



EMPLOYMENT TRIBUNALS

Claimant: Professor Jeffrey Karp

Respondent: University of Exeter

Heard at: Exeter **On:** 11, 12, 3 and 14 September 2017

Before: Employment Judge Street

Representation

Claimant: In person

Respondent: Mr Midgeley of Counsel

RESERVED JUDGMENT

The claim in respect of unfair dismissal is dismissed. The claimant's breach of contract claim succeeds. The respondent's counterclaim is dismissed.

The respondent is ordered to pay damages for breach of contract. That is 8 days pay, gross, without statutory deductions, in respect of the balance of pay due with damages for loss of pension contributions over the period of six months and 8 days.

The quantification of those sums if not agreed is to be listed for further remedy hearing with a two hour time estimate.

REASONS

1. Evidence

- 1.1. The Tribunal heard from the claimant and from Professor Andrew Massey, Professor Ken Evans, Professor Debra Myhill, Professor Ken Evans, Toby Lott and Kirstie Johnson from Human Resources

("HR"), Professor Janice Kay and Michael Shore-Nye. The Tribunal read the documents in the bundle referred to.

2. Issues

- 2.1. The claimant claimed unfair dismissal and breach of contract. The respondent counterclaimed. The issues were as set out in the preliminary Order.

Unfair dismissal

- 2.2. What was the reason for dismissal? The Respondent asserts that it was a reason related to conduct or some other substantial reason, which are potentially fair reasons for dismissal under s. 98 (2) of the Employment Rights Act 1996. The Claimant does not know the reason for his dismissal but believes, in reality, that he was dismissed because of the events which arose in 2015.
- 2.3. Did the Respondent hold a genuine belief in the Claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances? The burden of proof is neutral here but it helps to know the Claimant's challenges to the fairness of the dismissal in advance and they are identified as follows:
- The Claimant claims that the Respondent did not genuinely believe that he was guilty of the matters which were alleged;
 - No complaint had been made by any individual and the Claimant maintains that he was never made aware of all four of the members of staff that he was supposed to have fallen out with. He also alleges that the identity of some of those relied upon by the Respondent changed;
 - His former wife was interviewed but the Respondent maintained that she had not been and it failed to disclose the evidence that it gathered from her;
 - The Claimant provided names to the investigator of witnesses which he considered relevant, but they were not interviewed;
 - The investigator asked leading questions and did not take notes or minutes of evidence which potentially supported the Claimant's case. The investigation was slanted towards a 'conviction';
 - The investigator's method of questioning witnesses was a cause for concern even amongst the witnesses who were interviewed
- 2.4. Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts? The Claimant contends that the allegations were not sufficiently serious so as to have justified his dismissal. He suggested alternatives to dismissal, including redeployment, in his letter of appeal which were not considered sufficiently or at all.
- 2.5. He also alleges that the decision to dismiss in his case was inconsistent with decisions taken in similar circumstances (he relies on the position of Professor Moss, a member of the Sociology Department who was not dismissed in similar circumstances).

- 2.6. Did the Respondent adopt a fair procedure? The Claimant challenges the fairness of the procedure in the following respects;
- The Claimant asserts that the choice of the investigator (Mr Lott) was unfair since he had been involved in the 2015 process;
 - He believes that he was effectively disciplined twice for the same matters (double jeopardy);
 - He alleges that he submitted written evidence in advance of the disciplinary hearing which was not included in the documentation which was seen by the panel before the hearing;
 - He further alleges that the investigator 'prosecuted' the case at the hearing;
 - He considers that the result was predetermined;
 - He alleges that he was not allowed to call witnesses at the disciplinary hearing; he was only allowed to call 2, although he had provided a list of 9 who he had wanted to call;
 - He also claims that he was not allowed to speak and/or effectively put his case forward at the hearing. He considered that the Respondent was seeking to impose time constraints; 7.5.8 He claims that these last two matters were in breach of the Respondents written policies;
 - He complains that the dismissal letter referred to witnesses who had apparently given evidence to the investigation, but who had not done so; 7.5.10 At the appeal, the Claimant alleges that the Respondent's policy required the chairman to have been an academic, but he was not; 7.5.11 The Claimant was further prevented from calling witnesses to the appeal hearing.
- 2.7. If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?
- 2.8. If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct? This requires the Respondent to prove, on the balance of probabilities, that the claimant actually committed the misconduct alleged.
- 2.9. Those were the agreed issues. By way of amplification, it is right simply to add that if the reason for the dismissal is some other substantial reason, was it of a kind such as to justify the dismissal of an employee holding the position which the employee held.

Breach of contract

- 2.10. The Claimant's case is that he ought to have received 6 month's pay ending on the last day of term, but did not. He alleges that the Respondent even acknowledged his entitlement, but still failed to pay him. He also claims that he was entitled to pension contributions during that period which were not paid and that there was no provision for him to have been paid in lieu of working his notice. It is not in dispute that that Respondent dismissed the Claimant without notice.

Employer's Contract Claim

- 2.11. The Respondent alleges that it paid the Claimant his notice in lieu of him working the period. It asserts that a gross payment was made in error and that he was notified on 18 October and requested to repay the overpayment of £12,555.02. He has not done so.
- 2.12. The Respondent claims that it is entitled to recover £10,695.25, being £12,555.02 less 8 days notice pay which was paid correctly (£1,859.77).
- 2.13. The Respondent could not identify any express contractual term that might be breached by the Claimant, but asserted that there was an implied term that employees would repay overpayments made in error.
- 2.14. The Employment Judge expressed some reservations about the viability of the claim and thought that it might be one of restitution and/or monies had received. The Tribunal's jurisdiction under the Extension of Jurisdiction Order would have to be considered at the hearing.
- 2.15. If the Claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy.
- 2.16. There may fall to be considered reinstatement, re-engagement and/or compensation for loss of earnings and/or breach of contract. Compensation for breach of contract may also have to be considered under the Respondent's counterclaim

3. Findings of Fact

- 3.1. These are the primary facts identified by the Tribunal from the evidence adduced. The discussion and analysis follows later.
- 3.2. Professor Karp was appointed as Senior Lecturer at Exeter University in 2006. He became Associate Professor in 2008 and Professor in 2010.
- 3.3. At no time during his employment with Exeter have there been formal grievances raised against him nor has he been asked to attend mediation.
- 3.4. Professor Massey became Head of Department for Politics in June 2010. He is now Professor of Politics, Associate Dean – Internationalisation and Development.
- 3.5. In July 2010, Professor Karp commenced as the Personal Investigator ("PI") for the Comparative Cross-National Electoral Research ("CCNER") project. Associate Investigators included Professor Vowles, Professor Banducci, Professor Bolleyer and Dan Stevens, later Professor Stevens. The project was funded by the Economic and Social Research Council ("ESRC").
- 3.6. Professor Karp was a founder member of the Centre for Elections, Media and Parties ("CEMAP"). For a time he was the Director of Doctoral Studies.
- 3.7. Prior to working at Exeter, he had been on the faculty of universities in the United States, the Netherlands and New Zealand. He has published over 80 academic publications, including many with co-authors. He has a successful record as a teacher and is regarded warmly and with respect by former students whose academic careers he has encouraged and supported.

External Work

3.8. The University of Exeter has policies which govern external work (D, 45) and leave of absence:

“Subject to sub-sections (b) and (c) below, the University expects Professors and staff in the Education and Research job family to devote their exclusive service to the University.” (45)

3.9. That prohibits the taking of another full-time job while employed at the University in a full-time post.

3.10. There are limited exceptions, as follows:

“Members of staff are required to disclose other employment to their College Dean. Provided there is no undue interference with the performance of normal duties of the member of staff, a member of staff may undertake literary work and occasional broadcasting without seeking permission. The University reserves the right to seek further information about such work where it has concern that there may be a conflict of interest or an impact upon the employee's normal duties.

3.11. There are further regulations about consultancy work, study leave and leave of absence

3.12. In relation to consultancy work, the provisions are expressly to ensure that consultancy is undertaken on a professional business basis, that the commercial interests of the University are protected and that conflicts of interest are avoided. Consultancy work is encouraged, but with the requirement that institutional consultancy must be managed in accordance with procedures approved by the University. Individual consultancy is authorised for up to ten days per annum, and must be disclosed. For periods longer than ten days,, exceptionally, more than ten days may be authorised, but the permission must be in writing.

3.13. Study leave is leave from normal teaching research supervision and other duties, in order to devote time exclusively to full-time research.

3.14. Leave of absence is leave for visits or secondments to other institutions for any purpose which the University considers suitable and on such terms and conditions as are appropriate (47).

3.15. International and cross-institutional co-operation are encouraged but within terms agreed by the University.

The Research Excellence Framework

3.16. At the periods concerned here, the University was subject to a grading system in relation to research known as the Research Excellence Framework (“REF”). Very simply put, the census date, in October 2013, grades were attached based on academics in employment undertaking research. The reputation of a UK university was in part founded on the REF returns which were important for attracting academics, students and funding.

2011

- 3.17. Professor Karp was married to one of his academic colleagues at the University and that marriage broke down in the period from 2010. They have children. There was litigation and it was a stressful period, which impacted on their work. They both worked on the CCNER, as well as being colleagues.
- 3.18. Professor Myhill is the Pro-Vice Chancellor and Executive Dean of the University. In 2011, she was Acting Dean.
- 3.19. In 2011, there were discussions between Professor Karp and Professor Myhill about leave of absence. He had had an offer of employment dated 23 February 2011 from the Australian National University (“ANU”) in Canberra which he showed her (191.19).
- 3.20. She told him he could stay, with inducements to remain, take the ANU offer, take the ANU offer from autumn 2011 until September 2013 on secondment (unpaid leave), or with 10% Exeter salary, or negotiate later for a similar arrangement from March 2012 (689.2). The inducements to remain were a period of study leave and an increase in pay of £3000 per annum. The Australian post paid double the Exeter post, and the scope for increasing his salary fell far short of competitive with what he had been offered.
- 3.21. Professor Karp was reluctant to take permanent employment in Australia, given that his children were in the UK.
- 3.22. The negotiations continued. Professor Karp was offered unpaid leave of absence, initially for one year from October 2012, and eventually for two years. His post at Exeter would be kept open for him. Professor Myhill initially conducted the negotiation, explaining the offer of unpaid leave as justified on compassionate grounds given Professor Karp’s marital breakdown.
- 3.23. An effect of Professor Karp taking leave of absence for the academic years 2012/13 and 2013/14, was that he would be absent on the census date for the REF.
- 3.24. To overcome that, there were discussions directed at keeping him on the payroll so that he could be returned as employed at Exeter on the census date. Professor Myhill proposed 10% full-time equivalent (“FTE”).
- 3.25. Professor Karp as the PI on the CCNER would have to maintain his involvement and work on that project throughout the period of unpaid leave and agreed to do so. 10% FTE would reflect his continuing role.
- 3.26. In terms of start dates, early on Professor Karp suggested that the unpaid leave would start at the beginning of the third term, the non-teaching summer term (so, from May 2012) following on the study leave booked for the first term in 2012. Professor Myhill pointed out that study leave had been offered as part of the retention deal, and was not additional to unpaid leave. (690).
- 3.27. Professor Myhill was working at first on the basis that the leave would terminate before the REF census in October 2013 (691). She was also expecting Professor Karp to be available for teaching and other duties prior to the start of unpaid leave.

2012

- 3.28. In May 2012, Professor Karp's full-time employment as a Professor of Politics at ANU began (121)
- 3.29. There was at that time no agreement in place relating to his absence on unpaid leave. He remained employed as a full-time Professor of Politics at Exeter.
- 3.30. There is no record of that employment being reported to Exeter University or to those with whom Professor Karp was negotiating for unpaid leave.
- 3.31. In 2012, Professor Myhill ceased to be Dean and Professor Van-de-Noort took over. The negotiations were concluded by Professor Van de Noort.
- 3.32. Professor Van de Noort knew that Professor Karp had an opportunity to work at the ANU on a salaried basis and would use his unpaid leave of absence to do that.
- 3.33. The arrangements were agreed in outline and verbally at some point in mid-2012. They provided for two years unpaid leave, during which Professor Karp's job would remain open for him.
- 3.34. Professor Van de Noort writes in September 212 (693) of having reached an agreement "some months ago". Professor Myhill had been in correspondence over the terms with Professor Karp during June and early July, making it likely that Professor Van de Noort is referring to the summer of 2012.
- 3.35. No email or record of the agreement referred to by Professor Van de Noort is produced earlier than that September 2012 email. That is the first record of the agreement. However, the University had, in reliance on the verbal agreement, already appointed a teaching replacement for Professor Karp by creating a new, permanent full-time post.
- 3.36. The email of 9 September 2012 points at some disagreement as to the actual arrangements entered into.
- 3.37. Professor Van de Noort was not happy with the proposal for 10% pay throughout and substituted 3 months at full pay from October to December 2013, covering the critical census date in October 2013.
- 3.38. The terms of the offer as clarified by Professor Van de Noort on 9 September 2012 were for Professor Karp
- to take unpaid leave for a year from 1 September 2012 to 30 September 2013, "in order to take up opportunity in Australia and continue PI duties for Exeter grant" (this refers to the CCNER PI role);
 - for the period 1 October 2013 to 31 December 2013, "FTE returns to 100% based at Streatham (one of the Exeter University sites);
 - from 1 January 2014 to 31 December 2014, further unpaid leave was offered "in order to take up opportunity in Australia and continue PI duties for Exeter grant"
 - from 1 January 2015 "FTE returns to 100% based at Streatham." (693, as corrected in the HR letter at 694).
- 3.39. Professor Karp's PI duties were to continue throughout the period of unpaid leave.

