EMPLOYMENT TRIBUNALS

Claimant: Mr A Garratt

Respondent: Secretary of State for Justice

Heard at: London South **On: 26th to 28th March 2018**

Before: Employment Judge Tsamados

Representation
Claimant: Mr L Harris of Counsel
Respondent: Ms N Ling of Counsel

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is as follows:

1) The claimant was not unfairly dismissed. His complaint is dismissed;

2) The claimant was not wrongfully dismissed and his complaint of damages for breach of contract fails and is dismissed.

REASONS

Complaints and Issues

1. By a claim form received by the employment tribunal on 28th April 2017, the claimant, Mr Garratt, has brought complaints of unfair dismissal, damages for breach of contract in respect of wrongful dismissal and unauthorised deductions from wages, against his former employer, the respondent, the Secretary of State for Justice. In its response received on 30th June 2017, the respondent has denied the claim in its entirety. The complaints in respect of unauthorised deductions from wages were subsequently dismissed on withdrawal on 31st July 2017.

2. The claimant was a Prison Officer working for the Prison Service. This case essentially involves an incident at his workplace, HMP Wandsworth ("the Prison") which took place on 26th September 2015. That incident gave rise to a lengthy investigation process and subsequent disciplinary and appeal proceedings against a number of prison officers, including the claimant. During the process a large number of witnesses were interviewed, including officers and offenders, as I believe the respondent refers to offenders. Joint disciplinary hearings and appeals took place over a number of days. The names of the other disciplined officers and the witnesses have been redacted within the documents and coded in order to preserve confidentiality.

3. At the start of the hearing, the parties provided an agreed list of issues with regard to the complaint of unfair dismissal. The respondent asserts that the claimant was dismissed for misconduct. If shown, the tribunal's task is to determine whether the dismissal was reasonable taking into account section 98(4) Employment Rights Act 1996, the Burchell test and the band of reasonable responses test. With regard to remedy, the claimant is seeking re-instatement and failing that re-engagement. If neither is awarded, then considerations of Polkey and/or contributory fault should be taken into account when assessing the compensatory award. With regard to the wrongful dismissal complaint, the central issue is whether the claimant had committed a repudiatory breach of contract so as to justify his dismissal by the respondent without notice or payment in lieu of notice.

4. The claimant intended to call two witnesses including himself and the respondent three. Given the volume of documentation within three full lever arch files, the necessary reading time, as well as the likely length of testimony, that the claimant is seeking re-instatement/re-engagement and there is a potentially substantial pension loss if compensation is awarded, I decided it was appropriate to deal with liability first and remedy should the need arise (either over the course of this three day hearing, if time, or on a subsequent date). I asked the representatives to address me on Polkey and contribution in submissions in any event.

Evidence

5. The respondent provided an agreed bundle of documents in three lever arch files running to 1460 pages. I refer to documents within those bundles as "R1", "R2" and "R3" where necessary. The respondent also provided a Redaction Key and a Chronology, although the latter was not agreed by the claimant, having just been produced.

6. I heard evidence from the claimant and from Mr Stewart McLaughlin, his Prison Officers' Association ("P0A") representative during the disciplinary and appeal proceedings. I was provided with the claimant's Schedule of Loss on the last day of the hearing.

7. I heard evidence on behalf of the respondent from: Mr Andrew Rogers, who at the time of the events in question was the Deputy Director of Custody for the South West Region and Immigration Removal Centres and with regard to the claimant's dismissal carried out the investigation; Mr Steven Bradford,

the Governing Governor of Wormwood Scrubs and the officer who dismissed the claimant; and Mr Paul Baker, who at the time was the Deputy Director of Custody (DDC) for Greater London and the officer who heard the claimant's appeal against dismissal.

8. Evidence was given by way of written statements and in oral testimony.

9. I adjourned until after lunch on the first day to read the witness statements, referenced documents, as well as the following pages I was specifically directed to: the investigation interviews a R1 54-109; the investigation report at R1 128-189; the charge letter at R1 191-193; the outcome letter at R1 222-225; the appeal letter at R1 226; the appeal outcome letter at R1 250-256. The parties indicated that it was unrealistic to expect me to read the minutes of the various meetings given their length, but I would be taken to extracts in cross examination. The minutes are transcripts from taped meetings and so the contents are not in dispute.

10. At the end of the respondent's evidence, the respondent's counsel explained that he was going to limit his cross examination of the claimant and his witness to those matters raised by the claimant's counsel in cross examination of the respondent's witnesses. I expressed the view that any matters that are not put to the witnesses and are therefore not tested in evidence are in effect not pursued. Both representatives agreed to this approach.

Application to admit video evidence

11. At about midday on the second day of the hearing, the respondent's counsel made an application to admit video evidence of the incident in cell B3-29 which was uploaded to social media on 29th September 2015 and was viewed by both Mr Rogers and Mr Bradford.

12. The claimant's counsel objected on the basis that this application had been sprung on him at short notice, came after the evidence of both Mr Rogers and Mr Bradford had been heard and that whilst the claimant has also seen the clip, how is it relevant? What is relevant he submitted is what the claimant sets out in his witness statement and he makes no mention of it. In any event there is evidence of what was placed on social media at R2 813 onwards.

13. I considered the application and the objections. I indicated that perhaps I had brought about this application because I mentioned the video footage earlier and stated that I had resisted the temptation to view it on the Internet on the basis that I did not see the need to do so.

14. I gave my decision that I rejected the application because it was not necessary to view the footage in order to determine the matter. In any event Mr Baker had overturned the specific charge relating to this matter on appeal ("that the above actions and subsequent media and social network exposure discredit on the Prison Service").

Findings of Fact

15. I set out below the findings of fact I consider relevant and necessary to determine the issues I am required to decide. I do not seek to set out each detail provided to me, nor make findings on every matter in dispute between the parties. I have, however, considered all the evidence provided to me and I have borne it all in mind.

16. The claimant was employed by the Respondent from 1st September 2002 until his dismissal on 21st December 2016. At the time of his dismissal he was employed as a Prison 0fficer at the Prison.

17. I was not provided with any evidence as to the respondent's size and administrative resources, but it is self-evident that the Prison Service as part of the Ministry of Justice is a national organisation, has sophisticated and detailed rules and procedures and that the managers involved had assistance and advice from HR Case Managers throughout out the disciplinary and appeal process.

18. I was not referred to nor can I find a copy of the claimant's contract of employment or a written statement of terms and condition of employment within the bundles. I assume nothing turns on it.

19. I was referred to the respondent' s Conduct and Disciplinary Policy ("the Code") at R2 827-911. In particular, 3.1 and annex A at R2 832, 849 which states:

"All NOMS staff are expected to meet high standards of professional and personal conduct. All staff are personally responsible for their conduct."

20. I was also referred to Professional Standards Statement in annex A to the policy, which identifies and clarifies the key standards of professional and personal conduct expected of all staff (R2 849-853). The annex states:

"misconduct will not be tolerated and failure to comply with the standards can lead to action which may result in dismissal from the service."

21. The Prison is a Category B local male prison built in 1851. The main part of the Prison is comprised of five Wings A-E. The claimant worked for the majority of his time at the Prison Officer on Bravo Wing ("B Wing"). B Wing consists of 4 landings. The landings are referred to as "B1", "B2", "B3" and "B4".

22. B Wing and is set out as one traditionally visualises Victorian prison wings as seen on television dramas and documentaries. It is a large gallery which is approximately 60 metres long, with the offenders' cells lining either side of it and walk ways running the length of each side of the Wing by which access to the cells is gained. There are stairwells linking each landing to the other and to the ground floor. These are situated at each end of the Wing. There is are interconnecting bridges half way along each of the walk ways. There is an office about 7 metres from the Gable End. B1 holds approximately 48 offenders and also has the Servery where offenders

collect their meals. B2 holds approximately 78 offenders and B3 and B4 each hold approximately 84 offenders.

23. In evidence, I was advised as to the meaning of certain terminology regarding the shutting and locking of the cell doors. As I understand it, "shuts" means to close a cell door to; "locks" means to bolt or lock it from the outside; a "shot bolt" is where the bolt is opened but secured so that the door cannot be shut from the outside, so as to stop anyone being locked inside the cell. If the bolt is shot, by flicking it, the weight if the door will cause the door to open. I was also advised that the bolt is a manual mechanism and shot (as in shot bolt) means it is not physically locked.

24. The focus of the disciplinary action against the claimant arises from an incident which occurred on B3 on Saturday 26th September 2015. This involved a number of offenders who had gathered in one cell (namely B3-29), with access to mobile phones, drugs and/or alcohol. The matter did not remain internal though because on 29th September 2015, The Sun newspaper published a print and online article with images from video footage recorded inside the cell. The footage itself could also be viewed online. This footage had been recorded on a mobile phone or phones and then posted on a social media website by one of the offenders. The article did not name the prison establishment at which the incident took place. I was referred to R2 813-826 which contains the reports at that time as well as subsequent reports from 819 onwards in which the Prison is identified. I was invited to view the video footage online but as indicated above I declined.

25. On 26th September 2015, the claimant was on duty working from 0745 to 1800 hours. Including the claimant there were 8 Prison 0fficers on duty on B Wing that day. The names of the officers have been redacted in the documents contained within the bundles for reasons of confidentiality, although I was provided with a Redaction Key. The officers are therefore identified by numbers. The other officers on duty that day were: 01, the Supervising Officer ("SO"); 03, the B1 Cleaning Officer; 029, an Officer on B2; 013, an Officer on B2; 02, who was cross-deployed from E Wing as an Officer on B3; 015, an Officer on B4; and 014, an Officer on B4. 010 is a Custodial Manager ("CM") but was providing cover as a Prison Officer on the Visits Team that day. The number of offenders on B3 (the "Roll") that day was 78.

26. The SO carries out the allocation of officers on the Wing's landings at the start of each shift and designates an officer in charge ("IC") for each landing. The claimant was IC on B3 that day. The SO was most senior member of staff on duty. Whilst the claimant and the other members of staff were required to follow the SO's instructions, each officer has responsibility for the different parts of the Wing, whereas the SO has overall responsibility. All officers are responsible for the offenders on their landings and for dealing with any queries, issues or incidents arising. If a major incident occurs or looks likely to occur, all officers are expected to attend and assist.

27. The CM on B Wing that day was officer 04. The CM is the most senior uniformed grade at a prison establishment and has overall responsibility for

line management. On the day in question 04 was also "Oscar 2". Oscar 2 is a call-sign on the Prison radio net, and the Oscar 2 is responsibility across the Wings to respond to incidents, to take responsibility and to give advice to officers.

28. That morning, officer 01, the SO, held a briefing with his officers. It was agreed that the offenders should be allowed some social and domestic ("S&D") time that day, having not had any the previous day; B1 and B3 in the morning and B2 and B4 in the afternoon. S&D is a period of time during which all the cell doors are unlocked and offenders are free to roam on the landing and into each other's cells.

29. As will become apparent later on, there as what is called an occupancy rule which relates to numbers in cells when locked, but there is no written rule as to numbers in cells when cells are unlocked. However, there are issues which officers are expected to take into account as to health and safety, fire and security issues, as well as emergency action to secure a dangerous situation. All of these have a bearing on the numbers in cells whether locked or unlocked.

30. A period of time in the open air or exercise time takes place before S&D. This is when all the cell doors on the wing are opened and all of the offenders are given the opportunity to exercise in the yard. Offenders not going outside generally have a shower, collect medical treatments or stay in their cells.

31. The times and actions of the various officers and offenders which took place that day can be ascertained with a large degree of accuracy from the timeline of events taking from the CCTV footage of B Wing on the day in question, as set out in the Investigation Report at R1 128-189, in particular at pages 139-148.

