differently at each stage.

313. The claimant had been absent from work from 19th February to 18 March 2015 following an injury to his wrist sustained at work. The claimant was given a warning as to his attendance which required him to make a sick leave excuse or application to Governor Davis. That was approved on 27 April and the warning was allegedly quashed on 1 May. What is clear, however, is that the warning should never have been given in the first place and CM Laithwaite's evidence as to why the warning was given was contradictory and evasive. The suggestion that there was an "unwritten policy" known only to certain people within Woodhill and which countermanded the policies and procedures which applied to the prison service throughout the country was not supported by any evidence whatsoever. It was rejected by Ms Hunt, the human resources business partner who gave evidence. In addition, although the claimant was told that the warning had been quashed, it remained on his file as he discovered when he made a data subject access request.

314. In the absence of any sensible explanation from the respondent as to why the claimant was given a warning when he should not have been and why the warning was not removed from his file when it should have been we had to consider whether this was for some reason of inadvertence or carelessness. The claimant was already suffering harassment at the hands of other officers. He had had his informal request for transfer rejected. He was already being treated differently by colleagues and managers. We are satisfied that those facts are sufficient to shift the burden of proof to the respondent to establish a non-discriminatory reason why the claimant received a wholly inappropriate attendance warning,

was required to go through an excusal process to have that warning quashed and why his warning remained on his file. No such reason has been established by the respondent. We have considered whether this was a combination of incompetence and inadvertence but that has not been the respondent's position. CM Laithwaite continued throughout the case to seek to justify the giving of a warning and the requirement to make an excusal application as being correct. It was not. The claimant having established facts (in particular the pre-existing treatment and the circumstances in which he was given an attendance warning which was then not removed from his file) from which we can conclude that this was an act of discrimination based on his sexual orientation and the respondent having failed to establish a non-discriminatory reason for the treatment, we find that the issue of the attendance warning was an act of direct discrimination.

315. We have also found as a fact that the claimant's prison bag was coloured pink in July 2015. The suggestion implication that the claimant did this himself in order to identify his bag is without any merit whatsoever. The claimant would not have complained about having his bag coloured pink if he had done it himself. The colour pink was clearly chosen with the intention that it should be a reference to the claimant's actual or perceived sexual orientation. We have also accepted and found that the claimant made requests to CM Laithwaite for a replacement bag which she did not follow through. The colouring of the claimant's bag and the refusal to replace it, meaning that he had to carry a pink coloured bag to and at work on a daily basis were, we find, acts of harassment which were designed to create a humiliating or offensive environment for the claimant.

316. We have also found as facts that PO H called the claimant a "poof" outside house unit 2 in July 2015 in circumstances where the claimant exercised considerable restraint in not responding to the harassing and intimidating conduct of that officer whose actions were designed to provoke a reaction from the claimant and that regularly thereafter that same officer called the claimant a "poof" and "vermin" within house unit 2.

317. It is right to point out that we have been struck by the very limited level of investigation that has taken place into the serious allegations which the claimant has made regarding the conduct of other officers. We are bound, as we have done when making our findings, to contrast that with the way in which matters were investigated in relation to the claimant. The serious matters raised by the claimant against in particular officers Puttock and H have not been investigated adequately, indeed barely at all.

318. We have found as a fact that in July 2015 PO H pointed his finger into the claimant's face and slapped the claimant in the face in the presence of CM Laithwaite, who did nothing to intervene but who, we have found, laughed at the events taking place before her. The officer in question

clearly realised that he could do almost anything to the claimant and his manager would simply stand aside and watch. Why was this allowed? Because the claimant was "different". He had been identified as probably "gay" had been asked about and revealed his bisexuality to CM Laithwaite and thereafter he was "fair game" for abuse, initially verbal and thereafter physical, at the hands of his colleagues. This was not "harmless banter" this was a conscious program of intimidation and harassment towards the claimant as a result of his sexual orientation and those such as CM Laithwaite and SO Wallbank who were in positions of authority and should have stopped the conduct and brought the perpetrators to book did no such thing but contributed to the conduct of which the claimant was victim. On this occasion CM Laithwaite allowed conduct of a wholly unacceptable nature to take place in front of her and rather than intervening laughed along with the course of events.

319. Indeed, CM Laithwaite grabbed the claimant's arm with considerable force (so the bruising was called) in July 2015 telling the claimant that he was causing "too many problems" including complaining about his treatment at Woodhill. By this stage the claimant had had his informal request to transfer rejected, his formal request accepted by the Governor which was then immediately overturned and had had a totally inappropriate warning placed on his file and (contrary to what he was told) not removed. We have concluded that all of this was effectively a campaign of action to control the claimant and in particular to ensure as far as could be the case that he made no complaint outside of the prison itself.

320. We have found as facts that in August 2015 PO H squirted a bottle of water at the claimant and shortly thereafter pushed the claimant from behind into a desk in the manager's office. These were nothing more nor less than acts of intimidation and harassment and the claimant was considered by that officer to be a fair target for such conduct. He was, we conclude, of the view that it was safe to behave in this way shielded as he was by colleagues who denied that events were taking place and a manager, CM Laithwaite, who was not merely complicit in these matters but an active participant. Why was the claimant treated in this way? We conclude he was treated this way because of his sexual orientation. The words "poof" and "gay" were regularly used. Such people are considered by PO H to be "vermin". By this stage the actions of the individuals had escalated beyond name-calling into acts of physical abuse. The respondent’s witnesses all denied any knowledge of these events, and that they did not happen. We have found that they did, and the respondent has offered no non-discriminatory reason for them.