- 3.40. That Professor Van de Noort knew about the salaried role Professor Karp was due to take up in Australia is clear from his reference to the Australian salaries in that email, as being considerably higher than the Exeter salaries, so that Jeff Karp was the loser by the original 10% FTE proposed. What that comment also shows is that the intention, nowhere spelled out, was that the ANU salary would dovetail with the UK salary, so that Professor Karp would receive 100% of a full-time salary – that is why he would be the loser by an arrangement whereby 10% was paid at the lower, UK rate.
- 3.41. The proposal in that email reflected a teaching commitment at Exeter during the months of October to December 2013, as set out in the email from the HR Administrator (694). Professor Karp asked to be relieved of that in order to be able to devote himself to the research project.
- 3.42. Professor Van de Noort responded on 11 September 2012 to confirm that the arrangement would start on 1 October 2012, that the three months from 1 October 2013 to 31 December 2013 were to be dedicated to work on the CCNER project (ie, no teaching or related duties) and as to pension provision.
- 3.43. Professor Karp had left for Australia before that – the date is not established. Professor Massey had not known when he left or what had been agreed.
- 3.44. Unfortunately the letter finally confirming the arrangements was sent by HR to Professor Karp’s home address in mid-October 2012, so Professor Karp did not see it, although the terms were as agreed by Professor Van de Noort directly with him on 11 September 2012 (694),
- 3.45. None of the emails or letters produced refer to a full-time role at ANU starting prior to the autumn of 2012.
- 3.46. Professor Myhill knew that he had had an offer of permanent appointment from ANU in 2011, which he might have taken up in 2012, and Professor Van de Noort knew he had an offer of employment at ANU for which he would be taking unpaid leave.
- 3.47. Both confirm that they were not aware that Professor Karp had taken up full-time employment at ANU at the same time as he was full-time at Exeter (702 and 702.1) They did not authorise full-time employment with full salary in payment at the ANU concurrent with that at Exeter. The correspondence is about unpaid leave, authorising employed work elsewhere during that unpaid leave. It was not agreed that salaries could be received from both universities at once. Professor Van de Noort says that “No verbal or written agreement was given for the unpaid leave to start before the 1 October 2012”

Appointment as Head of School, ANU

- 3.48. Professor Karp was formally engaged as the Head of the School of Politics and International Relations at ANU from 1/07/13, although the ANU note that he took some time away from those duties between January and June 2014. They do not say that he took time away from those duties between October and December

2013. This was initially a three year appointment, but it ended on 30/06/14.

- 3.49. That he was known by Professor Van-de-Noort to be employed as Head of Department at ANU was confirmed in response to Andrew Massey's email of 5 September 2013 (699). Professor Massey said "He is now Head of Department at ANU,,,,, so I don't know if that has been factored into his October return". Professor Van de Noort confirmed that "Jeff was always going to be 100% employed by Exeter during the REF census data, as I have confirmed before and there is no change in this position."
- 3.50. Professor Van de Noort does not recall any correspondence with ANU to arrange matters with them as to Professor Karp's employment with them during that three month period, such that it was agreed with ANU that payment and commitment would be as to 100% by Exeter.
- 3.51. No condition was imposed expressly on Professor Karp as part of this agreement that his ANU salary and employment would cease or be suspended during this period, beyond the contractual conditions of employment.
- 3.52. Other members of staff had arrangements that afforded them a honorarium or a contribution to salary from Exeter while working on a paid basis at other universities. Some such arrangement in fact applied in respect of Professor Jack Vowles and Dan Stevens, another colleague of Professor Karp who was paid an honorarium by ANU during the period when Professor Karp was working there. Further details of the payments made or the basis for them do not appear in the evidence.
- 3.53. Professor Karp's engagement as Head of School ended on 30/06/14 and his engagement with ANU ended altogether on 25/10/14.
- 3.54. He received full time salaries from the two institutions from 1/05/12 to 30/09/12 and 1/10/13 to 31/12/13 (206).

CCNER

- 3.55. In July 2013, Nadine Bollyer ceased her active involvement with the CCNER project. In her email, she reported that she had secured a five year funded project, and with that, she was well over 100% committed (53)
- 3.56. She had already had discussions with Professor Myhill, complaining of Professor Karp's management of the project and attitude. She had been asked informally to undertake the PI role, without Professor Karp standing down, but she refused. She understood others had also been asked and had refused. She was concerned about her name being associated with the project, on which failures or poor review might damage her future prospects academically in particular in relation to securing future grant funding – essential for an academic career. Professor Myhill had to tell her that she could not simply withdraw from the project – the procedures did not permit her name to be removed.
- 3.57. Professor Myhill had had concerns about the project herself. She had been copied into emails from Hannah Pike and Roz Davies indicating that they were concerned about the ESRC

reporting requirements and the impending deadlines, and whether Professor Karp was taking those seriously.

- 3.58. On 6 August 2013, Professor Myhill wrote to Professor Karp. A letter had been received from Christopher Carlton of the ESRC expressing concerns about the project and report and requesting a redrafted report (54). The letter was detailed in its criticism and made specific requests for additional and clearer material, noting for example, that “We would like you to provide a management plan to address how the project is operating given that the team seem to have dissipated away from Exeter...” A meeting was proposed after the redrafted report was received.
- 3.59. To her, such a letter was exceptional, a major alert, and raised immediate and serious concerns.
- 3.60. She headed the email to Professor Karp “ESRC Concerns - IMMEDIATE RESPONSE REQUIRED, Importance HIGH”. The email conservatively described “some concerns”. However, she imposed a deadline for a response, the letter to be seen before being sent, and she warned that the issue might affect Professor Karp’s academic reputation as well as the reputation of Exeter University as a future fund recipient. (54) It expresses anxiety unequivocally and calls for an effective and prompt response.
- 3.61. In August 2013, Professor Myhill and Professor Karp met in the UK to discuss her concerns. He denied any problems, although data collection was outstanding. She asked for regular updates – the problems were “more concerning” than she had first understood.
- 3.62. A poor grade on the CCNER project could damage future applications for grant funding from the University or the academics involved.
- 3.63. Professor Myhill continued to require information from Professor Karp and to monitor progress on the project.

2014

- 3.64. In January 2014, while on holiday with his children in the United States, Professor Karp fell and sustained an injury to his knee.
- 3.65. On 20 June 2014, his role as Head of School at ANU came to an end – it had originally been a three year term (121). That was information provided to Exeter University by ANU in an email containing other details of Professor Karp’s employment, dated July 2015.
- 3.66. The School of Politics was expanding. Office accommodation was at a premium. Professor Karp’s room had been kept for him until September 2014 but at that point it was converted into accommodation for two academics to share and his belongings put in storage. Nicole Bolleyer organised this, and she offered to retrieve things he needed for his research before the room was packed up. Professor Karp protested at the disruption of the loss of his room but Professor Massey confirmed that anyone absent from the University had to vacate their room until their permanent return (59). Professor Karp raised the issue repeatedly,

with HR in December 2014 and with Dr Reifler in March 2015, Professor Karp being very reluctant to accept the decision (106).

- 3.67. In early October 2014, Professor Myhill was still expressing concerns about the CCNER project and asking for confirmation that data collection was complete. No funds could be spent after the end of December, so time was running out. Professor Karp suggested he return early from his unpaid leave, and that he would be writing up the report in the spring. He asked for his office back and to be relieved from teaching on his return. Data collection was not complete. Professor Karp had at some stage obtained an extension due to his accident in January, and no more could be granted, having had the maximum allowed (68) as he acknowledged to her on 14 October.
- 3.68. Professor Myhill did not grant any extension of study leave for the purposes of the report. He was needed for teaching and his role from January was not funded by any research grant.
- 3.69. Professor Karp also asked Professor Massey in November about research leave to finish the project in the spring but Professor Massey also told him that the teaching obligations meant that would not be possible (witness statement para 12/ 116).
- 3.70. Professor Myhill expressed concern at data collection being behindhand, since she had seen November as necessary for data analysis, with a view to returns being made by the December deadline. The funds had to be spent by the end of December (366/74).
- 3.71. On 24 October 2014, Professor Karp emailed Andrew Massey, asking for a time to discuss the teaching expectations for him in January 2015.
- 3.72. Professor Massey replied asking him to discuss teaching with Jason Reifler, as Director of Education.
- 3.73. Professor Karp's last day at ANU was 25/10/14. He did not report that that employment had ended to Exeter University or say that to the colleagues with whom he was in touch over research or teaching plans (121).
- 3.74. On 29 October 2014, Professor Karp and Jason Reifler met using Skype. It is agreed that that was a lengthy discussion – Professor Karp puts it at around an hour, as does Reifler in his first report.
- 3.75. Dr Reifler reported to Professor Massey on 30 October that he had not been able to assign the Professor any teaching assignments because it was not clear when he was coming to the UK.

“As he explained it to me, he needs to have knee surgery in Australia in January. He additionally says that the post-op instructions will include a ban on flying (for an unknown period of time) He anticipates going on sick leave immediately (or nearly immediately) upon returning the payroll in January, again for an unspecified period of time.”

- 3.76. From the conversation, Reifler was unable to say when Professor Karp would be back (77)

- 3.77. The report from Mr Reifler was that this report had been “At the conclusion of the call...” (78)
- 3.78. This was the first report that Professor Karp would not be returning to teach in January 2014, or that he required planned surgery, although he followed up with an email giving an estimated 6 – 7 week absence from a date in January to HR (76)
- 3.79. In the subsequent investigation meeting with Mr Lott (245) Dr Reifler reported again that the discussion about sick leave was at the end of the meeting: “a meeting via Skype which continued for approximately 90 minutes and concluded with JK leaving the meeting saying he would be going on medical leave.” (246).
- 3.80. In a later investigation meeting, also with Mr Lott, on 15 June 2016, Dr Reifler said,
- “JK asked for no teaching (in order to write a grant final report); light teaching and team teaching so he could share the load. JK also said that the standard teaching load JR (sic) was asked to fill was an increase over his previous load. After approximately a one hour conversation where JR did not grant any of the things JK asked for, JK said he would be going on sick leave anyway.” (341).
- 3.81. Professor Karp did spend some time back at the University of Exeter that autumn, borrowing Andrew Massey’s room, while working on the project. He was at a workshop for the project on 15 December 2014 in California. He flew back to Australia, meeting Professor Jack Vowles at Wellington University in New Zealand to prepare a chapter for a book, and then back to Canberra, in order to undergo surgery on his knee in January.
- 3.82. While Professor Massey had asked for a full medical report to be obtained, it is not clear that HR required anything other than a sick note at the point when Professor Karp underwent surgery. Professor Karp did not provide any detailed medical evidence. The nature of and reasons for surgery remained undefined.
- 3.83. On 17 December, Professor Massey emailed Professor Karp about the spring schedule, setting out that although Professor Karp had asked for professional leave, that had been refused and the medical leave process was not complete. Accordingly he would be scheduled for teaching, although if leave was granted, he would be replaced (86).
- 3.84. In response, Professor Karp confirmed that he would be taking sick leave in early January to undergo surgery and would be unable to return to work for about seven weeks. He would be providing a medical certificate. He didn’t comment on the teaching topics allocated to him, although it did not include American Politics, Professor Karp’s preferred subject, for which he had been asking.
- 3.85. Professor Massey thought the surgery elective, did not understand why it could not be done in England on Professor Karp’s return and wanted to see medical certification. As he explained at the first investigation meeting in May 2015,
- “Jeff was opting to have the operation on his ankle in January to correct the damage from a road traffic accident. I was concerned about this, as if it was urgent, then it should have been done in

Australia or he should have come back to the UK and have it done under the NHS” (116).

- 3.86. Professor Karp was only asked to provide doctor's certificates.
- 3.87. Professor Myhill was continuing her supervision of Professor Karp's management of the CCNER project and also wondered if the surgery timing was helpful – she took advice as to whether they were entitled to suggest rescheduling, given that no further extensions for the project were available (80.1).

2015

- 3.88. Neither Professor Myhill nor Professor Massey heard from Professor Karp at the start of the New Year. He was due back at Exeter on 1 January as per the agreement. They had not had confirmation of medical leave. He was not at that point covered by any medical certification.
- 3.89. On 11 January, Dr Reifler asked advice from Professor Myhill about the teaching, having had no further news and wanting to be sure that the students were taught and the substitutes he had arranged knew what their commitments were.
- 3.90. HR made enquiries of Professor Karp and on 12 January, Jane Browning in HR reported back that the surgery was scheduled for 13 January. That was the first notification of the date.
- 3.91. Professor Karp had indicated that he would be working on a proposal for grant funded research while off sick and emailed Dr Reifler to review his proposal on January 21.
- 3.92. On 29 January 2015, the Orthopaedic Surgeon provided a medical certificate confirming that Professor Karp had undergone a medical procedure on 13 January and would not be able to fly for six weeks (97).
- 3.93. On 9 February, Jane Browning reported receiving a doctor's letter for Professor Karp saying he was unfit for work until 23 March 2015, a note greeted with marked frustration by Professor Myhill and Professor Massey.
- 3.94. Ultimately, he was accepted as on authorised sick leave from 13 January 2015 to 22 May 2015 (355).
- 3.95. In March 2015, Dr Reifler emailed Professor Karp about the plans for teaching and marking. Marking had been allocated to him for the third (summer) term – a non-teaching term - and for the autumn, a standard load of courses allocated. The email is friendly. Dr Reifler has a reputation for getting on well with people, in a role that is capable of producing resistance to his proposals.
- 3.96. There were a number of exchanges, including detailed explanations as to why the courses put forward were appropriate from Dr Reifler and explanations from Professor Karp as to why they were not. It ended without agreement and on 9 March, Dr Reifler referred the allocation of teaching to Professor Massey to resolve (104),

“Hi Jeff

I think our conversation has reached a bit of an impasse. I will pass this over to Andrew while I am still in good spirits and hopefully before either of us is upset.”

- 3.97. Professor Massey’s evidence is that this is unprecedented – the role of Director of Education is difficult, what courses people do can be contentious, but ultimately the Director’s decisions are respected. He confirmed Dr Reifler’s decisions regarding the teaching schedule (106). He offered some additional training and mentoring to assist with adapting back to Exeter and to the enlarged department.
- 3.98. Professor Karp wanted to teach American Politics and he wanted his old room back. The correspondence ended with Professor Massey refusing Professor Karp’s requests.
- 3.99. On 28 March 2015, Professor Karp flew back to the UK. He did not get in touch with his colleagues who did not know he had returned.
- 3.100. In early April, Professor Massey learned of some concerns from colleagues of Professor Karp at Canberra and also that Professor Karp was shown on the website of Sydney University as a visiting fellow. He understood that Professor Karp may have been working for Sydney or ANU or both during his sick leave. He was confident of his source, a senior professor, who shared concerns about Professor Karp’s conduct.
- 3.101. Professor Massey was unhappy at relying on the medical evidence provided.
- 3.102. Professor Myhill had not known of the Sydney role and her comment was that, “Surely this is deception!”
- 3.103. Professor Myhill and Professor Massey were still unaware of Professor Karp’s return to the UK (161).
- 3.104. Two members of the department at Exeter had spoken to Professor Massey about their concerns about Professor Karp’s proposed return. Professor Bollyer did not want to work with him again. She felt there had been a breakdown of trust in the team that had endangered the delivery of the CCNER project, that he was not reliable, that he was impossible to work with and intimidating. She said she would consider alternative employment if she had to work closely with him again. Dan Stevens also expressed concern, echoing those concerns. Others did too, but did not wish to be identified – nor had Dan Stevens, who had continued to work with Professor Karp both on the CCNER project and on a visiting basis at ANU.
- 3.105. By 22 April, Professor Massey had learned that Professor Karp was in the UK and arranged to meet him with Geoff Williams from HR (111)..
- 3.106. Professor Karp was on sick leave, now certificated by his UK GP, and on 6 May asked permission to work on the CCNER project while off sick, with the final deadline for the academic report on 15 May. That was granted.
- 3.107. On 11 May, Professor Massey was interviewed by Professor Robinson and Lisa Pacey from HR, about his concerns. The topics identified were whether or not Professor Karp had undertaken paid or unpaid employment with the University of Sydney without

Exeter's permission, whether he had been working or fit for work while medically certificated as unfit for work and as to whether he had brought the University of Exeter into disrepute as a result of his conduct whilst on unpaid leave and working at ANU (115).