32. An overview of the relevant sequence of events is as follows:

    32.1 At 0846 hours, the claimant along with 02 and 012, supervised and assisted by 01, unlocked the cell doors on B3 for the period of time in the open air / exercise time. Almost immediately, a number of offenders congregated around cell B3-29;

    32.2 At 0850 hours the claimant stood with 02 and 012 at the Gable end of B3 closest to cell B3-29. At this time a number of offenders removed several pieces of furniture and other items from cell B3-29 to another cell on B3;

    32.3 At 0853 hours the claimant began to close the B3 cell doors of those who had gone for out for time in the open air. The door to cell B3-29 and some other cells were left open;

    32.4 At 0858 hours the claimant went to cell B3-29 and spoke to an offender inside the cell. The door remained open;

    32.5 At 0904 hours 01 went to the SO office;

32.6 At 0905 hours the claimant moved to the B3 landing office with 02 and 012;

32.7 At 0911 hours, 04 went to the B3 landing office and then to B4 one minute later;

32.8 At 0912 hours the claimant left the office with 02 and 012. 02 went to the staff room on B1. 012 returned to Visits;

32.9 At 0920 the claimant walked past B3-29. The door remained opened;

32.10 At 0925 hours 01 left the SO office and B3. He returned to the SO office at 0939 hours;

32.11 At 0945 hours 02 left the staff room on B1;

32.12 At 0950 hours offenders returned to B3 after the period of time in the open air, overseen by 01;

32.13 At 0954 hours the claimant allowed at least 12 offenders to enter cell B3-29 whilst 02 was standing directly opposite. Additional numbers of offenders moved in and out of the cell between this time and 1002 hours when the door appeared to be locked by the claimant. A large number of offenders were located in the cell at this point (in excess of 20). The claimant arrived at the cell door, looked in for approximately 20 seconds and then shut the door;

32.14 At 0959 hours the claimant went back to the cell and allowed another offender access. One offender left the cell and the door was then secured;

32.15 At 1002 hours the claimant allowed access to the cell by another offender and then closes the door again;

32.16 At 1007 hours the claimant and 02 went to A Wing to assist with offenders returning from time in the open air;

32.17 At 10.13 hours 03, an officer from B1, made his way to cell B3-29 with a black bin liner which appears to contain items apparently placed in there after he had been to the staff toilets on B1. He opened the door of cell B3-29, handed the bin liner into the cell and then returned to B1;

32.18 At 1023 hours 01 walked past cell B3-29;

32.19 At 1030 hours the claimant and 02 returned to B Wing;

32.20 At 1033 hours the claimant began to unlock B3 for the period of S&D time. 01 assisted from 1034 hours and 02 assisted from 1035 hours onwards;

32.21 At 1036 hours the claimant entered cell B3-29 for about 10 seconds;

32.22 At 1036 hours 01 unlocked cell B3-29 but did not look inside or talk to the occupants;

32.23 At 1057 hours the claimant went to the B3 landing office;

32.24 At 1126 hours S&D time was over;

32.25 At 1127 hours the claimant arrived at cell B3-29 and talked to the occupants of the cell;

32.26 At 1128 hours 03 left B1 and at 1129 hours arrived at cell B2-29 and talked to offenders;

32.27 During this time a large number of offenders exited the cell some dancing, and some appeared to be under the influence of illicit substances. 03 stood on B3 watching this. Exiting continued until 1137 hours;

32.28 At 1133 hours, 04 went to B3 and looked towards B3-29. He went to B2 two minutes later.

32.29 At 1137 hours the claimant returned to cell B3-29 and observed an offender struggling to stand up;

32.30 At 1138 hours 01 attended cell B3-29 and talked to the occupants for around 20 seconds and then left the cell. He talked briefly to staff on the B3;

32.31 At 1143 02 went to assist the claimant at cell B3-29;

32.32 From 1145 hours onwards B3 offenders collected their lunch meals. 02 assisted with the serving of the lunch meals.

32.33 At 1203 hours cell B3-29 was locked;

32.34 At 1258 hours the roll of offenders was confirmed as correct.

33. I did note that there were slight time discrepancies between various timelines.

34. The claimant's recollection of events both at the time and testimony before me is set out below:

34.1 After unlocking the cells, about 60 offenders went out to exercise. The doors of those offenders staying in their cells were locked. Once the exercise period finished, the cell doors were unlocked;

34.2 A lot of the offenders on B Wing are Polish. One of the Polish offenders told the claimant it was his birthday and asked if he could

have coffee and play cards with some of the other offenders in his cell. His cell was B3-29. The claimant agreed to this;

34.3 It is common practice for offenders to socialise in each other's cells during S&D and there are no rules preventing this. Cell B3-29 had been left unlocked during the exercise period because that inmate had gone to collect his medication;

34.4 The Prison was short staffed that day and the claimant was sent to assist on A Wing during the morning. He was there for over half an hour. In his absence 03 was left on B Wing by himself;

34.5 When the claimant left to go to A Wing he believes there were about 6 to 8 offenders in B3-29. At that time there was no issue or cause concern, everything looked normal;

34.6 As the S&D period was coming to an end, the claimant noticed that the noise level on B3 was rising. He went to investigate and found about 20 offenders in B3-29. He had reason to believe some had been drinking because he could smell alcohol. They were all very excitable and some had taken their tops off. 03 came to assist him in getting the offenders out of the cell. 03 said that he would inform Oscar 2 (04) of what was happening in case a problem arose;

34.7 Whilst the claimant felt quite intimidated and realised that the situation could have escalated, the offenders were all in a good mood and complied with his instruction to leave the cell. The claimant did not need to raise the alarm because the situation was managed. He believed that if he had raised the alarm that in itself would have escalated the situation;

34.8 By then it was mealtime and so the claimant and 03 tried to hurry the offenders down the landing towards the canteen. Some of the offenders who had been in B3-29 were taking their time and he had to go back to encourage them to move on;

34.9 One of the offenders looked a little worse for wear and the claimant asked him if he wanted to see a nurse but he declined;

34.10 Everyone ate their meals and the lock-up was conducted in time. The rest of the afternoon was the calm.

34.11 The claimant spoke to 01 later that day who advised him to report the incident. The claimant did so by completing an Intelligence Report ("IR") form. These forms are completed online on a computer. The form cannot be submitted without ticking a particular box which indicated that incident had been recorded in the Wing Observation Book. The claimant ticked the box so that the form could be submitted. It was his intention to complete the Wing Observation Book shortly afterwards, but as he and his colleagues were extremely busy that day, he did not do so. The claimant was the only person who reported the incident.

35. On 30th September 2015, Mr Andrew Rogers, the Deputy Director for Prison Safety, Public Sector Prisons, was commissioned by Mr Ian Mulholland, the then Acting Director of Public Sector Prisons, to investigate the circumstances regarding the incident on B Wing on Saturday 26th September 2015. Mr Rogers is referred to as the Investigating Officer.

36. The investigation was commissioned following an article published in The Sun newspaper on 29th September 2015 and online entitled "Con the Booze" following video footage of the incident recorded on a mobile phone or phones posted by an offender on social media (R2 815-818). The article states that *"drunk lags party at a cell block bash in shocking video obtained by The Sun"*, *"around 25 downed homemade booze and smoked roll-ups thought to contain legal highs"* and *"the prisoners are filmed with two banned smartphones as they chant and sign loudly to rap music with no jail staff in sight"*. Photographs taken from the video posted on Facebook are included as well as assess to the video footage. The stills show bare chested offenders and in one still a plastic container said to hold *"secretly fermented booze".*

37. Mr Rogers' Terms of Reference were to consider the facts of the incident, the cause and sequence of events that led to the incident, the number and identities of the offenders involved and whether and what role staff played in the incident (these are set out at R1 48-50). Mr Rogers was asked to identify any individual potentially in breach of the Code (which is at R2 827-911) and to consider the efforts made to identify the location of incident, the failure to identify the Prison as the location until 30th September 2015 and whether there were any deficiencies in the contact arrangements for prison staff.

38. Mr Rogers' role was to establish the facts of the case and to report them to Mr Mulholland, the Commissioning Manager, in accordance with paragraph 4.15 of the Code (R2 834). Mr Rogers was assisted by Mr Dave Quinnell, Operations Manager, South West Region and Mr Chris Simpson, Performance Assurance Manager, South West Region.

39. A notice to all staff was issued on the Prison's intranet asking anyone who had anything to contribute about the incident to make contact. Hard copies were also printed and displayed.

40. On 30th September 2015, the claimant received a letter from Mr Ian Bickers, the Prison Governor, informing him that he was suspended from work on full pay (R1 47). Several other officers were also suspended that same day, namely, officers 01, 02, 03, 04 and 012. The claimant's letter indicated that he was suspended from work pending the outcome of an investigation surrounding events that occurred on B Wing on 26th September 2015. The letter further indicated that the decision to suspend rather than to place the claimant on alternative duties detached duty was because of the severity of this allegation.

41. The claimant received a letter from Mr Rogers dated 5th October 2015 advising of his appointment as Investigating Officer and that he or one of

his team wished to interview the claimant on 8th October 2015 with regard to the incident on 26th September 2015. That letter is at R1 51-52. The letter advised the claimant of his right of accompaniment, the timeline of the investigation and of the possible outcomes, including formal disciplinary action. The letter enclosed a copy of the Code (referred to as Prison Service Instruction 06-2010/Agency Instruction 05-2010).

42. Mr Rogers and Mr Quinnell interviewed the claimant on 8th October 2015. The claimant was accompanied by his Prison Officers Association ("POA") representative, Mr Stuart McLaughlin. Part of the interview involved viewing the CCTV footage from the video cameras on B Wing. Mr Pat Boland, the Corruption and Prevention Manager, Security Department, HMP Wandsworth, assisted with the CCTV equipment. The interview was recorded and the transcript of the recording is at R1 54-104.

43. Mr Rogers' investigation report was originally scheduled to be completed by 16th October 2015, under the Terms of Reference within the Code. However, it took much longer than Mr Rogers had anticipated given the number of staff and offenders that he had to interview, that he had to watch in excess of 20 hours of CCTV footage, because of a delay in sending the recordings of the interviews for transcription which added four weeks to the process and having to read through the transcripts. Further, Mr Rogers was undertaking this role in addition to his existing duties.

44. Mr Rogers submitted a number of requests to extend the time limit in which to finalise his report. On each occasion the claimant and the other staff under investigation were sent letters advised of the extensions. The letters sent to the claimant are at R1 106, 111 and 127. Mr Rogers' requests for extensions are at R1 107-113. A final extension was granted until 24th December 2016.

45. The claimant was not told why the respondent needed to extend the time needed to carry out its investigation. The delay was beginning to cause him significant stress.

46. On 7th December 2015, the claimant, through Mr McLaughlin, raised a grievance in which he complained about the delay in completing the disciplinary investigation and the continued extension of his period of suspension. The grievance stated that he felt suspension was being used as a punishment, was not given a reason why the suspension was extended and that his personal life had suffered immensely as a result the uncertainty of his situation. This can be found at R1 114-124.

47. By a letter dated 14th December 2015, Mr Mulholland wrote to the claimant advising him that matters involving disciplinary investigations are not covered by the grievance procedure (at R1 125). His letter expressed appreciation of the difficulties arising from suspension and suggested that the claimant should raises concerns about the process with the Commissioning Authority (Mr Bickers) or to appeal his suspension to the Appeal Authority as named in the letter he received when he was suspended (DDC Mr Nick Pascoe).

48. Mr Rogers submitted Part A of his report, the investigation into the incident on 26th September 2015, on 24th December 2015. This is at R1 128-189 with annexed documents as listed at R1 133-134. At R1 136 of this document, Mr Rogers indicated that the investigation report is broken into three parts: Part A – incident B Wing; Part B – the identification of HMP Wandsworth as the establishment where the incident took place; and Part C – the identification of the offenders and subsequent actions.

49. At this time, Mr Rogers had not yet completed Parts B and C of the report. Mr Rogers explained in oral evidence that these parts were not relevant to Part A. Whilst they had been completed they were not in report form. Part B looked at investigations into social media sites and action to prevent a similar situation arising again. Part C was quite brief and identified two offenders were found to have mobile phones after being moved from the Prison.

50. Following a subsequent grievance (dealt with below) raised by the claimant alleging that documents had been "withheld" from his report, Mr Rogers subsequently provided a copy of his rough notes of Part B in advance of the subsequent disciplinary hearing (these are at R3 1364-1365).

51. During the course of his investigation, Mr Rogers interviewed 13 members of staff and 18 offenders as listed at R1 138. Other staff were interviewed but these documents were not annexed to the report because Mr Rogers concluded that they did not add anything, were peripheral to the incident or were more relevant to Part B of the report dealing with the identification of the Prison as being the establishment at which the incident took place (014 at R3 1334-1340, 07 at R3 1327-1333 and 08 at R3 1341-1345).

52. Mr Rogers set out his recommendations at R1 186-188 of the report. He recommended that charges of unprofessional conduct, performance of duties, breach of security and bringing discredit on the Prison Service be considered by the Commissioning Authority (Mr Mulholland) against the claimant and that these be tested through the disciplinary procedures.