321. The claimant complains that Mr Vince failed to investigate his grievance of 15 October 2015 (relating to the mishandling and distribution of his letter to Mr Selous) and that this was an act of direct discrimination or harassment. Mr Vince, having received the grievance, sent it back to the

manager against whom the grievance was raised (Ms Hunt) and did so because in his view he was required to do so by the respondent's grievance policy. That is a misreading of the policy because in circumstances where it is inappropriate for the relevant manager to consider the grievance the matter should be sent to a more senior manager. Mr Vince said that when he read the grievance he considered that it related to a management decision and therefore it was appropriate for the matter to go back to the relevant manager. But the claimant had marked boxes in the grievance form to indicate that he was complaining about discrimination on the grounds of sexual orientation. Mr Vince said that he did not consider that the matters raised in the grievance related to those issues.

322. Contrary to what Mr Vince said it should have been abundantly clear to him on reading the grievance form that the claimant was suggesting that management decisions were being taken to his detriment because of, or motivated by, his sexual orientation. If Mr Vince was in any doubt about this could and should have made enquiries the claimant to ascertain precisely why he was indicating that he had been the victim of discrimination based on his sexual orientation. The grievance was dealt with inappropriately by Mr Vince when he sent it back to Ms Hunt for investigation notwithstanding the fact that the decision being complained about had been made by her in circumstances where the claimant alleged discrimination on the ground of orientation. He failed to have any regard for the fact that the claimant had raised complaint that he was being discriminated against on the ground of his orientation. He has suggested that he did not read the grievance properly.

323. We are satisfied that the claimant has established facts (that he raised the grievance which made allegations of discrimination on the ground of sexual orientation, that that significant part of his grievance form was apparently ignored and the person about whom he was complaining was identified as the person but should investigate the grievance) from which we could conclude that the reason why the grievance was not investigated properly was because of its nature which would amount to an act of direct discrimination as it was not suggested that other grievances were inadequately red or improperly considered. It is therefore for the respondent to show that there was a non-discriminatory reason for the treatment of the claimant complains of (the failure by Mr Vince to investigate the grievance).

324. The reason put forward by Mr Vince was that he did not consider the grievance raised issues of discrimination, but it clearly did. On any reading of the grievance and the relevant policy the claimant said that he had been the victim of discrimination based on his orientation and that the person responsible was Ms Hunt. It was wholly inappropriate to send the matter back to Ms Hunt for investigation into herself and to do so was to ignore

the basis upon which the grievance was being brought. We do not find that the respondent has established a non-discriminatory reason for this treatment and we therefore find that Mr Vince's failure to investigate the claimant's grievance was an act of direct discrimination.

325. It is appropriate to deal with the complaint that SO Wallbank threatened to "put the claimant on his 'arse' in November 2015 and the allegation that PO Haige screamed at the claimant and grabbed his face, digging her fingernails into his face on 4 December 2015 together. We do so because we have found is facts that both incidents occurred and we conclude in relation to each of those incidents that the claimant was treated as he was by each of them simply as part of the campaign and culture of abuse of which he was the victim. To that extent there was an element of institutional discrimination towards the claimant because of his sexuality. He was a bisexual man, begin by other officers as a homosexual man. He was, in the view of the other officers who perpetrated these actions, a legitimate target as a result of his sexuality. They were also secure in the knowledge that the relevant manager, CM Laithwaite, condoned and participated in the abuse of the claimant. Thus, the threat of violence from SO Wallbank and the physical attack by PO Haige took place in circumstances where those perpetrators considered they could act with impunity. The claimant had already been warned not to make complaint about the conduct of other officers and that if he did so he would face "trumped up" charges which would result in him losing his job and perhaps going to prison. Against that background both SO Wallbank and PO Haige could act as they did without fear of being brought to account for their behaviour. The claimant was identified as a target because of his sexual orientation or because of his perceived sexual orientation, the officers in question making no distinction between a bisexual man and a homosexual man. These are acts of direct discrimination, neither perpetrator would have acted as they did towards an officer who was not exposed as "fair game" for such behaviour; the claimant was identified as "fair game" because of his sexuality.

326. On the same day as PO Haige attacked the claimant the claimant's work bag was again defaced and a pink "fairy" cake was smeared across the inside of his bag. This was but a further example of the conduct of other officers towards the claimant. Those carried out this act of harassment did so in the knowledge or belief that they were safe from any retribution or punishment and were demonstrating their dislike of the claimant's sexual orientation.

327. It was on 7 December that an incident occurred between the claimant and Prisoner A which led to, in order, the claimant's injury, suspensions and then dismissal.

328. The claimant has alleged that POs Adams Johnson, Punter and O'Dell failed to assist him in relation to the situation which developed with prisoner A on 7th December and that their failure to do so amounted to an act of direct discrimination. We do not accept that to be the case. PO O'Dell was working on another landing and PO Punter was on a "constant watch" duty with a prisoner who was a suicide risk. It was he who alerted PO Adams to the incident in question. PO Johnson was also working on a different landing and ran down to assist the claimant after the call of "staff" went out. PO Adams did come to the claimant's aid but his failure to ensure that prisoner A was behind his locked door as he should have been and precisely where he was at the time the incident between the claimant and prisoner A escalated has not been investigated. We cannot say, however, that facts have been established to shift the burden of proof onto the respondent to show that the conduct of PO Adams requires a nondiscriminatory explanation because on his own evidence PO Adams was on another part of the landing ensuring other prisoners were secured behind their doors and no facts have been established from which we could conclude that the claimant was left to deal with prisoner A for any reason connected to his sexuality.

329. Prior to the incident with prisoner A the claimant had not only raised his grievance to Mr Vince but also written to Andrea Leadsom MP (he was a constituent of hers).

330. His letter to Ms Leadsom was not disclosed by the respondent until very late in the proceedings, although it was clearly in the respondent's possession throughout.

