



EMPLOYMENT TRIBUNALS

Claimant: Mr J Oommen

Respondent: Wrightington, Wigan and Leigh NHS Foundation Trust

Heard at: Manchester

On: 2-6 March 2020

Before: Employment Judge Hoey

10, 13 and 19 March
2020 deliberations

REPRESENTATION:

Claimant: Ms McNermey (counsel)

Respondent: Miss Clayton (counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claims raised under the Equality Act 2010 are dismissed upon the claimant's withdrawal of said claims.
2. The claimant's claim for unfair dismissal is not well founded. The claimant was fairly dismissed.
3. The claims are accordingly dismissed.

REASONS

Introduction

1. This case called for an 8 day final hearing. At the commencement of the hearing the claimant confirmed he had withdrawn each of the Equality Act 2010 claims which are accordingly dismissed.

2. The only outstanding or live claim was a claim for “ordinary” unfair dismissal. It was possible to timetable the case to focus the issues and reduce the hearing time such that the evidence and submissions concluded within 5 days. This judgment is issued following 3 days deliberating given the issues arising.
3. Both parties were represented by counsel and I began the Hearing by discussing the overriding objective and of the need to ensure matters were dealt with justly and fairly.
4. At a previous case management preliminary hearing the issues in respect of the unfair dismissal claim had been agreed and the parties had worked together to prepare a joint bundle. Some further productions were added during the course of the hearing and oral reasons were given for allowing these additional documents. The bundle ran to 1365 pages.

Issues

5. The issues to be determined were agreed to be:
 - a. What was the reason for the admitted dismissal, the respondent contending that the claimant was dismissed for some other substantial reason justifying his dismissal, namely the irretrievable breakdown in working relationships.
 - b. Did the respondent genuinely believe in that reason.
 - c. Were there reasonable grounds for the respondent to hold that belief.
 - d. Did the respondent form that belief having carried out as much investigation as was reasonable.
 - e. Did the decision to dismiss fall within the range of reasonable responses open to a reasonable employer.
6. It was agreed during the hearing that the Tribunal would determine liability only, with any issues as to compensation (including any grounds to reduce compensation, such as whether there was a chance the claimant could have been fairly dismissed at some point or whether he was guilty of conduct that contributed to his dismissal) being dealt with separately at a remedy hearing if needed.
7. The Tribunal heard evidence from the claimant and from Dr Ismail (consultant radiologist and clinical director), Mr Gambhir (Consultant Orthopaedic Surgeon and Medical Director), Dr Wardman (Responsible Officer), Ms Fleming (Executive Director of Operations and Performance), Ms Law (Executive Director of Nursing) and Ms McManus (deputy Director of HR) who had all produced witness statements and who were cross examined. A witness statement was provided in respect of Dr Arya who was not called to give evidence. The Tribunal applied appropriate weight to that statement. An agreed Chronology had been provided and there were few material facts in dispute.

Facts

8. I found the following facts established on the balance of probabilities, which is that they are more likely than not to have happened. The Tribunal heard evidence in relation to wide ranging areas and issues but I only make findings of facts which are necessary to determine the issues set out above.
9. The respondent is an NHS trust which runs a hospital with 3 separate sites. It has around 6000 employees and an HR support team.
10. The claimant was a consultant radiologist who was responsible for carrying out general radiologist work. He also had a speciality within the muscular skeletal field. There were 2 other consultant colleagues who shared this specialist field (called the MSK team)
11. The claimant's work involved interpreting x-rays and scans, dealing with treating physicians and interacting with colleagues. It was important that the team was able to work together and communicate effectively, not least to share experiences and discuss clinical issues but also for individual and collective learning.