53. The charges against the claimant were as follows:

- *"Failure to observe the removal furniture and items from Cell B3-29;*
- *allowing a significant number of offenders (controlling the entry and exit) into cell B3-29 knowing that the cell was designed only for maximum occupancy level of two offenders;*
- *securing a significant number of offenders in cell B3-29 including offenders who were not allocated to that cell;*
- *failure to report concerns in a timely manner and record them in the Wing Observation Book despite suggesting it had been in a submitted Information Report;*
- *failure to place any offenders on formal adjudication processes;*
- *failure to use the Incentives & Earned Privilege (IEP) scheme for witnessed behaviours of offenders;*
- *that the above actions and subsequent media and social network exposure brought discredit on the Prison Service."*

54. Mr Rogers made further recommendations in relation to 5 other members of staff. These can be found at R1 187-188. The officers identified are , 02, 03, 04 and 012.

55. In respect of 01 the following charges were recommended:

- *failure to give appropriate challenge or take action on viewing a large number of offenders congregated in one cell;*
- *failure to report concerns in the Wing Observation Book;*
- *failure to place any offenders on formal adjudication processes;*
- *failure to use the IEP scheme for witnessed behaviours of offenders;*
- *that the above actions and subsequent media and social network exposure brought discredit on the Prison Service.*

56. In respect of 02 the following charges were recommended:

- *Failure to observe the removal of furniture and items from cell B3-29;*
- *failure to report the claimant for allowing a significant number of offenders (controlling the entry and exit) into cell B3-29 knowing that the cell was designed for only a maximum occupancy level of two offenders;*
- *failure to report concerns in the Wing Observation Book;*
- *failure to place any offenders on formal adjudication processes;*
- *failure to use the IEP scheme for witnessed behaviours of offenders;*
- *that the above actions and subsequent media and social network exposure brought discredit on the Prison Service.*

57. In respect of 03 the following charges were recommended:

- *Trafficking items into cell B3-29;*
- *failure to secure a class III door on two occasions;*
- *failure to report concerns in the Wing Observation Book;*
- *failure to place any offenders on formal adjudication processes;*
- *failure to use the IEP scheme for witnessed behaviours of offenders;*
- *that the above actions and subsequent media and social network exposure brought discredit on the Prison Service.*

58. In respect of 04 Mr Rogers recommended that he be given verbal and written managerial guidance be given regarding the failure to report the incident to CM colleagues and to the Duty Governor of the day as well as ensuring that the Wing Observation Book was updated by his staff.

59. In respect of 012 the following charges were recommended:

- *failure to observe the removal of furniture and items from cell B3-29;*
- *that the above actions and subsequent media and social network exposure discredit on the Prison Service.*

60. Mr Rogers also made a number of recommendations to review processes and issue reminders and guidance to staff in paragraphs 26.7 to 26.12 of his report at R1 188.

61. Mr Rogers said the following in oral evidence.

61.1 He interviewed the claimant, 02 and 012 separately and they each said that they had not seen any furniture taken out of the cell. He recommended the same charge in respect of each;

61.2 At 9.54 hours the claimant appears to secure the door of cell B3-29 with in excess of 15 prisoners inside, then at 10.13 officer 03 opens the door, sees a lot of prisoners inside and hands a bag in and closes the door. He also accepted that 01 unlocked the cell door at 10.36 and so one can assume that 03 must have looked the door at 10.13. He accepted (with this in mind) that with hindsight he should have made the same recommendations for 03 as he did for the claimant at bullet points 2 and 3 at R1 186. But he emphasised that the two situations were not identical because the claimant had responsibility for landing B3 whereas 03 had different reasons for being there;

61.3 At 10.36 01 unlocked the cell but does not look inside or talk to inhabitants (at R1 145). Mr Rogers accepted that he did not ask him if he noticed that there were a large number of prisoners inside the cell. However, it was apparent from the CCTV that he did not look inside or talk to those inside. Mr Rogers stated that cell doors are quite thick and you cannot see inside. It would not be unusual for staff to unlock a door without looking inside;

61.4 As to numbers in cells, he stated that whilst it was usual to have multiple prisoners in one cell with the bolt shot, it was very unusual to lock large numbers inside a cell. It was put to him that by asking the question of 01 it would have determined whether or not this was custom and practice to let multiple occupants in a cell as the claimant stated. Mr Rogers replied that other officers indicated that it was not their practice. He did not find it was the normal practice;

61.5 04 received guidance alone because when he was told 010 that there were a number of drunk offenders in a cell, his view was that the situation was calm. Mr Rogers said that he had to balance everything in front him and believed it was appropriate given his level of involvement to recommend 04 be given managerial advice about his actions;

61.6 It was put to him that 03 attended the cell and saw a number of offender in there, locked the door, said the situation was calm, 02 unlocked the door but does not look inside, but later sees number of people in there, but thinks nothing untoward, then 04 attended the wing, told there were drunk prisoners, saw a number of offenders inside but does not see any problem. From this he was asked whether Mr Rogers saw this as a more systemic problem? Mr Rogers responded yes, but having investigated it, he saw it to be individual fault and not systemic. I find this a reasonable conclusion to draw;

61.7 There is no written policy about the numbers that can be placed in a cell beyond occupancy rules but there are issues to do with risk and control. There is an expectation that large numbers should not be locked in a cell for health and safety and security reasons;

61.8 01 stated that it was his practice that all offenders are locked in their own cell and no more than 2 offenders should be secured in each cell and only if the cell was designated as a double cell (R1 163 paragraph 16.16). 02 at R1 156 paragraph 14.5 said it was his practice to lock offenders in their own cells and would not allow more than 2 in each cell. The claimant at R1 61 stated "if they wanted to jump in with their mates so to speak for five minutes I had no, no issues with that". Taking all of this evidence together Mr Rogers arrived at the conclusion that this was not common practice as the claimant stated. I find this to be a reasonable conclusion to draw from the evidence;

61.9 The claimant did not raise his explanation as to why he did not complete an entry in the Wing Observation Book during his interview although accepted that he Mr Rogers did not ask him why he had not completed it. However, Mr Rogers was aware that the system of sending an IR form means you have to answer all questions in order to submit it. But he made the point that in his experience you then have to do what you said you were going to do;

61.10 Following Mr Rogers' report and recommendations, Mr Steven Bradford, the Governing Governor of HMP Wormwood Scrubs, was appointed as the Hearing Authority. Usually, the Governing Governor of the establishment in question would be appointed as Hearing Authority. However, because the then Governor of the Prison, Mr Bickers, had been involved in the aftermath of the incident, it was decided to appoint someone outside of the establishment to ensure independence and impartiality.

62. Mr Bradford wrote to the claimant by letter dated 12th January 2016 which can be found at R1 191-192. This letter required the claimant to attend a disciplinary hearing to consider the allegations against him as identified by Mr Rogers in his report at R1 186. These are set out in identical terms within the letter.

63. The letter stated that the charges, if proven, would amount to gross misconduct, that the claimant had the right of accompaniment to the hearing and asked him to ensure that he had read the Code which was available on the Prison's intranet. The letter also listed the witnesses that Mr Bradford expected to attend the hearing and asked the claimant he wished him to consider calling any additional witnesses. The letter further stated that the hearing he would consider the evidence of the claimant's alleged gross misconduct, any mitigating factors and would come to a decision: to take no further action; take informal action; or to take formal action, up and to including ending his employment.

64. 01, 02 and 03 all received disciplinary invite letters from Mr Bradford dated 12th January 2016. Each letter set out the charges as recommended by Mr Rogers in his report (at R3 1406-1407,1424-1425 and 1437-1438 respectively). Their cases were dealt with by Mr Bradford acting as the Hearing Authority.

65. 04 and 012 were dealt with separately. They both received disciplinary invite letters from Ms Amy Frost, the Deputy Governor of the Prison, acting as the Hearing Authority. These letters set out the charges as recommended by Mr Rogers in his report. Both officers were offered the opportunity to accept the allegations as true and opt to have their cases considered via the "fast track" process. The letters are at R3 1450-1452 and 1455-1457 respectively.

66. There appeared to be a general understanding that the charges against the claimant, 01, 02 and 03 were laid by the then Governor of the Prison, Mr Bickers, in consultation with the Commissioning 0fficer, Mr Mulholland.

67. Indeed, the claimant had this understanding. He attempted to raise his concerns with Mr Bickers that the incident had caused embarrassment to the Prison. Mr Bickers responded saying that he could not possibly comment because he was a witness in the investigation. When the claimant subsequently found out that Mr Bickers had laid the charges against him, he was devastated. Even more so, when he looked at ACAS guidelines regarding undertaking an investigation, which stated that anyone involved in an investigation, most certainly a witness, should not be laying charges. The claimant believes that he should have got a letter of commendation for the actions he took on the date of the incident and for a job well done and not disciplinary charges.

68. Mr Bradford explained in oral evidence that when he received the disciplinary file, he believed that the charges against the claimant and the other officers had been agreed by Mr Mulholland and that Mr Bickers had sent them out. However, after discussions with the Prison he realised they had not been charged and so he had to go through the formal process of charging them and he wrote to the parties and set out the charges.

69. By way of letter dated 10th February 2016, Mr Bradford wrote to the claimant instructing him to attend a disciplinary hearing on 7th March 2016 (R1 196-199).

70. Mr Bradford was provided with a Case Analysis Submission dated 18th February 2016 by Mr Dan Rizzo, HR Case Manager. This is at R196-199. He was also provided copies of the Investigation Report and the annexes to the report, as well as the CCTV footage and a copy of the article published in The Sun newspaper.

71. Three other members of staff faced charges arising from the same incident (01, 02 and 03). Mr Bradford had decided to hold the disciplinary hearing in respect of all four members of staff at the same time.

72. The disciplinary hearing took place on 7th March 2016. The claimant attended the hearing accompanied by Mr McLaughlin, who also represented 02 and 03. Mr Mike Rolfe, another POA representative, represented 01 at the hearing. Mr Rizzo attended the hearing to provide HR support as necessary. The hearing was recorded and a transcript was subsequently produced which is at R1 257-271.

73. At the start of the hearing Mr McLaughlin raised concerns that not all of the evidence had been provided to the claimant and to the other members of staff. In particular, he referred to "withheld" interviews conducted with officers 07, 08 and 014, an email from 019 to the investigation team and in addition that he had not been provided copies of the Wing Observation Book or Parts B and C of the Investigation Report. This is set out in R1 259-260 of the transcript of the hearing. Mr McLaughlin also raised concerns about the length of the investigation.

74. Following an adjournment, Mr Bradford advised Mr McLaughlin that he did not consider that the testimonies had been withheld because Mr Rogers had sent out the salient facts in his report. Further, each member of staff would have the opportunity to challenge any evidence and had the right to call witnesses to give evidence on their behalf. He also stated that Mr McLaughlin would have the opportunity to question Mr Rogers as to why the relevant entries in the Wing Observation Book were not annexed to his report. Mr Bradford acknowledged the time taken to complete the investigation and whilst noting that extensions to the completion date had been sought and granted, he did not feel that any material disadvantage had been caused by the delays. Given the complexity of the investigation he did not feel the delay in completing report was unreasonable.

75. After a break, Mr McLaughlin indicated that the officers he represented intended to raise a formal grievance regarding the missing evidence and he asked Mr Bradford to adjourn the disciplinary hearing for that to take place. Mr McLaughlin then requested sight of parts B and Claimant of the investigation report. Following a further break, Mr Bradford informed Mr McLaughlin that he would adjourn the disciplinary hearing as requested.

76. The claimant submitted a formal grievance dated 7th March 2016, in which he requested the missing staff interviews, 18 prisoner interviews, the B Wing Observation Book and parts B and C of the investigation report. This is set out within Part A of the grievance form GRV at R1 200-204.

77. Mr Bradford was appointed as manager to consider the grievance under Stage I of the process. In response, Mr Bradford completed parts B and C setting out his response, which is at R1 203-205. Mr Bradford stated that copies of the four staff interviews (in fact three staff interviews and the email from officer 019), 18 prisoner interviews and the relevant entries from the Wing Observation Book would be provided. The prisoner interviews and Wing Observation Book are at R31380-1394 and 1346-1355 respectively. Mr Bradford also indicated that he had established that parts B and C of the report had not yet been written could not therefore be disclosed.