- 3.108. Professor Massey passed on a number of pieces of information given to him by colleagues in the UK and Australia that raised concerns about Professor Karp's conduct, including as to where he was working and what his state of health was (115 -119). Professor Karp had, for example, been listed as a resident research fellow at Sydney for the second semester (159), of which he had not notified Exeter or sought consent. There were allegations that while certified unfit to fly, he had been flying from Canberra to Sydney and he was due at a conference in Chicago.
- 3.109. Enquiries were made of ANU. On 6 July, ANU responded with the dates of Professor Karp's employment and summarising concerns identified as allegations of serious misconduct (121).
- 3.110. Professor Karp was immediately suspended with investigation to follow into gross misconduct due to fraud, a decision made by Jacqui Marshall of HR (120).
- 3.111. Dr Reifler was not told of Professor Karp's suspension, and did not arrange cover for his teaching in the autumn term, which did nothing to improve working relationships. The very late cancellation of his course lead to anger and adverse publicity in the student magazine, rebounding on Dr Reifler as Director of Education.
- 3.112. There was a disciplinary hearing on 2 October 2015. It was conducted by Professor Robin Mason, Pro Vice-Chancellor and Executive Dean.
- 3.113. The allegations were:
- That Professor Karp had worked in paid or unpaid employment at the University of Sydney while on sick leave
 - That he may have been working or fit for work while off sick
 - That he was employed on full pay by ANU when also employed on full pay at Exeter without the knowledge of approval of senior staff at Exeter and therefore acted dishonestly in his conduct
 - Whether issues of serious misconduct made by ANU constitute behaviour bringing the University of Exeter into disrepute
 - Whether travel and expenses claims were legitimate in the light of information from ANU.
- 3.114. Professor Mason dismissed four of the five allegations.
- 3.115. It was confirmed by Professor Karp that he had travelled to Sydney University to attend lunch appointments and seminars during the period of certified sick leave from January 2015, but it was not confirmed that he was working at Sydney University. It was accepted that the activities were related to Professor Karp's academic interests (175). Professor Karp had explained that the

Sydney role was not an employed position and would have started in July 2015, during Exeter's summer break (162).

- 3.116. The finding from ANU on the disciplinary matters had been that Professor Karp's performance was deemed to have fallen below that expected of a senior staff member and Head of School but was not serious misconduct and no damage to Exeter's reputation had been identified.
- 3.117. Professor Mason recommended that Professor Karp be given advice and guidance on the University's expectations of him with respect to leave arrangements and travel expenses.
- 3.118. The third allegation, relating to being on full pay from two universities at the same time was seen as the most serious of the matters under consideration. Professor Karp confirmed that that had happened.
- 3.119. In relation to the period from May 2012 to October 2012, Professor Karp had said that it was agreed that he would receive salary five months in advance of taking up his position at ANU. Professor Mason had reservations as to whether that was credible.
- 3.120. Professor Karp relied on verbal consent to his receipt of two full-time salaries from two Universities, from Professor Van de Noort. The absence of written confirmation represented a failure by the HR department and the loss of minutes of a meeting. He equally relied on ANU being aware of the arrangement, notwithstanding a statement from the head of HR at ANU that they didn't know that he was working at both universities (144). He had no written corroboration that either University was so aware.
- 3.121. Professor Mason adjourned for enquiries to be made. He expressly said that Professor Karp would be invited to a further hearing.
- 3.122. No further evidence was obtained from ANU but Professor Myhill and Professor Van de Noort were consulted in relation to the terms of the agreement for unpaid leave. Both denied any knowledge that Professor Karp would be paid by ANU while still employed by Exeter, Professor Myhill adding, "I can see no reason as to why we would ever have agreed to such a request."
- 3.123. Advice was then sought from Toby Lott in HR as to whether the disciplinary hearing should be reconvened and if so as to the membership of the panel. Not knowing the history, and in particular not having seen the letter in which a further hearing was promised, Toby Lott gave general advice primarily recommending that if reconvened, the panel must be the same (182) Mr Lott was not otherwise involved in this investigation.
- 3.124. On advice from HR, Professor Mason then wrote to Professor Karp on 17 November 2015, dismissing him on the grounds of gross misconduct, without calling a further hearing (185).
- 3.125. What had been at issue, given that Professor Karp openly acknowledged receipt of full-time salaries from both universities, was what the arrangements were that had been agreed with Exeter. Professor Mason concluded that it had been Professor Karp's responsibility to obtain a clear written agreement with the Dean on the terms of his period of leave. Only he would know the terms of the contract and payment arrangements with ANU. He had

presented no evidence that the University of Exeter had been made aware of the exact arrangements, which had only come to light in the course of this investigation (186).

3.126. Professor Mason concludes,

“I uphold the allegation that you were employed on full pay by ANU at a time when you were also employed on full pay at Exeter without the knowledge or approval of senior staff at Exeter and, therefore, acted dishonestly in your conduct.”

3.127. He took into account the length of the period during which the Professor had received full pay from both universities and found serious gross misconduct. The dismissal was without notice (187).

3.128. Professor Karp appealed (191.1 – 191.22). There were 12 grounds of appeal, many procedural.

2016

3.129. The appeal hearing was chaired by Professor Ken Evans and took place on 29 January 2016. Professor Evans is a Professor of Materials Engineering and the Executive Dean of the College of Engineering, Mathematics and Physical Sciences at the University of Exeter. He had no prior knowledge of Professor Karp. He had dealt with disciplinary proceedings before and had conducted appeal hearings. He was on a panel with Professor Djordjevic and Kate Mackay. They had HR advice.

3.130. Professor Mason attended and explained his decision.

“2 things were prominent. 1. This was significant misconduct, 8 months of receiving a professorial salary from 2 Universities which could not be ignored. 2. Growing sense that the bond of trust between employer and employee was lost. Both together, serious and misconduct led to the decision to dismiss.”

3.131. Professor Karp maintained his account that he had been offered employment at ANU to start in May, saying again that he had been told he need not attend but that they would lose the money for the post if he did not start before the autumn. He said he was told it was in his interests to receive money to use later for expenses, so he was put ‘on the books’ but didn’t need to be there. He said he disclosed this in March 2012 to Professor Van de Noort who was not concerned about it (201).

3.132. At the close of the hearing, after some 3 and a half hours, the minutes show Professor Karp speaking of the profound effect on him that this had had and in the course of that saying “I will gladly give all the money back, I did not intend to defraud the University, I want my job back”.

3.133. That was part of Professor Karp’s final statement. There was no discussion of it.

3.134. Professor Karp acknowledges making some such statement, specifically acknowledges saying “gladly” but denies that he offered or intended to offer repayment of salary. The panel members and

the HR adviser agree that that that was what he said – perhaps not the precise words but as to the meaning and content.

- 3.135. That statement had a profound impact. Professor Evans discussed it with his HR colleague as they left the venue, agreeing that it represented a recognition of wrongdoing, remorse, an element of contrition. That was a factor in the decision taken as a panel to change the outcome of the disciplinary action.

“First it implied an acknowledgement that Professor Karp had known that he had done something wrong. Secondly, it represented a positive resolution to this matter and would ensure that Professor Karp was not unjustly enriched. It was an acknowledgment of the seriousness of the offence.” (witness statement)

- 3.136. The panel concluded that it was common sense that an academic should not get paid twice for the same period of time. It is not uncommon for members of staff to undertake different roles on an ad hoc basis and potentially receive remuneration for them. It is another matter and very exceptional for an employee to knowingly receive payment from two universities to cover the same period of time, and the duration and sums involved were significant. This was dishonest conduct and seriously damaged the trust and confidence the University could have in Professor Karp. It brought the University into disrepute (witness statement).

- 3.137. The panel took into account the failure to reconvene the hearing and the expression of remorse as a basis on which to reduce the sanction for the gross misconduct to a final written warning. That decision was issued on 19 February 2016.

- 3.138. In the meantime, there had been some correspondence between Professor Karp and Jacqueline Marshall, Head of HR, who had not been present at the appeal hearing or on the panel. That correspondence was without prejudice but Professor Karp waived privilege in respect of his email of 10 February 2016.

- 3.139. He comments that he sees no difficulty in reintegrating at Exeter, albeit willing to engage with any concerns. He sets out that he is entirely flexible with regard to teaching, accepting that “I may not be able to walk straight back into the classes that are my speciality” given that for this semester those classes are assigned to someone else. “I am willing to participate broadly in the needs of the Department until I can most usefully integrate back into the teaching and research programme.”

- 3.140. With regard to the question of reimbursing the University, he says the University would need to quantify and assess what the costs are.

“I did offer to repay any losses suffered by the University due to any misunderstandings about my leave. I can’t see that the University has suffered any loss but you may have a perspective that you haven’t put to me.”

- 3.141. He objects to being asked “to buy myself back into my job.”
 3.142. That email undermines any sense that Professor Karp felt that he had been guilty of wrongdoing – he says he had been

unjustly accused. It does not echo the remorse the panel thought they had identified.

- 3.143. The outcome of the appeal was notified by letter on 19 February 2016, setting out a specific finding of dishonest conduct and undermining trust and confidence and bringing the University into disrepute, finding,
- That he knew that it was necessary not simply to report proposed external work with ANU but to reach agreement with his managers about the proposal
 - That the University understood the start date to be 1 October 2012 when it was in fact 1 May 2012.
 - That he had not told his managers in clear terms that that was the start date nor had he reached agreement with them about that.
 - That he knowingly drew two full-time salaries from ANU and Exeter University from 1 May to 31 September 2012 and 1 October to 31 December 2013 without the University of Exeter being aware of having agreed that state of affairs.
 - That by any reasonable standard, this is dishonest conduct and conduct capable of damaging the relationship of trust and confidence between himself and the university and that it was capable of bringing the university into disrepute

But,

“...In the light of the failure of the University to arrange a further hearing....together with what appears to be an expression of remorse by you at the end of the appeal hearing when you apparently offered to repay monies paid to you by the University...during relevant periods, the decision to dismiss was unsafe....(205 – 6)

- 3.144. (The letter is worded in careful terms, using the expression “It seems reasonably clear that.... And “It appears that....” The findings set out are those made on balance of probability by the panel.)
- 3.145. Professor Evans had sought advice from the Director of Human Resources as to how to proceed, but mindful of her prior involvement in the matter, she chose not to discuss the matter with him but arranged for him to take external legal advice. Professor Evans had not had access to the without prejudice discussions.
- 3.146. On the same day, 19 February 2016, Professor Myhill wrote to Professor Karp, having seen that letter. She suspended him, because she considered that working relationships between him and four members of the Department of Politics “may have irretrievably broken down”. The reasons were:
- A breakdown in trust between Professor Karp and key staff in politics, which will make future academic collaboration between yourself and colleagues, e.g. on research matters potentially non-viable

- Your reluctance to take on teaching responsibilities and the difficulties this creates for allocating teaching workloads to other colleagues and for the effective running of the department'
- The difficulties in working with you as part of a research team, particularly in terms of sharing the responsibility for delivering key goals, as evidenced in the recent difficulty in working as part of research team in the CCNER;
- An overall view that he was not a collegial and trustworthy member of the department and there is no viable working relationship between you and other colleagues, leading to a concern that your return could potentially lead to a loss of staff from the department. (207)

- 3.147. Toby Lott was appointed to investigate. The misconduct procedure was followed because the allegations involved possible misconduct.
- 3.148. Professor Karp was barred from contacting staff or entering University premises or from holding himself out as an employee of the University and was required to keep the matter confidential.
- 3.149. In her letter, Professor Massey also raised the question of the apparent offer to repay the University in respect of the period for which he had also been paid by ANU. She agreed that during the period of 8 months, he had performed some work for Exeter, and as a compromise suggests payment of 5 months pay, repayable by way of salary stopping altogether from the date of his reinstatement until 17 April 2016 (reflecting the period of non-payment from 17 November 2015, the date of dismissal). So in spite of reinstatement, and suspension on full pay, salary would not recommence until 17 April.
- 3.150. She directly relates any inability to reach what she considers to be a fair and reasonable settlement on the matter of "your repayment and your pay", as something that itself may lead to an irretrievable breakdown in their relationship (208).
- 3.151. Nothing was agreed as to that, Professor Karp saying (in brief summary) that he would pay only losses incurred by the University and that he had not offered repayment of salary.
- 3.152. In due course, the University simply withheld salary from him until 17/07/16 when he was returned to the payroll, notwithstanding continuing protests from Professor Karp denying any offer or agreement to repay, or any liability and explaining the hardships being caused (270). He continued to speak of willingness to repay losses if there were any.
- 3.153. Initially, there were four individuals in the department stating that they could not work with Professor Karp. Professor Myhill then added herself but excluded one other from further investigation when he or she indicated reluctance to participate – she said because the individual feared repercussions from Professor Karp. It was another senior academic who had worked closely with Professor Karp. .
- 3.154. Toby Lott interviewed Professor Bolleyer on 11 March 2016. She gave a detailed account of the difficulties she had had with Professor Karp's management of the CCNER project, including the

lack of contact while the Professor was in Australia and the lack of information provided to co-investigators and that she had been asked to fulfil the PI role informally, but had refused, as placing her in an impossible position. She remained concerned about the long-term repercussions of the poor management, given that the evaluation had not yet come in. Words like “last-minute”, “erratic” “difficult” “stressful” pepper the record. She said she would never work with the Professor again, as she thought he had no awareness of the impact of his actions or behaviour on others (231). She had considered leaving Exeter given those concerns.