331. In his grievance against Ms hunt, the claimant had identified that he considered himself a victim of discrimination on the ground of sexual orientation. In his letter to Ms Leadsom he set out a significant part of the history of his time at Woodhill. He referred to bullying as "rife" amongst staff and management. He referred to having written to Mr Selous. He said that letter was passed among managers in the prison, after which he said bullying towards him became worse. He described officers "who conform" getting a "free pass to do what they like". He complained of receiving verbal abuse from staff and said,

"I'm not an officer anymore. I'm a little poof. I've had water thrown over me. My personal possessions and some of my uniform have been coloured pink. There is more I would like to report but I don't know [how] confidential my information is now".

332. This letter was clearly passed to the prison. It clearly relates to breaches of the Equality Act 2010and was a protected act for the purposes of s27 of that Act.

333. The grievance raised to Mr Vince was admitted by the respondent as amounting to a protected act. It was also a protected disclosure within the meaning of s43A of the Employment rights Act 1996. When he raised it the claimant reasonably believed that it was in the public interest to do so as it related to the mishandling of confidential correspondence with a Member of Parliament and a decision-making process within a government service which was tainted by discrimination.

334. Both the grievance sent to Mr Vince and the letter to Ms Leadsom were known to the managers at Woodhill shortly after they were sent by the claimant. Indeed, the fact that Ms Leadsom had offered the claimant an appointment to see her to discuss this matter (which had to be rearranged) was known to those managers at Woodhill. The letter is endorsed with the words,

"letter sent 16.10.15 offering 3.30 27/11" and

"30/11 can't attend offered alternative"

so that it was clear to those receiving this copy letter, in particular Governor Davis as the head of the prison and CM Laithwaite as the claimant's line manager, that Ms Leadsom, someone outside the prison service, would be aware of the claimant's allegations.

335. Also known to the respondent's management was an intelligence report which the claimant had raised with the Corruption Prevention Unit on 28 September 2015. This document was also produced, originally, in a redacted form. In the form the claimant says he had been seeking a transfer from Woodhill had sought a transfer for family reasons "and that's not the only reason". He said he had challenged inappropriate comments made to him and others; said he had had a bottle of water tipped over him, been kicked in the back of his legs and been threatened by her members of staff. He set out that he had been told that if he complained he would have false reports made against him, complained about having uniform taken from his bag, and having his bag coloured pink. He said that he was told transfer requests would be stopped because his line manager would "put things on his record" along with a letter to an MP which he had asked to remain confidential.

336. The "Intelligence Assessment" section of the report, completed by CPU was originally redacted by the respondent, and said this,

"This is a serious management issue. All details have been passed to Livvy Kerr – Head of Res who will speak to officer Plaistow about his concerns. No further Corruption Prevention action required".

337. In fact, this matter was not passed to Officer Kerr. Her evidence was clear, that she had not been told about any of these matters and had she been made aware she would have acted on the contents of the complaint. We accepted her evidence.

338. We have, in this sequence of events, concluded that there is a pattern of conduct within the senior management of HMP Woodhill. It is a pattern of conduct which turned a blind eye to the bullying conduct which the claimant suffered. It is a pattern which threatens the victim of that bullying not to raise matters outside the prison, so that the claimant was told not to raise matters with an MP and was threatened that raising a complaint would lead to action being taken against him.

339. These were not idle threats. The claimant had a wholly inappropriate attendance warning issued and then notwithstanding the same being "quashed" it remained on his file.

340. Another element of the pattern of conduct was to hide and control information. Thus, Ms Kerr was not told about the CPU report, and we conclude that the statement that "all details have been passed to Livvie Kerr" was information falsely given to the CPU so that the allegations made by the claimant could be "contained". That, we find, explains not only the failure to disclose the claimant's letter to Ms Leadsom and the inappropriate redaction of the CPU report, but also the way the investigation and disciplinary hearings involving the claimant were conducted and the way documents have been created late in the day in an attempt to disguise the failures of the respondent.

341. The fact that Andrea Leadsom MP was now aware of the allegations the claimant was making made the continued hiding and controlling of information much harder, if not impossible.

342. The claimant sustained injury at work on 7th December 2015. The circumstances of that injury were that a prisoner (A) who should at the time have been locked in his cell, but who was not secured as he should have been, was raising complaint over the food he had been given. He had been free to wander the open area on the wing and was seen on CCTV practicing a punching movement in the air. He was standing under a staircase in a position where he could not have been easily seen for a period of time.

343. Ultimately, he was leaning into the servery area and on his own admission was told by the claimant (who was the officer in charge of the servery at the time) to "bang up" (i.e. go back to his cell) which he did not do. On one occasion he walked away from the area and then turned and came back. At that stage he was, on his own admission verbally threatening to a prisoner (D) who was wheelchair bound, raised his hand in what we

consider was a punching motion to D (although there is no suggestion that he hit D) and was verbally threatening to the claimant. He then turned away for a second time, at which point the claimant reached round his left shoulder with his left arm in an effort to restrain A. that restraint / hold failed, a broke loose and on the evidence of both A and the claimant, A struck the claimant more than once whereas the claimant did not hit A. A call for "staff" resulted in a number of officers appearing on the scene, including PO Adams who took the prisoner to the floor. He and others restrained the prisoner.

344. The claimant injured his wrist in this incident, apparently when he was assisting PO Adams to retrain the prisoner. He was absent from work from that date until 11 January 2016.

345. In the meantime, several things should have happened, and did not.

346. First, all officers involved in the incident should have completed a use of force form. Only one such form "Annexe A" was provided at the time, from PO O'Dell. There were a number of officers involved in the incident including several (not identified) in discussion with Prisoner D after the incident. All of those people should have completed the Annexe A forms and submitted them to the relevant officer. They did not.

