



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4100755/2016

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**Held in Glasgow on 25, 26, 29, 30 and 31 October and 1, 2, 5 and 6 November
2018**

Employment Judge: Michelle Sutherland (sitting alone)

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David Morrison

**Claimant
In Person**

Glasgow Life

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**Respondent
Represented by:
**Mr S Milligan -
Solicitor****

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgement of the Tribunal is that the Claimant was not constructively unfairly dismissed in terms of Section 98 of the Employment Rights Act and his claim is dismissed.

REASONS

Introduction

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1. The Claimant presented a complaint of constructive unfair dismissal.

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2. Preliminary hearings were held on 7 July 2015, 12 January 2017, 7 July 2017 and 31 July 2018. The Claimant was ordered to specify the acts and omissions that taken together constituted the repudiatory breach, the last straw relied upon in precipitating his resignation, and the reasons for any delay between the last straw and his resignation (the Claimant's Allegations). The Claimant intimated those Allegations in July 2017. Given that the Claimant was unrepresented, his detailed grievance lodged on 13 March 2015 was used as an aid to interpret those Allegations in line with the overriding

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objective. It was agreed that the final hearing would be split with the first hearing restricted to merits only and any hearing on remedy to be listed subsequently. Evidence-in-chief was given by written witness statements which were considered at a reading day held on 24 October 2018.

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3. The parties lodged a joint bundle of documents. At the hearing, parties agreed that additional documents could be included into the agreed Joint Bundle. The Claimant's additional bundle was included under deletion of certain items which were not relevant to the issues. Given that the Respondent was seeking to rely upon unapproved notes of the investigation meeting held on 27 May 2015, the Claimant was permitted to rely upon any extract from his covert recording which may evidence him having provided a list of witnesses to the investigation officer. The Claimant was permitted to amend the specified Allegations to rely upon two additional recorded delivery letters dated 17 and 21 August 2015.

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4. At the hearing parties agreed that –

- the Claimant's employment transferred under the Transfer of Undertaking (Protection of Employment) Regulations 2016 from Glasgow City Council to the Respondent on 1 November 2010 ('the Transfer').

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- his applicable contract of employment remained that dated 18 April 1989 (J158)

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5. The Claimant gave evidence on his own behalf. For the Respondent, evidence was led from: The Respondent led evidence from Mary Greenshields (retired), Laura Hogg (Librarian, Respondent), Anne Louise Anglim (retired), Katrina Brodin (Programme Manager, Respondent), Audrey Sutherland (Operations Manager, Respondent), Karen Donnelly (Operations Manager, Respondent), Martin Wright (Community Services Manager, Respondent), Andy Robinson (Community Services Manager, Respondent), Gerry Torley (Principal Librarian, Respondent).

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6. Closing submissions were made on behalf of both parties.

7. The following abbreviations are used in the findings of fact:–

Initials	Name	Title
AO	Andrew Olney	Head of Libraries
ALA	Anne Louise Anglim	Principal Librarian
AR	Andy Robinson	Assistant Area Manager (Grievance Investigating Officer)
AS	Audrey Sutherland	Community Library Operations Manager (ex Library Manager) (Disciplinary Investigating Officer)
GT	Gerry Torley	Principal Librarian
KB	Katrina Brodin	Library Manager
KD	Karen Donnelly	Library Manager
LH	Laura Hogg	Librarian (acting Principal Librarian)
LT	Lesley Tamburrini	HR Business Partner
MG	Mary Greenshields	Principal Librarian
MW	Martin Wright	Assistant Area Manager (Grievance Investigating Officer)

Findings in Fact

- 5 8. The Tribunal made the following findings in fact:–

Background

9. The Claimant was employed as a school Librarian by the Respondent. The Respondent is charitable trust which delivers a range of arts, music and sports services across several venues within the City of Glasgow. The Respondent has about 3000 employees and a dedicated HR department.
10. The Claimant was employed by Strathclyde Regional Council from 3 November 1986. His employment transferred to Glasgow City Council ('the Council') on 18 April 1989 during a local government reorganisation. On 1 November 2010 the Claimant's employment transferred to the Respondent

under the Transfer. Prior to the Transfer the Claimant worked at Lourdes Secondary School ('Lourdes') although he had previously worked at another secondary school. He remained at Lourdes until his resignation effective on 30 November 2015.

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11. The Claimant was a member of a recognised union and had access to union advice. The Claimant was in receipt of union advice from at least May 2014. The Claimant did not generally exercise his right to be accompanied to formal meetings.

10 Contract of Employment

12. The Claimant's contract of employment contained a mobility clause specifying an administrative base school: "However, you may be required to transfer from that employment location to such other place of employment in the Council's service as may be considered reasonable after consultation with you and, if necessary, the appropriate Trade Union" (J159).

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13. The Claimant's contract of employment stated that: "The duties applicable to the post will be prescribe by your Head of Department or such other person acting on his behalf who will also exercise supervision over your services. If the circumstances so require, you may be employed on other duties, appropriate to your grade, in your own or another department, after consultation with you and, if necessary, your trade union" (J159).

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14. The Claimant's contract did not expressly address the issue of temporary cover. Both pre- and post-transfer the Librarians from time to time provided temporary cover at another school.

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15. Whilst the Claimant's duties remained those of a professional librarian his duties had under gone some changes over the years. The Claimant was unwilling to agree to any material changes to his duties without union consultation.

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The Transfer (Nov 2010)

16. The Claimant was very unhappy about the Transfer and found the associated changes stressful. The Claimant was one of thousands of employees who were subject to the Transfer.
- 5 17. The Respondent entered into a Service Level Agreement ('SLA') with the Council specifying the library service to be provided (J181). The SLA was relied upon by the Respondent as indicating the duties to be performed by the Librarians including the Claimant. There was no material conflict between the SLA and the Claimant's duties prior to transfer.
- 10 18. Proposed measures in relation to the Transfer included: "Each school Library will be based in a named school(s) but will work at any Glasgow Life venue as required" (p175). In response the union sought an undertaking to be written into the SLA, that the Respondent "cannot remove School Librarian's from School Libraries, during term time or school holidays". The undertaking was not however given nor written into the SLA (J181).
- 15 19. The SLA specified the service to be provided by the Respondent including management and maintenance of an appropriate stocked on-site library; integrated stock procurement, servicing and cataloguing; co-ordination and line management of the schools' library service. The identification and selection of appropriate resources was the role of the librarian with teaching staff input but final decision to purchase will be the librarian's.
- 20 20. After Transfer the school library premises remained part of the local authority estate but the books, shelving and the librarian's ICT equipment transferred to the Respondent. (J192) After transfer the Head Teacher retained control over the library layout.
- 25 21. After transfer the teachers retained formal supervisory responsibility for pupils using the library and their discipline (J186). The Claimant undertook low level supervision of pupils using the library both before and after Transfer. Pupils usually attended the library with a class teacher but from time to time would
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attend the library unaccompanied. Any issues with discipline would be reported to the class teacher.

22. Prior to the Transfer the Claimant reported to the Head Teacher in the school.
5 After the Transfer the Claimant reported to a Principal Librarian also employed by the Respondent. There was triangular relationship between the School Librarian, the Principal Librarian and the Head Teacher which enabled input and discussion with all parties around pupil supervision and library layout, amongst other matters.

10 23. After the Transfer, the Claimant initially reported to MG until 2013 and then to ALA from 2013 onwards. ALA had extended absences during the period from June to December 2014. LH occasionally acted up to the role Principal Librarian including when ALA was off sick. (LH knew the Claimant from her
15 time as a librarian prior to the Transfer.) There were no regularly scheduled 1-to-1 meetings between the Claimant and his line manager. The Principal Librarian reported to a Library Manager also employed by the Respondent. ALA reported to KB. There were six Library Managers who shared an office including KB, KD and also AS until 2014. LH, KB, KD and AS were all subject
20 to the Transfer of their employment from the Council to the Respondent.

IT issues (2010 onwards)

24. Under the SLA the Respondent was to manage an integrated stock
procurement system based on centralised acquisition through the operation
of a library management system (J183). Following transfer there was a
25 change of library management system from 'ALICE' which not networked across all schools to 'Open Galaxy' that was so networked. The SLA recognised that a period of integration was required. Significant issues arose during that period of integration. The Claimant did not have a working barcode reader for about 18 months until 2012. There were connectivity issues with
30 Open Galaxy but these were resolved by 2013. There were issues with cataloguing but these were largely resolved by 2014. The IT issues arising between 2012 and 2014 meant the Claimant spent more time on

administrative duties and less time on professional duties. The Claimant felt frustrated by these IT issues. There were ongoing IT issues after 2014 but these were much more minor and resolved fairly promptly. e.g. In May 2015 an issue arose with Open Galaxy affecting all schools. The issue took a few days to resolve (J461).

Book Purchases (2010 onwards)

25. Pre-transfer the Claimant was able to specify which books he wanted to purchase and from what sources and was free to negotiate discounts. Post-transfer the Claimant was able to specify the type of book he wanted to purchase, but not the specific title, and to source this from one of two preferred suppliers. The Claimant could then reject the specific title provided. Rejection of a book did not always result in the cost being credited to his library budget. The Respondent is part of Excel Scotland Framework which is a procurement process. The Respondent had secured discounts from these preferred suppliers at around 40%.

26. On 4 March 2013 highly inappropriate books were ordered centrally and delivered to the Claimant. The Claimant required to confirm receipt of all books upon delivery and was uncomfortable about having his name associated with these books. The Claimant had the option of rejecting any books delivered and elected to reject these books.

Equal Pay Claim (April 2011 onwards)

27. On 6 April 2011 a collective grievance was submitted regarding equal pay and in particular the implantation of the Workforce Pay and Benefits Review (WPBR) implanted in January 2007 (J194). The Claimant was one of many employees represented by that collective grievance. That collective grievance was the subject of litigation which was not finally determined until after the claimant had resigned.

Flexible Working Application (Aug 2011)

28. Prior to Transfer the Claimant had responsibility for one school and following Transfer the Claimant had responsibility for two schools, namely Bellahouston Secondary School ('Bellahouston') and Lourdes. The Claimant experienced issues with pupil behaviour at Bellahouston. He did not experience same issues at Lourdes.