Staffing structure

12. The Medical Director was the most senior clinician within the respondent's organisation. This was Dr Prabhu and then Dr Arya.
13. Reporting to Medical Director and next within the hierarchy was the Divisional Medical Director. There were 3 such posts, one for medicine, one for surgery, and one for specialist services. The relevant individual for the purposes of this case was Mr Gambhir (from October 2014). His predecessor was Dr Temperley.
14. Reporting to the Medical Director was the Clinical Director. That role is the relevant department's manager. For the Radiology Department the Clinical Director was Dr Wheeler and then Dr Ismail (from July 2014). Prior to Dr Wheeler it was Dr Poon.
15. Throughout the period in question there were around fifteen Consultant Radiologists in the department with ninety seven Radiographers and around a hundred and twenty non-medical staff with two or three Nurses assisting.

Contractual position

16. The claimant began his employment on 25 April 2005 as Consultant in Radiology.
17. The claimant agreed a contract of employment with the respondent. At paragraph 3 of that contract the claimant agreed that he would work with the respondent "in a spirit of mutual trust and confidence". It was agreed that the

parties would work together, maintain goodwill and carry out respective obligations in devising, reviewing, revising and following the respondent's policies, objectives, rules, working practices and protocols.

18. The claimant was also subject to a number of policy documents with which he had agreed to comply (at clause 15 of his contract).
19. Clause 16 stated that the respondent had a separate grievance procedure and reference is made in clause 17 to a disciplinary or capability procedure as appropriate.
20. A separate policy is also in place that deals with the investigation and consideration of concerns arising as a result of conduct, capability or ill health issues. That is called the Maintaining High Professional Standards policy ("the MHPS policy").
21. There was no contractual (or other) policy that deals with breakdown in working relationships (or some other substantial reason dismissals).
22. In or around August 2010 the claimant raised concerns about Dr Temperley, the then chair of clinical support, alleging that he had bullied and harassed the claimant. Dr Prabhu (the then Medical Director) sent a letter to the claimant on 11 August 2010 stating that the issues the claimant had raised were mostly interpersonal and communication problems. He said he saw no evidence that the claimant had been bullied or harassed.
23. He also stated that his clinical director and the divisional chair had raised issues about the claimant's interaction within the radiology department and that (informally) some staff had felt harassed by the claimant. The claimant was advised to put any specific concerns as to bullying or harassment into a letter to HR. He did not do so and no further action was taken.

2013 and 2014

24. In or around late 2013 a number of concerns arose as to the claimant's clinical practice. In around January 2014 there were concerns about a Consultant Rheumatologist which led to a review of the claimant's work, the claimant having reported in respect of that Consultant's patient. There were concerns at that time as to potential incorrect rheumatology radiology reporting which the respondent required to investigate.
25. On 17 January 2014 the claimant raised a grievance about Dr Wheeler in respect of alleged bullying. Dr Wheeler was the then Clinical Director. The matter was dealt with by Dr Wardman, supported by Miss Balson, (then) Head of HR.
26. On or around 31 January 2014 the terms of reference for an internal investigation were given to the claimant.
27. On 3 April 2014 the claimant was interviewed in respect of concerns about his practice. On 30 June 2014 the investigation in relation to the clinical issues of the claimant in this area was progressed under the MHPS policy.

28. On 10 August 2014 a report was produced in relation to the review of the rheumatology radiology reporting of the claimant. A significant number of these appeared to contain a discrepancy. Mr Husain was appointed the MHPS case manager.
29. On 12 November 2014 the respondent referred the claimant to the GMC.

Claimant on sick leave

30. On 18 December 2014 the claimant went on sick leave where he remained until 21 December 2015 when the claimant returned to work on a phased basis.
31. During the claimant's absence he self-referred to occupational health and was referred by the respondent. He attended occupational health around 5 or 6 times.

Issues in 2015 – outcome of grievance against Dr Wheeler

32. On 6 January 2015 the outcome in respect of the claimant's grievance against Dr Wheeler was reported. Three allegations were fully upheld, six were partially upheld and nine were dismissed. The grievance was found to amount to mismanagement and miscommunication but there was no evidence of any bullying or discrimination. Dr Wardman recommended that Dr Wheeler apologise to the claimant.
33. The outcome of the grievance highlighted that there were relationship issues between the claimant and his clinical director.