347. There should have been a de-brief but there was not.

348. Prisoner A should have been searched and his cell should have been searched. They were not.

349. Prisoner A should have been attended by a nurse. A nurse attended his cell but was not allowed n to see him.

350. Prisoner A should have been taken to an isolation unit, He was not.

351. There are no contemporaneous documents produced which explain these failings and the absence of these documents and procedures appears to have concerned the senior managers at Woodhill, and thereafter the investigating and disciplining managers who dealt with the charges of misconduct against the claimant not one jot.

352. There was CCTV footage of the incident. We have viewed the footage from 3 angles. The claimant has maintained throughout this case that he was shown a fourth angle which is no longer available, and that that footage showed him being punched in the head or face by Prisoner A. We asked for a definitive plan to demonstrate the positions of all CCTV/security cameras in the area, but the only thing provided by the respondent was a plan of the floor with camera positions drawn on it by hand. We find it remarkable that neither the prison itself nor any person

charged with the installation and maintenance of a Category “A” prison has a plan showing where CCTV cameras are positioned, but that appears to be the case on the respondent’s evidence.

353. At the beginning of the hearing, the Tribunal was concerned that certain documents which by law, and not mere procedure, would have been required to be completed were not present in the bundle. In particular the report which had to be made to HSE, an accident book entry or similar. The claimant had been seeking these documents for some time, but they had not been disclosed. No explanation as to why was forthcoming, but the documents were produced during the hearing. All of them record the incident as Prisoner A assaulting the claimant.

354. Whilst the claimant was absent from work with his injury, his transfer out of Woodhill was approved. It did not progress as the claimant was unfit for work, but also because there was a belief at Bullingdon (to where the claimant was to transfer, and where he had been prior to Woodhill) that there was a delay in actioning the transfer at Woodhill’s request.

355. In any event the claimant was not told of a date for transfer and Bullingdon was not told that he would be fit for light duties on 11 January 2016.

356. When the claimant returned to work after injury on 11 January 2016 and walked past the room in which CM Laithwaite was working she called him a "poof”.

357. The claimant had been advised that light duties were available for him in the post room, which was untrue because when he got there, there was no work for him to do and he was met by a trade union representative whose job it was to accompany him to the Governor's office where he was suspended. Given that CM Laithwaite had told the claimant to report to the post room we conclude that she knew there was no work for him to do and knew he would be suspended that day. She too felt she could abuse the claimant with impunity.

358. The claimant had complained to the police about the incident on 7th December, stating that he had been assaulted by a prisoner. The police conducted investigation into the incident, but beyond viewing the CCTV and speaking to the claimant it is not clear that any further investigation was undertaken.

359. On 6 January, the police investigation was complete. DC Oakman had been the investigating officer, but DC Winnett wrote to confirm that,

“Following the incident on Monday 7 December involving Officer Plaistow and Mr A with Mr A showing some aggression. As the altercation moves

away from the serving area, Mr A appears to be aggressive to Mr D and Officer Plaistow intervenes by stepping between them.

Mr A is then seen to turn and walk away, it appears at this point Officer Plaistow places his arms around the shoulders of Mr A. This causes Mr A to react and interact with Officer Plaistow. Both appear to exchange blows before Mr A is restrained by other members of staff.

Based on the CCTV, it appears that Officer Plaistow has potentially committed common assault on Mr A.

Therefore, there will be no further action in relation to Officer Plaistow's allegation of assault against Mr A.

DC Oakman has confirmed this with DI Darnell.

DC Oakman will speak to Officer Plaistow on 7 January to update him on this".

360. The Respondent should have, within Woodhill, a log which shows who has had access to or viewed the CCTV of this incident and on what dates. That document is also, apparently, missing. It is of concern to us that no-one within Woodhill has considered that this requires investigation. The respondent refused to allow either the clamant or his representative to have a copy of the CCTV footage, because it is – we were told – a "controlled" document, so that its' distribution and use must be carefully controlled. Yet the log relating to access to it is unavailable. No-one has investigated this at all.

361. Clearly the police had at least viewed (if not been given a copy of) the CCTV footage. The email from DC Winnett was sent to Governor Davis. Thereafter a decision was taken to suspend the claimant was taken. Because Governor Davis was potentially a decision maker in any disciplinary process, he passed the responsibility for commissioning the investigation into what Governor Davis called "the possibility of serious and/or gross misconduct" which would go "right to the heart of the trust and confidence HMPS needed to have in [the claimant] to perform his duties properly" to Governor Marfleet. Governor Davis decided that the claimant should be suspended because "the allegation of assault raised serious concerns as to whether he should be at work in any establishment".

362. We have considered this evidence carefully. We are satisfied that Governor Davis had at this stage viewed the CCTV footage and had determined that the claimant should be dismissed. We are satisfied that CM Laithwaite, as the claimant's line manager had also viewed the CCTV. It is not credible to believe – as CM Laithwaite maintained in her evidence - that she did not involve herself in anything to do with the incident on 7

December 2015 is not credible. One of her officers had been injured at work during an incident of violence with many officers involved. We are satisfied that CM Laithwaite will have at the very least spoken to some of the officers involved and viewed the CCTV footage. To do otherwise would be incredible.

363. The respondent, and in particular CM Laithwaite, was now in a situation where allegations regarding the bullying and harassment to which the claimant had been subject were being put before a wider audience. We have concluded that the reaction of, in particular, CM Laithwaite, who we find – just as she had done when persuading Governor Davis to overturn his decision to approve the claimant's transfer in April 2015 – persuaded Governor Davis that the claimant's actions on 7 December 2015 warranted a charge of assault on a prisoner and that she did so because the way to avoid the truth of the way the claimant had been treated at Woodhill coming out was to discredit the claimant. It was also the further fulfilment of the threat made to the claimant that if he was to complain, charges would be laid against him.

364. When he was fit to return to work on light duties, on 11 January 2016, the claimant was suspended from work. He went to the post room, where he had been told by CM Laithwaite to report for work (having walked past the room in which she was siting and been called a "poof" by her) but there was no work for him to do. Instead he was met by a union representative who escorted him to the governor's office where he was suspended.