78. On 9th March 2016, Mr McLaughlin submitted an appeal against suspension of the claimant, 02 and 03 on the basis that some of the charges were minor, that the charges were mostly unrelated to the initial terms of reference of the disciplinary investigation and that continued suspension was unreasonable (R1 213). Mr Paul Baker, the then Deputy Director of Custody for Greater London, dealt with the appeal. In a letter to Mr McLaughlin at R1 214-215 he advised him of his decision to reject the appeal. Whilst this letter is undated, the covering email at R1 216 indicates that it was sent on 18th March 2016.

79. On 20th March 2016, the claimant appealed against Mr Bradford's decision with regard to his grievance of 7th March 2016, by completing part D of form GRV1 (at R1 206-207). Mr Baker was appointed to consider the appeal.

80. Following an appeal hearing held on 11th April 2016, Mr Baker upheld grievance and confirm the parts B and C of the investigation report should be disclosed (R1 210).

81. On 22nd April 2016, Mr McLaughlin appealed against the claimant's suspension on the basis that he had now been suspended since September 2015, the evidence disclosed following the separate grievance suggested that senior management intervention on the date of the incident may have prevented or at least curtail the activities of the prisoners concerned and it was unfair to penalise some staff when others face no censure (R1 221). It is unclear from the documents what happened to this appeal.

82. The disciplinary hearing reconvened on 16th May 2016. The manuscript notes of interviews with officers 022, 018, 038, 020 039, 021, 026, 024 and Mr Pascoe were also provided to the claimant in advance of the reconvened disciplinary hearing. These can be found at R3 1356-1379. The transcript of the hearing can be found at R1 272-279.

83. At the hearing, Mr McLaughlin again represented the claimant and officers 02 and 03. Mr Dave Todd of the POA represented officer 01. Ms Michelle McNicholas, HR Case Manager, attended to provide HR advice as required. Mr McLaughlin informed Mr Bradford that the claimant (and 03) were unable to attend the hearing due to ill-health but the claimant was content for the hearing to proceed and for Mr McLaughlin to represent him in his absence (at R1 275).

84. Over the course of the disciplinary hearing, Mr McLaughlin updated Mr Bradford as to the claimant's continued inability to attend the hearing. Mr Bradford was aware that the process had already been delayed and was conscious of the need to finish the hearing.

85. The claimant was unable to attend because he had been signed off work by his GP with work-related stress. In his witness statement he states that the prison did not contact him, asking to make written representations or to respond to specific questions and as such he was not able to make representations regarding his case the disciplinary hearing. However, it is clear that he had instructed Mr McLaughlin to continue in his absence and to represent him.

86. Mr McLaughlin advised Mr Bradford that whilst he had received the outstanding transcripts of interviews with members of staff and prisoners and the email from 019, he had not received parts B and C of the investigation report. Thereupon, Mr Bradford adjourned the hearing to make enquiries. He spoke to Mr Rogers who confirmed that he had not yet produced parts B and C of the report, but Mr Rogers provided his manuscript notes (as indicated above). Copies were given to with representatives and the hearing was adjourned to allow them time to read those notes.

87. The disciplinary hearing continued on 17th, 18th, 19th, 23rd, 26th May and on 1st to 3rd June 2016, a total of 9 days. The hearing was recorded and transcripts were then produced (R1 280 to 554-R2 555-649).

88. At the start of the resumed hearing, Mr McLoughlin made representations to suggest that there was pressure to conduct an investigation into the incident at high level because film of the incident had been uploaded to social media and because of a recent visit to the Prison by Secretary of State. Mr McLaughlin requested that Mr Bradford call additional witnesses, namely 018, 026 and 021, to provide evidence as to how and why the investigation was commissioned (R1 281). Following short break in which Mr Bradford considered these representations, he informed Mr McLaughlin that he did not consider calling the additional witnesses would have any relevance to the charges. He also believed it would be impractical to do so within an acceptable time limit (noting that 018 and left the service and lived abroad). He reiterated his view that Mr McLaughlin could raise these points Mr Mulholland when he gave evidence (R1 287-288). Initially Mr McLaughlin indicated that he would submit grievance regarding Mr Bradford's decision. However, Mr McLaughlin subsequently indicated that he was content to proceed (R1 288-290).

89. Mr Bradford heard evidence from Mr Rogers, Mr Mulholland, Mr Quinnell, prisoners C, Q, J, S, M, B, E and D, and officers 06, 09, 010, 019, 012, 04, 014 and 017, as well as the officers charged, save for the claimant. The CCTV footage was also shown. Mr Bradford also visited cell B3-29. It is a double cell and is approximately 12 feet long and 8-9 feet wide.

90. During the hearing, Mr McLaughlin made representations regarding the involvement of the Band 5s (the managers) during the day of the incident. Mr Bradford rejected these representations on the basis that it was evident that 010 had reported his concerns about what was happening on B Wing to 04 who in turn raised this with the SO on duty. However, he found that 04's involvement came some two and a half hours after the incident had started and so his actions would have had no bearing on the conduct of the claimant and the other officers charged.

91. On the final day of the hearing, 3rd June 2016, Mr McLaughlin made closing submissions These are very lengthy and are set out in full at R2 621-641. Mr Bradford responded to some of these points during the hearing (R1 641-642). Mr Bradford has summarised submissions in his witness statement at paragraphs 33 and 35. Essentially, Mr McLaughlin submitted that the investigation was flawed, the process had been severely delayed, the

systemic issue had not been explored and there was disparity of treatment between the various officers disciplined and involved on the day. It is hard to discern in express terms what the claimant's specific defence is to each of the charges is, although perhaps the clearest picture comes from the claimant's evidence to this hearing. I gained the impression from what I was taken to in the documents and the evidence that Mr McLaughlin's focus was more on process at the expense, perhaps, of providing a substantive defence to the allegations.

92. Mr Bradford then gave his findings in respect of the officers. In respect of the claimant he stated that he found all the charges proven (R1 644). Specifically:

92.1 The CCTV footage showed the claimant standing in close proximity to cell B3-29 whilst furniture was being systematically removed from that cell. Mr Bradford concluded that the claimant could see the furniture being removed from the cell and chose to ignore it. At no point did the claimant challenge or question the significant number of prisoners gathering in the area;

92.2 The claimant locked and unlocked the door to cell B3-29 on a number of occasions allowing prisoners to enter and leave the cell freely, effectively controlling entry and exit to the cell. The claimant knew that at times there were a significant number of prisoners inside the cell (up to 35 at one point) but made no attempt to restrict or control the number of prisoners in cell;

92.3 The claimant allowed a number of prisoners in cell to far exceed the official allocated number (two). At times, the claimant locked a number of offenders in cell B3-29. As noted in the above, there were up to 35 prisoners in cell B3-29 one point;

92.4 The claimant made no entry in the Wing Observation Book despite having direct knowledge of the incident. He made a false entry in the IR form that he submitted, indicating that he had made an entry in the Wing Observation Book knowing that he had not. This was a falsehood;

92.5 The claimant failed to place any prisoners on report, despite having direct knowledge of the incident, which should have prompted timely action;

92.6 The claimant failed to give any consideration to the use of the IEP scheme, contrary to service policy (Prison Service Instruction 30/2013). Mr Bradford acknowledged that placing prisons on report is discretionary. However, officers must exercise their discretion appropriately and that the claimant failed to do so on this occasion;

92.7 The incident received coverage in a national newspaper on social media and the claimant's actions brought discredit on service (or had the potential to do so).

93. Mr Bradford then invited Mr McLaughlin to make submissions regarding mitigation. Mr McLaughlin made the following points: the claimant had an unblemished service record of over 13 years; the Prison Service had not phoned him to find out how he was during his ill-health absence; and evidence had been withheld and the delay in completing investigation resulted in him feeling low and depressed such that it would be detrimental to his mental health to attend the disciplinary, a view shared by his doctor.

94. Mr Bradford adjourned the hearing to consider sanction. The hearing resumed after 55 minutes and Mr Bradford stated that having considered the evidence in mitigation he had decided to dismiss the claimant from the service with immediate effect.

95. Mr Bradford wrote to the claimant by letter dated 7th June 2016 in which he confirmed his decision and reasons (R1 222-225).

96. His letter initially deals with the claimant's concerns regarding the investigation process but concludes there is nothing in them. The letter also deals with the issue of the Band 5's and again concludes that this is unfounded.

97. In respect of each allegation, the letter sets out Mr Bradford's findings:

"Failure to observe the removal of furniture and items from cell B3-29

Having reviewed the CCTV footage I am satisfied that you (the claimant0 can be seen ignoring the removal of cell furniture from cell B3-29 whilst stood at close proximity to the cell.

In my view you could see cell furniture being systematically removed and chose to ignore it. At no point did you challenge or question the considerable amount of offenders gathering in that area. By ignoring this you were condoning their behaviour.

Allowing a significant number of offenders (controlling the entry and exit) into cell B3-29 knowing that cell was designed for only a maximum occupancy level of two offenders

I am satisfied that you were effectively controlling access into and out of cell B3-29. You knew full well that at times there were significant numbers of offenders, up to 35 according to the evidence, made no attempt to restrict or control it. You locked and unlocked the door on a number of occasions allowing offenders to move in and out freely.

Securing a significant number of offenders in cell B3-29 including offenders who were not allocated to that cell

I have seen and heard clear evidence that you exceeded the official allocated number is designated to cell B3-29. At times you locked a large number of offenders in cell B3-29.

Failure to report concerns in a timely manner and record them in the Wing Observation Book despite suggesting it had been on a submitted Information Report

You made no entry into the Wing Observation Book despite having direct knowledge of the incident. He also made a false declaration on the Information Report claiming to have made an entry in the Wing Observation Book. This was a falsehood and I am satisfied you failed in your professional obligations.

Failure to place any offenders adjudication processes

You failed to place any offenders on Governor's report despite having direct knowledge of a serious incident, which should have prompted timely action in this area.

Failure to use the Incentives & Earned Privilege (IEP) scheme for witnessed behaviours of offenders

You also failed to give any consideration to the use of the IEP Scheme despite having direct knowledge of the incident. This does not comply with service policy in this area.

Placing offenders on Governor's report or issuing IEP behavioural warnings is discretionary for officers. However, officers need to exercise their discretion appropriately, and know when to apply appropriate sanctions or not. I am satisfied that this did not take place in this case.

That the above actions and subsequent media and social network exposure brought discredit on the Prison Service

As a result of the incident appearing in newspapers and various social media sites the Prison Service suffered damage to its professional reputation. This seriously undermines the excellent work being done by the majority of prison staff.

I have heard representations made around shortages of staff and mobile phone blockers not being widely available. In my view, having extra staff on the landings would probably have made little or no difference to the way in which staff chose to conduct themselves on 26 September 2015 on B3 landing. Those staff made a conscious decision and chose to act in those ways. Presence of additional staff or mobile phone blockers would have made no difference to what took place."

98. The letter then set out Mr Bradford's overall findings, as follows:

"I have considered the evidence in mitigation offered.

The conduct demonstrated by yourself fell well short of the professional standards expected of you and is a clear breach of the values of the Prison Service.

You were at the very centre of this incident and allowed it to happen with your full consent. You had the ability to prevent it from happening, but you chose to allow it with serious consequences for the Prison Service and members of staff. Your behaviour was an abuse of the trust placed in you as a prison officer. Prisons are built on trust and integrity which you completely disregarded on this occasion.

In considering mitigation I also note that you have shown no responsibility or remorse for your actions. Your conduct makes any further relationship and trust being (sic) the Prison Service and yourself impossible."

99. The letter stated that the penalty imposed was the sanction of dismissal with immediate effect. The letter closed by setting out the claimant's right of appeal to be exercised in writing within one week of the date of the letter. The transcript recording of the hearing was enclosed with the letter.

100. Mr Bradford also imposed disciplinary action against the other officers who had faced proceedings with the claimant.

101. In the case of officer 01, Mr Bradford issued him with a two year final written warning, downgraded him to a Band 3 Prison Officer and removed him from the field of promotion for two years (R3 1412-1415). 01 was a senior officer and was responsible for B Wing on the day of the incident. Mr Bradford awarded a lesser penalty because 01 was on the periphery of the incident and his principal failings were that he did not take appropriate actions quickly enough on discovering what was going on in cell B3-29. He was not responsible for allowing the incident to take place and was not present at the scene at the outset.