MPTS say no action

34. On 27 February 2015 the Medical Practitioner Tribunal Service told the respondent that they have decided it is not necessary for the protection of the public nor in the public interest nor in the claimant's interests to take any action in respect of the claimant, albeit there was an ongoing GMC investigation. That outcome was repeated on 7 August 2015.

Grievance against Dr Prabhu

35. On 15 September 2015 the claimant raised a grievance against Dr Prabhu, the then Medical Director in respect of alleged bullying and harassment.
36. On 26 September 2015 Dr Prabhu emailed the Chief Executive of the respondent in the following terms: "I have put up with a lot in my life but I am requesting the trust formally investigate the claimant's allegation about me bullying him.... If the allegation is not upheld I want the trust to consider it as defamation against my good name".

Disciplinary hearing regarding the claimant

37. On 28 September 2015 a disciplinary meeting took place in connection with 7 concerns regarding the claimant's practice. The outcome letter is issued on 2 October 2015. Ms Balson chaired the hearing.

38. The outcome letter noted that the claimant had been spoken to informally by Dr Prabhu as his behaviour was below expected standards and that any repetition would result in formal disciplinary processes.
39. The panel found that in respect of one of the allegations there had been a communication breakdown, albeit the claimant was correct clinically.
40. While some of the allegations were upheld or partially upheld, the panel decided to record an outcome of "counselling". That was not a formal disciplinary sanction. It required the claimant to reflect on the findings of the panel and ensure there was no repetition of the relevant behaviours.

Investigation

41. On 14 October 2015 the respondent commissioned an independent investigation in respect of the claimant's alleged bullying claims against Dr Prabhu. The respondent agreed to the claimant's request for a specific outside independent review, the Chiltern Review.

Occupational health in November 2015

42. The claimant attended an occupational health physician on 23 November 2015 where he confirmed that the format of a return to work had been agreed and the consultant stated that "as a consequence any lingering symptoms of stress have settled". The consultant opined that the claimant had no anxiety and his mood was satisfactory and there was no impairment of his concentration or cognition.
43. The consultant noted in his letter to Mr Beatty (clinical manager) on 23 November 2015 that the claimant attended initially as a self-referral (on 18 December 2014) reporting symptoms of stress which the claimant had related to bullying at work. He had been reviewed in January 2015 with ongoing symptoms of stress which were exacerbated by GMC issues and the work investigation. The consultant was unable to make a judgment as to what had caused the absence from work.

Issues in 2016

44. On 5 February 2016 Mr Husain, as the MHPS case manager in relation to the claimant, sought advice from NCAS in respect of restrictions in the claimant's practice following his return to work. NCAS is the National Clinical Assessment Service which assists employers in managing clinical issues and disputes with clinicians. An independent body had been commissioned to review the claimant's reporting since his return to work.
45. NCAS advised that in accordance with Royal College return to work protocols there should be a phased return to clinical activity, occupational health should inform the return to work programme and the claimant should not participate in the on-call rota until he was signed off against competencies to work independently.

46. On 18 February 2016 an investigation meeting in connection with the claimant's grievances against Dr Prabhu took place.
47. On 10 March 2016 Dr Ismail stated the claimant had closed his office door onto Dr Ismail's face and suggested that everything Dr Ismail said was suspicious, having asked if Dr Ismail was recording the discussion. On the same day Dr Ismail had told Mr Gambhir in an email (again copied to the claimant) that the claimant had been recording a discussion he had with Dr Ismail, which he stopped when asked. The claimant had told Dr Ismail earlier in the day that he considered Dr Ismail a bully
48. On 10 March 2016 the claimant raised allegations of bullying.
49. On 11 March 2016 Ms Balson suggested a facilitated meeting between the claimant and Dr Ismail but on 17 March 2016 the claimant explained to Ms Balson that he had a "peaceful meeting" with Dr Ismail and accordingly no facilitated meeting was required.