365. His sickness absence exclusion form was completed by CM Laithwaite, as hit should have been in April 2015. She did not explain why the purported "unwritten policy" no longer applied. In that form, completed on 11 January 2016, she records the claimant as being "back from sickness absence after an assault at work".

366. The clamant complains about the manner and location of his suspension meeting, but we do not find that it was inappropriate for the Governor to hold a suspension meeting in his office and that doing so would ordinarily involve the suspended employee being escorted from the prison. Clearly it would be inappropriate for a suspended member of staff to retain their prison keys.

367. He also says that his suspension was a detrimental act, and was carried out because he had made protected disclosures. Whilst we would ordinarily consider that suspension is a neutral act, and thus cannot amount to a detriment, that is not the case when an employee is suspended without just cause, or for a reason not connected to his conduct. That, we find, was the case here. The claimant was suspended because, as we have said, the complaints he had made, in particular to Ms Leadsom, were such that there was a determination that he should be

discredited so that his complaints were not believed. Suspending the claimant was the first stage in that process and whether the decision was truly that of governor Davis or whether he was – as he had been over the claimant's transfer in April 2015, he was effectively led by CM Laithwaite as the claimant's line manager we cannot say. But we are satisfied that as soon as the respondent was aware of the content of the email from DC Winnett the opportunity to prevent the claimant's complaints gaining traction and credibility was seized upon and from that moment as was set out in writing, the claimant was "odds on for dismissal". The clamant was suspended for that reason, and his suspension was a detriment, which he suffered because he had carried out a protected act, his complaint to Andrea Leadsom MP about his treatment at Woodhill.

368. Governor Marfleet said that on their viewing of the CCTV "the police took the view that there had not been an assault by the prisoner on Mr Plaistow, but that there did appear to have been as assault by Mr Plaistow on the prisoner".

369. She commissioned Governor O'Connor to investigate the allegation of misconduct against the claimant.

370. Governor O'Connor's own evidence in cross-examination was that his investigation was flawed. He accepted that there should have been a number of documents presented to hi which were not made available, including the HSE report, a RIVO report (both of which were subsequently made available in the course of the hearing before us) and Annexe A forms (he had one, from PO O'Dell, but no others). He apparently made one enquiry about these forms and was simply told (he could not recall by whom) that they were not available.

371. His investigation should have been concluded within 28 days (in this case by 8 February 2016), unless there were acceptable and justifiable reasons for delay. Any extensions of time had to be justified and fully documented by the investigating manager and agree in writing by the commissioning manager. Th member of staff under investigation must be informed in writing of the extension and the reason for it.

372. No contemporaneous extensions were sought or given in accordance with this policy and no proper information about delay was given to the claimant as it soul have been. The respondent sought, belatedly, to indicate that extensions had been given by producing documents bearing the dates 1 March 2016 purporting to extend the date for completion of the investigation to 10 April 2016 and another dated 11 April 2016 "extending" time to 1 April 2016. The properties of those documents were sought by counsel for the claimant. The first mentioned document was created on 30 November 2017 (and modified the same day). The second was created on 27 March 2017. Governor O'Connor postulated that these documents had

been produced to “plug gaps”. It appeared to be of no further concern to him that these documents had been produced many months after their purported dates and were put in evidence before the tribunal with, we find, the deliberate aim of misleading the tribunal into believing that the respondent had complied with the requirements of its own policies.

373. By contrast we consider that to be a matter of utmost seriousness.

374. Governor O’Connor also accepted that he was at fault by not pursuing the use of force forms, not making enquiries as to why there had been no debrief after the incident, and making no reference to the failure to provide such documents in his investigation report. He spoke to the officers in question (in particular PO Adams, Punter and Johnson) as part of his investigation but did not challenge them about their failures to complete the forms. He described the lack of process as set out above as “causing him concern” but did nothing about that concern.

375. Governor O’Connell also made no enquiry about whether any action had been taken regarding the prisoner’s conduct (he had been placed on report) and sought to excuse this by saying that when he viewed the CCTV he did not think that prisoner A had assaulted the claimant.

376. He made no enquiry as to why PO Adams had – unlike every other prisoner on the floor – not locked Prisoner A up and whilst he said he did not accept he claimant’s view that Prisoner A had been “hiding” under the stairs he said he held this view because Prisoner A’s behaviour was of no concern to PO Adams.

377. PO Adams, however, was not recorded as being asked about this at all so from where Governor O’Connor knew this he could not say.

378. In his interview, Prisoner A admitted threatening both Prisoner D and the claimant. He complained, that PO Adams “booting” him while he was on the ground. No enquiry or action was taken in relation to that matter. He admitted punching the claimant and denied that the claimant had punched him. He said that the claimant had “jumped on his neck”. The claimant had made his contact with Prisoner A from behind, so that whilst he may have held that view, Governor O’Connor accepted that the claimant had not “jumped”. The police email referred to the clamant “plac[ing] his arms around the shoulders” of Prisoner A. Prisoner A was not allowed to see the CCTV footage of the incident.

379. Prisoner A also told governor O’Connor that he had been denied medical treatment. That prompted no enquiry or investigation.

380. Prisoner D had told Governor O’Connor that Prisoner A was “deteriorating” and was “going to kick off at some stage” which other staff were also aware

of. No enquiry into this aspect of the incident was made. D confirmed that prisoner A had walked away and returned to the altercation on one previous occasion and that he had adopted a threatening posture.

381. Prisoner E described A as being "violent on impulse" and having "massive mental health problems". He confirmed that A had been aggressive towards himself, D and the claimant whom he described as "very placid".