- 3.155. Professor Myhill was interviewed on 14 March (235). She reiterated her concerns and involvement in supervising the CCNER project and that Professor Bolleyer had expressed serious concerns to her and had considered leaving Exeter. Others had felt their reputations to be at risk. She did not feel that if Professor Karp returned to work that he could return to the Centre for Elections, Media and Participation or Q-map. The team overall worked well together, but the Professor could not re-enter the research teams because of the history of difficulties and his role if working on research alone would be limited and of less value to the University, given their need for collaboration on larger scale projects. She reiterated the concerns about the Professor’s reluctance to teach and use of strategies to avoid teaching, as well as instancing other areas where relationships had been strained by his conduct, including an allegation that he had resiled from an agreement about naming co-authors. She questioned his trustworthiness.
- 3.156. Professor Massey was interviewed on 16 March (240). He reiterated that in his eyes the employment by both Exeter and ANU at the same time had been fraudulent, a gross breach of trust and that he could not trust him. He said Dr Reifler did not want to work with the Professor because he felt he was dishonest. He was not a team player and “leaves a trail of destruction wherever he goes.” (243).
- 3.157. Dr Reifler was interviewed on 18 March (245). He gave the account above in relation to the Skype conversation, that he had emailed to ask when the Professor would return from sick leave, but had no response and the Professor then did not undertake any teaching in the January 2015 term. He had then seen him in the City Centre. He had felt let down repeatedly over the Professor’s failing to deliver teaching scheduled for him and his insistence on only teaching American Politics. He included in the failures to teach the failure to attend for teaching during the period of suspension, about which he was still unclear – he did not know of suspension, only of some level of investigation.
- 3.158. Dr Reifler commented that “He finds (Professor Karp) dangerous, not in a physical sense but in a sense that he can pose a serious threat to someone’s career, someone’s professional reputation, and someone’s personal and mental wellbeing (248). He brings “chaos and discord with him.”
- 3.159. There was a discussion about the Professor’s marital problems. Reifler indicated that his former wife would be the only person who could possibly convince him that the Professor should return to Exeter, recognising her wish to have her children’s father

near to them. He went on to say that he and his wife – Amy, then teaching American Politics – would try not to take sides but that if forced to choose they would both take the side of the Professor’s former wife – she had done them every favour but Professor Karp had done them none (247).

- 3.160. Toby Lott recognised that that was an important comment in terms of the evaluation of Dr Reifler’s evidence, but in the interests of what he described as a duty of care to Professor Karp’s wife, those lines were redacted in the report that went before the disciplinary panel.
- 3.161. Professor Karp was interviewed on 11 April, by Skype from Australia – he had had permission not to remain in Exeter while on suspension.
- 3.162. In the course of that meeting, a further allegation was added, in relation to the comment recorded in the appeal hearing that had been taken as an offer to repay salary. Professor Karp denied ever making the comment and considered it defamatory (262).
- 3.163. Professor Karp rebutted the allegations and concerns put to him and challenged the procedure adopted. He protested at the delay of two years in raising issues with him about effective working relationships on the CCNER. He attributed delays to difficulties in retaining and replacing an associate research fellow. He attributed the disruption caused by the loss of his room to a decision by Professor Bolleyer to use the room for her own researcher and had been puzzled by the lack of support he had had from Professor Massey over it. He denied any breakdown over an agreement about co-authorship. He said Professor Massey had been responsible for unfounded allegations, outrageous and defamatory in nature, and that he should himself be investigated under the Dignity and Respect Policy. His allegations, based on rumour, had been dismissed, including that his (Karp’s) sickness absence was not genuine. He denied any reluctance to teach. He complained of an accumulation of allegations against him, some of which had already been adjudicated in his favour. He was being singled out and he wondered when it would end.
- 3.164. Mr Lott enquired of his interviewees as to whether they would attend mediation but each individually considered the proposal as unlikely to improve matters.
- 3.165. He put additional questions to Professor Karp and re-interviewed some individuals, including Professor Massey, Professor Myhill and Dr Reifler.
- 3.166. He received unsolicited statements in support of Professor Karp from various academics. Dr Nettelfield of Royal Holloway University commended him as a world class scholar, a popular lecturer and willing to undertake extra work in a spirit of scholarly collegiality (297). Dr Luhiste of Newcastle University commended his teaching and encouragement (300). Dr Milazzo, who had been Associate Research Fellow on the CCNER project from July 2011, reported no unprofessional or uncollegial behaviour between the Professor and any other member of the team and in her view the project was on track when she left in 2012. She spoke of his support and guidance in advancing her academic career and of her successful collaboration with him over research since she had left.

There were other testimonials, from George Buckley at Bristol University (305) and David Armstrong, Exeter, who spoke of the nature of collegiality and saw allegations of a want of collegiality as ludicrous in general and in relation to the Professor in particular. He was very questioning of the University's approach (310). David Castiglione wrote warmly of Professor Karp as a good colleague, researcher and teacher.

- 3.167. Toby Lott interview Dr Robert Lamb at Professor Karp's request (303) Professor Lamb was then Director of Research but had previously been Director of Education from January 2011 to July 2012. Professor Karp had taught three modules during that time and they were popular and successful. There had been no refusal to teach, and no issues in terms of collegiality. Professor Lamb himself was a lone researcher, but there were at least a dozen colleagues who could work collaboratively with the Professor.
- 3.168. Professor Karp's former wife agreed to a very limited statement being included, slightly amplified late on after an interview (406). She did not confirm that his leadership on CCNER was "neglectful and chaotic" and she did confirm that there were significant research outputs from the project and objectives appear to be met. She avoided answering a question about irretrievable breakdown of relationships within the team save that she did not see them as unable to collaborate with each other if the occasion arose. She saw no difficulties in relation to teaching or delivering an excellent student experience (406).
- 3.169. In April 2016, Professor Karp brought proceedings in the Employment Tribunal in respect of the University's failure to pay salary from 17 November 2016. He referred in his statement of claim to the basis for that, that is, his alleged offer to repay, which he said was incorrect. "The claimant asserted that he would gladly re-pay the Respondent any monies which he had obtained by fraudulent means. The Claimant does not accept that he committed fraud and did not consent to pay back any monies."
- 3.170. There was an interview with Hannah Pike on 24 May (314). She was concerned with research accounting on the CCNER. She referred to the one year delay in commencing spending, which had caused concern, she confirmed that Professor Myhill had been involved in regular discussions with Professor Karp, that there had been problems with interpersonal relationships, she thought at one point a lot had been left to Dan Stevens, the least experienced of the team, and there were issues of communication with the Professor, "not horrendous, just nagging". They had had to put in more resource in order for the project to complete, an administrative assistant..
- 3.171. There was an interview with Julie Southgate, HR administrator on 8 June 2016. She wasn't terribly happy with Professor Karp on second marking – he needed chasing up to collect and return them and there was no evidence of the papers being looked at. Marks were never changed. They received complaints from students and other academics felt let down. The behaviour was different from that for other academics.

- 3.172. Toby Lott interviewed by Skype Professor Jack Vowles, then at the Victoria University in Wellington. Vowles took issue with his approach, the allegations and the account of the interview and commented adversely on the wisdom of Exeter's "pursuit of Professor Karp as the person allegedly solely responsible" for what he termed an unfortunate conjunction of events (337). He later wrote a statement supportive of Professor Karp.
- 3.173. University records did not disclose an earlier history of reluctance to teach.
- 3.174. The investigation report was produced on 8 July 2016 (349 – 378).
- 3.175. In addition to the original allegations, Mr Lott included the matter raised by Professor Myhill in respect of the supposed offer to repay, which he presented as an offer that had been accepted and so became a term of Professor Karp's contract of employment on reinstatement (350).
- 3.176. Mr Lott had chosen to limit the scope of the investigation, by limiting the witnesses interviewed to those relevant and named in the allegations, partly in order to risk spreading the concerns more widely. He points out therefore that others within the staff might be willing to work with Professor Karp but that could not be gauged. He initially attached no weight to the statement from the Professor's ex-wife because she had not confirmed her statement, but there was a subsequent interview with her, so he was then able to .Those providing unsolicited statements had not been interviewed, given that it was not clear what they had been told of the points at issue.
- 3.177. The report is detailed and reflective.
- 3.178. In relation to the question of teaching, Mr Lott found no history of refusal to teach, but that he had previously probably taught his preferred topics, now being taught by Dr Reifler's wife, appointed for that purpose. (He dealt with the risk of conflict of interest by explaining the arrangements taken to avoid it.) He accepted it was sensible for that arrangement to continue but Professor Karp had not shown himself to be co-operative over the courses then proposed for him; he had demonstrated an unacceptable degree of petulance. In relation to surgery, the limited information put forward by Professor Karp at the time and the conflicts in Professor Karp's explanations for the surgery justified his colleagues reaching a view that he had chosen the date and place of surgery to suit his own circumstances without giving thought to the impact of that decision on others or the University. He thought the view reached by Professor Massey and Dr Reifler that the relationship with Professor Karp had broken down was likely to be genuine and credible (360).
- 3.179. In relation to co-operation as a member of a research team, he reviewed the evidence fully and concluded that there were significant concerns on the part of senior management regarding the project and that those concerns were made known to Professor Karp (363). He cited fully the concerns expressed by Professor Myhill in October 2014 and compared the accounts of difficulties with Professor Karp's confident explanations. He concluded that Professor Karp's answers appeared relatively vague and evasive and not supported by contemporaneous evidence. The University

had received several million pounds in research funding from ESRC over the years, making the failure of any research project a matter of significance. He concluded too that there was a question over the retention of staff if Professor Karp returned to the team, citing in particular Professor Bolleyer (367).

- 3.180. Toby Lott concluded that the rather broad statement that an overall view existed that Professor Karp was not a collegial and trustworthy member of the department was well founded. He focused on the views of the four individuals who had been identified as lacking a working relationship with him.
- 3.181. In relation to the final allegation, he reviewed the evidence as to what Professor Karp had said, which was confirmed by three witnesses albeit denied by Professor Karp (376). He reviewed the accounts given by Professor Karp either that he was offering to pay losses or that he was offering to repay any monies fraudulently obtained, no such monies being admitted in either case. He found that to be relevant to the breakdown in working relationship with Professor Myhill, suggested that Professor Karp was being untruthful about what he had said at the hearing and had in any case reneged on a promise to repay monies. He was unable or unwilling to recognise the significance of his actions (377).
- 3.182. In his report, Mr Lott repeatedly presents the allegations as proved, having conducted his analysis, a style which Professor Karp views as usurping the role of the disciplinary panel.
- 3.183. He found that there was a prima facie case of misconduct, a breakdown in working relationships due to a breakdown in trust and confidence and difficult personality likely to reflect real or personal damage to the business of the University. He thought it would be difficult for Professor Karp to return to the University or to work as a lone researcher. He recommended that there be a formal hearing to determine whether there were grounds for dismissal (378).

The disciplinary hearing

- 3.184. The disciplinary hearing was held on 5 September 2016, the fourth proposed hearing date, having been postponed from late July at Professor Karp's request. It was conducted by the Provost, Professor Kay with James Hutchinson, Director of Transformation.
- 3.185. Professor Karp provided more character references from eminent academics, warmly praising his work, relationships and collegiate approach. Shaun Bowler of the University of California, Riverside, Department of Political Science wrote about a series of joint projects, mentioning Professor Karp's success in gaining funding for research efforts. He illustrates Professor Karp's initiatives and collegiality with an account of flying a team of academics to Australia in 2013 to work on a project plan, with a further meeting at Laguna Beach later that year, out of his own grant funding (409). Professor Donovan of Western Washington University also wrote about similar collaborative work and joint authorship of articles and the development of "multiple, overlapping projects with cross-national emphasis", with colleagues at different American universities. He emphasised his capacity to bring people

together, and generate new research, enhancing career opportunities.

3.186. Michael Thrasher who had been an external assessor on the original ESRC grant application commented on the sound design, Professor Karp's great talent for framing research questions coupled with a sound grasp of statistical methods. His work receives multiple citations. "I view Jeff as a political scientist of international repute who has published papers in the highest quality journals" He comments that he works with fellow researchers amongst the best in their field, demonstrating collegiality and the ability to collaborate. "His scholarship is amongst the best there is" and his modules, known to Thrasher as an external examiner, were well-designed. He adds, that "I realise that sometimes it might not be easy to manage people whose principal platform is international as Jeff's undoubtedly is" and comments that the disjuncture between the local and the global sometimes creates tensions."

3.187. Bice Manguashca, a member of the department had been present at the interview with Toby Lott. She highlighted that in her view, Professor Karp was asked to respond to a series of personal slights and general rumours. She had doubts about the fairness of the procedure, given that more serious allegations involving alleged bullying and harassment had not gone to a disciplinary hearing. The very process was divisive and destructive of a team that had worked well.

"Since there are a good number of us who like Jeff and have no problem working with him and since many of us also work well with the few colleagues who do not like him, I have no doubt that in a very short time bridges can be re-built." (420).

3.188. Professor Jack Vowles also provided a detailed statement commenting on the difficulties encountered with CCNER in terms of co-ordinating the team and keeping a research fellow, and says that the success of CCNER in terms of its final packaging and delivery was in large part due to Professor Karp's efforts in the latter stages of the project. He commends his attitude to teaching, and dismisses the suggestion that he is difficult to work with. He had worked with Professor Karp on CCNER, CEMAP and as his Head of Department at the New Zealand University of Waikato (412- 4).

3.189. The investigation report and documents that the University relied on were circulated to the panel and to Professor Karp in July. They included a further statement from Professor Myhill, although ultimately she was able to attend the hearing.