Occupational health in March 2016

50. In March 2016 an occupational health referral was made at the respondent's behest. The respondent completed a management referral document in which they had stated that the claimant's performance had been unsatisfactory. For that reason the claimant initially refused to consent to the release of the report. The claimant spoke to Dr Ismail about this and Dr Ismail agreed to clarify that statement. Ultimately Dr Ismail sent an email to the occupational health consultant stating that with regard to productivity the claimant's cases were within the normal range. The quality of his reports were unknown as double reporting of his work had not yet been commenced. A number of discrepancies had been identified but these were not a major issue.
51. The referral report noted that the claimant had submitted a grievance which was being investigated and that the claimant had experienced some difficulties with his relationships with his manager and colleagues such as a breakdown in trust. The referral stated that there was a concern this may be impacting on the claimant and his ability to perform his role in a supportive environment and affecting the manager's ability to support the claimant due to the claimant's perception of the intentions of managers around him.
52. The claimant was reviewed by the occupational health consultant on 17 March 2016 and a report was sent to Dr Ismail on 21 March 2016. The report noted the claimant had been carrying out his normal duties spread across 2 sites (other than rheumatological cases and on-call work). His absence had been reported as stress related and he received counselling. The claimant reported no previous history of any mental health or psychological problems prior to the episode in 2015.
53. The report stated there were no current symptoms of stress, his mood was stable and there were no difficulties with cognition, memory, concentration and attention span.

54. The claimant had also reported to the occupational health consultant that he believed his relationships with his colleagues was fine and he tried to keep himself to himself.
55. There were no specific health issues affecting attendance, performance or fitness to work.
56. The report noted that if there were symptoms of stress, the claimant should report and discuss these with his seniors.
57. The report stated that “with regard to observed tensions in relationships with colleagues, I am not able to determine any specific mental health or psychological reasons for any difficulties. I suspect these, if present, arise from issues in terms of the allegations, investigations, disciplinary and grievance matters that have taken place or are currently ongoing. With regard to how these are best managed, I would suggest discussion with all concerned facilitated possibly by an independent senior person in the Trust and/or consideration of mediation.”
58. The report also stated that with regard to support in terms of adjusting back to work, the occupational health consultant stated that input from an independent clinical colleague or senior may be helpful in providing support, assistance and confidence. It concluded by stating that if there was a need for further assurance regarding the claimant’s psychological health he could be referred to a consultant psychiatrist but this would require the claimant’s consent and reasons for this. There was no formal arrangement to meet again.
59. On 26 April the occupational health consultant wrote to the claimant confirming that Dr Ismail had confirmed there was no major issue (with regard to productivity). Since it was some time since the original assessment on 16 March 2016 the consultant suggested a further meeting and up to date report.
60. On 28 April 2016 the occupational health consultant saw the claimant and wrote to Dr Ismail with a further report. The claimant had raised concerns about the consultant stating in the earlier report that if further assurance as to the claimant’s psychological health was needed, a referral could be made with the claimant’s consent. The consultant explained to the claimant that although he had not determined any specific ongoing mental health issues, since there were some concerns regarding his performance and tension in relationship this was an option for his managers.
61. The claimant stated that subsequent to the assessment the claimant met with Dr Ismail where he was reassured that there were no problems or issues regarding his performance. The claimant did not feel he could provide consent for the report to be released. The claimant attended on 28 April 2016 and confirmed there had been no change in his health and no further symptoms of stress. The consultant concluded “Taking into consideration your response I informed him that on the basis of the assessments on 17 March and 28 April and if his GP confirms the medical history including that there are no ongoing psychological problems, I feel that a psychiatric assessment is not likely to add anything further at this stage....”