382. Notwithstanding all of those matters including the lack of process followed by the officers and managers involved in this matter Governor O'Connor made no reference to any shortcomings in process as part of his report which he submitted on 26th April and concluded that the evidence supporting the allegation consisted of the Thames Valley Police email, the CCTV and A's statement, but the only evidence against the allegation was the claimant's own statement.

383. Governor O'Connor accepted before us that that was not a fair representation of the position but had no explanation for that or any of the other shortcomings in his investigation.

384. Further there is a specific question in the pro-forma investigation report to ask, "Was any information not available? Why?" to which Governor O'Connor replied "no" which he knew, and admitted to us, was not true.

385. Ms Braganza invited us to find that the delays in Governor O'Connor's report, in particular the lengthy delay in interviewing prisoner A and his failure to investigate the actions of PO Adams were acts of detriment, undertaken because the claimant had made protected disclosures.

386. We do not find that to be the case. We find, on the evidence as presented, that the reason why matters proceeded as they did was because Governor O'Connor (Head of reducing re-offending at Woodhill) was aware of Governor Davis' view of the seriousness of the claimant's offence, that the matter was, in effect, a fait accompli from that moment on. Accordingly, requests for documents which would have assisted the claimant's position were ignored, the evidence which Governor O'Connor obtained which assisted the claimant was discounted and the obvious shortcomings in the behaviour of officers and senior officers after the incident on 7 December were simply glossed over or ignored. We are also satisfied that the driving force behind this was CM Laithwaite who was aware that the claimant's allegations as made to, in particular, Ms Leadsom, could now be considered outside the confines of Woodhill, despite the threats which had been made to the claimant of the consequences of raising complaint. It was, therefore, essential for the benefit of her and the "close knit team" that the claimant's complaints should not gain traction, and to that end that the claimant should be discredited.

387. By this time the claimant had also (in early April) contacted ACAS to commence early conciliation. The closed minds of the senior officers at Woodhill to any suggestion of wrongdoing were made apparent shortly thereafter. On 22nd April Melissa Hunt advised CM Laithwaite and Governor Kerr that the claimant had made complaint about bullying and harassment based on his sexuality. She added the words "sorry, Vicki" when pointing out that this included complaints about CM Laithwaite as his manager and then said – in an email which was meant to be a request for the collation of documents to enable the respondent to reply to the claim described the claimant's allegation that he had been asked by CM Laithwaite about his sexuality on "day 1" that "this doesn't seem plausible". It is noteworthy, however, that Ms Hunt was aware by this stage, and told both CM Laithwaite and Governor Kerr that these allegations were specifically made and that the clamant was complaining about being called "gay" and having his bag coloured pink. At this stage the claimant was under investigation but had not been told that he faced any disciplinary charges.

388. Governor Marfleet as commissioning manager should have fully reviewed and considered Governor O'Connor's report. Had she done so with care and with an open mind, she ought to have identified the shortfalls in the report and the conduct of officers after the incident on 7 December. She said in evidence that she read the report "very carefully". She said that she agreed with the recommendation that the claimant should face disciplinary action "given the evidence of the CCTV footage, coupled with that obtained in interview of the witnesses". The obvious failures of process and the overlooking of the statements of witnesses whose evidence assisted the claimant in his case (that he was seeking to restrain A and ensure he returned to his cell in a situation where he was in fear of violence) appears not to have become apparent to her on her careful reading of the report.

389. However, what Governor Marfleet did was to pass the report to Governor Davis (thus completely circumventing the idea that he was to remain "impartial" and not part of the process) with her recommendation with which Governor Davis agreed. Notwithstanding that the investigation report was completed on 26 April and passed to Governor Marfleet that day she did not refer it to Governor Davis until 12 May and he endorsed his agreement to the commencement of a disciplinary process on 16 May.

390. Under the respondent's policy a decision regarding further action following an investigation must be taken within two weeks of receipt of the investigation report unless there are acceptable and justifiable reasons for delay. Neither Governor Marfleet nor Governor Davis explained the delay in this case.

391. Two things had happened between the submission of the report and the decision to proceed. The first is that a "briefing note" was prepared by Mark

Johnston, staff officer to Mr Vince. That note is dated 28 April 2016 (two days after the investigation report was completed and 14 days before Governor Marfleet made her recommendation. It states that "the prognosis is that Mr Plaistow is highly likely to be dismissed for misconduct".

392. The second is a letter from Mr Vince himself dated 9 May sent to Mr I Mulholland, Director of Public Sector Prisons stating that "a date for [the claimant's disciplinary hearing] had yet to be set as the interview tapes are currently being transcribed. However early advice from the Governor is that the CCTV is so overwhelming that dismissal is a potential outcome".

393. When asked about this, Mr Vince confirmed that "the Governor" was Governor Davis. We note that this letter, purporting to state that a disciplinary date was no yet fixed, was dated before a decision to proceed to a disciplinary hearing had been made.

394. The correspondence and briefing note related to the grievance which the claimant had sent to Mr Spurr on 11 March 2016 (and also sent to Mrs Carpenter, HR Director and National Offender Management service) complaining of verbal and physical abuse at Woodhill on the grounds of the claimant's sexuality. He asked that the grievance in question should not be passed to either management at Woodhill or to Mr Vince. We refer to this document as the grievance to Mr Spurr, but it is of importance that it was also brought to the attention of the most senior HR person within NOMS.

395. That grievance was both a protected act and a protected disclosure, the claimant making a series of allegations which would amount to breaches of the equality act and which he made in the reasonable belief that they were in the public interest and indicated breaches of legal duties by the respondent.

396. Governor Davis admitted that at the time he made his decision to refer the claimant for disciplinary action he was aware of the grievance raised with Michael Spurr. We are satisfied that he was also aware of the contents of it and was the source of the "prognosis" in the briefing note as well as the comment recited by Mr Vince in his letter.

397. Michelle Jarman-Howe was commissioned to investigate the claimant's grievance and Governor Griffin (Governor at HMP Frankland) was commissioned to act as disciplinary officer.