102. In the case of officer 02, Mr Bradford issued him with a two year final written warning (R3 1426-1429). 02 was working early shift on the day question, he did not usually work on B Wing and had been detailed to work there at about 08.45 hours. Mr Bradford awarded a lesser penalty for the following reasons: whilst 02 was at the scene of the incident he had a lesser role to play in what happened as compared with the claimant, who played a central role by effectively controlling what was going on in cell B3-29; 02 was guesting on the landing and in some ways was allowing the claimant to run his landing his own way and kept in the background to a degree; whilst 02 knew what was happening was wrong, he chose not to challenge the claimant or to inform his superiors and he failed to correctly follow up with appropriate reporting and recording.

103. In the case of officer 03, Mr Bradford dismissed him for gross misconduct (R3 1439-1442). Mr Bradford found that 03 had failed to secure a Class 3 door two occasions, failed to report concerns in the Wing Observation Book, failed to use the IEP scheme for witnessed behaviours of offenders and that these actions and subsequent media and social network exposure brought discredit on the Prison Service. Whilst 03 had also been charged with trafficking items into cell B3-29, Mr Bradford not find these proven. However, he concluded that 03's conduct fell well short of the professional standards expected of him and was in clear breach of the values of the Prison Service.

104. The claimant submitted an appeal on form F11 dated 13 June 2016 (R1 1226). This indicated that the grounds of appeal were as follows: unduly severe penalty; new evidence has come to light which could affect the original decision; the disciplinary proceedings were unfair natural justice; and the original finding was against the weight of evidence. The appeal form indicated that "supporting documents will follow as soon as the hearing transcripts become available although the letter states transcripts are enclosed?"

105. Mr Baker was the Appeal authority in respect of the claimant's appeal. Mr Baker also dealt with the appeals of officers 01, 02 and 03.

106. Mr Baker wrote to the claimant by letter dated 14th July 2016 inviting him to appeal hearing to take place on 17th August 2016 (R1 227-228).

107. Mr McLaughlin sent a number of documents to Mr Baker by emails dated 15th August 2016. These are at R2 663-664, 665-666, 667-674, 675-690, 691-692, 693-703, 704-711, 712-721 and 722-728. The covering emails indicate that these documents contain an outline of the issues raised during the disciplinary hearing/are supporting summaries of the hearing.

108. Mr Baker was provided with a Case Analysis Submission dated 15th August 2016 by Ms Jane Griffith, HR Case Manager (R1 236-239). He was also provided with copies of the investigation report, the annexes to the report, transcripts of the disciplinary hearing and Mr Bradford's decision letter.

109. The appeal hearing took place over a number of days: 17th 18th and 23rd August, 2nd ,6th and 29th September and 26th October 2016. Mr Baker also went to the Prison on 22nd August 2016 to visit B3 and to view the CCTV footage of the day of the incident. He confirmed in oral evidence that he had visited the landing to determine vantage point and it was possible to see down the landing to the cell door. Mr Baker dealt with the appeals of the claimant, 01, 02 and 03 together.

110. Mr Baker stated that from the CCTV he determined that 32 offenders came out of the cell. He further stated that half a dozen would be a lot in that space.

111. The claimant attended the hearing was accompanied by Mr McLaughlin as his representative on the first day. The claimant did not attend on the further days but was represented by Mr McLaughlin. Over the various days Ms Griffith or Ms Channer, HR Case Managers, attended to provide HR advice as required. There were also a number of different note takers. The notes of the hearing are at R2 729-812.

112. On 6th September 2016, Mr McLaughlin wrote to Mr Baker on behalf of the claimant and officers 01, 02 and 03 (R1 242). In his letter Mr McLaughlin expressed concern about the format of the proceedings. He also complained that the CCTV footage been used selectively, that employees present at the time of the alleged incident were not subjected to disciplinary

action and there was insufficient clarity regarding the threshold number of prisoners in each cell.

113. On 26th 0ctober 2016, Mr McLoughlin wrote to Mr Baker on behalf of the claimant and the officers 01, 02 and 03 (R1 247). In his letter he raised concerns about the conduct of the appeal.

114. On 27th October 2016 Mr McLaughlin sent a further eight documents to Mr Baker's Office Manager (R1 248). Four of these documents concerned the claimant's appeal (R2 650-656, 657-658, 659-662 and R1 242).

115. Mr Baker wrote to Mr McLaughlin on 14th November 2016 apologising for the delay in providing a decision in respect of the appeals raised by the claimant and the other officers (R1 249). His letter stated that distilling such a large amount of evidence and making considered decisions is going to take some time. He acknowledged that this is a difficult time for those staff members involved and that he would write to them as soon as possible with the outcomes of their appeals.

116. By a letter dated 21st December 2016, Mr Baker wrote to the claimant inform him of his decision which was to uphold his dismissal in respect of the first three allegations (at R1 250-256).

117. In respect of the fourth, fifth and sixth charges of failure to take any follow-up action such as using the Wing Observation Book, placing prisons on report or using the IEP scheme, Mr Baker discounted the charges on the basis of a collective failure by officers to take responsibility, except in the case of 01 who as SO had more responsibility than most for these matters (at R1 253).

118. In respect of the seventh charge of bringing discredit on the Prison Service because of the subsequence of media and social network exposure, Mr Baker overturned the finding of Mr Bradford. He accepted that the charge was unfair because the staff were not responsible for the media exposure which was a consequence of earlier failures in allowing the party to take place (at R1 253).

119. The letter also dealt with the Mr McLaughlin's generic concerns on behalf of all four officers as to the commissioning of the investigation, the level of delay between the investigation report and the disciplinary hearing and the non-availability of parts B and C of the report, investigation process, the conduct of the matter at the disciplinary hearing and as to the outcome letter. This is set out at R1 251-255.

120. The findings in relation to the claimant personally set out in the heading Part Two of the letter at R1 255-256 as follows:

"a) You state that the Hearing Authority has not referenced any evidential matters in the outcome letter and has relied on the investigation report. This is clearly untrue as the Hearing Authority sat through 10 days of testimony. b) You state that the investigating officer never visited the scene so could not be sure of the degree to which the view of the furniture being removed

could be established. However, I am content that his investigation assist (sic) did and drew the right conclusion. This is based on my own visit to the scene. The CCTV shows you standing in a position where there was a clear view of cell 29, aided by the wrought ironwork on the stairs enabling you to see through them.
c) You state that two officers gave evidence that the removal of furniture per se would not necessarily give cause for concern. I agree that if one item was removed that may not raise suspicions, but on viewing the CCTV that day it is clear that several items of furniture were removed right in front of you, and any conscientious or competent prison officer would have questioned what was happening. You did not do so.
d) One of the main defences supplied was that there was no clarity on the numbers of prisoners that could be locked in the cell and that you locked up a number of prisoners together knowing that they would shortly be out again. I have addressed this in part one (at paragraph c) on R1 253-254 of the generic findings). It is no excuse and stretches the bounds of reason when increasing numbers are put in a cell which you had just witnessed the furniture being removed from.
e) The confusion over the total numbers in the cell is unsurprising given the amount of prisoners being allowed in and out of that cell. The minimum number quoted of 15 would still be far too many. I personally counted 30 prisoners leaving the cell on CCTV.
f) I have dealt with the issues of the follow up to the incident and the issue of social media and discounted these when considering this appeal.
g) You state that the explanation of why the charges constituted gross misconduct was never forthcoming, nor were they clearly explained in the (outcome) letter. I disagree – the letter is clear and unequivocal in stating that the Hearing Authority found your behaviour unacceptable.

I have read your grounds for appeal, read the investigation and hearing transcripts and viewed the CCTV as well as speaking to you at the appeal hearing, which lasted several weeks. Of all of the staff in this incident, you were clearly in my view the most complicit in what happened. You watched the furniture being removed, then supervised large numbers of men entering the cell before locking them in. After the cell was unlocked for social and domestics, the cell became a magnet for other prisoners on the wing. You frequently attend the cell and from the CCTV it was very obvious to me that you must have been aware of what was going on.

At the end of the party, you were there as large numbers of very obviously drunk prisoners left the cell. You did not alert anyone to your concerns, but simply kept visiting the cell to check what was going on. As prisoners left, one slapped you on the back and shook your hand. I am appalled by what I saw on the CCTV and none of the evidence presented to me has persuaded me that you were neither complicit nor incompetent in allowing the party to happen.

For this reason, whilst I accept that you have expressed remorse for your actions, I believe the Hearing Authority made a sound judgement in deciding that this was gross misconduct and that any further trust between you and the Prison Service is impossible. I am therefore upholding the dismissal."

121. In the case of 01, Mr Baker rescinded the penalty of downgrading but upheld the two-year final written warning and removal from the field of promotion (R3 1416-1422). He discounted the charges of failing to take any follow-up action as he had done in the claimant's case. He also discounted the charge that his actions and subsequent media and social network exposure brought discredit on the Prison Service, as he had done the claimant's case. He decided that downgrading the officer was unduly severe for the one remaining charge of failure to give appropriate challenge or take action during a large number of offenders congregated in one cell. He found that 01 passed cell B3-29 at 10.23 hours and unlocked the cell at 10.34 hours and, at that point, did not challenge any offenders inside the cell. He had some sympathy with 01's argument that there were two other CMs in the vicinity at this time and neither of them took any direct action. However, as a manager Mr Baker concluded that 01 should have taken direct action and taken responsibility to make sure prisoners in cell B3-29 were dealt with. In cross examination Mr Baker explained that there were other CMs who had been made aware of the incident and it formed his view of the collective failings that day.

122. In the case of 02, Mr Baker upheld the decision to award a final written warning (R3 1430-1436). He did not believe the charges should have been reduced from gross misconduct to serious misconduct because 02 was in the vicinity when prisoners were removing furniture from the cell and when the claimant was standing in the doorway of the cell with a large group of prisoners. And 02 did nothing to challenge it. The two remaining charges (failure to observe the removal of furniture and items from cell B3-29 and failure to report the claimant for allowing a significant number of offenders controlling the entry and exit into cell B3-29 knowing that the cell was designed for only a maximum of two offenders), were linked together and could have constituted gross misconduct, as 02 appeared to be either incompetent or complicit in allowing the events which led to the build (up) of the party to occur. However, Mr Baker accepted Mr Bradford's decision to reduce 02's charges to serious misconduct.

123. In cross examination it was put to him that 02 was not dismissed although charged with the same offence as the claimant. He accepted this but only that one respect. He explained that it was difficult to say 02 would be dismissed as both were charged with misconduct. But clear from the CCTV footage that the claimant was standing there when the furniture was going in and out and 02 was opposite and could see. And the claimant was also facilitating the going into and leaving the cell.

124. In the case of 03, Mr Baker reinstated the officer and substituted the award with a written warning to remain in force in two years (R3 1443-1449). He discounted the charges of failing to take any follow-up action as he had done in the claimant's case. In respect of the remaining charge (failing to secure a class 3 lock on two occasions), 03 claimed that the CCTV evidence showed that the door was left open only one occasion. Mr Baker accepted this. He decided that dismissal was unduly harsh the one remaining charge of failing to secure a class 3 lock on one occasion.

125. Two other officers were also charged with disciplinary offences, 04 and 012 but Mr Bradford was not involved in these cases.

126. In the case of officer 04, Mr Rogers had not recommended formal disciplinary action, although he did recommend that 04 be given verbal and written management guidance (R1 188). However, Mr Mulholland took the view that 04's conduct fell short of the required standard. 04 was subsequently charged with failing to respond to the incident on B Wing and a failure to report the incident to Oscar 1 or the Duty Governor (R3 1450-1451). 04 accepted the charges and elected to have the matter dealt with at a fast track disciplinary hearing which took place on 4th February 2016 (R3 1452). Ms Frost acted as Hearing Authority and she issued 04 with a written warning (R3 1453-1454). 04 did not appeal the decision.

127. Whilst Mr Bradford was not involved in 04's case, he understood the key difference between 04 and the claimant was at 04's involvement came some to hours after the incident started and his actions had no bearing on the claimant's conduct or that of the three other officers prior to that point in time. In her decision letter, Ms Frost noted that 04 understood what had happened, the role he had played and the reason why he had been charged with misconduct. She further noted that 04 taken full responsibility for his actions and assured her that he learned from the events and the subsequent investigation and she believed that he had which was reflected in the award.