62. The claimant agreed that the original March report could now be sent to Dr Ismail with the April report.

Another grievance by the claimant against Dr Prabhu

63. On 18 April 2016 the claimant raises another grievance against Dr Prabhu, raising 31 complaints.

Double reporting

64. On 19 April 2016 Dr Prabhu advised Dr Husain by email (copying same to Dr Ismail, Mr Gambhir, Dr Wardman, Mr Beatty and Ms Balson) that the claimant's work required to be checked – by a process called double reporting (which meant a colleague gave their opinion on the case as well as the claimant). 10% of his cases were to be double reported. The claimant was told that 10% double reporting was to commence. Prior to double reporting, the claimant's work had been reviewed informally.
65. Dr Prabhu stated that the restriction was to continue until the internal investigation was concluded or the GMC advised the respondent.
66. On 25 October 2016 the claimant sent an email to Ms Balson and Mr Husain, which was copied to Mr Gambhir and Dr Wardman. He said he was asking for help as he was “in the dark” regarding the double reporting process and was not sure what the process was. The claimant's solicitor wrote to Mr Husain on 26 October 2016 to ask about the double reporting process.
67. Dr Wardman emailed the claimant on 28 October 2016 and confirmed that the decision to undertake double reporting followed concerns following a review of 150 images and a discussion with NCAS. The persons who were to undertake the process were set out and any discrepancies were to be considered independently. Dr Wardman concluded his email by stating “Although I am aware of the relationship difficulties between yourself and Dr Ismail, I see this as being entirely appropriate”.
68. On 1 November 2016 the claimant's solicitor emailed a letter to Dr Wardman raising concerns about the double reporting process. Concern were raised about Dr Ismail overseeing the process due to the “relationship difficulties” that existed. They asked that Mr Gambhir oversee the process. The respondent was not prepared to alter the position. Dr Ismail was coordinating the process and not reviewing or verifying the claimant's reports. This was confirmed in an email on 9 November 2016 following one of the reviewers complaining to Dr Ismail that the claimant had not followed the agreed process. Dr Ismail referred the claimant to the email of 25 October which set out the process.
69. The claimant responded by email later that day raising concerns about the “bullying and harassment” of him. He said that he followed the guidelines as to double reporting and national practice. He also stated that he wished to formally raise a grievance regarding bullying in the department as day to day harassment was making it difficult for him to work.

70. On 10 November 2016 Ms Balson responded to the claimant's suggestion that there was bullying and harassment. Having checked with her colleagues as to the double reporting issue she advised the claimant that there was no evidence of any bullying or harassment in the email trail the claimant sent. She advised the claimant of the persons with whom any queries about double reporting should be raised and concluded that the content of the email did not reasonably disclose evidence of any grievance.
71. Mr Beatty emailed the claimant on 25 November 2016 following a meeting with him and explained that the claimant had stopped following the agreed approach and adopted his own interpretation. The claimant responded to this email later that day stating he had received conflicting instructions.
72. Mr Husain responded confirming that Mr Beatty had clarified the double reporting approach and that, contrary to what the claimant said, the double reporting was to continue. He concluded by stating that he was keen to close the investigation as soon as he had the report from the case investigator.
73. On 28 November 2016 Mr Husain set out clarity as to the approach with regard to double reporting to avoid any further issues arising.
74. On 8 December 2016 Mr Husain wrote to the claimant following a meeting on 22 September 2016 when restrictions on the claimant's clinical practice were extended. It was agreed that the restrictions be reviewed. The letter noted that the double reporting arrangements can be brought to an end and by 12 December 2016 the claimant was told he could resume his general reporting work. The restrictions regarding rheumatology were to continue subject to the ongoing MHPS capability investigation process. The claimant was reminded that his comments had been sought twice in connection with audits carried out and an extended deadline of 13 December had been given to him to do so.
75. No specific adverse issues had arisen during the double reporting period.

MHPS process

76. The MHPS investigation process which began in 2014 did not conclude until July 2017 when a report was issued. The remit in 2014 was in relation to concerns that had arisen and its remit was extended in 2016 following a review of the claimant's work. The process had been delayed due to a number of factors, including the claimant's absence and the GMC investigation. The claimant gave his comments which are incorporated into the report, which concluded that there was a conflict with regard to the evidence in terms of capability issues and the claimant. The report noted (at para 8.4) that the Case Manager may need to consider whether the claimant has the required insight to participate and cooperate in a programme of remediation.