29. On 24 April 2011 the Claimant submitted a flexible working application seeking to reduce from 5 to 3 working days and from working across two schools (Bellahouston and Lourdes) to working at one school (Lourdes). His application refers to "two long term conditions, i.e. diverticular disease and a stricture" and a need to reduce his stress levels. The flexible working application notes that "the needs of the service might require me to work at other locations in the future". (J201) The application was granted by MG on 17 May 2011 and the new working arrangement commenced on 18 August 2011.

Incidents at Bellahouston School (June 2011)

30. On Transfer his line manager changed from the Head Teacher to a Principal Librarian. The Claimant believed that this gave rise to problems with pupil discipline.

31. On 23 June 2011 the Claimant complained to MG that that there were "repeated incidents with a gang of pupils" at Bellahouston either immediately outside or visiting the library at lunchtime and that no system had been put in place for supervising or disciplining these pupils. The Claimant did not experience these issues at Lourdes School (J208A). This particular complaint was made the day before the last day of term. The Claimant was about to cease work at Bellahouston and the Claimant therefore had one more day of such issues potentially affecting him.

Sickness absence 2010 - 2013

32. The Claimant had 2 days sickness absence in 2010, 15 days sickness absence in 2011, no sickness absence in 2012, and 1 days sickness absence in 2013 (J597).

5 Annual leave during Commonwealth Games (Oct 2013)

33. On 2 October 2013 all Respondent staff, including the Claimant, were advised that all staff were to be excluded from having annual leave during the 'Games Period' in view of the Commonwealth Games. The Commonwealth Games represented a very significant event for the Respondent. The Games Period for the Claimant was 23 July to 3 August 2014. The Claimant was advised that "there may be approvals where there are exceptional circumstances and this will be approved by HR. Requests for consideration under exceptional circumstances must be submitted by 31 October 2013 [the 'Request Period']" (J224). The annual leave arrangements applicable during the Commonwealth Games had been the subject of union consultation and collective agreement. The Claimant did not submit a request for annual leave during the Request Period.

34. In November 2014 all librarians including the Claimant were asked to give an indication of all likely leave throughout 2014. On 30 January 2014 the Claimant replied advising: "I'm waiting to get exact dates for going away in the summer, but that's right at the start, so should not cause any problem." He was looking for "a continuous break in the summer beginning at the end of term..."(C88).

35. The Claimant always took summer leave during the school holidays and generally took that leave at the beginning of the school holidays. The Claimant sought to take 4 week's continuous leave during the school holidays. No medical evidence was submitted by the Claimant to the Respondent that he required 4 weeks continuous leave for medical reasons. There were over 4 weeks between the start of the school holidays and the start of the Games

Period. The Claimant was not being forced to take summer holidays during the school term.

5 36. On 20 April 2014 the Claimant submitted a request for annual leave which included the Games Period. This request did not specify exceptional circumstances. On 6 May 2014 the request was refused by ALA because it was made out with the Request Period (J279).

10 37. The Claimant was off sick during the Games Period due to a rib injury sustained whilst cycling.

Communication with ALA (May 2014)

15 38. On 9 May 2014 the Claimant emailed ALA stating that by working at the Commonwealth Games he could be regarded as acquiescing to changes to his contract terms which in turn may have a bearing on his equal pay claim. The Claimant further stated that by articulating exceptional circumstances he could be regarded as acquiescing to an imposed requirement to do so. The Claimant raised issues with his health affected by lengthy seated meetings. The Claimant asked for clarification on what duties he was to undertake at the Mitchell Library during the Commonwealth Games as this may be relevant to his grievance to follow (J280). The Claimant was unclear what duties he would be undertaking during the Games Period.

25 39. On 13 May 2014 ALA offered to meet with the Claimant to have an informal chat about the issues raised by him (J278). On 14 May 2014 the Claimant advised that he was refusing to meet without a union rep, he was unclear as to what purpose an informal meeting would serve, and "Glasgow Life has formally removed my holidays, instructed me to act as a roaming worker carrying out unspecified duties and declines to make any statement regarding my longstanding health concerns" (J277). ALA responded the same day explaining that she was simply trying to understand his concerns, that a union rep was not required for an informal meeting, and that the Respondent was "unaware of any specific support that was to be put in place for you." She offered to discuss in person or by telephone and to endeavour to put in place

what support he may require (J277). ALA did not deny that the Claimant had a health condition. The Claimant did not require support at his normal place of work namely Lourdes. His concerns regarding support pertained to his previous work at Bellahouston School and prospective work at the Mitchell Library during Commonwealth Games.

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40. On 15 May 2014 around lunchtime the Claimant advised that he was unwilling to discuss matters without union involvement and sought confirmation as to whether his health condition namely a stricture in his digestive system had been recorded by the Respondent (J282). Later on 15 May 2014 in the afternoon the Claimant advised that he had taken union advice, that he wishes to take out a grievance over the changes to his working conditions, and that he now understands that “an informal meeting can be part of a step prior to a formal grievance hearing, and that I can leave any such meeting if I feel the need to, I propose that we arrange an informal chat for the week of your return from holiday” (J286).

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41. Paragraph 5 of the Respondent’s Grievance Procedure provides that “Any employee who has a grievance concerning their employment should, where practicable, discuss the issue informally in the first instance with their designated supervisor. Both parties should make genuine attempts to find a mutually acceptable solution to the problem during these informal discussions to avoid the need to invoke the formal procedure. However if the matter cannot be satisfactorily resolved at this stage, the [formal] procedure will apply. Admin note: Should an employee intend to proceed to the formal process, they are encouraged to seek guidance/advice from their representative or Trade Union who will assist with the completion of the relevant pro-forma.” (J101) Whilst the Claimant had a right to be accompanied at the formal meetings/hearings, he did not have a right to be accompanied at informal meetings.

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42. On 5 June 2014 the Claimant met with ALA and they discussed his annual leave, line management, his health and previous issues at Bellahouston

(J287). The meeting was difficult to begin with but ended on a more positive note. In her contemporaneous notes of the meeting ALA recorded that at points he was extremely agitated and was raising his voice. During the meeting the Claimant was invited to advise of any special circumstances which would justify he leave during the games period. The Claimant did not advise of any such circumstances. ALA did not advise that the Claimant medical records may have been lost. The Claimant did not advise ALA that he required any support or specify what support he required.

Communication with KB (June 2014)

10 43. On 20 June 2014 the Claimant emailed KB asking whether she has his medical records and when he can view them, stating that their approach to holidays constitutes bullying, describing his health conditions and the need to avoid stress, and seeking copies of his medical records in full (J296).

15 44. The Claimant's full personnel records, which may contain medical information rather than medical records, were held centrally by the HR department. An employee may gain access by contacting HR. A summary of the personnel records are held locally by the relevant department.

20 45. On 26 June 2014 KB replied to the Claimant advising that she was unsure what medical records he was referring to (e.g. return to work documents?), asking who advised that his records are missing, and asking what medical records he is looking for. She advised that his personnel file is always accessible and he simply needs to set up a meeting with HR. KB advised that referral to occupational health to get more advice on any adjustments required to support him was an option. She also advised that a work station assessment was an option. She offered for breaks to be built into longer seated meetings. She offered to put right anything that had not been attended to. She offered to meet with him and at the same time to provide access to the records he is seeking. (J294) The Claimant did not seek to set up a meeting with KB or HR for the purpose of accessing his medical records.

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46. On 26 June 2014 the Claimant replied to KB advising that ALA had told him his entire medical records had been lost, that he cannot voluntarily agree to changes to his terms without potentially compromising his other claims (relating to the effect of the Transfer on his terms and separately for equal pay). He also advised that he agreed to attend during the Games Period under protest and that he would be away from the city throughout. He did not advise what medical records he was looking for. He did not take up the offer to meet. (J293)
47. In late June 2014 KB undertook an audit of the Claimant's personnel files to see if anything was missing but there did not appear on the face of it to be anything missing or incomplete when compared with what she expected would be there.
48. On 26 June 2014 KB replied to the Claimant advising that a discussion would be good, that she can't on the face of it see anything missing, that she'd like to go through the documents with him, to progress the health support measures and make an OH referral (J292). On 27 June 2014 the Claimant advised that the specific medial documents relate to him going part-time, that the Respondent agreed to provide a range of work that bears little resemblance to the duties or nature of the service before Transfer, that in "my doctor's view a 4 week clear break in the summer is very therapeutic for someone in my condition", that they are refusing to discuss his claims (relating to the effect of the Transfer on his terms and separately for equal pay), and that he is considering a grievance relating to "bullying complaints, stonewalling and failings in H&S." (J291) The Claimant did not provide any medical evidence that such a break was required. On 30 June 2014 KB offered the Claimant a meeting with her and HR to discuss all of his issues (J291). The Claimant did not take up the offer to meet.

30 Communication with LH (June 2014)

49. On 26 June 2014 the Claimant emailed LH seeking clarification on who has been granted leave during the Games Period, seeking contact details regarding data protection and corporate security, and seeking access to

corporate policies, and complaining that he has been denied access to his medical records and that records are missing (J290/4). LH replied the same day advising that staff who sought leave in the Request Period were granted leave, advising contact details as sought, and advising that there is no barrier to him asking to see his records. She afforded him the opportunity to make an application for leave during the Games Period out with the Request Period on grounds of exceptional circumstances. The Claimant did not take up that opportunity.

Occupational Health (Aug 2014)

- 10 50. The Claimant had 13 days sickness absence in 2014 (J597).
51. On 6 August 2014 LH held a return to work interview with the Claimant following an extended period of absence. (The return to work interview was held by LH rather than ALA who also had extended absences during the period from June to December 2014.)
- 15 52. The Respondent's absence management procedure is not materially different from that adopted pre-Transfer. LH attended the return to work interview with an occupational health ('OH') referral form. LH was not refusing to refer the Claimant to OH. Although a referral to OH was not required following his rib injury it was agreed that a referral would be made regarding an ongoing health condition. The Claimant clarified that his medical condition is an intestinal stricture and diverticular disease rather than diverticulitis (J303).
- 20 53. On 6 August 2014 the LH prepared an occupational health referral which was signed by the Claimant (J299). On 14 August 2014 OH prepared a report which stated that he has a condition affecting his digestive system, it affects half of the western population by the time they are 50, the condition can present no symptoms at all, his condition is quiet at this time, the Claimant believes extended sitting can cause problems, that stress is known to exacerbate symptoms and that it is the Claimant's perception that he is under considerable stress at work (J359). It was recommended that he be furnished
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with a stress risk assessment form and to proceed to discuss his perceived work related problems with his manager. OH advised "His condition will have no direct effect on his ability to carry out the role as librarian; any adjustments/modifications will come through the risk assessment process".