128. In the case of officer 012, Mr Rogers had recommended that disciplinary charges be considered against him (R1 187). 012 was charged with failing to observe the removal of furniture and items from cell B3-29 and that this action and subsequent media and social network exposure brought discredit on the Prison Service. Ms Frost was appointed as Hearing Authority. Ms Frost dismissed the second allegation and issued 012 with a final written in respect of the first allegation. 012 appealed the award but it was upheld by the Appeal Authority (Mr Bickers).

129. Whilst Mr Bradford was not involved in this case, he understood the key difference between 012 and the claimant was that 012 did not play a central role in the proceedings, was on the periphery of the incident and he arrived on the Wing to assist with the unlocking exercise before leaving the Wing a short time later. In cross examination he said that if this was the sole charge against the claimant it would not have resulted in his dismissal.

130. In cross examination the claimant accepted the timeline at R1 140 – 141.

131. When he locked the doors of cell B3-29 at 10.36 he thought there were about 8-10 offenders inside the cell. When he saw the CCTV footage he counted 15 in there. But after the door was unlocked then they was no limit on how many could be in a cell.

132. At 11.37 he thought there were about 20 in the cell (Mr Baker says 30-35). He stated that it was horrendous in there.

133. The claimant accepted that the furniture being removed is fairly visible on the CCTV but the cameras are 12 feet in the air. It was not visible from

where he and his colleague were standing. Prisoners were coming and going. CCTV gives an aerial view. About 170 prisoners had just been unlocked. He was just monitoring what was going on generally and not that cell in particular. However, he accepted that he was supposed to be alert to what was going on so as to control order.

134. The claimant stated that even if he had seen a chair come out of a cell or a waste paper bin, he would not necessarily assume it was untoward. The prisoner might simply be moving the chair or emptying the bin.

135. He accepted that you should not lock more than 2 offenders in a cell and that for health and safety reasons it was not a good idea for him to lock so many prisoners in one cell, although he only expected to have there for a short time. But he admitted it was a bit stupid of him to assume it would only be a be a short time.

136. He accepted that he said it was normal to have large numbers in cells but he did not say to Mr Rogers that this practice was condoned by his superiors.

137. He accepted that what happened in that cell escalated to a potentially dangerous situation and that others were alerted by the noise (010 R1 171).

138. He accepted that 02 was 100% not as culpable as he was for the matters for which he was dismissed. And that 012 was even less culpable that he was.

139. The claimant raised a number of concerns during the disciplinary process and at this hearing as to the apparent disparity or inconsistency of treatment in terms of the sanction applied to him and to the other officers who were disciplined at the same time as him. In respect of officer 03 he asserts that whilst they faced the same or broadly similar allegations and were both dismissed, on appeal 03 had his sanction reduced. In addition, the claimant states that he was dismissed mainly for securing too many prisoners in cell and yet 03 also secured the same number of prisoners in the cell, but no charges for this were brought against him and he was not even asked about it in interview. The claimant also points to officers 02 and 012 in which the respondent found that the failure to observe the removal of furniture was not in itself gross misconduct. Whereas he was charged with gross misconduct in this regard, they had only been charged with misconduct.

140. In cross examination, Mr Bradford explained that the claimant was charged with the second and third charges and 03 not because the claimant was the central player in the incident throughout, letting prisoners in and out of the cell. Whereas 03's involvement was essentially to deliver a bag to the cell and to go. 03 had a lesser role. The claimant was controlling the landing and 03 was working downstairs and decided to come upstairs and deliver an item and the respondent believed initially that he was trafficking goods. Mr Bradford took the view that 03 was primarily concerned with trafficking. By the time he got to the cell it was the claimant's failing that allowed that situation to arise. 03 does it on one occasion but the claimant does it on more than one. It is the level of involvement that is important.

141. In cross examination, Mr Bradford was directed to the transcript of the disciplinary hearing and questioning of 010 at R1 490-491. He accepted that what 010 said was that 04 should have taken responsibility at that stage and acted upon it and at R1 496 was drawing a distinction between a band 3 officer and those in charge. It was put to him that by stating that 04 was not involved at the time of the incident was failing to look at the bigger picture as to how the CMs were managing the wings and managing their officers and how that could have led to the incident in question. Mr Bradford's response was that he was focusing on the specific events between 0930 to 1100 hours. He added that if it was being suggested that the CM had a responsibility from 0830 hours then the answer was yes, but the CM was unaware of the issue at that time. He explained that usually the Prison Service relies on SO with to deal supervising the Band 3 officers because the CM has other duties and is not always on the Wing. There is also a responsibility for the Band 3s to exercise common sense as well as the rules in exercising order and control. This is part of the core foundation training. One expects officers should know that it is not a good idea to allow so many prisoners in one cell. There was insufficient evidence that large numbers in cells was the norm as the claimant suggested.

142. In cross examination, Mr Bradford accepted that at 10.30 hours, 01 walked past B3-29 and saw a number of prisoners in the cell and later locked it (R1 162); at R2 570 01 spoke to the claimant who told him there were. Mr Bradford accepted that that 01 had stated that he no cause for concern after having seen a large number of prisoners in and around cell B3-29 and having been told by the claimant that there were "loads going in and out" of the cell "celebrating somebody's birthday", because they were not doing anything. He accepted that this was the view of the senior officer on the wing It was put to him that this suggested that either there was a conscience decision to ignore the behaviour or perhaps to condone it. However, he did not accept that it built a picture of senior officers condoning the behaviour but of a number of officers on that day failing in their roles to various degrees.

143. Whilst he considered whether what the claimant and the other officers did on the day was influenced by the general approach and culture on B Wing, the evidence was not clear and his brief was to deal with the incident in question. He accepted that there was an opportunity for managers to deal with the incident at an earlier stage and they did not but he was not able to establish evidence of a general lack of management and control.

144. Mr Baker said in cross examination that whilst 3 officers were charged with the same allegation and in the case of the claimant it was gross misconduct and in the case of the others, misconduct, it was the combination of the first three charges which made it gross misconduct for the claimant. The furniture issue was not on its own a dismissible offence.

145. Mr Bradford said in cross examination that his view was that the claimant was allowing people in and out of B3-29 who could have been taking in mobile phones, alcohol and drugs. Whist the claimant was not directly involved he said he believed that the claimant was indirectly responsible.

Mr Bradford said that if there are a number of prisoners in a cell, making a lot of noise, your instinct would be to go and investigate it.

146. Whilst this was never put to the claimant in these terms at the time, Mr Bradford felt that from the evidence it was clear that the claimant allowed the situation to arise, did not do anything about it and this happened on his watch. Mr Bradford stated that it is his experience that prisoners will have the alcohol and phones secreted about their person and take this into the cell. Whilst these could have been in the cell already, the claimant allowed the situation of intoxication to arise on his watch.

147. Mr Bradford stated in oral evidence that he had never dealt with the situation where the grievances were raised outside of a disciplinary hearing. He explained that usually any dispute is dealt with during the hearing and if not resolved is expected to be picked up by the relevant appeal body.

148. He further stated that the normal length of the disciplinary hearing was one day. But to be fair he accepted that this was a large investigation with a large number of witnesses. But, nevertheless, one would expect it to have taken between 2 to 3 days.

149. Mr Bradford stated that Mr McLaughlin's approach to the hearing was put too much emphasis on process and too little on dealing with the facts of the case. He believes that Mr McLaughlin did this in an attempt to detract and remove the focus from the real issues of the case and to lead him into making procedural errors or failings.

150. In cross examination it was put to Mr McLaughlin that his conduct of the disciplinary process had very much caused the delays of which he and claimant complained of. In particular, that he had spent 3 days questioning Mr Rogers about his report. Mr McLaughlin did not accept this. He was representing 4 people, his questioning and representations were as long as necessary. He pointed to the Code at R2 843 which sets no time limits on the length of hearing. He said he had previously dealt with a hearing which lasted 7 days.

151. Mr McLaughlin did not accept that it would have been better to have raised his concerns about the withheld documents earlier than 7th March 2016. In his experience it was a waste of time asking for documents earlier. He found out about the documents about the end of February 2016 and in any event when he asked for the documents in March 2016 it took the respondent a further 2 months to provide them.

152. Mr Bradford accepted that it was alleged by Mr McLaughlin at the hearing that managers were not doing their jobs properly or supporting the staff and disciplinary action should be taken. However, he stated that it was not put to him that managers allowed large groups to be in cells, did not do anything about it and did not report it.

153. Mr Bradford stated in oral evidence that whilst it was suggested it was quite a normal thing to happen on B Wing to have large groups of prisoners in cells during S&D this was not borne out in evidence. His perception from

the witnesses was that the party in B3-29 had been pre-planned. The CCTV footage clearly showed the claimant and others allowing the prisoners to literally strip that cell bare and transport the furniture 40 yards down the landing to the wash area.

154. At paragraph 47 of his witness statement, Mr Baker was persuaded by the argument that the investigation could and should have identified more than the number of people on duty that day to action in relation to the incident. In oral evidence he stated that 06 was in charge of the Prison and no follow-up actions taken against him. And whilst some action was taken against 010 he felt it was insufficient. One CM had a fast track disciplinary and one did not. His feeling was around the managerial response on that day and he believed there simply was not one. He did not draw the conclusion that what happened on that day was indicative of what happened on other dates. In his experience as a governor and as a visitor to the Prison he believed it could just be what happened on that particular day.

Closing Submissions

155. I received written submissions from the respondent's counsel which were amplified orally. I heard submissions from the claimant's counsel. I was provided with copy of Newbound v Thames Water Utilities Ltd [2015] IRLR 734, Court of Appeal by the claimant's counsel and a copy of Paul v East Surrey District Health Authority [1995] IRLR 305, Court of Appeal by the Respondent's counsel.

Relevant Law

156. Section 98 (1), (2) and (4) of the Employment Rights Act 1996:

'(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

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

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

Conclusions

Unfair Dismissal

157. I first considered whether the Respondent had shown a potentially fair reason for the claimant's dismissal within section 98(1) and (2) ERA 1996. I find that the Respondent has shown that the potentially fair reason is to do with conduct. The claimant was dismissed for gross misconduct originally in respect of seven charges but upheld on appeal in respect of the first three only.

158. I then turned to consider whether this was a sufficient reason for the claimant's dismissal within section 98(4) ERA 1996. This involves an examination of both the way in which the Respondent dismissed the claimant (the process followed) and the reason for the dismissal (the substance).

159. I had regard to the ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2015) as well as the respondent's own Code.

160. I also had regard to the test contained within BHS v Burchell [1979] IRLR 379, EAT relating to conduct dismissals. This requires me to consider the following:

    160.1 Whether the employer believed that the employee was guilty of misconduct;

    160.2 Whether the employer had in mind reasonable grounds upon which to sustain that belief; and

    160.3 At the stage at which the employer formed that belief on those grounds, whether s/he had carried out as much investigation into the matter as was reasonable in the circumstances.

161. When assessing whether the Burchell test has been met, the tribunal must ask itself whether what occurred fell within the "band of reasonable responses" of a reasonable employer. This has been held to apply in a conduct case to both the decision to dismiss and to the procedure by which the decision was reached. (Sainsbury's Supermarkets v Hitt [2003] IRLR 23, CA).

162. In addition, I reminded myself that I must be careful not to substitute my own decision for that of the employer when applying the test of reasonableness.

163. I was conscious of the need to remember the context of this matter. It is a category B prison. The claimant is a prison officer with 13 years' experience and not a new recruit left out of his depth without training. Indeed, no issue of lack of training has been raised. The claimant was working on a landing in which he was in charge of 70 prisoners and assisted by another officer who was guesting on that landing. He was trusted and required to maintain vigilance on the landing. The claimant was in a position to control the numbers in the cell and had authority on the landing at all times.

164. During the internal disciplinary process, the main focus of Mr McLaughlin was to criticise the investigative process and the conduct of the disciplinary hearing. In turn these failings have been raised to challenge the reasonableness of the claimant's dismissal.

165. In submissions the claimant's counsel criticised the focus on the incident itself rather than the management failings which had led to the situation. He submitted that there was clearly evidence that some officers were aware that more than two prisoners were locked in a cell when the incident took place. He averred that this was enough to alert the respondent to the need to explore the issue, it did not do so and this undermined the adequacy of the investigation.

166. The overall submission made is that there was the failure to investigate whether or not there was a systemic problem of locking multiple prisoners in cells. The claimant's case is that he was unaware there was anything wrong with such a practice.