Claimant's adverse comments about Dr Ismail

77. On 21 April 2016 the claimant criticised Dr Ismail in the internal reporting software system. This system is used throughout the NHS to report upon clinical incidents. It is accessed by a large number of the respondent's

employees. The claimant stated that a scan was misinterpreted. He said “Gross lack of basic anatomical knowledge and misinterpretation of images resulted in inappropriate overriding of the report... A poor comprehension of English has contributed to this. This action appeared to be of malicious intent and reflected ongoing bullying within the department”. These were comments about Dr Ismail. The report was seen by Mr Beatty who passed it to Ms Balson. Ms Balson was concerned about the inappropriate nature of the comments and recommended to the claimant’s union representative that mediation takes place between the claimant and Dr Ismail. The claimant’s representative agreed and suggested that the claimant apologise for the comments. Ms Balson began to source relevant mediators.

78. On 25 April 2016 the claimant emailed Mr Beatty and Mr Gambhir (but not Dr Ismail) recognising that what he had said in the report was “probably unhelpful and needs to be withdrawn”. The claimant believed there were lessons to be learned from the clinical approach. He concluded by stating: “I can genuinely understand how my ascriptions may be unhelpful and how these can exacerbate the interpersonal tensions between Dr Ismail and me. I hope with your help it will be possible to facilitate an assisted remediation of our relationships”.
79. On 19 May 2016 at an Audit Meeting the claimant criticised Dr Ismail in the presence of colleagues. The claimant stated that Dr Ismail was using information for malicious purposes which Dr Ismail found humiliating and embarrassing. After the meeting on 19 May 2016 Dr Ismail emailed Mr Gambhir and Ms Balson, copying Dr Prabhu, stating that he was submitting this incident for appropriate action.
80. Dr Ismail telephoned Ms Balson to complain about the way the claimant had acted during the meeting. He advised Ms Balson that he believed there were significant relationship issues with the claimant. Ms Balson asked whether these were linked to the comments the claimant had made in the software report. Dr Ismail was not aware of these issues and upon receiving a copy of the comments, Dr Ismail asked that the claimant’s comments in the report and his conduct at the meeting be investigated formally. He told Ms Balson that he was not prepared to consider mediation, which she was organising, as he believed the relationship with the claimant had broken down.

Outcome of grievance against Dr Prabhu

81. In May 2016 the independent report into the investigation of the claimant’s grievances against Dr Prabhu, the Chiltern Report, was produced. It noted that the claimant had alleged that Dr Prabhu had consistently bullied and harassed him over a period of 5 years. In support of his grievance the claimant submitted 32 heads of complaint. Each complaint was fully examined.
82. The report concluded that much of the evidence the claimant submitted was repetitive “with varying degrees of relevance”. For some heads the claimant had not provided the necessary information. The report stated that “in only 2 heads of complaint was there sufficiently compelling evidence to support his

complaint. These were concerned with failure to disclose information to and the withholding of information from national bodies.”

83. In relation to those allegations the report stated that “the trust should reflect on the lack of transparency in how it dealt with providing information concerning the claimant to NCAS, the GMC and his legal representatives in the selection of external experts. This lack of transparency served only to fuel the claimant’s suspicions of bullying and discrimination against him. No doubt the claimant’s relationship with Dr Prabhu is impaired largely due to him being referred to NCAS and the GMC. This has impacted on his working relationships with others, particularly if they are in positions of authority such as clinical director who he perceives to be party to the intense bullying and discrimination against him. Other than the finding in the investigation that an email from Dr Wheeler amounted to bullying and harassment, which Dr Prabhu was not considered to be a party to, there was no evidence to sustain the allegation that Dr Prabhu had instigated intense bullying and discrimination against the claimant.”
84. Mr Gambhir did not consider there to be any malicious intent on the part of the claimant in his raising of the grievance against Dr Prabhu.
85. The respondent invited the claimant to a meeting by letter on 10 June 2016 to review the report and conclude necessary actions. A meeting was to take place on 20 July 2016. The claimant did not receive that letter.
86. Attempts were made to reconvene the meeting which was not possible until 18 January 2017.
87. On 8 September 2016 Mr Gambhir wrote to the claimant including the report. It stated that “The report acknowledges the points raised by you each of which was looked into by the investigator. There was found to be no or insufficient evidence to uphold the allegations made against Dr Prabhu based on the evidence available. The report considers the 31 points raised...The investigator was asked to consider the behaviours you observed and the sequence of events which you identified as pertaining to an orchestrated attempt to bully and harass you. The information considered objectively by an independent investigator was determined to not evidence such behaviours and on this basis your allegations are not upheld.”
88. The letter also stated that “there was some feedback which provides some learning to the trust with regards to how information is provided to external bodies in its processes, specifically when liaising with NCAS in MHPS investigations. The conclusions drawn, relating to allegations 10 and 11, have suggested that the trust could increase transparency with regard to how it shares information and this may be best considered as a point for the regular Doctor concerns meetings to inform how similar cases are managed in the future.”
89. The letter concluded that the initial meeting to discuss the letter had been delayed and rearranged for September, a meeting the claimant did not attend.