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54. LH understood that ALA would discuss the OH Report with the Claimant following her return from extended sickness absence. A follow up meeting had been arranged for 29 October 2014 to discuss the OH report but the Claimant did not attend the meeting (J357).

10 CIPFA (Oct 2014)

55. On 7 October 2014 ALA emailed all school librarians regarding a CIPFA Young Peoples Survey to be carried out in all schools with S1-4 on 20 – 25 October 2014. CIPFA is a professional accountancy body (J306). The Survey was intended to collect information about the school library and gauge customer views. The views of pupils may feel like a personal evaluation where the library has only one member of staff, which reflected the Claimant's circumstances at Lourdes.

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56. On 10 October 2014 the Claimant replied to ALA noting that he was puzzled to find another major change to existing terms and conditions appearing from out of the blue, he as happy to administer the survey on this occasion on a one off voluntary basis, that no librarian has ever been expected to be answerable to the views of pupils, and that performance has been hampered by failure to offer support (J306). The Claimant saw the survey as the introduction of a performance measure without consultation based on the views of pupils rather than based upon the delivery of the curriculum for excellence.

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57. The Claimant carried the survey on a one-off basis and was not asked to carry out the survey again.

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Absence management (Dec 2014/January 2015)

58. The Claimant had 13 days sickness absence in 2014 (J597).

59. On 5 December 2014 the Claimant emailed KB to advise that the OH process has been blocked from continuance for some unexplained reason, that he is only willing to meet with the union present and “with staff who are not directly involved with the pattern of behaviour demonstrated in recent years”, that her
5 insistence that he work at the Commonwealth Games last summer on unspecified duties regardless of his health concerns was in breach of contract, that managers have failed to act regarding his health concerns for years, that they had failed to state his duties, and that he will be raising issues regarding misuse of funding (J314). The Claimant did not ask for a copy of the OH
10 report.
60. On 16 December 2014 KB replied to the Claimant advising that she was keen to meet to discuss his concerns directly, that he was welcome to be accompanied, and that this meeting could take place immediately after his
15 separate Return to Work interview (J313). On 17 December 2014 the Claimant replied advising that she had offered no explanation to progress the OH process and that “It would be inappropriate to participate in meeting with those engage in bullying behaviours over an extended period” (J312). The Claimant was by this time seeking advice from union representatives.
- 20 61. On 17 December 2014 the Claimant advised LH that he was back at work and that a meaningful return to work interview could not take place until the full information has been collected. LH replied the same day advising that ALA is unwell but will meet him in the New Year to follow up on his occupational
25 health referral, and that LH will conduct his return to work meeting in the meantime. The Claimant replied indicating that his grievance required remedied before any continuance of a flawed absence process. LH replied querying whether he was refusing to attend a return to work interview and noting that this could give rise to disciplinary action (J310). On 18 December
30 2017 the Claimant agreed to attend a return to work meeting the next day (J311).
62. On 23 December 2014 KB replied to the Claimant advising that she had raised his concerns with a colleague who would be in touch in the New Year to

arrange a meeting to discuss matters with a view to the issues being considered by them independently. She advised that ALA will meet with him in the New Year to discuss the OH referral report and the required supporting actions that she will undertake for him.

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63. On 7 January 2015 the Claimant replied to KB advising that she had declined to provide reasonable answers to legitimate queries, noting that he has not seen his medical records, noting the threat of disciplinary action “which is symptomatic of the culture of bullying you have fostered”, that KB, the Principal Librarian and LH have all failed to follow procedures over an extended period, and given that they are the subject of his parental complaint it is not appropriate for them to progress his absence management “where the documentation appears to clearly show you have used the absence procedure to further a pattern of bullying behaviours” (J315). LH has never been the subject of any complaints or grievances from any other members of staff. At this stage KB had never met the Claimant nor had any telephone calls with him. Her only interaction had been the emails described above. KB has only been the subject of one complaint or grievance from another member of staff which was not upheld. KB regarded the emails as an informal grievance which she passed to KD on advice from HR.

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64. On 7 January 2015 ALA emailed the Claimant requiring him to attend a formal absence management meeting on 14 January 2014 and advising him of his right to be accompanied (p328).

65. On 8 January 2015 the Claimant emailed ALA advising that she has not followed procedures, has engaged in bullying behaviours and he is therefore unwilling to meet with her and will be raising a grievance (p329). ALA found the Claimant’s accusations stressful and unreasonable.

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Communication with KD and ALA (January 2015)

66. In early January 2015 KD was asked by LT of HR to have an informal meeting with the Claimant to discuss his informal grievance which concerned his line manager and her manager. KD had no prior dealings with the Claimant. On 8

January 2015 KD telephoned the Claimant to discuss the concerns he had raised, to offer the opportunity to meet with her informally to discuss matters without union representation and agree a way forward or alternatively to raise a formal grievance would entail a formal meeting with union representation.

5 KD was trying to persuade the Claimant that it was in his best interests to meet her to discuss matters. KD did not state: 'Things will go better for you if you do as I say'. The Claimant found KD to be authoritative and had misinterpreted the terms of their conversation. Their discussion was confirmed by letter and invited him to meet informally on 14 January 2015

10 (J331). The Claimant understood that this was a reference to the return to work meeting already scheduled for 14 January and he did not therefore reply to the offer to meet.

67. On 14 January 2015 the Claimant attended a return to work interview with

15 ALA. He was advised that if his attendance did not improve or the absence level deteriorated it may result in a disciplinary hearing, that they will continue to monitor his absence and will review in 3 months (J333). He was provided with a manager's form regarding management of team stress which was not suitable (J335). The Claimant was not provided with the correct stress risk

20 assessment form and this added to his stress. His refusal to complete the manager's form was not relied upon to allege a pattern of non-co-operation requiring disciplinary investigation. At the meeting the Claimant expressed the view that his grievance should be dealt with by HR rather than by line managers. (J358) ALA did not provide the Claimant with a copy of the OH

25 report during the return to work interview.

68. At the end of the return to work interview, ALA advised KD that she was finished and that the Claimant was now available to meet with her. KD asked the Claimant to meet with her in her room. The Claimant did not want to meet

30 with KD. Both KD and the Claimant remained standing. The meeting between them was short and heated. KD was determined to persuade the Claimant of the benefits of holding an informal meeting. The Claimant advised that he was unwilling to discuss his concerns without union representation and that he'd

not yet heard back from his union. KD explained that there was no right to union representation at an informal meeting. KD ultimately advised that the formal grievance route would be the most appropriate in these circumstances. Immediately after the meeting KD made a note of that meeting in which she asserted that the Claimant shouted at her on a number of occasions and stated "You are a disgrace" (J332). KD has never been the subject of any complaints or grievances from any other members of staff. The Claimant had not previously received complaints that he has raised his voice (although ALA in her note of their meeting of 5 June 2014 had noted that he had raised his voice). On 15 January 2015 KD wrote to the Claimant confirming their discussion (J352). That letter does not reference the allegation that he shouted at her, etc.

69. On 16 January 2015 the Claimant emailed KD advising that staff continue withhold access to his medical records and that there has been frequent bullying over a period of years, that she not part of his chain of line management and therefore ought to have passed his concerns upwards, that "instead you called me up and began the 'conversation' with "things will go better for your if you do as I say"", that she has "embarked on a self-appointed campaign of harassment", that she is "trying to marginalise the involvement of other parties, including the union and the Ombudsman", suggesting that there is no locus for an informal grievance procedure, and that she is unable to deal with staff in an appropriate manner (J354). KD did not have any further contact with the Claimant.

70. On 21 January 2015 ALA emailed the Claimant a summary of their meeting, provided a copy of the OH report, and asked to arrange a meeting to conduct the stress assessment (J356). There had been 5 month delay in providing the Claimant with the OH report caused by ALA's periods of extended absence and this delay caused the Claimant understandable frustration.

Disciplinary Investigation (Jan and Feb 2015)

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71. In mid-January 2015 AS was asked by LT, HR to investigate KD's complaint of inappropriate behaviour by the Claimant on 15 January 2015. AS had no prior dealings with the Claimant bar a brief meeting in 1992.
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72. On 20 January 2015 AS gave the Claimant written notice of an investigation into an allegation of inappropriate behaviour by him during his meeting with KD on 15 January in the Library Managers' Office. He was instructed to attend an investigation meeting to be held on 29 January 2014 and was advised of his right to be accompanied (J355). This letter was sent by recorded delivery.
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73. Invites to formal meetings were sent by recorded delivery to his home address. In January 2015 he Claimant raised an objection to this intrusion of work matters into his home life which he found stressful. It was explained to the Claimant that this was part of the Respondent's standard procedure. The Claimant did not raise further objection to the subsequent recorded delivery letters sent in August 2015.
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74. On 22 January 2015 the Claimant emailed AS asking her to advise who had appointed her and asking that this matter be passed on to HR or her line manager (J364). AS was previously a library manager and had shared an office with KB and KD. The Claimant had unexpressed concerned that they were colluding, and that AS was not therefore impartial. He was seeking independent oversight of the disciplinary allegations and his related grievance to follow. He was concerned that the letter inviting him to an investigation meeting did not make reference to any HR involvement. AS took advice from LT, HR who confirmed that it was appropriate for her to continue.
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75. On 28 January 2015 the Claimant emailed AS advising that his union is unavailable, the Respondent has failed to address medical and professional concerns for years, that matter ought to be dealt with by her and HR, and that procedures are not being followed (J368). He referred to her "stated unwillingness to consider a full range of evidence" but no such statement had

been made by AS. AS replied the same day confirming that she is only investigating the complaint lodged by KD, it is inappropriate for the investigation to be conducted by someone more senior, and seeking alternative dates for them to meet (J368A).

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76. On 5 February 2015 AS wrote to the Claimant to advise that since he had not responded with an alternative date for the investigation meeting a further meeting had been arranged for 13 February 2015 (J370). The letter was sent by recorded delivery.

10 Communication with LT (Jan/Feb 2015)

77. On 22 January 2015 LT of HR wrote to the Claimant to advise that the grievance route would be the most appropriate way for his concerns to be addressed, that bullying and health and safety allegations are taken very seriously and any grievance will be fully investigated (J366).