"I have a genuine worry that some staff may leave should Jeff return. For myself, I have lost all ability to trust him. I feel now there is a complete breach of trust between him and me, and between him and his colleagues. It is for these reasons that I believe a return to work will be to the serious disadvantage of the Politics department and the college and that a recovery of this breach of trust is no longer possible." (424)

- 3.190. The deadline for presentation of Professor Karp's documents was 10 am on 30 August. He breached the deadline. His documents were nonetheless considered save for some identified as having no relevance to the issues (429). He had provided 74 documents, including some duplicating those appended to the investigation report. He objected to the exclusion of any of his evidence.
- 3.191. In addition, he produced a very detailed statement to the panel, as he had for previous hearings, which was handed in at the hearing and left for them to read.
- 3.192. Professor Karp was particularly unhappy at the duration of the hearing, which was three hours – he ran out of time. He questioned the witnesses, Professor Myhill and Professor Massey. He reached the point of calling his own witnesses late on, when he telephoned them – they had not been asked to attend in readiness to be called. He had proposed to call 5 internal witnesses. Only two attended before time ran out. At the first disciplinary hearing, there had been adjournment to another date to allow the matter to be more fully aired, but that was not the course adopted this time. He felt that he had not had the opportunity to present his case, or to call his witnesses. The witnesses were present throughout the hearing. There were other points on which he felt he had not been properly treated.
- 3.193. Professor Karp had wanted to question Professor Bolleyer and Dr Reifeld. They were available by telephone to answer any questions arising for the panel but not available for questioning by Professor Karp (435). Professor Myhill had some involvement with that arrangement.
- 3.194. Professor Kay wrote on 22 September dismissing Professor Karp (507 – 515):
- “(I) confirm the decision has been taken to terminate your employment on grounds of misconduct leading to an irretrievable breakdown in trust and working relationships between you and four members of the department with potentially serious adverse consequences for the University.”
- 3.195. The letter was issued by email (602).
- 3.196. The letter goes through the key allegations and finds them proved.
- 3.197. There was clear and unequivocal evidence of the breakdown of relationships. That was based on the documentation and “clearly” from the witness testimonies. Relationships between Professor Karp and four key colleagues would not support any sort of future academic collaboration.
- 3.198. Dr Reifler's account of the conversation in October 2014 when they failed to reach agreement over teaching, and that Professor Karp ended the call saying he was going on sick leave was accepted. The later lack of co-operation over the teaching schedule for 2015/16 was also evident. In addition, Professor Karp had missed teaching for the remainder of the 2014/15 academic year but had used the time to complete the CCNER project. He

could reasonably be seen as reluctant to teach, with ensuing difficulties for colleagues and the department.

- 3.199. There had been significant concerns over his management of the CCNER project pointing to difficulties in working with him as part of a research team, accepting the account of Professor Myhill in her supervisory role following the concerns raised by the funding body that she reports as unprecedented, given her concerns about the timetable, about working relationships and the implications of poor reviews for the University and individuals and with corroboration directly from Professor Myhill and Professor Bolleyer.
- 3.200. While acknowledging Professor Karp's good record, without grievances or an earlier history of concerns, the testimonials and supportive character statements, the specific evidence was a lack of collegiality, lack of interest in the Department as a whole or his colleagues, and a genuine risk of loss of other valued faculty members and with them significant grant funds and staff working on their research projects. That was not a risk that the University should have to take. The relationship with some of his colleagues was non-viable.
- 3.201. In relation to the supposed offer to pay back salary, the finding was that he made the offer of repayment in a cynical attempt to influence the appeal panel's decision in his favour and that upon being reinstated, he reneged on it.
- 3.202. On the basis of the chronology, the case now presented was not prompted by his litigation as he had claimed
- 3.203. The letter goes through various points of appeal in relation to procedure and dismisses them.
- 3.204. The letter finally considers alternatives to dismissal. There was no team to which he could be returned other than his original team; lone research, not as a member of a collaborative team was not an option because the trend in his field is towards collaboration, and the ability to collaborate with colleagues at Exeter was necessary, accepting Professor Myhill's view as Pro-Vice-Chancellor. There had been a failure to recognise the seriousness of the University's concerns or the impact of his behaviour on others. Given the number of very positive testimonials, the decision was not likely to be career-ending.
- 3.205. In conclusion, the panel considered summary dismissal on the basis that the late added allegation, regarding the refusal to honour the supposed promise to repay, amounted to "a serious reach of confidence that could justify summary dismissal under the University's disciplinary policy". The panel decided instead on dismissal on notice "due to the loss of trust and confidence and irretrievable breakdown in relationships with colleagues." (515).
- 3.206. The letter goes on to say that although he is entitled to receive notice in accordance with his Contract of Employment, he was not required to work the notice period and his dismissal is effective immediately. The final day of employment was 23 September 2016. He was to receive six months' pay and a sum in respect of the value of his fringe benefits in lieu of notice entitlement, subject to normal deductions of tax and National Insurance contributions.

- 3.207. The payment made was £32,080.98, representing six months' salary including holiday pay. It was paid gross.

The Appeal

- 3.208. On 28 September, Professor Karp appealed (515.1).
- 3.209. He provided detailed grounds of appeal on 6 October 2016 (528 – 546). He set out the following grounds, with supporting detail:
- Double jeopardy
 - No prior grievances/warnings
 - Lack of evidence to support conclusions
 - Factual inaccuracies
 - Allegations do not amount to misconduct
 - Dismissal is unreasonable and inappropriate
 - Mitigating circumstances
 - Lack of due process and failure to follow procedures
 - Breach of contract.
- 3.210. With the appeal, Professor Karp provided the full notes of his former wife's interview with Toby Lott, not previously included in the appeal bundle because it was understood that she had not consented to them being included. Those were admitted in evidence. There was some correspondence over other documents and some additional emails were included, but other records were not conceded to exist.
- 3.211. Professor Kay provided a response to the appeal in which she provides a detailed rebuttal of the points made by Professor Karp supplementing the reasons for dismissal given in the dismissal letter (567 – 582). That was not provided to Professor Karp in advance of the hearing, on the basis that it is not a requirement to provide such a response or to produce it in advance.
- 3.212. The appeal against the disciplinary outcome was heard on 27 October 2016, before Mike Shore-Nye, Registrar and Secretary, with Professor David Hosken.
- 3.213. The University's policy is for appeal to be by way of review of the decision taken not a full rehearing. Only exceptionally will new evidence be allowed or witnesses be called.
- 3.214. Professor Karp was admitted to the hearing at 9.25. Professor Kay went through her written response to the appeal and answered questions. Professor Karp presented his case from 11.00 am. The meeting closed at 12.56 pm (621). Full minutes are at pages 583 to 621.
- 3.215. Professor Karp then provided a further statement to the appeal panel including a response to Professor Kay's response to his appeal (622 -629). That was admitted for consideration, with an acknowledgement that the response of Professor Kay had not been given to Professor Karp in advance (631).
- 3.216. He sent a further document on 7 November in relation to additional procedural breaches in relation to potential witnesses Bolleyer and Reifler and actions taken by Professor Myhill (632) and again on 10 November in relation to evidence not disclosed by the investigating officer (639)

- 3.217. In respect of pension for the period of notice, Professor Karp was in October advised that pension contributions are not taken from payments in lieu of notice unless asked to do so. He therefore had to make a payment to the University in respect of his 8% contributions which would enable the University to pay the employer's contributions into the scheme. The figures were provided.
- 3.218. By a letter dated 11 November, the appeal was dismissed (640).
- 3.219. The nine grounds were gone through. In summary, these were the findings.
- Double jeopardy
The allegation in respect of the breakdown of the relationship with Professor Myhill arose not from the previous proceedings but from his conduct after the previous proceedings had concluded. He had in fact made an offer of repayment as he had confirmed in the appeal hearing itself and had then gone back on it. As a result, working relationship with Professor Myhill had broken down. This was not double jeopardy.
 - No previous grievances/warnings
Concerns had been raised in relation to the CCNER project as was clearly documented. Concerns in abeyance during his absence had resurfaced when it his return was likely.
 - Procedural unfairness
The panel were impressed by the time and trouble taken by the disciplinary panel. The character statements had been considered. The Professor himself had failed to call the witnesses he intended. The investigating officer had not played a key role in the earlier investigation and was appropriately independent. The other criticisms of him had not been accepted.
 - Lack of evidence to support the conclusions reached
There was first-hand evidence to support the conclusions reached in the documents and at the hearing, and that evidence was corroborated in the documents.
 - Factual inaccuracies
In response to this, the panel say that they are satisfied that the disciplinary panel formed a genuine belief that he was guilty of the conduct alleged, and that that belief was well founded on the reasonable investigation carried out. Professor Karp had been selective with the facts, including as to asserting that the original allegations had been dismissed, whereas Professor Evans had expressly found dishonest conduct.
 - Allegations do not amount to misconduct
The cumulative effect of the conduct has irretrievably damaged working relationships between Professor Karp and his colleagues. They add that during the appeal Professor Karp had accused almost everyone in the case, including the Head of Discipline, Professor Massey, the Pro-Vice Chancellor, Professor Myhill and the Provost, Professor Kay, of lying. On his own evidence, relationships had broken down and his position was untenable. His conduct in reneging on the agreement to repay the monies once

reinstated itself amounted to a serious breach of confidence going to the root of the contract,

- Dismissal is unreasonable and inappropriate
 Alternatives had been considered. The option of summary dismissal had been rejected although justified in principle. A final written warning during the currency of an earlier such warning was inappropriate. Alternatives to dismissal were not viable, and in the view of the appeal panel, the decision was neither unreasonable nor inappropriate.
- Mitigating circumstances
 These had been taken into account in dismissing on notice.
- Lack of due process and failure to follow procedures
 The University procedure had been properly followed. The University had moved away from a single person chairing a disciplinary hearing, and adopted a panel, with the consent of unions. Only one panel member is required to be an academic where action is taken in respect of an academic. There was no breach. In challenging the time available to present his case at the disciplinary hearing, Professor Karp was found to have been selective with the facts.
- Breach of contract
 It was agreed that the notice period should have terminated on the final day of the academic term and that ground was upheld. The notice period paid in lieu ended on 22 March 2017 and the spring term ended on 31 March 2017. 8 days pay was therefore due.

3.220. On 18 October, the University HR department wrote to Professor Karp to say that while 8 days pay had been authorised by the appeal panel, they had established that the pay in lieu of notice had been paid gross and not subject to deductions and that therefore he was asked to repay £12,555.02.

3.221. On 30 March 2017, the Employment Tribunal, Employment Judge Matthews, ruled in Professor Karp's favour in respect of the salary withheld for the period 17 November 2015 to 17 July 2016. The salary for the two periods was due under the contract of employment. In the first period, Professor Karp was working, so far as the evidence before the Judge showed, in the normal way for the University. In the second period, October to December 2013, the employment relationship was clear – it was known that the work would be done over a different period but nonetheless the University's commitment was unequivocal. Salary paid had been salary contractually due. Finally, "If the University had wanted to make the reinstatement condition on an authority to deduct 8 months salary from Professor Karp's wages," they had the opportunity to do so but did not.

3.222. Judge Matthews found, on the evidence he had, that Professor Karp did return to his position at the University between the dates in October to December 2013. Professor Karp's oral evidence to the present Tribunal was that he had of course been working at ANU at that point – given that he was Head of School.

4. Law

4.1. By section 98(1) of the Employment Rights Act 1996 (“the ERA”), it is for the employer to show -

- “a) the reason (or, if more than one, the principal reason) for the dismissal, and
- b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.”

4.2. A reason falls within subsection (2) if it relates to the capability or qualifications of the employee for performing work of the kind which he as employed by the employer to do or which relates to the conduct of the employee. Misconduct is therefore a potentially fair reason for dismissal, as is lack of capability for the role.

4.3. By section 98(4),

“Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

- a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- b) shall be determined in accordance with equity and the substantial merits of the case.”

4.4. First therefore the employer must establish the reason or principal reason for the dismissal and that it is a potentially fair reason.

4.5. Then the Tribunal must be satisfied that the employer has acted reasonably in treating the ground as a sufficient reason for dismissal. It must be true in fact or believed to be true on reasonable grounds (*W Devis & Sons Ltd v Atkins [1977] AC 931, [1977] 3 All ER 40 HL*) If there are no reasonable grounds for a belief relied on as an important part of the reason for dismissal, the employer may be held not to have acted reasonably in all the circumstances in relying on it (*Smith v City of Glasgow District Council [1987] IRLR 326, [1989] ICR 796, HL*)

4.6. The question for the Tribunal is whether the employer has acted reasonably. The Tribunal is not entitled to substitute its own view for that of the employer, only to consider whether the employer’s actions fall within the band of reasonable responses ; that is, whether the employer acted reasonably and fairly in accepting the facts and beliefs that he did (*Tayeh v Barchester Healthcare Ltd [2013] EWCA Civ 29, [2013] IRLR 387, CA*)

- 4.7. The same test applies in relation to procedural matters. . An employer need only adopt such procedural safeguards as a reasonable employer would adopt. When it comes to the credibility of witnesses, what matters is the employer's assessment of credibility and whether it is fair and reasonable, rather than that of the Tribunal, at this stage of the proceedings.
- 4.8. The Tribunal is not bound to hold that any procedural failure by the employer renders the dismissal unfair: it was one of the factors to be weighed up in deciding whether or not the dismissal is reasonable within s 98(4). The weight to be attached to such procedural failure should depend upon the circumstances known to the employer at the time of dismissal, not on the actual consequence of such failure.
- 4.9. In *Polkey v AE Dayton Services Ltd* [1988] ICR 142, the House of Lords confirmed that the question for the tribunal was whether the employer acted reasonably in the procedure adopted at the time.
- 4.10. In a suitable case the employer may rely upon the breakdown in trust and confidence as a substantial reason justifying the dismissal. Usually that will apply where the breakdown arises out of the conduct of the employee. The employee cannot be fairly dismissed on the basis of personality alone. The Tribunal here may need to be prepared to consider the whole of the story, in order to fairly assess whether the reason is substantial and whether dismissal falls within s 98(4).
- 4.11. Loss of trust and confidence should not be relied on as an alternative to proving misconduct.
- 4.12. If the respondent could readily organise the business in such a way that a breakdown in working relationships can be avoided, conflicts may not amount to a substantial reason justifying dismissal.
- 4.13. The Tribunal was referred to and considered *Perkin v St George's Healthcare NHS Trust*, [2006] ICR 617 and *Brain and Co Ltd v Philippart* (UKEAT/0571/06ZT and UKEAT/0041/07/ZT).

5. Submissions

- 5.1. Mr Midgeley amplified his written submissions orally. Professor Karp gave detailed submission based on review of the evidence. Both were helpful.

6. The Hearing

- 6.1. For reasons of judicial resource, the hearing which had been listed for five days including remedy was listed for four days, with remedy to be adjourned.
- 6.2. The hearing was timetabled with a view to oral judgment on Thursday afternoon. Professor Karp was to conclude his cross examination on the second day, the Tribunal having taken the first morning for reading. At lunchtime on the second day, he had five witnesses out of seven still to question and his position was plainly impossible. He was allowed an extension until 12.00 on the third day, which gave him an hour for each key witness and half an hour for the HR

representative dealing with payments made to him. In spite of warnings as to how much time was available, he ran out of time to question Professor Kay, the dismissing officer, at all. The Judge allowed a brief recess, ten minutes, inviting Professor Karp, if he sought an extension of time, to identify the key points on which he wished to ask questions and to make an application on the basis of that. On resuming the hearing, the matters he had identified for Professor Kay earlier were put by the Employment Judge together with her own questions. That done, Professor Karp confirmed that his questions had been answered, save for two, and he was given time to put those. The questioning of Professor Kay took an hour, which had been the time estimate on the basis of which time was first extended on the previous day.