398. Precisely who commissioned him was not clear, even to Governor Griffin. There was no document setting this out. Governor griffin said that he thought Mr Vince had telephoned him to carry this task out but his recollection was "vague" and that it might have been Governor Davis. We conclude that both of them spoke to Governor griffin about this.

399. Governor Griffin confirmed in evidence that he knew there were errors and omissions in the investigation report and that documents such as use of force forms and other reports which should have been prepared immediately after the incident on 7th December had not been produced as part of the investigation. He told us, however, that it was not "his remit" to deal with that. He said that errors or omissions in the investigation were matters to be dealt with by the commissioning officer (Governor Marfleet) and when asked by the tribunal what should happen if Governor Marfleet had failed to raise those issues he repeated that it was "outside his remit". He told the tribunal that "if it's not in the investigation I am not looking at it" and that his remit was "not to look for evidence, it is to test that evidence" and "if it's not in the investigation report even though I know it should be I am not going to go looking for it because that is not within my remit".

400. Thus, the disciplining officer was aware that there were errors and omissions in the investigation report, could have requested further investigation and the production of missing documents and could have taken steps to rectify what was in his own view an inadequate investigation but he did not do so because that was not within his "remit". That "remit" was not written anywhere.

401. Remarkably Governor Griffin expressed the view, in evidence, that the missing documents, in particular the use of force forms, "didn't alter what happened" and that he considered whether the missing information would have made a difference but "it didn't" but he could not explain how he could come to the conclusion that contemporaneous documents would have made no difference to the issue when he did not know what was in them although he did eventually say that he "took the point".

402. Governor Griffin denied that he was aware of the nature of the grievance raised by the claimant. He said that he was aware that a complaint had been made but he did not know what it was about and described it as something "going on in the background". We do not find that credible. The claimant's letter to Mr Spurr had, notwithstanding its' contents and the specific request within it, been passed to Mr Vince's office (hence the briefing note and the letter to Mr Mulholland). Mr Vince and/or Governor Davis had commissioned Governor Griffin to undertake the disciplinary hearing. Governor Griffin admitted that he knew the claimant was complaining that PO Adams in particular was treated very differently to him following this incident. He knew the claimant had raised grievances and we are satisfied that Mr Vince and Governor Davis, as part of their verbal "commissioning" of Governor Griffin told him what the grievance was about. The casual distribution of information regarding the claimant's complaints, from the initial letter to Michael Spurr onwards, including – notwithstanding the specific request in his letter – his letter to Michael Spurr of 11 March 2016, would we find, have included telling Governor

Griffin not only about the most recent complaint and the claimant's history, but also that Governor Davis had already formed the view that the claimant ought to be dismissed, a view with which Governor Griffin was willing to agree and thus he approached this entire process with his mind already made up. We have reached that conclusion because there is no other credible explanation for the way the disciplinary hearing was conducted.

403. It was Governor Griffin who told the claimant that the charge he was facing was one of potential gross misconduct, the matter being simply referred to as "misconduct" during the investigation process. Under the respondent's policies in determining what level of misconduct the alleged misconduct constitutes the commissioning manager must take into account the member of staff's current disciplinary record.

404. Governor Marfleet was the commissioning manager but she did not make this decision, it was Governor griffin, who accepted that he had not looked at the claimant's disciplinary record before making his decision. Nor could he explain what it was about this incident which turned it from "assault" which is described as possible misconduct to "assault" as defined as possible gross misconduct.

405. We have already found that Governor Griffin was unwilling to accept any of the reasons the claimant advanced for his seeking to restrain prisoner A when he was turned away from him. Governor Griffin advanced several other things which the claimant is his view could or should have done instead of what he did. He also, however, discounted those parts of the evidence of others which did not fit his own analysis. He said under crossexamination that he did not agree that prisoner A had struck the claimant, yet Prisoner A himself admitted he had done so (and faced no internal
action as a result – he was placed on report but the hearing was never held. When he refused to attend it was simply left in abeyance). The claimant's representative was only able to view the CCTV on the morning of the hearing itself and Governor Griffin refused what we consider to have been a reasonable request for an adjournment in the light of that.

406. Governor Griffin, we conclude, approached this matter with a completely closed mind. He refused to look into the failures of process after the incident and ask why they had occurred, he refused to look into the inadequacy of the investigation report, he refused to accept any evidence from the witnesses which did not fit is pre-formed view and he determined that all the lead up to the incident, which the claimant said established the context for his actions (believing that A may turn around again or get a weapon – he had been found with a weapon in his cell previously) was irrelevant because "that part" of the incident was "over" (notwithstanding that in Governor O'Connor's report he set out that whole incident had to

be viewed as one continuing incident). He refused to consider the claimant's comment that he did not know that A was simply going to go back to his cell at that time (he had refused to do so previously and walked away and turned back once before during the incident) saying that "you don't know that he wasn't". The claimant had reminded Governor griffin that not only had A walked away and returned on one previous occasion but that he had been assaulted on a previous occasion by a prisoner walking away and turning on him. None of this was taken into account by Governor griffin at all.

407. He also said that had the claimant admitted he had been in the wrong he would not have dismissed him. There is nothing in the respondent's policies which permits this sort of "plea bargaining" and the policy requires penalties to be determined on a case by case basis. Governor griffin did not consider any penalty other than dismissal or a final warning, and justified his dismissing the claimant on the basis of a loss of trust because he could not be sure that this was not a "one-off" and Governor griffin is an experienced officer. He has been in the prison service for 35 years, and for 11 years has been a Governing Governor. He prays his experience in aid in his evidence. That evidence was, however, most unsatisfactory. He failed to answer questions directly, he was guilty of obfuscation and diversion in his answers and engaged in what amounted to verbal jousting with the claimant's counsel. This was a reflection of what Ms Braganza on behalf of the claimant characterised as his badgering and oppressive questioning of the clamant during the disciplinary process, a characterisation with which we agree.