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78. On 28 January 2015 the Claimant emailed LT noting that he has been asking to be put in touch with HR for sometime (J599). On 29 January 2015 the Claimant emailed LT advising that "My concerns, both as a parent and as an employee, were originally raised by colleague and myself during the transfer process" and that he needs a couple of weeks to submit his grievance (J600).

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79. On 5 February 2015 the Claimant emailed LT advising that the investigation meeting was being held to block consideration of his grievance and to engineer confrontation, and complaining post being sent to his home address amounting to "a pattern of intrusive harassment" "sufficiently well documented to report to the police" (J371).

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80. On 6 February 2015 LT advised AS to put the disciplinary investigation on hold for one week to allow time for the grievance to be lodged and if so hold off the disciplinary investigation until the grievance has been investigated (J372). This email was not sent to the Claimant but this was the Claimant's understanding.

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School Librarians' Meeting (Feb 2015)

81. On 11 February 2015 a School Librarians' meeting was in the Mitchell Library. These meetings are held every few months. The Claimant was expected to attend such meetings and would ordinarily attend. The Claimant did not attend this meeting. The Claimant had not been given permission not to attend these meetings.

82. At the meeting on 11 February 2015 the librarians were asked to check the recorded capacity for their school library with a view to addressing problems with overcrowding in the school library. In that context the minutes note that "Most librarians work on the basis that they do not supervise more pupils than a teacher would". Having received a copy of the minutes, on 27 February 2015 the Claimant advised ALA that "inclusion of any supervisory role where there was none before transfer is a very clear demonstration that TUPE was broken and that these arrangements were invalid from the outset" (J378). The Respondent did not seek to impose formal supervisory duties on librarians at this meeting or otherwise.

83. On 13 February 2015 ALA sought clarification regarding his failure to attend this meeting. The Claimant replied the same day indicating that he is unwilling to attend meetings because of the "on-going bullying taking place during visits to the Mitchell Library" and that a group of people "have moved from workplace bullying to criminal harassment involving a bizarre accusation and frequent harassment of my wife and myself at home within the context of the workplace harassment" (J375). On 26 February 2015 ALA replied asking him to let he her know when and why he is unable to attend a Librarians' Meeting in advance of the meeting (J378).

Grievance Investigation – Part 1 (Feb 2015)

84. On 13 February 2015 the Claimant submitted his grievance to AO and this was passed to LT (C104). The Claimant notes that his grievance contains what were originally parental complaints about service delivery.

85. In February 2015 MW was appointed investigating officer in respect of the Claimant's grievance. MW had previous training and experience in conducting grievance investigations. MW had no prior dealings with the Claimant. MW was subject to the Transfer of his employment from the Council to the Respondent.

86. On 4 March 2015 MW telephoned and then emailed the Claimant to advise of his appointment, asked the claimant to summarise his grievance on the Grievance Form to enable him to structure the investigation, and thereafter to arrange an initial meeting. On 5 March 2015 the Claimant responded advising that "managers have refused me access to my medical records/personal file for almost a year" (J394). MW replied the same day advising him to include this issue within his grievance. The Grievance Form made states that the Claimant has a right of appeal if his grievance is not resolved satisfactorily (J442).

87. On 13 March 2015 the Claimant submitted his grievance together with supporting emails using the Respondent's standard grievance form (J396). The grievance extended to 12 pages, contained supporting documentation extending to about 40 pages, and raised the following issues in summary –

- Refusal to arrange access to the Claimant's medical records
- Withholding of an Occupational Report for months
- systematically undermining the development of literacy and attainment
- parental concerns regarding failure to deliver an effective library service to children
- Manipulation of pay under WPBR
- False claims for reduced costs
- Misleading of the public about savings and quality of services
- Unnecessary and wasteful expenditure on resources
- Culture of bullying and harassment
- Change of duties after Transfer
- Freeze on appointing librarians

- Contradictory approach to performance management focusing on issue figures rather than the curriculum
- Failure to provide adequate training
- Breaching H&S and data protection laws
- 5 - Failure to address pupil supervision
- IT support systems not working
- Use of CIPFA in a public library model
- Insisting upon meetings without union representation
- Unnecessary communication using home address
- 10 - Making of bizarre accusations

88. On 18 March 2015 the Claimant sent to MW further supporting documentation relating in the main to the WPBR and the Transfer (J443). The supporting documentation provided extended to about 70 pages.

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89. On 20 March 2015 the Claimant asked MW to advise how to access his medical records (J444).

90. On 24 March 2015 MW invited the Claimant to attend a grievance investigation meeting on 2 April 2015 to be held at Lourdes Secondary School. He was advised of his right to be accompanied. In light of phone calls with the Claimant, MW advised his understanding that the grievance pertained to five areas namely "A. impact on attainment and achievement, B. health and safety, C. bullying, D. funding, E. terms and conditions" and the claimant was asked to "come to the grievance hearing prepared to talk through each of the allegations and sign post any of the supporting documentation relevant to each allegation". The Claimant was advised to contact the HR service who would make an appointment to enable him to view his HR/ medical records (J446/7).

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91. On 25 March 2015 the Claimant replied to MW advising that "I am rather baffled by your statements concerning comprehension and signposting. If you've read through the material twice I am at a loss to understand how it

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would be difficult to see what is recorded within the current evidence. If you can identify areas that you are finding hard to understand I'd be happy to try to provide an overview of those areas" (J450). The email does not contain a request to access his records.

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92. MW replied on 26 March 2015 stating "all I ask is you come prepared to clearly articulate your grievances and your evidence which supports this" (J449). The Claimant replied on 27 March 2015 stating "No, that won't be appropriate. You have refused to meet a whole series of prerequisites for running a valid investigation and the pattern of behaviour shown by you is an exact step-by-step copy of the evasion and bullying already used by a succession of managers. I'll collate the evidence and send in a grievance about your actions at the earliest opportunity" (J449). On 31 March 2015 MW emailed the Claimant seeking to reassure him that he intended to investigate properly but the Claimant replied refusing to meet or discuss matters because of his systematic bullying (J452). MW was completely taken aback by his allegations. MW has never been the subject of any complaints or grievances from any other members of staff. There was no reasonable basis upon which the Claimant could consider that MW had bullied him. The Claimant did not ultimately raise any grievance regarding MW.

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93. On 25 March 2015 the Claimant made contact with the HR Service seeking access to his HR/ medical records (J448). This was the first time that the Claimant had explicitly sought copies his personnel records.

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94. On 1 April 2015 LT emailed the Claimant to note concern regarding his email to MW and asking that any grievance be lodged by 9 April 2015 (J453). The Claimant replied on 9 April advising that he has 6 months in which to raise a grievance and noting that "GL continues to undermine any such process by refusing myself and my representatives access to medical/ personnel records" (J454). On 10 April 2015 LT replied urging him to call a named individual at HR to access his records and urging him to meet with MW as an independent manager with a view to addressing his concerns or to propose an alternative solution (J455). The Claimant responded on 10 April advising

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that the only solution was for him to lodge a grievance about MW and that it was not appropriate for him to call an individual at HR to seek access to his records because there would be no written record of the call (J456).

5 95. The Claimant did not call the named individual at HR but on 10 April 2015 sent an email to the generic helpline address for HR asking for access to his personnel records (J457).

10 96. On 10 April 2015 LT telephoned the Claimant to explain that MW's approach to the grievance investigation was compliant with the grievance procedure but the Claimant advised that it was inappropriate. The Claimant advised that he had requested but not received his personnel records from HR. LT agreed to follow this up. This was confirmed by LT in writing on 13 May 2015. She provided the Claimant with a copy of the Respondent's Grievance Policy. With
15 a view to achieving a swift resolution of his March Grievance the investigation was to be passed to AR and the allegations regarding bullying were to be considered first. The Claimant was advised that he did not require to attending any meetings involving Library Managers during this investigation (J467).

20 97. AR had previous training and experience in conducting grievance investigations. AR had no prior dealings with the Claimant. AR was subject to the Transfer of his employment from the Council to the Respondent. On 13 May 2015 LT offered the Claimant an informal meeting with AR prior to the investigation commencing to ensure AR has a full understanding of his
25 complaint and address any areas requiring clarity. On 15 May 2015 the Claimant advised that he was willing to meet with AR because LT had finally agreed to give him access to his records (J469).

30 98. On 19 May 2015 a grievance investigation meeting is arranged for 27 May 2015 at Lourdes Secondary School (J472).

99. On 21 May 2015 ALA provided the Claimant with a copy of his personnel records. These are provided 2 months after his first explicit request for these records. The Claimant is frustrated by this delay given his earlier requests and

complaints regarding access to his medical records, notwithstanding the confusion about which records he is seeking.

- 5 100. On 21 May 2015 the Claimant advised that AR that he these documents “identify further examples of bullying which are related to the grievance” (J474).
- 10 101. On 27 May 2015 AR held an initial grievance meeting with the Claimant. Notes of the meeting are taken by HR which are not sent to the Claimant for approval (J475). The Claimant makes a covert recording of the meeting. AR advises the Claimant that he wanted to split the grievance process in two stages: the first to deal with the allegations of bullying and harassment, which he regarded as a priority, and the second to deal with the contractual or TUPE related issues. The Claimant did not agree with that approach. He saw the issues as interconnected. At the grievance meeting the Claimant talked to issues that encompassed both the first and second stage allegations. In describing his 15 allegations the Claimant mentions the name of a colleague but does not provide AR with a list of witnesses.
- 20 102. On 12 June 2015 the Claimant then sent AR substantial additional pages of unindexed and unreferenced documents which came from his personnel records. On 15 June 2015 AR telephoned the Claimant with a view to arranging an informal meeting to establish the relevance of that documentation. He explained that it was not possible for him to understand 25 their relevance when the documents were not presented in any order, aligned to any aspect of his grievance or referenced. The Claimant declined to meet (C107). On 19 June 2015 the Claimant emailed AR advising that he was unwilling to meet, that he ought to be able to understand the documentation without further explanation, and that he was “engaging in further bullying” 30 (J499). AR regarded the email was almost abusive. AR has not previously been subject to a complaint or grievance by another member of staff. On 2 July 2014 the AR advised the Claimant that he would conclude the grievance based on the information available (J500).

103. On 29 July 2015 AR reminded the Claimant that there were five aspects to grievance investigation and that bullying was being considered first. On 5 August 2015 the Claimant replied advising that “at no point did I agree to stages” and that “there are no grounds for a separation of content” (J504). AR
5 regarded the tone of the email as confrontational.