- 6.3. Witness statements throughout were taken as read, and Mr Midgeley had raised minimal additional matters for evidence in chief. At the conclusion of his cross examination, the Employment Judge allowed Professor Karp time to address any points that he felt had not been fully covered and he took that opportunity, expressing himself satisfied that he had covered what he needed to. As a result of that, Professor Karp's evidence took the whole of the morning of day four, notwithstanding that Mr Midgeley was crisp and focused in his questioning.
- 6.4. After oral submissions Professor Karp addressed the question of anonymity. The Employment Judge indicated that there was no basis for anonymity or restricted reporting and the matter was not pursued. The hearing concluded at 5pm, with a commitment from the Judge that no judgment would be issued before 11.00 am on the following Monday, to allow time for Professor Karp to consider his position or for any negotiation. There was no settlement and no withdrawal.

7. Discussion

- 7.1. Fundamental to this case is the way that the University works. As to that, I make the following additional findings.
- 7.2. The University builds its reputation on teaching and research. The strategy of the university has in this field been directed at large-scale, collaborative research projects. Collaboration between academic colleagues is fundamental. So too is the competent management of grants to the satisfaction of funding bodies.
- 7.3. Academics through their research contribute significantly to the funding of the University. When applying for funding, they will include contributions to salaries, so that the grant funding is not simply for external expenditure but for core staff costs. Mismanagement of research projects has the capacity to affect the University's ability in future to fund its own staff and core functions, as well as impacting on its reputation in a highly competitive world.
- 7.4. This employment is one that depends uniquely upon trust. Academics, in particular senior academics require and enjoy substantial freedoms. Teaching and marking are essential parts of the duties of the role but when not required on site by those responsibilities, academics are free to work from home or

elsewhere. During the summer term, the University may not require any teaching, so that an academic may be little seen, if at all. They may be participating in research or collaborating with other academics or undertaking functions elsewhere with no consent being required for absence from the University or even the UK.

- 7.5. Bearing those findings in mind, my analysis is as follows.
- 7.6. It is a fundamental requirement of the contract of employment that academics devote their time exclusively to the University. However, other roles can be undertaken, some without permission, provided there is no conflict. In particular, literary work and some broadcasting may be undertaken without permission. Other employment must be disclosed and requires permission – that is the necessary interpretation of clause (b) of the provisions in the Terms and Conditions regarding External Work.
- 7.7. Professor Karp is wrong in his interpretation of the terms. He suggests that the provisions mean that so long as the activity is notified to the University, he is free to undertake that activity. At times in his evidence he did not even acknowledge that permission is required. That is to overlook the overriding clause requiring the devotion of exclusive service to the University and the limited nature of the exceptions granted.
- 7.8. That was how he justified holding two full-time academic posts at the same time with different Universities.
- 7.9. His colleagues were clearly shocked at his interpretation.
- 7.10. It is not what the provisions say (45) and it is not a reasonable interpretation of the provisions. While he may now have persuaded himself that that is a legitimate interpretation, it is not. His colleagues and employer were justified in seeing dishonesty here.
- 7.11. If he was wrong in his interpretation, the University was lax in applying the provisions. Professor Van de Noort concluded terms for unpaid leave with Professor Karp without any written agreement. The written agreement is only produced in September 2012 when a misunderstanding of what was agreed emerged.
- 7.12. The written agreement is itself oddly silent on key facts. It is clear that permission was granted for Professor Karp to work full time for ANU and that was in Professor Van de Noort's mind when agreeing the unpaid leave. It is not mentioned. Professor Massey was unaware of it. It is equally clear that throughout the proposals made or considered by Professor Van de Noort and Professor Myhill, it was taken for granted that salary would be paid by or contributed to by the two institutions, to reach a 100% full-time salary: it did not even bear expressly stating the obvious that that was the maximum. But it doesn't help that it is not made express what arrangement would apply in respect of salary from ANU during the period in 2013 when full-time salary would be paid by Exeter, in order for Professor Karp to be returnable for the REF.
- 7.13. The absence of written agreement left it open to Professor Karp to draw pay from Exeter, and become subject again to the terms and conditions of employment with Exeter, and to resolve for himself the implication of that for the contract he had with ANU.
- 7.14. Originally, HR had incorporated in the letter setting out the terms of unpaid leave that Professor Karp would be teaching

during the period October 2013 to December 2013. He asked to be relieved of that, and Professor Van De Noort agreed. That meant, pursuant to the freedoms academics enjoy when not required to engage in teaching or collaborative work, although he was to be paid by Exeter for the period October to December 2013, it was immaterial whether he was there or not.

- 7.15. In his oral evidence, Professor Karp volunteered that he of course was not there at that time – he was Head of School at ANU, so plainly could not be in Exeter.
- 7.16. There is the nub of the problem: he could not devote himself exclusively to his duties with Exeter while at the same time being required to be in Canberra attending to the not inconsiderable duties of being Head of School in Canberra.
- 7.17. He was exploiting the freedom he had to the point where he ceased to observe, or even acknowledge, the fundamental terms of the contract.
- 7.18. The University itself benefited from a degree of manipulation. They were using what I am told was a common device at the time, to include people as returnable for the REF when they were no longer members of staff. The result is that Professor Karp, amongst others, was treated as full-time at Exeter solely for the purposes of the REF and without committing him to the usual duties associated with his employment.
- 7.19. At the same time, the University required of him that he maintain his PI duties in relation to the CCNER project while on unpaid leave – albeit with his consent. The 10% salary originally contemplated would have recognised his continuing level of commitment. That however was not seen as bringing him within the scope of the REF. The three months pay, full-time, was a frank device to get him into the REF. It was also a way of remunerating him for continuing work on the CCNER project albeit that the work would have to be done over the whole period of his leave of absence and at times on a full-time basis.
- 7.20. The level of manipulation is evidenced from Professor Van de Noort's dismissal of the 10% as being financially disadvantageous to Professor Karp, given the difference between the Australian and the UK salary.
- 7.21. So while Professor Karp disregarded the requirements of his contract, in a way that invites question and scepticism, the University's approach sets an example of manipulation, with blurred boundaries instead of clear contract terms.
- 7.22. Having said that, Professor Karp did not follow the University's lead in this. He started having two full-time jobs, and two salaries, from May 2012, long before the discussion of the three months' salary in substitution for the 10%.
- 7.23. Reviewing the full history suggests a possible course of events. Early on, he was negotiating for unpaid leave from March 2012. He said in terms in the oral evidence that he had given his availability for ANU as being from spring 2012. He says that had he not taken up the offer from May 2012, that University would have lost the funding for his post. That is plausible.
- 7.24. It seems consistent with his decision making that he would commit to accepting an offer that he wanted to accept in the

expectation that he would be able to negotiate the leave of absence he needed.

- 7.25. What is not plausible, and what Professor Mason was entitled to see as improbable, is his uncorroborated statement that the offer was made on the basis that no work would be required of him by ANU until the autumn and he could simply bank the money to meet the expenses bound to be incurred when he eventually moved to Australia to start work later in 2012.
- 7.26. In the absence of teaching commitments in the summer term in 2012, he would have been free to be in Australia for part of the time and when faced with having to commit himself before negotiating permission, he may have felt that he could meet the ANU expectations sufficiently while doing what was necessary at Exeter and also finding some time with his children. Or he may simply not regard the issue of permission as particularly serious – as when accepting the Sydney fellowship without having obtained permission or disclosed it, so that it was discovered on the Sydney website, heightening suspicions amongst colleagues.
- 7.27. So there are other possible explanations for his having entered into a contract with ANU when not free to do so, other than that they were prepared to pay him for a period of months when he was not willing or able to work for them. That is the least likely.
- 7.28. To enter into a full-time contract with ANU while still under a full-time contract with Exeter was a fundamental breach of the contract with Exeter.
- 7.29. Professor Karp says that “Everyone knew”. That is unlikely and would need corroboration to be credible. Professor Van de Noort and Professor Myhill confirmed that they did not know and did not agree to it, and Professor Myhill went on to say she saw no reason why they would have agreed to it. Professor Mason saw evidence from ANU that they had not been aware of it either. He was entitled to accept that evidence and that of his academic witnesses.
- 7.30. The only reasonable interpretation for the silence of all the documents about the ANU employment during the periods of overlap with Exeter is that it was not disclosed. The respondent was entitled to reach that view. It is what Professor Van de Noort says, and he concluded the agreement. It is what Professor Myhill says, and she clearly was personally unaware of it.
- 7.31. One other explanation is relied on by Professor Karp, which is slightly different. That is that Professor Van de Noort knew, but didn’t care. The respondent was entitled to rely on Professor Van de Noort’s denial that he knew.
- 7.32. Professor Mason and Professor Evans were entitled to find that Professor Karp had acted dishonestly in relation to the contracts of employment.
- 7.33. The difference between the outcome of the first disciplinary hearing and the appeal was not in relation to that. Both panels found misconduct, dishonesty, conduct capable of breaching trust and confidence and of bringing the University of Exeter into disrepute. On the evidence they were entitled to do so.
- 7.34. The difference was that on appeal, Professor Karp was seen as recognising that he had done wrong and as expressing remorse.

That was sufficient to enable the outcome to be changed from summary dismissal to final written warning.

- 7.35. Professor Evans recognised in the letter giving the outcome that the Professor's conduct could harm relationships. Harm had already done.
- 7.36. The suspension on the day that Professor Karp was reinstated came as a very unpleasant surprise to him. It was however squarely based on the difficulties in working relationships that had already arisen.
- 7.37. Amongst those aware of it, that Professor Karp had had another job while employed full-time by Exeter was seen as fraudulent, dishonest, serious misconduct. It generated anger, no doubt because of the trust on which the University operates: it was a breach of trust. At a personal level, it was a slap in the face for his colleagues: he had been treated with some compassion, his job had been kept open, arrangements had been made for courses and marking to be covered. That there was anger and resentment is clear from the tone and wording of the emails.
- 7.38. The apparent expression of remorse and the decision on appeal had possibly opened the door to Professor Karp's reintegration into the department. However, before the decision on appeal was given, Professor Karp had written to HR suggesting he had been treated unjustly, with no renewal of his apparent remorse for wrongdoing and limiting any offer of repayment.
- 7.39. Professor Karp's view, on which he has been consistent, is clearly expressed in his witness statement,

"The Respondent claims..... that I "expressed remorse" for acting dishonestly. This is an incorrect interpretation and is entirely inconsistent with everything that I have said about the matter. I do not believe that I acted dishonestly and I never made an unconditional offer to repay the University eight months of salary."
(para 21)

- 7.40. His letter of 10 February also addresses the concerns about teaching.
- 7.41. Professor Kay highlights that the attitude to teaching disclosed in the history is inflexible and unco-operative. There is no earlier history of that, but earlier, Professor Karp had been teaching his chosen subject. During his absence, another academic had been appointed to cover that. Professor Kay found that the email trail strongly suggests to an objective reader that he was not prepared to teach any modules other than those which he had taught previously and which he considered to be "his" courses. That is a legitimate interpretation of the emails.
- 7.42. Dr Reifler's account to the respondent entitled the respondent to see Professor Karp as reluctant and evasive in his attitude to teaching. Dr Reifler's account of the Skype conversation stands out. If Professor Karp was committed to surgery in January 2014, it is hard to see why he wrote to Professor Massey about teaching commitments without mentioning it. The consistent account from Dr Reifler is of a lengthy discussion of teaching options, none agreed, ending with Professor Karp announcing that

he had to have surgery and would be on sick leave. It comes across as an impulsive decision, made to avoid a teaching load that was unwelcome and which conflicted with the demands of finishing the CCNER academic report by May 2015.

- 7.43. In his email of 10 February 2016, while expressing willingness to be flexible and to co-operate fully, Professor Karp limits that to the immediate semester and is otherwise so vague as to make it difficult to see what level of commitment and co-operation is being offered.
- 7.44. The respondent was entitled to be sceptical as to what that meant in practice.
- 7.45. So, even before the outcome of the appeal had been given, there were signs that the difficulties were not behind them, if he was reinstated. Professor Karp was not approaching matters on the basis that he needed to re-establish trust or demonstrate co-operation. His position is demonstrated by his statement to Toby Lott that he had been exonerated on appeal, just as he wrote to Professor Myhill on 1 March 2016 of “multiple unfounded allegations”.
- 7.46. In the meantime, there were the continuing concerns about working relationships on research and Professor Karp’s management of the CCNER project. The respondent had evidence that respected staff would consider their position if Professor Karp returned, and in particular did not want to be associated with him on collaborative, grant funded research. While stemming from the CCNER project now concluded, the concerns resurfaced with the prospect of Professor Karp returning to the College. Professor Myhill expressed her concerns cogently and compellingly in her evidence.
- 7.47. The University relies on the breakdown of trust and confidence. That is understandable. But they also rely on breach of contract by Professor Karp on a new matter and that is not understandable.
- 7.48. Professor Karp had, it is said, made an offer to reimburse the University of Exeter his salary for the eight months that he had also been employed full-time by ANU.
- 7.49. The University asserts that on reinstatement, the University had accepted that offer and that repayment became a term of his contract. That was the basis on which 8 months salary was eventually withheld.
- 7.50. The “offer” itself, as recorded, is not a quantified offer. It was an assertion, at an emotional time, after a long hearing, in which Professor Karp was saying he wanted his job back. It might perhaps fairly be seen as an expression of willingness to make some recompense but it is at best a suggestion. It can barely be read as a proposal, much less an offer capable of acceptance.
- 7.51. It was not discussed, amplified or accepted in the hearing. The hearing simply moved on.
- 7.52. Professor Evans in the letter granting reinstatement did not formally accept any offer. He simply refers to it in the most general way - “what appears to be an expression of remorse by you at the end of the appeal hearing when you apparently offered to repay monies paid to you by the University”

- 7.53. There was no formal offer to repay 8 months salary and no contractual commitment to do so.
- 7.54. What there was was a statement that was fairly seen at the time as an expression of remorse and regret and a willingness to find a way to move forward.
- 7.55. Initially, Professor Myhill in her email of 19 February 2016, simply held Professor Karp to his expressed willingness to repay. She looked to him for an agreement that he repay 5 months pay, by way of compromise, or counter with an alternative. She makes it clear that an appropriate agreement over this was necessary for the repairing of relationships between them (208).
- 7.56. When nothing was agreed, or even proposed, as to repayment, she wrote again, initially adding the matter to the other matters Toby Lott was investigation and then setting out that that the full 8 months' salary considered to be overpaid would be reclaimed by withholding salary until that was done (27).
- 7.57. It is hard to see on what basis the University withheld arrears of salary and current salary – that is, on what basis it was thought that that was either lawful or proportionate. The letter is written on HR advice and it is hard to see any informed basis on which such advice could be in any way appropriate given an employer /employee relationship. That matter has been dealt with elsewhere.
- 7.58. It did nothing to improve trust and confidence that Professor Myhill was advised to write in those terms and without lawful authority. It undoubtedly placed the University in fundamental breach of contract and was inconsistent with the duty of care HR claims in this case to exercise towards staff..
- 7.59. In Toby Lott's investigation report, he relates that there was understood to be an offer, that the University accepted this offer and thus it became a term of Professor Karp's contract of employment upon reinstatement. It is alleged that Professor Karp has subsequently refused to honour this term of his contract and on that basis Professor Myhill now considers that Professor Karp deliberately misled the appeal panel and her relationship with him has broken down.
- 7.60. None of that is in the documents establishing the contract between Professor Karp and the University.
- 7.61. It is not only not what the documents show, but it is a major leap from Professor Myhill making it clear that failure to agree with regard to recompense for wrongdoing could irretrievably damage future working relationships. Professor Myhill herself does not speak of misleading the appeal panel, rather of reneging on what was offered (witness statement paras 25 – 27). Reinstatement had been granted in the light of the expression of remorse and so there was an imperative that that be followed through with the recompense seen as offered. That didn't make it contractual, but she then wrote on the basis that the University were entitled to claim the money back, and in the harshest possible way.
- 7.62. Professor Kay adopted a similar formulation – that the offer to repay 8 months pay was made and accepted and that the contract from reinstatement contained an obligation to repay those monies.
- 7.63. The letter of reinstatement simply does not bear that interpretation.