167. The evidence in relation to the question of locking the cell with more than two offenders in it is as follows:

    167.1 Officers 01, 02 and 04 denied such a practice (at R1 163, 156 and 5 to 7 respectively);

    167.2 Officer 012 stated that if he brought people in on visits sometimes you would see 4 to 5 in cell (R1 159);

    167.3 Officer 019 said that if the "whistle went" then sometimes 10 to 14 people might be locked in a cell to secure the landing (R1 505);

    167.4 Officer 01 had unlocked the door to B3-29 with 15 offenders in it and not question their presence. However, CCTV evidence showed he had not looked into the room (R1 145);

    167.5 The claimant accepted in cross examination that under normal circumstances for "lock-up" there should no more than two a two-person cell;

    167.6 Officer 03 locked the door with 15 offenders inside after delivering items in a bag to the cell at 10.15 and stated he had no concerns about locking the cell with 8 to 10 offenders in it (R1 152-153).

168. I find that this does not provide sufficient evidence of a systemic problem as alleged and that it was reasonable the respondent not to have investigated further and to conclude that there was no such problem.

169. The next of the claimant's submissions was the alleged failure to investigate whether or not there was a systemic problem of large numbers of prisoners in cells outside lock-up time. It was submitted by the claimant's representative that the response of senior individuals such as 01 and 04 was indicative of this. In particular:

    169.1 Officer 01: 01 viewed the inside of the cell at 11.38 (R1 146) and stated that he did not recall the cell to be noisy, that there had been about a dozen offenders inside the did not see alcohol or phones. He subsequently instructed staff of the landings to serve lunch. He said in the disciplinary hearing that the offenders in the cell were just "happy" which was not the scene he was expecting;

    169.2 Officer 04: the evidence in relation to 04 was contentious because prisoner A said that 04 knew was happening and "asked me what to do I do and how do I get them out of here" (R1 175) and 03 had said he spoke to 04 and had said "what do you expect us to do?" (R1 152). However, CCTV footage supported 04's account that he been informed of an incident by 010 around 11.00 and had gone to B3 at about 11.15 (R1 165). In fact, the CCTV evidence showed him talking to 010 at 11 30 and going to B3 at 11.33. He had seen 10 to 15 prisoners on the landing but not intervene in any way as the situation appeared calm to him (R1 165).

170. In addition, the claimant's representative questioned 019 during the disciplinary hearing and he confirmed that there might be 5 to 7 individuals in cell playing cards. There is no other evidence of groups of offenders congregating in cells during S&D.

171. It was also suggested that these systemic failings indicated a wider failure to manage the Wing. Mr Bradford stated that there were significant failings of responsibility on the part of more senior managers and that he had attempted to explore the question of the culture or whether this kind of event was the norm or not. He found that the officers were aware of their roles but had not followed it up on the day. Any evidence that might have pointed to culture was inconclusive, for example his questions at 04 at R1 527 and his questions of prisoner Q at R1 433.

172. I accept that the respondent's investigation and conclusions in this regard were reasonable. There was nothing on which to sustain such allegations and what there was pointed to individual failings by officers on that day.

173. The claimant also raised the issue of the delay. The incident occurred on 26th September 2015, the article appeared in The Sun on 29th September 2015, the claimant was suspended on 30th September 2015, the investigation report was not produced until 24th December 2015, claimant was not charged until 12th January 2016, the disciplinary hearing did not commence until 7th March 2016 and was then adjourned until 16 May 2016.

The claimant submits that this prejudiced his ability to defend himself not least because of his intervening ill-health which resulted in his inability to attend the hearing which recommenced on 16th May 2016.

174. It is of course regrettable that such a length of time occurred between the original incident and the substantive start of the disciplinary hearing and the outcome letter to the claimant which was dated 7th June 2016. However, I do take into account that the interviews with the various witnesses were undertaken between 8th and 20th October 2015, when the events in question were fresh in the minds of those individuals. I also take into account the numbers being interviewed and the unfortunate delay in arranging for transcription of the recordings of interviews. I also take into account that ultimately four individuals were being disciplined at the same disciplinary hearing and that the hearing took a total of nine days over a number of months.

175. Whilst I have some sympathy with the respondent for the amount of time that Mr McLoughlin spent questioning witnesses, in closing submissions and in raising separate grievances on a number of occasions, I cannot criticise him for doing what one would expect of a conscientious trade union representative. However, I do acknowledge that perhaps inadvertently the claimant and his representative added to the delay by raising concerns about withheld evidence until the last moment before the original date of the disciplinary hearing on 7 March 2016.

176. Sadly, in the intervening time before the resumed hearing in May 2016, the claimant had become unwell and was unable to attend. However, Mr McLaughlin confirmed that he was instructed to represent the claimant in his absence and the claimant acknowledged this.

177. I therefore find that any delay whilst regrettable was not unreasonable in the circumstances. The respondent conducted the matter reasonably.

178. Ideally one would expect the claimant to be present at his own disciplinary hearing but he was competently represented by Mr McLaughlin and he was able to attend the subsequent appeal hearing on at least one of the days and was again represented by Mr McLaughlin.

179. A further submission by the claimant is as to the charges against him. Mr Mulholland as the Commissioning Manager would normally have laid the charges against the officers concerned. However, in this case the charges were laid against the claimant by Mr Bradford, the Hearing Authority. The claimant's counsel submitted that this extra layer of process was therefore missed out. I do not see anything untoward arising from this and in any event I do not find the way in which the respondent proceeded to be unreasonable. I also note that when Mr Mulholland was questioned during the disciplinary hearing he confirmed that he accepted the investigation report and recommendations made (at R1 387).

180. With regard to the charges themselves, the claimant's counsel submitted that it was important to look at what the claimant was charged with. The investigation report at R1 140 sets out the CCTV timeline involving the

claimant. At 10.02 hours the door of the cell is closed with what is found to be roughly 15 offenders in it. The claimant closes the door and leaves the Wing. Then at 10.13 hours, 03 goes to the cell and opens the door, hands in a bag and then locks the door. And then at 10.36 hours, at R1 145, 01 unlocks the cell door. The respondent's justification for not charging 01 with the same offences as the claimant is that he was unaware of the numbers in the cell because at that time it was calm.

181. Having considered the respondent's findings in respect of 01 and 03 at the investigation stage, at the disciplinary hearing and on appeal I conclude that the respondent acted reasonably in respect of the charges laid against those officers as opposed to those laid against the claimant and the conclusions that it reached were reasonable.

182. The claimant's counsel further submitted that the allegations that were taken forward to the disciplinary hearing dealt with the events up to 10.02 hours in the first three bullet points. They do not relate to what happened after the cell has been unlocked by 01 at 10.36 hours. This was not part of the case against the claimant (reference R1 184 paragraphs 25.2 and 25.3).

183. The claimant's counsel also submitted that very crucially there is no charge against the claimant that he is in any way responsible for the alcohol or mobile phones making their way to the prisoners. The relevance of this is that Mr Bradford said in evidence that he did take into account and it did form part of his decision that the claimant was indirectly responsible for those prisoners having access to alcohol and mobile phones. This was never put claimant or his representative at the time. The claimant's counsel continued that at 10.36 hour all is calm, prisoners enter and exit the cell and it is impossible to say that the alcohol was brought in then or was already there. One can speculate that it was already there. But the question is, was this allegation that the claimant's actions directly or indirectly to the prisoners having access to alcohol and mobile phones ever explored and put to him. The Claimant's counsel submits was not.

184. The claimant's counsel stated that a central tenet of a good disciplinary procedure is that the accused should know what they are charged with so that they can put their case. This is within the ACAS Code of Practice as well as the respondent's own Code at R2 838 paragraph 5.13. This was a crucial part of the decision to dismiss that was not put. It might be said that this did materially affect the outcome because if you look at R3 1241 in respect of 01, he is aware of a number of offenders in the cell but is not charged with gross misconduct. The claimant's counsel submitted that there is something else in the claimant's case that tips the balance and that this is the issue of alcohol raised by Mr Bradford.

185. The respondent's counsel accepted that the charges against the claimant did not address the period during which he was supervising the S&D. However, the respondent has never said or put to the claimant that he knew that there were 32 prisoners congregating in the cell. It is not part of the findings that he should have done something about this between 10.30 and 11.30 hours, although it was an argument that could have been raised.

However, the respondent's counsel submitted that the claimant's responsibility did not end at 10.02 as the claimant's counsel avers.

186. The claimant came into the cell at 10.36 and spoke to the offenders in there as can be seen at R1 141. The implication of this is that the claimant was aware of the numbers in the cell at the start of the S&D period and that this is what led to what then ensued. He is aware of 15 in the cell and he is responsible. There is no evidence to suggest that this is a typical thing notwithstanding the claimant and Mr McLaughlin's assertions.

187. The respondent's counsel submitted that the claimant's counsel was putting matters somewhat high by suggesting that what Mr Bradford said in oral evidence was that it formed part of his decision that the claimant was indirectly responsible for prisoners having alcohol and mobile phones in the cell. The significance of this to the respondent at each stage is less than the claimant tries to place on it. It is clear there were 32 prisoners at the end of the sequence of events having consumed alcohol and having mobile phones from the footage which was uploaded to social media. Mr Bradford did not say that he held the claimant directly responsible for what happened. What he said was that the claimant was letting people in and out, who might have alcohol and mobile phones, into a cell, and that there was ample evidence that this could have happened and was foreseeable.

188. The respondent's counsel referred to the interview with Officer 01 at R1 162 paragraphs 16.7 and 16.10 in which he refers to it being common knowledge on the wing and his staff that the Polish offenders are drinkers, that they make spirits and that the use of hooch was a regular thing. At R1 89 the claimant himself says there is a big Polish community on the 3's and cell B3-29 was that of a Polish offender. Further at R1 103 he speaks of Marmite being sold in the Prison, the inference being that it can be used to make alcohol. In cross examination he said alcohol was an issue with some of the Polish offenders. Thus, she avers, there was plenty of evidence from which Mr Bradford could conclude that some of the offenders allowed into the cell may have had alcohol on them and evidence that the claimant was aware of this and so it was foreseeable. It was suggested that this should have been put in the disciplinary hearing, but the claimant was not there to put it to and Mr Bradford was allowed to draw reasonable conclusions and not to put every single point.

189. I made the point that the claimant's position here is analogous to the situation where an employee is dismissed for dishonesty when this is never put to the employee during the disciplinary proceedings. I accepted it was not as high, but the claimant is saying he was dismissed because the respondent believed that it was indirectly his fault, whereas the respondent is saying there was enough evidence there to indicate it was foreseeable that the consequences of his actions were to allow a situation where it was possible alcohol to be taken in.

190. Mr Bradford, when asked in cross examination "you are not suggested the Claimant was responsible for the alcohol and mobile phones being in the cell?" replied "my view was that he was allowing people in and out of that cell who could have been taking in mobile phones, alcohol and drugs. But

he was not directly involved although I believed he was indirectly responsible. If there are a number of prisoners in a cell, making a lot of noise, your instinct would be to go and investigate it."

191. Having considered my finding as to what Mr Bradford stated in cross examination and the evidence of foreseeability, I accept that Mr Bradford was clearly saying what he believed. But I find it was reasonable of him to draw this conclusion and it was very much self-evident from the reasons for dismissal both at first instance and as upheld by Mr Baker on appeal. In the circumstances it was not unreasonable to raise this directly with the claimant.

192. It is clear that Mr Bradford had this in mind and I am drawn to his words in his dismissal letter at R1 224:

"*You were at the very centre of this incident and allowed it to happen your full consent. You had the ability to prevent it from happening, but you chose to allow it with serious consequences for the Prison Service and members of staff. Your behaviour was an abuse of the trust placed in you as a prison officer. Prisons are built on trust and integrity which you completely disregarded this occasion."*

193. Further, I am drawn to the words of Mr Baker in the appeal outcome letter at R1 256:

"*I have read your grounds for appeal, read the investigation and hearing transcripts and viewed the CCTV as well as speaking to you at the appeal hearing, which lasted several weeks. Of all of the staff in this incident, you are clearly in my view the most complicit in what happened. You watched the furniture being removed, then supervised large numbers of men entering the cell before locking them in. After the cells was unlocked for social and domestics, the cell became a magnet for other prisoners on the wing. You frequently attended the cell and from the CCTV it was very obvious to me that you must have been aware of what was going on.*

At the end of the party, you were there as large numbers very obviously drunk prisoners left the cell. You did not alert anyone to your concerns, but simply kept visiting the cell to check what was going on. As prisoners left, one slapped you on the back and shook your hand. I am appalled by what I saw on the CCTV and none of the evidence presented to me has persuaded me that you were neither complicit nor incompetent in allowing the party to happen."