104. In August 2015 AR issued the Grievance Investigation Report (J506) which found as follows –

- 10 - The absence management policy is not being applied as robustly as it should be
- The Claimant’s OH form was not discussed with him as timeously as it should have been
- The Claimant was advised the procedure for accessing his records and those records were provided to him
- 15 - Management adopted an appropriate, reasonable and supportive approach to annual leave during the Commonwealth Games
- An altercation took place between ALA and the Claimant and this ought to have been formally followed up at the time
- 20 - The sending of the letters to his home address was in line with practice and procedure and did not amount to bullying
- The Claimant’s inappropriate, aggressive and uncooperative behaviour requires further investigation
- The Claimant’s frustration with the transfer has affected his
25 perspective
- A more structured approach to meetings should be adopted to allow opportunities to request and provide information and individual support and supervision meetings require scheduled
- There was no evidence of bullying or harassment

30 105. The Claimant was unhappy with the terms of the Investigation Report which he felt had disregarded relevant evidence, had unreasonably preferred management evidence over his and had failed to follow the appropriate procedure. The Claimant was not advised by AR of any right of appeal in

respect of the findings and recommendations in this report. The Claimant had previously been provided with a copy of the Grievance Procedure and was aware of his right to appeal. This was the first part of a two-part grievance and the Claimant would be afforded the opportunity to appeal at the end of the second part.

Action Planning (July 2015)

106. In July 2015 the Respondent proposed to plan and assess the work of all staff by recourse to 'Action Planning'. This was a different approach to performance appraisal than had been adopted pre-Transfer. The Claimant had no objection to his performance being appraised but objected to the approach being adopted which was not linked to the Curriculum for Excellence. The Claimant did not complete an Action Plan and was not required to do so.

Monthly Performance Return (July 2015)

107. The Claimant had been completing and submitting monthly performance returns since the Transfer. The Claimant did not submit the monthly performance returns for June 2015. On 24 July 2015 LH asked the Claimant to provide his monthly performance sheet (J500B). The Claimant replied advising that the sheets were sent on 19 June and both were nil returns and asserting that these were duties out with his contract. On 24 July 2015 the Claimant emailed LH stating that she had been "lying, participating in vicious bullying and disregarding medical requirements concerning myself" (J500A). LH reported this issue to KB.

108. On 28 July 2015 KB instructed the Claimant to submit his monthly performance sheets by 31 July 2015. She expressed concern at the tone of his emails to LH and was reminded of his duty to communicate appropriately and not aggressively (J503). The Claimant responded by advising that he had been bullied and misled and that the Respondent cannot impose new conditions (J501). The Claimant did not submit the requested monthly performance sheets.

Grievance Investigation – Part 2 (Aug 2015)

109. On 10 August 2015 AR invited the Claimant to attend a grievance investigation at Lourdes Secondary School on 21 August 2015 to discuss the remaining issues in his grievance. The claimant was advised of his right to be accompanied (J519). On 11 August 2015 AR advised the Claimant that it remained his intention to complete the grievance investigation in two parts and that he would seek advice on whether any appeal process could be invoked at this stage (J521).
110. A grievance investigation meeting was held on 21 August 2015. During the second grievance meeting the Claimant proposed resolution involving third part mediation e.g. ACAS. That proposal was not taken up by the Respondent. The meeting was suspended to allow the Claimant to clarify with HR whether the disciplinary investigation could run in parallel with the grievance investigation.
111. On 21 August 2015 the Claimant provided a list of witnesses that related to the second stage of the grievance investigation concerning the TUPE transfer, etc.(J535). AR replied the same day confirming that he will contact the witnesses and noting that “In terms of the first stage of the grievance process, you will recall that I asked you to identify any specific witnesses that you wished me to speak to, but you did not identify anyone to me” (J535). On 26 August 2015 the Claimant replied noting that “you have proceeded in drawing conclusions/ outcomes without reading the documentation; without consulting the witnesses identified at the first meeting” and “my own focus is now on discussions with my lawyer, tomorrow evening, to make arrangements for a prompt cessation of the four years of bullying in which you appear complicit”. (J535/542) The Claimant had not appointed a lawyer at this stage and did not have any meeting arranged.
112. On 28 August 2015 AR emailed the Claimant seeking to reconvene the suspended grievance meeting of 21 August 2015 to continue with confirmation of key witnesses and evidence and to explore solution options

(J534). The Claimant replied the same day advising “you have received written detail on witnesses and you have already had weeks to see witness identified at the first meeting. The only solution you have suggested is to return to 4 years ago by sitting down again with proven liars and bullies”. The Claimant further advised that “I am in under no circumstances required to spend more time sitting across from an outright bully who has already spent four hours interrogating me without properly addressing a single concern”(J533). AR regarded that email as unsavoury and in appropriate. On receipt AR emailed LT the same day advising that “On the basis of this response, I believe I have taken the grievance process as far as I reasonably can” (C156).

113. On 4 September 2015 AR advised the Claimant that he is unable to proceed with part 2 of the grievance investigation because of the Claimant’s refusal to meet with him with a view to identifying relevant witnesses, providing explanation of critical evidence and the information submitted, and exploring potential solution. He advised the Claimant that the grievance as a whole is concluded and advised him of his right of appeal. He also noted that “I found the tone and language used in your email of 28 August 2015 to be unwarranted and unprofessional”. (J544)

114. The Claimant did not exercise his right of appeal because he had already made up his mind to resign.

Disciplinary Investigation (Aug 2015)

115. In mid-August 2015 AS was asked by LT, HR to re-start her disciplinary investigation regarding KD’s complaint and to include LH’s and KB’s complaints.

116. On 17 August 2015 AS gave the Claimant written notice of an investigation into allegations of inappropriate behaviour by him during his meeting with KD on 15 January 2015 and also into abusive behaviour towards LH on 24 July 2015 and his refusal to carry out a reasonable instruction from KB on 28 July 2015. The letter was sent by recorded delivery. He was provided with

statements prepared by KD and KB. He was instructed to attend an investigation meeting to be held on 26 August 2015 and was advised of his right to be accompanied (J525). The Claimant advised that his union rep was unavailable and it was agreed that the hearing would take place on 3 September.

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117. On 21 August 2015 AS confirmed to the Claimant that the disciplinary investigation meeting would take place on 3 September (J531). The letter was sent by recorded delivery. On 21 August 2015 the Claimant emailed the Head of Personnel to object to AS conducting the investigation given that she is named in his grievance which has yet to be concluded (J540).

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118. On 24 August 2015 AS wrote to the Claimant asking him to attend a disciplinary investigation meeting on 3 September 2015 (J541). The letter was sent by recorded delivery.

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119. On 27 August 2015 HR responded to the Claimant's email of 21 August advising that an alternative independent investigator would be appointed, and the disciplinary investigation should commence but would not be concluded until the outstanding grievance is concluded, both with a view to alleviating his concerns (J543). Upon receipt of this letter the Claimant took the decision to resign from the Respondents because HR were unwilling to stop the dual process of having disciplinary and grievance process running in tandem. They were proceeding to investigate disciplinary matters without yet having made explicit his right of appeal on the grievance report. (His right of appeal was currently being explored by AR and was explicitly confirmed on 4 September.) On 28 August 2015 the Claimant emailed AS advising that: "Your attempt to continue to misuse procedures to pursue your personal vendetta against me through further bullying has been blocked" and that sending letters to homes "as part of a deliberate campaign of bullying is, as previously stated, harassment" (J537). AS did not have a personal vendetta against the claimant and was surprised and upset by his email. AS has never been the subject of any complaints or grievances by any other members of staff. AS had never met with the Claimant (bar the minor exception arising pre-Transfer) and had

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no further involvement with the Claimant. There was no reasonable basis upon which the Claimant could consider that AS had bullied him.

- 5 120. No further steps were taken regarding the disciplinary investigation between 28 August 2015 and the Claimant's resignation on 30 November 2015.

Absence management (Oct 2015)

- 10 121. The Claimant was absent from work with the Respondent with stomach problems and alleged work related stress from 2 September 2015 until his resignation with immediate effect on 30 November 2011.

122. GT was asked to manage the Claimant's absence because he had no prior dealings with the Claimant. GT was subject to the Transfer of his employment from the Council to the Respondent. GT did not consider that there was any difference between either the absence management procedure or the payment of sick pay pre and post Transfer.
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123. On 28 October 2015 GT wrote to the Claimant requiring him to attend a formal absence management meeting on 6 November 2015 and advising him of his right to be accompanied (p548). Whilst the Claimant was unfit to undertake work for the Respondent, there was no medical evidence that the Claimant was unfit to attend an absence management meeting.
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124. On 4 November 2015 GT telephoned the Claimant with a view to confirming receipt of the letter and his attendance at the meeting. The Claimant advised that his response would be provided in writing. On 4 November 2015 the Claimant wrote to GT objecting to him contacting him by telephone and advising that he was unwilling to meet (J549). The Claimant did not attend the absence management meetings because he had made up his mind to resign.
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- 30 125. On 13 November 2015 GT wrote to the Claimant regarding his failure to attend the absence management meeting. A further meeting was arranged for 27 November 2015. The Claimant was advised that "A continued failure or refusal to participate in the absence procedure may lead to the company

withdrawing Occupational sick pay from you and investigation into a refusal to follow a reasonable management request". (J550) This threat was not a factor in the Claimant's reasons for resigning. The Claimant had already made up his mind to resign.

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126. On 22 November 2015 the Claimant wrote to AO advising that he has "never had any intention of addressing any of the issues raised with you formally through the customer complaint system months ago and have instead overseen a process of bullying involving harassing my family in my home" (J552).

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127. On 23 November 2015 GT telephoned the Claimant asking if he would be attending the absence management meeting. The Claimant advised that he had written to AO and refused to discuss matters.

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128. The Claimant did not attend the absence management meeting held on 27 November 2015. On 27 November 2015 GT wrote to the Claimant to advise that his failure to participate in the absence management procedure would be investigated as part of the conduct investigation. (J553).

20 Resignation

129. The Claimant to the decision to resign upon receipt of the letter from HR on 28 August 2015.

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130. The Claimant was absent from work with the Respondent with stomach problems and stress from 2 September 2015 until his resignation with immediate effect on 30 November 2015. The Claimant undertook paid work for the Open University as a Tutor starting around mid-October and continuing after his resignation. The Claimant attended his GP's on 7 September 2015 (J547), three weeks later around 28 September 2015, and on 26 October 2015 (J545). The GP initially counselled him against intimating his decision to resign but was supportive by 26 October. The Claimant did not get formal legal advice until after he resigned.