- 7.64. The final conclusion reached by Professor Kay and her colleague was simpler: that the relationship between Professor Karp and Professor Myhill had irretrievably broken down as a result of his decision to renege on his offer of repayment.
- 7.65. This was a misinterpretation that aggravated the harm to working relationships. Withholding 8 months salary is a very serious step. It is hard to see how it could be thought compatible with renewed commitment to the University or working relationships. Even if that debt existed, and even were there some willingness to agree deductions, and that is not the position here, 100% deduction is not proportionate.
- 7.66. In summary therefore, I am satisfied that at the time of the second suspension, in February 2016, the University had reports of anxiety about working with Professor Karp from respected academics, accepted as genuine, the difficulties and risk of discredit in his management of CCNER, anger about what was seen as fraudulent conduct, a recent history of inflexibility and pattern of non-co-operation over teaching. Reinstatement in the face of a finding of dishonesty and breach of trust turned on the expression of remorse and promise to make recompense.
- 7.67. The emphasis on repayment reflects the huge anger at the breach of contract and conflict of loyalties arising from Professor Karp's acceptance of two professorial roles at once. That was not helped by the Professor's reformulation of what had been said at the first appeal hearing, and the reformulations indicate no commitment to make any reimbursement. He didn't admit fraud and he did not acknowledge any losses.
- 7.68. As time went on, there was increasing evidence that there was no remorse, no willingness to make recompense, no acknowledgement of wrongdoing.
- 7.69. The University's action in withholding salary was culpable and wrong and compounded the difficulties in working relationships. Professor Karp however, seeks reinstatement and does not rely on that breach as showing that relationships are irretrievably breached.

8. Reasons

- 8.1. Applying the law to the facts found in respect of the issues identified the Tribunal concludes as follows.

Reasons for Dismissal

- 8.2. What was the reason for dismissal?
- 8.3. The University relies on misconduct and on some other substantial reason, namely the breakdown in trust and confidence, alleging that that arises from the claimant's misconduct.
- 8.4. Of the five allegations, the issue about teaching responsibilities is plainly a matter of conduct, albeit one with an implication for working relationships. The other four matters cannot be so described. Those are reported as the breakdown in trust between Professor Karp and other staff, the difficulties in working with him in

collaborative research, the “overall view” that he was not collegial and trustworthy and the allegation that the relationship between himself and Professor Myhill had broken down over his refusal to repay 8 months salary as per his commitment to the appeal panel following his first disciplinary.

- 8.5. The breakdown in trust and confidence, the breakdown in working relationships are plainly the significant matters relied on. The primary reason for the dismissal falls into the category of some other substantial reason. It is a potentially fair reason.
- 8.6. That conclusion is not without difficulty. The respondent attributes the breakdown to Professor Karp’s conduct but does not primarily rely on matters of conduct in that there are not the specific misconduct allegations on which dismissal for misconduct might be based. In truth, the conduct relied on is in part that which had already been dealt with by the previous disciplinary panel. The most serious instance of misconduct was that of taking a second full-time professorial post while committed by the terms of his contract to devote his time and allegiance to Exeter University. It would be patently wrong for Professor Karp to be dismissed for the same offence, having been the subject of disciplinary proceedings already and in due course reinstated.
- 8.7. But it is that action which contributed substantially to the view that his senior colleagues took in considering him to be dishonest and untrustworthy. And it is that lack of confidence amongst other matters which led them then to conclude that they could not reintegrate him into the School of Politics.
- 8.8. Had Professor Karp recognised what was apparent to everyone else, that taking the ANU role on while still contractually committed to Exeter was wrong, there might have been the opportunity that the appeal panel chaired by Professor Evans had seen for working relationships to be resumed and restored. It would not have been easy; clearly there had been substantial damage to the confidence with which Professor Karp was regarded by colleagues
- 8.9. In addition, it is clear from Professor Myhill that her concerns did not solely stem from that matter. It was on seeing that Professor Karp might be returning, that she needed to address the other difficulties, in relation to co-operation over teaching, the management and collaboration over research work and the breakdown in relations with some of the other senior academic staff such that she saw difficulties in reintegrating him. She says that in terms during the second disciplinary hearing but it is plain from the speed of the suspension.
- 8.10. Those matters arose from the way that the claimant had conducted himself over recent years and in a wide range of situations.
- 8.11. The reason for dismissal was within the category of some other substantial reason.
- 8.12. Was it a substantial reason?
- 8.13. There key here is the way that the University works, the way it is funded and builds its reputation, the trust residing in their academic staff and the way that their collaboration over teaching, marking, research is necessary. The concerns expressed were of a serious nature: jeopardy to future funding, to academic reputations and the

University's own reputation, of a loss of valued members of the academic team and continuing difficulties in working relationships, coupled with the difficulties of loss of trust and confidence in Professor Karp personally, as a research manager and to act within the terms of his contract.

- 8.14. Those concerns were supported by the evidence that the disciplinary panel and appeal panel had.
- 8.15. There were other voices. The many warm tributes for Professor Karp include some from individuals at Exeter University. Professor Lamb, now the Dean and with a history of senior roles in the department thought the concerns fanciful and said so.
- 8.16. Notwithstanding those other voices, the concerns held were clearly substantial.
- 8.17. Professor Kay said in the dismissal letter,

"It is the University's case that , due to a range of issues, you could not be returned to the CeMap or Q-step teams and that any such return would result in serious damage to the department.The panel is satisfied that there is clear and unequivocal first hand evidence from colleagues who worked with you. It is evident..... that relationships between you and four key colleagues would not support any sort of future academic collaboration."

On teaching, "The panel is satisfied that.... You behaviour could have reasonably been interpreted as reluctance and accepted the difficulties this could cause to colleagues and the effective running of the department."

- 8.18. With regard to the CCNER, Professor Kay accepted as established the difficulties of working with him as a member of a research team given the difficulties over his management of the project and its effects on team members, with a failure without good reason to assess and resolve problems.
- 8.19. In relation to the "overall view" that Professor Karp was not a collegial and trustworthy member of the department with no viable working relationship with his colleagues, it was accepted that that was the case with some of his colleagues, and there was a genuine risk of loss of staff, on his being reinstated. Colleagues has spoken of a lack of trust of the Professor, of his lack of awareness of the effect of his actions and behaviour and that they did not wish to work with him.
- 8.20. All the original allegations were upheld. In addition there was also the breakdown in the working relationship with Professor Myhill over his apparent remorse and offer to reimburse salary to the University, which had led nowhere.
- 8.21. Those were substantial concerns and well founded on the evidence and history. The panel were entitled to regard the concerns as they did. A reasonable employer would consider them substantial.
- 8.22. I am not in any doubt that the concerns were genuinely held, with one reservation, in relation to the issue about the 8 months salary.
- 8.23. Save as to that, I am satisfied that the concerns were supported by the facts. The history establishes concerns that go to the root of the functioning of the department, raising issues about funding and

reputation, trust and working relationships. The oral evidence was convincing as to the level of concern and the specific sources for that concern, well-founded in the facts. Added to that was that Professor Karp saw nothing to criticise in his conduct, demonstrating a stubborn confidence that promised little scope for working together to find solutions – that emerges clearly from his assurance that there was nothing wrong with his past conduct and from the very limited reassurances he offered in his letter of 10 February 2016.

- 8.24. The category of some other substantial reason cannot be used as a shortcut to dismissal instead of going through other tried and tested procedures with well-developed safeguards. While the Tribunal cannot substitute its view of matters for that of the employer, it is important to be clear that the respondent's views were not only genuine but well supported by objective facts.
- 8.25. In my judgment, in respect of the original allegations, that is what the evidence shows.
- 8.26. In respect of the question of the 8 months' salary, there must be reservation. There was no contract to repay it. Failure to pay or agree could not be relied on as breach of contract.
- 8.27. What is clear however is that both Professor Myhill and the dismissing panel held that the difficulty lay in failing to recognise the wrongdoing and reneging not simply on what had been seen as the offer to make recompense but on any expression of remorse or move towards restoring working relationships.
- 8.28. To the extent that the dismissal turned on a failure to repay either on a contractual basis or on the basis of the impulsive, but no doubt genuine words at the end of the first appeal hearing, that would not found a fair dismissal.
- 8.29. To the extent that the dismissal turned on recognition that there was no remorse and no willingness even to discuss a financial compromise, it added to the respondent's grounds. Professor Karp resiled from his position quickly after the end of the first appeal hearing and the University were bound to be influenced by that and entitled to take it into account. It certainly contributed to the view that he was not reliable.
- 8.30. The next question is whether the respondent's reasons were of a kind such as to justify the dismissal of an employee holding the position which the employee held. As Professor Karp pointed out, it is a very major step to dismiss a Professor.
- 8.31. As presented by the University, there was little choice.
- 8.32. There is an alternative view. There had been substantial expansion in the department while Professor Karp was on leave. Professor Lamb said that at least 25 new members of staff had been taken on while Professor Karp was in Australia, and did not know him. So it would, in his view, have been perfectly possible to reintegrate Professor Karp.
- 8.33. Bice Maiguashca saw the breakdown in relationships as limited to a few individuals, capable of being resolved and being handled disproportionately, and she knew the individuals concerned well. Professor Vowles also knew the department well and took a similar position.
- 8.34. There were academics in the department pursuing what was called "lone-wolf" research, that is, without involvement in large scale

collaborative research. That would have been open to Professor Karp to do.

- 8.35. The panel did consider alternatives to dismissal but rejected them. Given the evidence of dysfunctional working relationships and the risk that this was a pattern that would be repeated, and given the trust and co-operation issues, it was certainly reasonable for the panels to decide that there were risks here not worth taking, that the difficulties were too great. They were entitled to give more weight to the concerns being expressed to them. Given the independence under which academics operate, including as to their applications for grants and collaborative arrangements, there would have been practical difficulties in agreeing a framework for Professor Karp that he might have accepted and worked within.
- 8.36. There might have been employers who would, for someone of Professor Karp's academic reputation and track record, think it worth trying to find a way to retain him but it could not be said to be unreasonable to see dismissal as the safest and best way forward. It was certainly within the range of reasonable responses of a fair and responsible employer.
- 8.37. Professor Karp wished to draw a comparison with Professor Moss, a member of the Sociology Department who was not dismissed in similar circumstances. That is not a recent case and little information was available about it – not enough to show that the case provided a genuine point of comparison.
- 8.38. One or two of his witnesses write with some anger that other people have not been disciplined and that he is being treated differently.
- 8.39. Again, there isn't a basis in the evidence for making any genuine comparison. What is clear is that the concerns were genuine, well founded on the evidence, and wide ranging in the potential impacts on the department, with the reservation given above
- 8.40. Given that, and even given the reservations outlined, the respondent's reasons were sufficient to justify dismissal in this case.

Fair Procedure

- 8.41. Did the Respondent adopt a fair procedure? The Claimant challenges the fairness of the procedure and that is dealt with under the challenges he made.
- 8.42. He made a number of challenges to the procedure at the disciplinary and appeal hearings. They are dealt with in some detail in the dismissal letter of Professor Kay, dated 22 September 2016 (513 on).
- 8.43. The Claimant asserts that the choice of the investigator (Mr Lott) was unfair since he had been involved in the 2015 process.
- 8.44. Mr Lott's involvement in the earlier process was minimal and neutral. He did not get involved with the issues. He simply recommended that the same panel must be reconvened if a further hearing was necessary. He was not fully briefed. It was fair and reasonable to ask him to investigate.
- 8.45. Professor Karp believes that he was effectively disciplined twice for the same matters (double jeopardy).

- 8.46. There is undoubtedly overlap, but the second dismissal was not on the same grounds as the first. The second depended on the damage done by the conduct that had led to the finding of dishonesty, and in part, on the absence of any recognition of his own culpability in that and refusal to follow up on what the appeal panel reinstating him had taken for genuine remorse, regret and recognition.
- 8.47. Professor Karp alleges that he submitted written evidence in advance of the disciplinary hearing which was not included in the documentation which was seen by the panel before the hearing.
- 8.48. The index of documents before the panel runs to 110 documents. All statements and character references Professor Karp provided were included (514). The investigation does not have to be exhaustive. It does have to be reasonable. It cannot be seen that anything relevant or determinative was omitted. The panel were very well briefed, and Professor Karp had the opportunity to address them, which he did orally and in detailed written statements, albeit that he declined to make an oral submission or summary of his case (580).
- 8.49. He further alleges that the investigator 'prosecuted' the case at the hearing.
- 8.50. Having heard from Professor Kay and seen the evidence before the panel, it is clear that they were influenced by the evidence and not by either the conclusions put forward by Mr Lott or his manner at the hearing.
- 8.51. Professor Karp considers that the result was predetermined.
- 8.52. The evidence does not support that. The dismissal letter discloses a full and conscientious examination.
- 8.53. He alleges that he was not allowed to call witnesses at the disciplinary hearing; he was only allowed to call 2, although he had provided a list of 9 who he had wanted to call.
- 8.54. Professor Karp was allowed to call witnesses. He submitted a list of 9 proposed witnesses. He did not have his witnesses waiting ready to come in to the hearing and he took a substantial part of the time at the hearing questioning witnesses, leaving less time for his own witnesses. In the end, he only called two.
- 8.55. He also claims that he was not allowed to speak and/or effectively put his case forward at the hearing. He considered that the Respondent was seeking to impose time constraints.
- 8.56. The respondent did impose time constraints. The respondent had the option of arranging a further hearing. Three previous hearing dates had been identified and the hearing then postponed (445). The panel considered allowing more time but in the light of the difficulty of finding the present date and three clear hours for the gathering of senior members of the University, considered it better to proceed in the time available (514). The hearing took three and a half hours.
- 8.57. He claims that these last two matters were in breach of the Respondents written policies.
- 8.58. The procedure adopted was clearly within the Disciplinary code (23).
- 8.59. In answer to his procedural challenges, Professor Kay was very clear that there had been time for him to present his case, that he had had the opportunity to question and to call witnesses, that he had been free to call Professors Reifler and Bolleyer had he chosen to do

so. She regretted that he had not chosen to make a statement of his own case, but the panel had considered his written statements including one handed in late in the hearing.