194. The claimant also submitted both during the disciplinary process and at this hearing that there was an inconsistency of treatment between himself and various other officers involved in and around the incident in question. He refers to those officers who faced disciplinary proceedings at the same time as him, namely 01, 02, 03 as well as 04 and 012 who were dealt with separately.

195. The ACAS Code of Practice states that employers should act consistently. This can arise in two ways: either because two employees commit the same

offence at the same time, but only one is dismissed; or because some other employees have been treated more leniently for the same offence in the past (Post Office v Fennel [1981] IRLR 221, CA). Both situations are potentially unfair, but in practice, inconsistency is hard to rely on. This is partly because any argument about inconsistency only works if the comparable situations that really are similar. In reality few cases are identical (Hadjioannou v Coral Casinos Ltd [1981] IRLR 352, EAT). Also, where an employer consciously thinks about two cases and makes a distinction between them, the dismissal will only be unfair if there was no rational basis for the distinction (Securicor Ltd v Smith [1989] 356, CA).

196. What is important is for the tribunal to consider the individual facts of the particular case and to decide on the usual section 98(4) test whether the dismissal fell within the band of reasonable responses (Levenes Solicitors v Dalley UKEAT/0330/06).

197. The respondent's counsel has directed me to the case of Paul in which the Court of Appeal dealt with the situation where arguments of disparity are raised by an employee. The Court of Appeal held that where such arguments are raised, tribunals should heed the warning of Waterhouse J in Hadjioannou and scrutinise them with particular care. I was referred to paragraph 30 of Paul which is as follows:

"The first question, therefore, is whether the industrial tribunal could reasonably infer from the reasons given by the appeal panel either that they had failed to consider the arguments of disparity or that, having considered them, they irrationally concluded that the cases advanced are not truly compatible."

198. The guidance from Waterhouse J is set out in paragraph 34 of Paul and at paragraphs 35 and 36 the Court of Appeal states as follows:

"If the employer has an established policy applied for similar misconduct, it would not be fair to change the policy without warning. If the employer has no established policy has on other occasions dealt differently misconduct properly regarded as similar, fairness demands that he should consider whether in the circumstances, including the degree of misconduct proven, more serious disciplinary action is justified.

An employer is entitled to take into account not only the nature of the conduct and surrounding facts but also any mitigating personal circumstances affecting the employee concerned the attitude of the employee to his conduct may be relevant factor in deciding whether a repetition is likely. Thus an employee who admits that conduct proved is unacceptable and accepts advice and help to avoid a repetition may be regarded differently from one who refuses to accept responsibility for his actions, argues with management or make unfounded suggestions that his fellow employees have conspired to accuse him falsely."

199. I was also referred by the claimant's counsel to the case of Newbound, in which the Court of Appeal referred to Paul and at paragraph 63 stated as follows:

"There are two types of disparity argument. The first is where the employer has previously treated similar behaviour less seriously: if such behaviour has on previous occasions not even been treated as a disciplinary offence, this is often described as condonation. The second is where two employees involved in the same incident treated differently.

200. From all of this there are clearly very limited circumstances in which disparity of treatment can render a dismissal unfair. The circumstances are as follows:

200.1 If an employer failed to consider an argument that another employee had been treated differently;

200.2 If an employer did consider it but came to an irrational conclusion;

200.3 If there is a policy that misconduct in question should not result in dismissal; if there is no policy and previously the misconduct has been dealt with more leniently and there are proper grounds of treating the employee more severely.

201. The respondent's counsel submitted that it was reasonable of the respondent to reach the conclusions that it did in respect of the named comparators and further that it acted reasonably in disregarding the assertions made of disparity of treatment at the time. The claimant was responsible for the landing on the day in question, it was his landing where he knew the offenders, whereas others (for example 02 and 012) were guesting on the landing. He was on the scene the longest and had the greatest involvement in the incident. By his actions he enabled situation to develop and escalate. The failure of the others involved was, in different ways, to challenge or respond to the claimant's actions and the situation he had created. This included 03 who found cell B3-29 locked with 15 offenders in it when he arrived at it.

202. The claimant's counsel relied on the second element of inconsistency as identified in Newbound. He submitted that Mr Baker accepted that it was a omission not charging 03 with the same charges as against the claimant at bullet points 2 and 3 at R1 186. In cross examination Mr Bradford stated that because 03 had been charged with the more serious offence of trafficking this was why he had not been charged with the same offence as the claimant. The claimant's counsel submitted that this was an irrational decision: that an individual charged with a far more serious offences is not charged with the same offence as someone committing less serious offences. Mr Baker stated that because no such allegations had been brought against 03 he could not raise the issue.

203. The respondent's counsel accepted that it was an omission not to charge 03 with the same charges as against the claimant But he was dismissed although this was overturned on appeal. She submitted that you should look at the overall disparity and not the specific reason. The fact that there was an error on route to the treatment of 03 is not sufficient to render the claimant's dismissal unfair when there were other circumstances justifying

it. Mr Bradford said the other point was that by the time 03 got there the error had been made, the claimant had already allowed the situation to arise. Mr Bradford found the claimant's involvement on the general level throughout to be sufficient to dismiss not simply on those specific charges.

204. The claimant's counsel also pointed to the disparity in the treatment of 02 and 012 in respect of the charge of failure to observe the removal of furniture and items from the cell. He stated that it might be said that the claimant viewed the furniture being removed and that might be right. But it was not considered gross misconduct. Given 02 and 012 were not found guilty of gross misconduct in that respect, given 03 was not charged with same offence and given 01 was not charged with same, and given 04 and 010 were aware of an offence on the wing and saw the scale of it and took no action, then it was not within the band of reasonable responses for the respondent to dismissal the claimant.

205. The respondent's counsel submitted in respect of the CM and supervisors, when you look back at their level of involvement, what they were aware of the time was far short of what the claimant was aware of and they are not responsible for what arose directly or indirectly and indirectly what ensured. They are only responsible for not responding to it. Similarly, 02 and 012 were guilty of failing to challenge the claimant's actions and that was lesser involvement that that the claimant.

206. I have considered the disparity arguments carefully. I have taken into account my findings at paragraphs 101 -104, 121-124, 126-129 and 141-14t5 above. I accept the respondent's submissions. I do not find the circumstances of each sufficiently similar to be comparable and I accept that the respondent acted reasonably in raising different charges against some of the officers and in reaching the conclusions in respect of each. I accept the 03 should with hindsight have been charged with those matters set out at bullet points 2 and 3 of the claimant's charges but I do not find the explanation for this given by Mr Bradford or Mr Baker to be unreasonable. 03 had a different agenda on the day and a much more limited involvement. He had been charged with trafficking as a result even though this charge was not subsequently made out.

207. In the circumstances I find that the respondent acted reasonably in the process that it followed in dismissing the claimant and on appeal. I also find that this was within the band of reasonable responses. The claimant was allowed to be accompanied at all stages. He was notified of the charges against him and was provided with sufficient evidence in support. He was told in advance that one possible outcome was dismissal for gross misconduct. Whilst it was unfortunate that he was not able to attend the disciplinary hearing, he was represented by his POA representative who had the opportunity to state his defence and to make representations. He was sent the outcome of the disciplinary hearing with sufficient reasons. He was notified of his right of appeal. He was afforded the opportunity to attend an appeal hearing and again represented by his POA representative and again largely in his absence. He was sent the outcome of the appeal hearing with sufficient reasons. The delay did not render what happened unreasonable. It was understandable in the circumstances if unfortunate.

208. I also find that the respondent acted reasonably in dismissing the claimant for gross misconduct in respect of the charges against him and in upholding dismissal on the first three charges on appeal. The respondent had carried out as much of an investigation as was reasonable in the circumstances, having interviewed a considerable number of witnesses including officers and prisoners and had produced an investigation report with recommendations in respect of 6 officers as well as general recommendations. The conclusions reached from the investigation were reasonable and the respondent had a genuine belief that the claimant was guilty of gross misconduct. Dismissal fell within the band of reasonable responses. The inconsistency arguments are not made out.

209. I therefore find that the claimant was not unfairly dismissed.

Wrongful dismissal

210. Where an employee has committed an act of gross misconduct, the employer may end the contract without giving notice. What amounts to gross misconduct depends on the facts of each case, but essentially it is deliberate and grossly negligent conduct which would completely undermine the employee's trust and confidence in the employment contract. Some employment contracts define amounts to gross misconduct that some acts such as theft or physical assault are obvious acts of gross misconduct do not need stating.

211. In technical terms in order to justify summary dismissal has to be a repudiatory breach of contract. In order to amount to a repudiatory breach, an employee's behaviour must disclose a deliberate intention to disregard the essential requirements of the contract of employment – Laws v London Chronicle (Indicator Newspapers) Ltd (1959) I WLR 698, CA. The employer faced with such a breach can either affirm the contract and treat it as continuing or accept the repudiation, which results in immediate, ie summary, dismissal.

212. The degree of misconduct necessary in order for an employee's behaviour to amount to a repudiatory breach of contract is a question of fact for a court or tribunal to decide.

213. In Briscoe v Lubrizol Ltd [2002] IRLR 607, the Court of Appeal approved the test set out in Neary & Anor v Dean of Westminster [1999] IRLR 288, ECJ (Special Commissioner), in which it was found that the conduct "must so undermine the trust and confidence which is inherent in the particular contract of employment that the [employer] should no longer be required to retain the [employee] in this employment".

214. In London Central Bus Company Ltd v Nana-Addai & Nana-Addai v London Central Bus Company Ltd 29th September 2011 UKEAT/0204/11 & UKEAT/0205/11, the Employment Appeal Tribunal took the opportunity spelt out the differences in the two tests of unfair dismissal and wrongful dismissal. Unfair dismissal is a right created by statutory. Cases such as Burchell have made it clear that in an unfair dismissal case, it was for a

tribunal to identify what was the reason for the dismissal and to decide whether or not the employer's decision to dismiss was based on a reasonable conclusion after making such enquiries and investigation as was appropriate and then to ask if the dismissal fell within the band of reasonable responses. Wrongful dismissal is a contractual right. The question is, has the employee committed a fundamental breach of his/her contract of employment so radical in its nature that it justified summary dismissal without compensation for notice? Thus, in a case of wrongful dismissal it is for the tribunal itself to decide what happened and not the employer's perception of what happened.

215. The claimant's counsel submitted that the claimant had not committed a repudiatory breach of contract. What the claimant did was to secure 15 offenders in a cell and was then was called away. When another officer saw this, he did not do anything about it and unlocked the cell. Mr Baker says the claimant locked up those prisoners to secure a party and that is wholly unsubstantiated.

216. The Respondent's counsel submitted that a conclusion that the claimant was guilty of gross misconduct was sufficient to meet the test of wrongful dismissal.

217. My view is that the claimant's role in this matter clearly amounted to gross misconduct. He acceded to a request of a Polish prisoner to have a number of offenders in his cell to celebrate his birthday. He was in a position where he should have noticed furniture and other items being removed from the cell. That he did not does seem incredible. He knew that there was a problem with illicit alcohol on the Wing particularly with Polish offenders. He allowed offenders to enter and exit that cell, at times locking it and unlocking it. He saw allowed a considerable number to congregate inside the cell in breach of occupancy levels and contrary to basic issues which would have been obvious to a competent and conscientious officer as they related to health and safety and the security risk. At one point he locked the occupants in the cell. He very much acted as a gate keeper of that cell. Whether wittingly or unwittingly he allowed a sequence of events escalate and which led to the party at which alcohol and mobile phones were present and offenders became excitable and intoxicated. As a Prison Officer of 13 years' standing and in charge of the landing that day, one which he was very familiar with and with particular knowledge of the offenders, he should have exercised authority over what happened and controlled and stopped it. He should have been alert to what was going on. When the situation had got out of hand, he belatedly acted and it was very fortunate that nothing more serious occurred. It is clearly gross misconduct as defined by the respondent in its Code at R2 854-855. Moreover, it is behaviour that irretrievably destroyed the characterisation term of mutual trust and confidence between the parties.

218. I therefore find that the respondent was entitled to summarily dismiss the claimant without notice or payment in lieu of notice and that his complaint of wrongful dismissal fails.

Employment Judge Tsamados
Date: 11 June 2018