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131. The Claimant was not too unwell either to make the decision to resign or intimate that decision in the period between 28 August 2017 and late November. The Claimant had access to union advice during that period and was not prevented by a lack of knowledge about how to intimate that decision whilst he was off sick.

132. On 30 November 2015 the Claimant resigned with immediate effect and advised that he would be making a claim for constructive dismissal. The letter asserted the following “fundamental breaches of contract”, in summary: falsified TUPE transfer, equal pay/ WPBS, waste of public money, inappropriate recruitment, professional development failings, withholding information, failure to consider/ support medical condition, inadequate support re discipline, organised bullying, ignoring evidence, threats of dismissal, contact at home, falsified reports/ investigation, and undermining of the service (J555).

133. On 7 December 2015 the Respondent advised the Claimant that they were waiving their right to insist upon 4 week’s notice.

Observations on the Evidence

134. The standard of proof is on balance of probabilities, which means that the tribunal is satisfied that an event occurred if it considers that, on the evidence, the occurrence of the event was more likely than not.

135. The Claimant asserted that the standard book discount after Transfer was around 20% and not 40% and provided a sample of invoices to this effect. The Claimant did not give evidence that this was a representative sample and accepted that the discount of 20% was based upon his impression having had sight of the invoices. He accepted having not undertaken a statistical analysis of all purchases over a defined period or other analytical approach. The Respondent’s consistent evidence, including that of the relevant procurement manger, was that the Excel Framework Agreement provided discounts of around 40%. It is therefore considered more likely that the standard discount after Transfer was around 40% rather than around 20%.

136. On 23 June 2011 the Claimant complained about issues which would no longer directly affect him, namely pupil behaviour at Bellahouston.

5 137. The Claimant asserted that he submitted medical evidence to the Respondent that he required 4 weeks continuous leave for medical reasons during the 2014 summer holidays and that this was contained in his Flexible Working Application ('FWA'). His FWA does not contain any such evidence. No medical evidence was submitted by the Claimant to the Respondent that he required 4 weeks continuous leave for medical reasons.

10 138. The Claimant asserted that on 14 May 2014 ALA denied that he had a health condition which required support. On 14 May 2014 ALA explained to the Claimant that she was trying to understand his concerns and that she was "unaware of any specific support that was to be put in place for you." She
15 offered to discuss in person or by telephone and to endeavoured to put in place what support he may require. ALA did not deny that the Claimant had a health condition. The Claimant had a tendency to place an unreasonable interpretation on events.

20 139. The Claimant asserts that at his meeting with ALA on 5 June 2014 he advised of special circumstances namely that he needed extended leave to recuperate from his health problems. There is no record of this in the detailed note and this is inconsistent with his previous stated position that he was expressly unwilling to articulate any special circumstances for fear of acquiescence.
25 Accordingly it is considered unlikely that he articulated this need for extended leave.

30 140. The Claimant also asserts that at his meeting with ALA on 5 June 2014 ALA advised him that his medical records may have been lost. The Respondent does not retain medical records per se and accordingly it is considered unlikely that ALA would have stated that his medical records may have been lost. It is likely the Claimant inferred this from her lack of detailed knowledge regarding his medical condition.

141. The Claimant asserts that he made repeated requests to view his *personnel* records. He made requests to view his *medical* records on the following dates: by email to KB on 20 June 2014 and to the generic HR email on 25 March 2015 and 10 April 2015. The Respondent does not hold medical records per se, only personnel records which may contain medical information. The Claimant first makes explicit that he is seeking his personnel records on 25 March 2015. The Claimant asserted that his complaints about not having been provided with his medical records should have been inferred as a request to view his records. He complained to the following individuals about not having been provided with his medical records on the following dates: LH on 26 June 2014, KB on 7 January 2015, MW on 16 January and 5 March 2015, and LT on 9 and 10 April 2015. The Claimant first makes explicit that his complaint pertains to access to his personnel records on 9 April 2015. Accordingly by March 2015 the Respondent was aware that the Claimant was seeking access to his personnel records. There is a 2 month delay in providing him access his personnel records. Given his prior requests and complaints regarding access to his medical records, notwithstanding the confusion about which records he is seeking, this delay in providing his personnel records causes the Claimant understandable frustration.

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142. The Claimant asserts that KB failed to arrange a meeting with him in July 2014 when in fact it was the Claimant who failed to take up her offer to meet.

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143. The Claimant asserted that during their telephone call of 8 January 2015 that KD stated to him 'Things will go better for you if you do as I say'. KD asserts that she did not say that. KD and the Claimant had no prior dealings. The phrase was regarded by KD as inappropriate. There was no motive for KD to open their dialogue with an inappropriate remark. There was no evidence that KD had previously made such inappropriate remarks to staff. The Claimant was already agitated about the issues. KD's tone may well have been authoritative. The Claimant was prone to interpret events negatively. It is considered unlikely that KD made such a remark and it is considered likely that the Claimant had misinterpreted their conversation.

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144. The Claimant asserts that the failure to provide him with the OH report until 21 January 2015 was deliberate and malicious. There was however no evidence that the failure was deliberate and malicious. The fact that the covering letter had been saved as a document called '14 January', was dated 5 16 January 2015 and was emailed 21 January 2015 was simply a product of drafting. The delay in providing the OH report was caused by ALA's periods of extended absence.

145. The Claimant asserts that the Library Managers (KB, KD and also AS until 10 2014) inappropriately colluded in their approach to his concerns and were part of an orchestrated campaign of bullying but there is no evidence of any such orchestration or collusion. The mere fact that they shared an office is insufficient to support that inference. There is no evidence or reasonable basis for asserting that there was of escalating pattern of bullying behaviours.

146. The Claimant regarded the Librarians' Meeting on 11 February 2015 as 15 having imposed formal supervisory duties on librarians akin to teachers. The minutes of the meeting did provide any evidence of the Respondent imposing additional duties. There was no reasonable basis for the Claimant to conclude 20 that the Respondent was imposing additional supervisory responsibilities on librarians.

147. The Claimant asserted that he was bullied by KB, by MW and by AS amongst 25 others. The Claimant had only limited communication with them and never met with any of them (bar the minor exception with AS pre-Transfer). There was no evidence or reasonable basis upon which the Claimant could consider that KB, MW or AS had bullied him. These accusations constituted unreasonable conduct on his part.

148. The Claimant asserts that he provided AR with a list of witnesses at the initial 30 grievance meeting on 27 May 2015. The Respondent's notes do not record that such a list was provided (J475). The Claimant was afforded an opportunity during the tribunal hearing to produce the relevant extract from his covert recording. The extract provided by the Claimant did not evidence

that such a list was provided (J601). Further the Claimant's specific allegation refers to a list of witnesses to the TUPE transfer and the librarians' terms and conditions. The Claimant asserts that the list was also sent on 21 August 2015. The list of witnesses sent on 21 August 2015 pertain to the TUPE transfer, etc. It appears unlikely that a list of relevant witnesses was provided at the initial grievance meeting.

149. The Claimant asserted in evidence that he was unable to attend the meeting with GT on 6 November 2015 and that he was "in no fit condition to leave his home". It was however apparent from the evidence that having made the decision to leave, the Claimant was unwilling rather than unable to meet with GT. Indeed the Claimant had advised GT that he was unwilling to meet.

150. The Claimant asserted that he was too unwell to make the decision to resign, or intimate such a life changing decision, until 30 November 2017. That he was too unwell to resign conflicts with his evidence that he made up his mind to resign upon receipt of the letter of 27 August 2015 and that he did not submit an appeal or attend the return to work meetings because he had made up his mind to resign. That he was too unwell to intimate the decision is not considered credible given the length and nature of his absence, given his continued paid work with the OU from mid-October, and given the GP's position by end October. The Claimant asserted that he did not know how to resign and whether he could do so whilst off sick. This is not considered credible given both the Claimant's intellect and the ready availability of union advice.

The Claimant's submissions

151. The Claimant provided written submissions which in summary were as follows: –

152. He has been raising issues since the Transfer about the Respondent's inability or unwillingness to delivery a service which meets the expectations of schools and pupils. (This submission was considered only to the extent that it pertained to the specific Allegations A to F.)

153. - The triangular management arrangement meant there was a lack of clarity regarding pupil supervision and staff performance measures.
154. - His contractual dispute ought to have been resolved by HR rather than by recourse to the grievance procedure. (This issue was not raised in Allegations A to F. In any event it is reasonable for an employer to seek to resolve a contractual dispute by recourse to their grievance procedure.)
155. – He had reported increasing levels of stress and nothing was done. (This issue was not raised in the Allegations A to F. In any event on 21 January 2015 ALA attempted to arrange a meeting with the Claimant to discuss his stress. The Claimant was first absent with alleged work-related stress on 2 September 2015. On 28 October 2015 GT attempted to arrange a meeting with the Claimant to discuss his part stress related absence.)
156. - There had been an escalating pattern of bullying behaviours (This submission was considered only to the extent that it pertained to the specific Allegations A to F.)
157. – The Respondent had declined years of approaches asking for genuine negotiation (This issue was not raised in Allegations A to F. In any event it is reasonable for an employer to seek to resolve a dispute by recourse to their grievance procedure.)
158. – the Claimant did not approve of the grievance being dealt with in stages which he regarded as an artificial distinction. (This issue was not raise in Allegations A to F other than aligned to the right of appeal).
159. -the disciplinary allegations were distinct and ought to have been investigated separately from each other rather than jointly (This issue was not raise in Allegations A to F)

The Respondent's submissions

160. The Respondent provided written submissions which in summary were as follows:

5 161. – the burden of proof is upon the Claimant to establish constructive dismissal

162. - There must be an actual or anticipatory breach, the breach must be repudiatory, the employee must resign in response, and the employee must not affirm the breach by delaying too long.

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163. – The Claimant's interpretation of certain events is neither sustainable nor credible. In the event of a dispute on the facts the Respondent witnesses should be preferred.

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164. – His concerns as a parent are a key driver for his resignation

165. – Many of the allegations were remedied and/or were too historic

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166. – his request for medical records rather than personnel files caused confusion. There was no deliberate failure to provide his personnel files or the OH report.