- 8.60. Given the wealth of documentary evidence, including Professor Karp's own statements, to restrict the hearing to three and a half hours was not unreasonable. It was within the band of reasonable arrangements that a reasonable employer might make, notwithstanding the time management difficulties that Professor Karp displayed.
- 8.61. Professor Karp complains that the dismissal letter referred to witnesses who had apparently given evidence to the investigation, but who had not done so. There was evidence before the panel in the form of emails from individuals who had not been interviewed. One of those was Roz Davies who had objected to statements attributed to her. A statement from Roz Davies to that effect was put before the appeal panel (638)
- 8.62. What it does set out is that the ESRC no longer grades end of project reports. That was established in April 2016 on enquiry. It would not of itself alleviate the anxieties about future funding.
- 8.63. At the appeal, the Claimant challenged the constitution of the panel at the disciplinary and he also challenges the constitution on appeal.
- 8.64. There is an overall statement in the Disciplinary Procedure that disciplinary action under this procedure in respect of staff in the academic job families will be taken by academic managers.
- 8.65. The Vice-Chancellor, Registrar and Secretary, Deputy Vice-Chancellors, College Deans, Heads of Service and College Managers are authorised to take disciplinary action at all stages, and others may be so authorised (21).
- 8.66. The University's Procedure is amplified by agreement with the trade unions, whereby where an academic raises an appeal, one panel member will be an academic (645 and witness statement, Shore-Nye (7)).
- 8.67. The requirement otherwise is that the appeal is heard by two senior managers (24).
- 8.68. Professor Kay chaired the disciplinary hearing. She had a senior manager, but not an academic, sitting with her.
- 8.69. Mr Shore-Nye who chaired the appeal hearing, is not an academic but he is the Registrar and Secretary. He sat with Professor David Hosken, Professor of Evolutionary Biology.
- 8.70. While the Disciplinary Procedure specifies an appeal panel of two senior managers, it only specifies one manager to conduct the initial disciplinary hearing (23).
- 8.71. The University has moved from one person handling hearings to panels, in the interests of fairness.
- 8.72. There was no breach as to the constitution of the disciplinary panel – it was chaired by an academic. An additional panel member did not breach the code.
- 8.73. There was perhaps a technical breach of the commitment in respect of the appeal panel constitution in that the written policy promises academic managers. Against that, Mr Shore-Nye is expressly authorised to conduct disciplinary matters at all levels and in sitting with an academic, the panel met the requirements of the

Code as varied by agreement with the unions. I don't consider that a material breach.

- 8.74. Professor Karp also complains that he was prevented from calling witnesses to the appeal hearing.
- 8.75. The Disciplinary Code sets out that the appeal is a review. "No new evidence may be presented to the Appeal Panel nor any witnesses called, unless the Appeal Panel is satisfied that there are exceptional reasons why such evidence or witnesses were not produced at the disciplinary hearing and/or that it is necessary in the interests of fairness...." (24).
- 8.76. Additional evidence was admitted. It was within the range of reasonable responses of a fair and responsible employer not to identify exceptional circumstances here for fresh witness evidence to be called, given the care taken to allow time for Professor Karp to prepare for the initial hearing and to permit him to call witnesses. .
- 8.77. In addition to the above, there are the matters that were identified at the preliminary hearing in relation to misconduct: The Tribunal does not consider this to be a misconduct dismissal. For completeness, those matters are addressed.
- 8.78. The Claimant claims that the Respondent did not genuinely believe that he was guilty of the matters which were alleged. The Tribunal is satisfied that there was genuine belief in the grounds relied on.
- 8.79. No complaint had been made by any individual.
- 8.80. There was no history of formal grievances being raised. There is no history recorded of complaints of Professor Karp's conduct prior to 2012. There is an ample history of concerns being put to him about his management of the CCNER. He was told of the anxieties raised by the named individuals and of anxieties shared by others who chose not to be named. The key reliance was on those whose names were put forward and given to him.
- 8.81. The Claimant maintains that he was never made aware of all four of the members of staff that he was supposed to have fallen out with. He also alleges that the identity of some of those relied upon by the Respondent changed
- 8.82. Four individuals raised concerns directly. One then chose not to give his name. It is unfortunately in the papers and was given at the hearing. No reliance was placed in the findings on that individual's views. Three members of staff then remained, Dr Reifler, Professor Bolleyer and Professor Massey. Professor Myhill then added her own name given the way events developed. It would be fair then to say that the reference to four individuals should be a reference to three individuals, since Professor Myhill's concerns were in relation to the added allegation not the original three.
- 8.83. The individuals relied on were key figures and the respondent was entitled to take serious account of their views and concerns.
- 8.84. His former wife was interviewed but the Respondent maintained that she had not been and it failed to disclose the evidence that it gathered from her.
- 8.85. The Professor's former wife, herself a professor, was interviewed and gave a truncated statement. She knew that her name was being used and did not want statements attributed to her without the chance to comment (396) In her written statement, she is overall supportive

of Professor Karp, without giving any detail. The notes of the interview were not provided to Professor Karp but she passed them on. They indicate a difficult interview, but beyond what is in her written statement, add little to the issues.

- 8.86. The Claimant provided names to the investigator of witnesses which he considered relevant, but they were not interviewed.
- 8.87. Mr Lott acknowledges this. He interviewed the key witnesses. He did not conduct wider interviews and in particular held back from interviewing those who had volunteered statements on behalf of Professor Karp. That was because he did not know what they had been told – the interview with the Professor's wife shows that the actual allegations were not on all fours with the concerns on which Professor Karp had asked her to comment in requesting a statement from her (397 and 406). He did not interview one or two of the witnesses that Professor Karp expressly relied on as supportive of him and his role in the department, for example Dr Andrew Schaap and Dr Robert Lamb, who both attended the disciplinary hearing.
- 8.88. Professor Karp says that the investigator asked leading questions and did not take notes or minutes of evidence which potentially supported the Claimant's case. The investigation was slanted towards a 'conviction'
- 8.89. The interviewer sent the notes of interviews to the interviewees. That was fair. Professor Vowles in particular objected to the content and approach and provided his own statement. Others had the chance to comment and the disciplinary panel heard from Professors Myhill and Massey directly. reached conclusions that the allegations were upheld. The conclusions were objectively supported. If based on a selective reading and recording of the evidence, the disciplinary panel and the panel conducting the appeal had wider material before them.
- 8.90. Professor Karp goes on to say that the investigator's method of questioning witnesses was a cause for concern even amongst the witnesses who were interviewed.
- 8.91. There are records of complaints and they were before the disciplinary panel. The disciplinary panel showed itself able to assess the evidence independently.
- 8.92. A further issue raised in the evidence concerned the handling of Dr Reifler's statement. He had expressed allegiance to the Professor's wife over an above any allegiance to the Professor. Those lines had been deleted from his statement so that the panel did not see them. Those lines did disclose loyalties, but they did not in any way alter the direct evidence Dr Reifler gave in relation to teaching arrangements or his discussions with Professor Karp. The deletion of the lines was unfortunate but not material to the outcome. The panel were not misled.
- 8.93. The question is whether, given that there are some flaws in the procedure, was it fair overall?
- 8.94. In my judgment, this was not an unfair procedure. It was reasonable in the first instance for Mr Lott to restrict the range of the investigation, given the allegations made. Professor Karp had and used the opportunity to widen it. What that wider evidence showed was that he was highly respected as a scholar and well able to work collaboratively. What it couldn't address were the specifics as to why

the relationships here had broken down. In particular, the wider audience of potential interviewees did not know of the particular background here that had led to findings of dishonesty in relation to the ANU work or the basis for reinstatement. It is very clear that the Professor's numerous supporters did not know that background. Mr Lott's investigation addressed the specifics appropriately and the employer was entitled to rely on it. It was a procedure that a fair and reasonable employer might have relied on.

- 8.95. I would accept that Mr Lott made an error in putting what he saw as a duty of care to Professor Karp's ex-wife above the merits of openness and transparency in failing to disclose some lines in Dr Reifler's statement. I have not accepted that as critical
- 8.96. Of the many challenges that Professor Karp makes the most serious is the constitution of the appeal panel, but I accept that it met the disciplinary code as varied by agreement with the unions and posted on the website.
- 8.97. It is not every breach of procedure that renders a dismissal unfair and I do not find that the flaws in the procedure adopted did so in this case. The employer acted reasonably in the procedure adopted at the time.
- 8.98. To conclude, in my judgment, the primary reason for the dismissal was for the breakdown in trust and confidence between Professor Karp and his colleagues, Professors Myhill, Massey and Bolleyer and Dr Reifler.
- 8.99. This is not simply a clash of personalities. Professor Karp had so conducted himself that he had alienated these individuals to the point where they did not want to work with him and did not trust him. It is particularly clear that he had lost the trust and confidence of Professors Myhill and Massey and that in itself was fundamental to his future with the department as it was seen at this time.
- 8.100. The issues for the University were significant. Funding and reputation depend on their academic staff. The issues raised clear risks that future grant funding for research or the success of research projects might be jeopardised or that they might lose promising or successful academics to other Universities, with their grant funding and research teams, because of the conflicts and lack of trust. There was evidence the University was entitled to accept on that and they were risks the University was entitled to safeguard against. Collaborative research is the strategy adopted in this field and senior staff had to be willing to engage in collaborative research with each other. And, above all, given the absolute trust placed in academic staff to fulfil their contractual obligations without supervision and with very considerable independence, trust was paramount.
- 8.101. In this case, the breakdown of trust and confidence was well founded in the history and itself a substantial reason notwithstanding the reservations referred to above. .
- 8.102. While inextricably linked, these were not the matters that had been previously adjudicated on. Professor Karp had been reinstated notwithstanding a finding of dishonest conduct. He could not then be dismissed for dishonest conduct.
- 8.103. The present allegations necessarily reflect that history but arise from worsening relationships due to his conduct, the impact

his conduct had already had on those he worked with in Exeter and his refusal or inability to see how his behaviour was viewed by others, to mitigate its effects or to modify his conduct in future.

- 8.104. There was a very thorough, although not unflawed, investigation; there was ample first-hand evidence on which the disciplinary and appeal panels based their findings.
- 8.105. There was genuine belief in the findings made and the reasons given.
- 8.106. The respondent was entitled to accept the evidence of their own staff as to their difficulties with Professor Karp. The history and documents objectively support the respondent's findings.
- 8.107. To the extent that it was wrong and unreasonable to rely on the claimed breach of contract, the respondent was nonetheless entitled to rely on the failure to recognise the history and its impact and to treat the withdrawal of the statement at the first appeal hearing as further undermining trust and confidence.
- 8.108. Dismissal for some other substantial reason was within the range of reasonable responses of a fair employer and fair within section 98(4) of the ERA 1966.
- 8.109. The claim in respect of unfair dismissal is dismissed.

Breach of contract

- 8.110. The Claimant's case is that he ought to have received 6 month's pay ending on the last day of term, but did not. That is accepted by the respondent, and that 8 days additional pay is due. That was the decision of the appeal panel. The sum has not yet been paid because of the counterclaim.
- 8.111. The respondent has not accepted the liability in respect of pension contributions.
- 8.112. Professor Karp was entitled to pension contributions by his employer over the period of his notice and is now entitled to damages for breach of that contractual entitlement, based on the actual loss incurred. Damages are due for the breach of contract whether or not Professor Karp pays the 8% employee share into the pension fund, although that is what would have enabled the University to make the contribution direct to the fund.
- 8.113. The loss cannot be quantified at present without evidence of the level of contributions due and advice as to the consequence of the lost investment over time.
- 8.114. The claim for breach of contract succeeds. Remedy is to be dealt with on a date to be fixed if not agreed.

The respondent's counter claim

- 8.115. The Respondent alleges that it paid the Claimant his notice in lieu of him working the notice period and it erroneously failed to deduct tax and national insurance due to a software error. The respondent asserts that he was notified on 18 October and requested to repay the overpayment of £12,555.02. He has not done so.
- 8.116. The Respondent claims that it is entitled to recover £10,695.25, being £12,555.02 tax and national insurance that should have been

deducted less 8 days notice pay which should correctly have been paid (£1,859.77).

- 8.117. The Respondent could not identify any express contractual term that might have been breached by the Claimant, but asserted that there was an implied term that employees would repay overpayments made in error
- 8.118. The counter claim is for the value of tax and national insurance that were not deducted from the payment made in lieu of notice. It is presented as due from the claimant as an underpayment of tax and national insurance giving rise to an overpayment from him.
- 8.119. The starting point must be to identify the nature of the payment.
- 8.120. Payment was made on the contract ending, not on a periodic basis thereafter.
- 8.121. The effective date of termination of employment is 23 September. That is because the letter of dismissal sets out that Professor Karp is not required to work his notice and his dismissal was effective from 23 September. There is no room to interpret this as other than dismissal without notice.
- 8.122. The payment of £32,080.98 representing six months pay was made was made in lieu of notice. That is, it is a payment of damages for breach of contract in not giving notice. The sum payable is not therefore a payment of salary, and the tax and national insurance consequent on payment of salary do not arise.
- 8.123. The payment made was a termination payment. Tax arising is a matter for Professor Karp to address. National insurance deductions are not required.
- 8.124. There is no foundation for the respondent's claim. The tax and national insurance were not due and payable so this is not an overpayment in the hands of the claimant.
- 8.125. The respondent's counter claim is dismissed.

Employment Judge Street

29 September 2017