408. We conclude that this went beyond mere unfairness, it was a deliberate approach which was taken to ensure the outcome which Governor Griffin had pre-determined as a result of information given to him by Mr Vince and Governor Davis, including Governor Davis' own view that he claimant ought to be dismissed.

409. We conclude that Governor Griffin was a willing participant in a process which was designed to ensure the removal of the claimant from the respondent's employment. Prior to this investigatory and disciplinary process commencing the claimant's complaints had been hidden within Woodhill and ignored including in the case of the report from the Corruption Prevention unit, that unit being falsely told that matters were being investigated internally as a "serious management issue" had been identified by CPU. That concealment continued with the redaction of that document. Once matters had been raised outside the prison service, however, in particular to Ms Leadsom, but also to the Director of HR within NOMS we conclude that there was a determination that the claimant would be discredited, the aim being to stop his (legitimate and honest) complaints gaining traction and having credibility. Governor Davis and CM Laithwaite were, we find, the driving forces behind that process. That explains the early determination of the likely outcome by Governor Davis, the wholesale

lack of process around the incident on7 December and the indifference CM Laithwaite apparently had towards the claimant and lack of concern regarding his injuries after the incident with prisoner A.

410. We are also satisfied that the claimant has established facts from which we could conclude that his dismissal was an act of victimisation following the claimant's letters to Mr Selous, Mr Spurr/Mrs Carpenter and Ms Leadsom. It is not credible that the errors in the investigatory and disciplinary processes, carried out by senior and experienced officers within HMPS, were coincidental. None of those involved have sought to rely on a lack of competence or understanding. No non-discriminatory reason for the treatment has been advanced, so his dismissal was an act of victimization.

411. The dismissal was also clearly unfair. The Burchell test requires an employer to have a reasonable belief in the claimant's misconduct, founded on a sufficient investigation. The investigation was inadequate, as the investigating officer and the dismissing officer accepted. The belief (that the claimant was to be dismissed, i.e. that he had committed what would have to be characterised as gross misconduct) was formed at an early stage and well before the investigation was even complete. Thus the respondent's belief in the claimant's guilt was not reasonable, it was not founded on a sufficient investigation, it was rather that the incident on 7 December was seized on as a means of dismissing the claimant (who, uniquely, faced investigation and discipline despite the many-fold failings of officers involved in the incident, the conduct of Prisoner A and the allegation that one officer, PO Adams, had "booted" A whilst he was on the ground, an act of violence we consider to be potentially far more serious than the actions of the claimant on the day in question) who had, - notwithstanding the bullying, harassment and intimidation he had faced and notwithstanding the threats of what would happen to him if he made complaint about other officers – been bold enough to raise the issue of his treatment not only with the CPU, Mr Vince and Mr Spurr but also, and crucially, with Ms Leadsom.

412. Had we been required to do so we would in any event have found that dismissal was outside the range of rage of reasonable responses to this incident. If the claimant was guilty of anything it was of a failure to properly restrain A. He did not "jump on his neck" as has been suggested. The most accurate analysis of his actions is in the police email; where it is said he,

"…places his arms around the shoulders of Mr A. This causes Mr A to react and interact with Officer Plaistow".

413. No reasonable employer in these circumstances would have considered that to be an act of gross misconduct justifying dismissal. Even prisoner A did not criticise the claimant for what he did, admitting he had been "out of

order" and accepting that the claimant had not acted inappropriately. Governor Griffin could not explain the basis upon which the claimant's actions were considered gross misconduct and not merely misconduct (the offence of "assault" appearing in both parts of the respondent's disciplinary policy) and yet that was his decision.

414. The clamant has alleged that CM Laithwaite rang him on 27th May 2016 and asked him "what do you think you are doing putting in a grievance against the staff".

415. It is accepted that she called the claimant that day but said that she did so merely to advise the claimant of a change in her shift patterns so that Governor Kerr would be his point of contact in her absence.

416. We have already made findings about the reliability of CM Laithwaite's evidence. We accept the claimant's evidence in this regard. The grievance related to the abuse and intimidation the claimant had received at Woodhill and the challenge to him from CM Laithwaite was an act of victimization.

417. We finally turn to the investigation into the claimant's grievance. Ms Jarman-Howe asked Governor Blakeman to carry out the relevant investigation. The grievance was not upheld and as part of the process the claimant was not given a copy of the CCTV footage of the incident on 7 December. He cites both of those as acts of detriment for having made protected disclosures.

418. First, dealing with the CCTV footage, this was a controlled document. It should not have been copied to the claimant at that time.

419. Ms Jarman-Howe did not uphold the grievance because Governor Blakeman did not, in his investigation, find any reason why the grievance should be upheld. What Ms Jarman-Howe should have done was to read that report carefully, identify its' inadequacies of process and content and return it to Governor Blakeman to ensure a proper and thorough investigation had taken place. She did not do so but we do not find that she was motivated in her actions by the fact of the claimant's protected disclosures. She appears to us to have had scant regard for the seriousness of the allegations the claimant was making, the partiality and inadequacy of Governor Blakeman's report, or the overall context in which the claimant had raised his grievance, but we find that she viewed her role as a merely administrative one, to commission and receive the report and follow its' findings. She did not apply careful thought to the matter at all.

SUMMARY

420. The claimant suffered a campaign of direct discrimination and harassment on the basis of his sexuality or perceived sexuality throughout his period of employment at Woodhill. He was subjected to detriment for having made protected disclosures and victimised having made protected acts. He was unfairly dismissed and his dismissal was an act of victimisation.

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Employment Judge Ord

Date: 5 February 2019..

Sent to the parties on: 5 February 2019

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For the Tribunal Office