167. – Allegations arising after the last straw, and further allegations arising after termination, cannot be relied upon

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168. – The last straw is innocuous and cannot be relied upon

169. – The allegations relied upon pertained to individuals trying to assist the Claimant or acts permitted under the Claimant's contract

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170. – The Claimant delayed too long in resigning and thereby affirmed any breach

Discussion and Decision

171. The Claimant had more than two years' continuous employment and accordingly had the right not to be unfairly dismissed by the Respondent, by virtue of section 94 of the Employment Rights Act 1996 ('ERA 1996').

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172. 'Dismissal' is defined in s 95(1) ERA 1996 to include 'constructive dismissal', which occurs where an employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct (s 95(1)(c)).

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173. The test of whether an employee is entitled to terminate their contract of employment without notice is a contractual one: has the employer acted in a way amounting to a repudiatory breach of the contract or shown an intention not to be bound by an essential term of the contract: **(Western Excavating (ECC) Ltd v Sharp [1978] ICR 221)**.

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174. The issues in this case are as follows –

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- a. Was there a repudiatory breach of the Claimant's contract?
- b. If so, was the breach a factor in the Claimant's resignation?
- c. If so, did the Claimant affirm the breach?
- d. If not, did the Respondent have a potentially fair reason for the breach?
- e. If so, did the Respondent act reasonably in the circumstances?

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Was there a repudiatory breach of contract?

175. There must be a breach of contract by the employer. The breach must be "a significant breach going to the root of the contract" (**Western Excavating**). This may be a breach of an express or implied term. The essential terms of a contract would ordinarily include express terms regarding pay, duties and hours and the implied term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously

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damage the mutual trust and confidence between the parties (**Malik v Bank of Credit and Commerce International Ltd [1998] AC 20**).

176. The breach may consist of a one-off act amounting to a repudiatory breach.
5 Alternatively there may be a continuing course of conduct extending over a period and culminating in a “last straw” which considered together amount to a repudiatory breach. The “last straw” need not of itself amount to a breach of contract but it must contribute something to the repudiatory breach. Whilst the last straw must not be entirely innocuous or utterly trivial it does not require of itself to be unreasonable or blameworthy (**London Borough of Waltham Forest v Omilaju [2005] IRLR 35**).

177. Whether there is a breach is determined objectively: would a reasonable person in the circumstances have considered that there had been a breach.
15 As regards the implied term of trust and confidence: "The test does not require a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of..." (**Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT**)

178. The breach may be an actual breach or an anticipatory breach – a clear and unconditional intention not to perform an essential term of the contract. As
25 regards anticipatory breach: "whether, looking at all the circumstances objectively, that is from the perspective of a reasonable person in the position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract" (**Tullet Prebon plc v BGC Brokers LP 2011 IRLR 420**) However, “all the circumstances must be taken into account insofar as they bear on an objective assessment of the intention of the contract breaker. This means that motive, while irrelevant if
30 relied upon solely to show the subjective intention of the contract breaker, may be relevant if it is something or it reflects something of which the innocent party was, or a reasonable person in his or her position would have been,

aware and throws light on the way the alleged repudiatory act would be viewed by such a reasonable person” (*Tullet Prebon*).

179. The Claimant’s Allegations details alleged actions and omissions that taken together constitute the alleged repudiatory breach (J52). Each of these Allegations A to F will be considered in turn –

Allegation A. Bullying

180. The Claimant submitted that there had been an escalating pattern of bullying behaviours. There was no evidence or reasonable basis for concluding that he was bullied either “individually and/or in combination” or that there was “an escalating pattern of bullying behaviours”.

Allegation A1. Removal of line management within school leading to problems with discipline in June 2011 at Bellahouston which MG failed to deal with

181. The changes in line management were implemented in 2010 and were an inevitable consequence of the Transfer. The Claimant alleged that MG had failed to action a complaint made by him on 23 June 2011. The complaint was made only 1 day before he would cease being involved with the pupils at Bellahouston and accordingly there was no practical opportunity for MG to address his complaint.

Allegation A2. Refusal to amend library layout to improve visibility of pupils and therefore discipline by MG in June 2011

182. After the Transfer the Head Teacher retained control over the library layout. The complaint relied upon was the one made by him on 23 June 2011 and accordingly there was no practical opportunity for MG to address his complaint.

Allegation A3. Insistence on moving from a working issue system, Alice to Open Galaxy which had many faults

183. There were significant IT issues affecting all librarians during the integration period following implementation which caused the Claimant understandable frustration. However these issues were largely resolved by 2014.

Allegation A4. Attempting to alter the Claimant's terms and conditions – refusing his summer holiday request for July 2014 and requiring him to work at Commonwealth Games in July 2014

5 184. Pre and post transfer it was open to the Respondent to refuse a request for annual leave for operational reasons. In any event the arrangements regarding the Commonwealth Games were the subject of union consultation and agreement.

10 185. The Claimant's contract contained an express mobility clause. Both pre and post transfer the Librarians from time to time provided temporary cover at other schools. It was not either unreasonable or in breach of contract for the Respondent to require the Claimant to undertake his duties at the Mitchell Library. The Claimant did not advise ALA that he required any support at the Commonwealth Games or specify what support he required.

15 Allegation A5: Being forced to take summer holidays during the school term in 2014

186. There were over 4 weeks between the start of the school holidays and the start of the Games Period. The Claimant was not being forced to take summer holidays during the school term.

20 Allegation A6. On 14 May 2014 ALA denying that the Claimant has a health condition which requires support

187. ALA did not deny that the Claimant has a health condition which requires support. On the contrary she endeavoured to understand his conditions and offered to put in place what support was required.

25 Allegation A7. On 5 June 2014 ALA denying that there were any records of the Claimant's health condition

188. On 5 June 2014 or otherwise ALA did not advise that the Claimant's medical records either have been or may have been lost.

Allegation A8. On 8 January 2014 KD making an intimidatory phone call to the Claimant

189. KD did not make an intimidatory phone call to the Claimant on 8 January 2014 or otherwise. In that call she did not state “Things will go better for you if you do as I say”.

Allegation A9. On 14 January 2015 KD verbally attacking the Claimant at a meeting

190. KD did not verbally attack the Claimant at a meeting on 14 January 2015 or otherwise.

Allegation A10. On 20 January 2015 AS’s transformation of the above attack into an accusation of inappropriate behaviour by the Claimant

191. The Claimant was acting unreasonably by refusing to meet managers informally without union representation. The meeting between the Claimant and KD was short and heated. KD submitted a complaint regarding the Claimant’s behaviour. The Respondent was entitled to investigate that complaint and the Claimant accepted this. AS did not transform the alleged attack into an accusation of inappropriate behaviour.

Allegation A11. In January, February and August 2015 AS insisting on sending recorded delivery letters to his home address.

192. In January 2015 the Claimant raised an objection to this intrusion of work matters into his home life which he found stressful. In response it was explained to the Claimant that this was part of the Respondent’s standard procedure. The Claimant did not raise further objection to the subsequent recorded delivery letters sent in February and August 2015.

Allegation B. Imposition of additional duties

193. There was no imposition of additional duties in breach of contract.

Allegation B1. On 7 October 2014 ALA imposing data collection and reporting using CIPFA on the Claimant which is not relevant and is inappropriate

194. The Claimant was required to carry out CIPFA Young Peoples Survey on 20 – 25 October 2014. The Survey was to be carried out in all schools and was intended to collect information about the school library and gauge customer views. Whilst not intended to be, it was understandable that this felt to the Claimant like a personal evaluation because his library had only one member of staff. The Claimant was not asked to carry out the survey again.

Allegation B2. On 11 February 2015 ALA imposing pupil supervision requirement on the Claimant

195. After Transfer the teachers retained formal supervisory responsibility for pupils using the library and their discipline. The Claimant undertook low level supervision of pupils using the library both before and after Transfer.

196. ALA did not impose pupil supervision on the Claimant at the meeting on 11 February or otherwise.

Allegation B3. On 7 July 2015 ALA imposing action planning on the Claimant as a performance measure

197. In July 2015 the Respondent proposed to plan and assess the work of all staff by recourse to 'Action Planning'. The Claimant objected to the approach being adopted which was not linked to the Curriculum for Excellence. The Claimant did not complete an Action Plan and was not required to do so.

Allegation C. Improper use of public funds

198. There was no improper use of public funds.

Allegation C1. From 2012 onwards, being required to authorise purchases at full price or small discounts where large discounts were readily available

199. Pre-transfer the Claimant was able to specify which books he wanted to purchase and from what sources and was free to negotiate discounts. Post-transfer the Claimant was able to specify the type of book he wanted to

purchase, but not the specific title, and to source this from one of two preferred suppliers. The Claimant could then reject the specific title provided. Rejection of a book did not always result in the cost being credited to his library budget. The Respondent is part of Excel Scotland Framework which is a procurement process intended to secure best value.

Allegation C2. In March 2013 being required to authorise purchases of highly inappropriate graphic material

200. On 4 March 2013 highly inappropriate books were ordered centrally and delivered to the Claimant. Whilst the Claimant was required to confirm receipt of these books he exercised his right to then reject these books. The Claimant was not being required to authorise these purchases.

Allegation D. Failure to deal reasonably with his grievance

201. There was no failure to deal reasonably with the Claimant's grievance submitted February/ March 2015. The Claimant was invited to a grievance meeting on 2 April 2015 with AW which he unreasonably refused to attend. The Claimant attended a first stage grievance meeting with AR on 27 May 2014. The Claimant then refused to attend a second stage grievance meeting with AR. The Grievance Investigation Report was issued August 2015. The Claimant was offered but declined to exercise his right of appeal. The Claimant's refusal to properly participate in the grievance process was unreasonable.

Allegation D1. ALA, KB and LH in June 2014, and MW and Service HR in March 2015, refusing to facilitate access to the medical records in his personnel file.

202. The Claimant made requests to view his medical records on the following dates: by email to KB on 20 June 2014 and to the generic HR email on 25 March 2015 and 10 April 2015. The Respondent does not hold medical records per se, only personnel records which may contain medical information. The Claimant first made explicit that he was seeking his personnel records on 25 March 2015. The Claimant complained to the following individuals about not having been provided with his medical records

on the following dates: LH on 26 June 2014, KB on 7 January 2015, MW on 16 January and 5 March 2015, and LT on 9 and 10 April 2015. The Claimant first made explicit that his complaint pertained to access to his personnel records on 9 April 2015. Accordingly by 25 March 2015 the Respondent was aware that the Claimant was seeking access to his personnel records. On 21 May 2015 ALA provided the Claimant with a copy of his personnel records. There was therefore a 2 month delay in providing him with access to his personnel records. Given his prior requests and complaints albeit regarding access to his medical records, this delay caused the Claimant understandable frustration.

Allegation D2. On 27 May 2015 AR refusing to interview a list of witnesses provided by the Claimant

203. The Claimant did not provide AR with a list of witnesses at the first grievance meeting on 27 May 2015. AR did not refuse to interview the Claimant's witnesses. On the contrary, AR asked the Claimant for his list of witnesses and undertook to interview them.

Allegation D3. On 27 May 2015 AR asserting that the Claimant had not provided an explanation of his documentary evidence

204. The Claimant had provided a substantial number of unindexed and unreferenced documents in support of his grievance. AR sought to establish the relevance of that documentation. AR explained to the Claimant that it was not possible for him to understand their relevance when the documents were not presented in any order, aligned to any aspect of his grievance or referenced. The Claimant had met with AR to explain the relevance of some of the documents but refused to meet to explain the relevance of additional documents subsequently provided.

Allegation D4. In August 2015 AS and LT running a disciplinary investigation in parallel with the grievance investigation.

205. On 20 January 2015 AS gave the Claimant notice of an investigation into an allegation of inappropriate behaviour by him during his meeting with KD on 15

January 2015. No investigation meeting was held with the Claimant because his union rep was unavailable. On 6 February 2015 LT advised AS to put the disciplinary investigation on hold for one week to allow time for the Claimant's grievance to be lodged and if so to hold off the disciplinary investigation until the grievance has been investigated.

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206. The Claimant submitted his grievance on 13 February 2015. There were five areas to his grievance namely "A. impact on attainment and achievement, B. health and safety, C. bullying, D. funding, E. terms and conditions". The Claimant was advised that his grievance would be dealt with in two stages and that the bullying allegations would be investigated first. The Grievance Investigation Report regarding the bullying allegations was issued in August 2015.

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207. On 17 August 2015 AS gave the Claimant notice of an investigation into allegations of inappropriate behaviour by him during his meeting with KD on 15 January 2015 and also into abusive behaviour towards LH on 24 July 2015 and his refusal to carry out a reasonable instruction from KB on 28 July 2015. No investigation meeting was held with the Claimant because his union rep was unavailable, and because he went off sick and ultimately resigned on 30 November 2015.

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208. It is competent for an employer to run a disciplinary investigation in parallel with, or instead of, a grievance investigation provided that investigation is conducted reasonably with a view to establishing all materially relevant evidence. The Claimant's issue is that he understood from HR that the disciplinary investigation would be put on hold whilst his grievance was being investigated. It stands to reason that this undertaking only pertained to complaints relevant to the disciplinary issues and was not given in perpetuity but was contingent upon the Claimant's reasonable co-operation with the grievance investigation. This undertaking was given prior to sight of the Claimant's extensive and wide-ranging grievance. It was reasonable for the grievance to be considered in stages and for the complaints of bullying to be considered first. It was reasonable to understand that it was the complaints of

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bullying which were relevant to the disciplinary issues. It was therefore reasonable for the Respondent to commence the disciplinary investigation once the complaints of bullying had been investigated. In any event on 27 August 2015 HR advised that the disciplinary investigation would not be concluded until the outstanding grievance namely the second stage had been concluded.

Allegation D5. On 13 February 2015 ALA insisting that the Claimant should continue to attend meetings where the managers bullying him would be present

209. The Claimant was expected to attend School Librarians' meetings and would ordinarily attend. The Claimant failed to attend the meeting held on 11 February 2015. On 13 February 2015 ALA sought the Claimant's attendance at future library managers meetings. The Claimant's grievance was submitted to AO the same day on 13 February 2015. ALA was not aware that a grievance was being pursued when she sought his attendance.

Allegation D6. In September 2015 AR denying the Claimant a right of appeal regarding the first stage of the grievance investigation

210. When the grievance investigation report on bullying was issued to the Claimant in August 2015, he was not advised by AR of his right of appeal in respect of the findings and recommendations in that report. However the Claimant had previously been advised of his right of appeal both when he was provided with a copy of the Grievance Procedure and when he had completed the grievance form which also references his right of appeal. On 11 August 2015 AR advised the Claimant that he was seeking advice on whether any appeal process could be invoked at this stage. On 4 September 2015 AR advised the Claimant that the grievance as a whole is concluded and advised him of his right of appeal. Accordingly the Claimant was not denied the opportunity to appeal. The Claimant did not exercise his right of appeal because he had already made up his mind to resign.

E. Taking of disciplinary action

Allegation E1. In August 2014 LH refusing to refer the Claimant to OH until he refuses to sign an absence monitoring form.

211. LH did not refuse to refer the Claimant to OH until he refused to sign the
5 absence monitoring form. LH had attended absence monitoring meeting with
the OH referral.

Allegation E2. Following the OH referral in August 2014, ALA refusing to provide the Claimant with a copy of the OH report.

212. ALA did not refuse to provide the Claimant with a copy of the OH report. The
10 delay in providing him with the OH report was caused by ALA's periods of
extended absence and that delay was neither deliberate nor malicious.

Allegation E3. In January 2015 ALA refusing to provide of the sources of stress questionnaire

213. On 14 August 2014 recommended that the Claimant be furnished with a
15 stress risk assessment form and to discuss with his manager his perceived
work related problems. A form was not provided until 14 January 2014. The
delay in providing the form was caused by ALA's period of extended absence
and that delay was neither deliberate nor malicious.

Allegation E4. In January 2015 ALA failing to provide the correct stress
20 questionnaire/form; his refusal to complete the form was relied upon to claim a
pattern of non-cooperation

214. On 14 January 2015 the Claimant was provided with a manager's form
regarding management of team stress which was not suitable. The Claimant
was not provided with the correct stress questionnaire/form and this added to
25 his stress. His refusal to complete the manager's form was not relied upon to
allege a pattern of non-co-operation requiring disciplinary investigation.

Allegation E5. In November 2015 GT threatening disciplinary action and withholding of sick pay for failure to attend long term absence interviews whilst signed off sick

215. The Claimant was absent from work with the Respondent with stomach problems and alleged work related stress from 2 September 2015 until his resignation with immediate effect on 30 November 2011.

216. On 28 October 2015 and subsequently GT wrote to the Claimant requiring him to attend absence management meetings. Whilst the Claimant was unfit to undertake work for the Respondent, there was no medical evidence that the Claimant was unfit to attend an absence management meeting. The Claimant advised GT that he was unwilling to meet. The Claimant did not want to attend the absence management meetings because he had made up his mind to resign. The Claimant was warned that his continued failure or refusal to participate in the absence management procedure may lead to the withdrawal of Occupational sick pay and an investigation into a refusal to follow a reasonable management request. This threat was not a factor in the Claimant's reasons for resigning and was legitimate given his unreasonable refusal to participate in the absence management process.

Allegation F. The Last Straw was receipt of the letter sent to the Claimant by HR on 27 August 2015 indicating that they would be continuing with the disciplinary process.

217. On 17 August 2015 AS gave the Claimant notice her that she was recommencing the disciplinary investigation. On 21 August 2015 the Claimant emailed HR to object to AS conducting the investigation given that she is named in his grievance which has yet to be concluded. HR responded by letter of 27 August 2015 advising that an alternative independent investigator would be appointed, and the disciplinary investigation should commence but would not be concluded until the outstanding grievance is concluded, both with a view to alleviating his concerns. Upon receipt of this letter the Claimant took the decision to resign from the Respondents because HR were unwilling to stop the dual process of having disciplinary and grievance investigation running in tandem. Whilst the letter of 27 August 2015 was entirely reasonable

and sought to remedy his concerns, it did advise him that HR were refusing to put the disciplinary investigation on hold pending the outcome of the grievance investigation. It did therefore contribute something to the alleged repudiatory breach.

5 Did Allegations A to F considered together amount to a repudiatory breach?

218. The Claimant raised 27 separate allegations set out in Allegations A to F. Objectively considered from the perspective of a reasonable person in the position of the Claimant, there was no reasonable foundation to 22 of the 27 Allegations. Indeed many of these Allegations are unreasonable and wholly
10 without foundation. As regards the other 5 allegations –

219. Allegation A3. There were significant IT issues affecting all librarians during the integration period following implementation which caused the Claimant understandable frustration but these issues were largely resolved by 2014.

15 220. Allegation B1. The Claimant was required to carry out CIPFA Young Peoples Survey on 20 – 25 October 2014. Whilst the Survey was carried out in all schools it felt like a personal evaluation of the Claimant. The Claimant was not asked to carry out the survey again.

20 221. Allegation D1. On 21 May 2015 ALA provided the Claimant with a copy of his personnel records. There was a 2 month delay in providing him with access following his explicit request for his personnel records on 25 March 2015. Given his prior requests and complaints albeit regarding access to his medical
25 records, this delay causes the Claimant understandable frustration.

222. Allegation E2. On 21 January 2015 ALA provided the Claimant with a copy of the OH report. There was 5 month delay in providing the Claimant with the OH report caused by ALA's periods of extended absence and this delay
30 caused the Claimant understandable frustration.

223. Allegation E4. On 14 January 2015 ALA provided the Claimant with the wrong stress risk assessment form and this added to his stress.

224. Objectively considered from the perspective of a reasonable person in the position of the Claimant these 5 events when considered together (namely the IT issues, the survey, the delay in providing the personnel records and the OH report, and the failure to provide the correct form) did not constitute a course of conduct calculated or likely to destroy or damage the relationship of trust and confidence.

225. Objectively considered from the perspective of a reasonable person in the position of the Claimant the findings in relation to Allegations A to F when considered together did not give rise to a repudiatory breach. Accordingly the Claimant did not terminate his contract in circumstances in which he was entitled to terminate it. The Claimant was not therefore constructive dismissed and instead resigned voluntarily.

226. Given that there was no repudiatory breach it is not necessary or appropriate to consider the remaining issues (namely whether that breach was a factor in the Claimant's resignation, whether the Claimant affirmed the breach, whether the Respondent had a potentially fair reason for the breach and whether the Respondent act reasonably in the circumstances).

Employment Judge: Michelle Sutherland
Date of Judgment: 26 November 2018
Entered in register: 04 December 2018
and copied to parties