90. The report decided not to uphold the grievance. An appeal was offered to the claimant within 14 days of the date of that letter.

Grievance against the claimant

91. On 24 May 2016 an investigation took place in respect of the grievance raised by Dr Ismail against the claimant.

Claimant's complaint against Dr Ismail

92. On 29 June 2016 the claimant alleged that Dr Ismail shouted at him at a meeting which was investigated. There was no evidence of any wrongful behaviour identified.

Investigation into claimant

93. On 13 July 2016 the respondent wrote to the claimant to advise that a formal grievance investigation was being progressed following a complaint by Dr Ismail. An independent third party, Ibex Gale, was appointed to investigate the issues. The claimant was told that the issues arising comprise the inappropriate report he submitted and his comments to Dr Ismail at the audit meeting on 19 May.
94. The independent investigator met 8 people as part of the investigation, including the claimant.

Outcome of grievance against claimant

95. In October 2016 the outcome of Dr Ismail's complaint was confirmed, namely that there was a case to answer. The report stated that the claimant entered the report in good faith but the content was "inaccurate and unprofessional". The personal criticisms against Dr Ismail were offensive and had no factual basis. The report also found that the claimant made a comment about Dr Ismail in a meeting which those present found to be inappropriate and left Dr Ismail feeling humiliated, insulted and undermined. The criticism by the claimant of Dr Ismail was found to be misleading, misconceived and untrue. The act was found to amount to bullying and/or harassment by the claimant.
96. The report stated that the claimant's relationship with Dr Ismail appeared to have broken down.
97. As part of the investigation 8 people were interviewed and asked questions, which included questions about workplace relationships.
98. Dr Ismail was interviewed and stated that his relationship with the claimant was unhealthy, not least due to the claimant's lack of insight. He found it hard to manage the claimant. He opined that mediation would be a "waste of time" as the claimant would not change his approach.
99. Dr Temperley was interviewed and explained he saw the claimant regularly. He explained that the claimant was a challenge to manage as he was "outside on his own". He also said that "dealing with the issues relating to the claimant overpowers the ability to have a relationship" with him.

100. Dr Basu noted that there were tensions between the claimant and Dr Ismail.
101. Dr Poon in his interview stated that the tensions between the claimant and Dr Ismail “poison the atmosphere in the department”. He opined that the claimant does not engage with those in the department. He isolated himself and refused to speak to people.
102. Mr Beatty was of the view that the claimant was “self-destructing”.
103. The claimant’s secretary was interviewed as she took the minutes of the meeting and was present. She confirmed that the claimant had made the offensive remarks.

Outcome of grievance investigation into claimant

104. On 3 November 2016 Dr Wardman wrote to Dr Ismail sending him the investigation report following a meeting. Dr Wardman stated that the grievance was upheld and that report’s findings were accepted and that the claimant’s actions were found to be bullying and harassment. The letter noted that Dr Ismail had concluded that Dr Ismail believed the working relationship with the claimant had broken down, due to the claimant having undermined him. The relationship had been broken for some time with no prospect of a reconciliation in Dr Ismail’s view. Dr Ismail was of the view that the claimant had a lack of insight into how his behaviour affected others.
105. On 3 November 2016 Dr Ismail told the respondent he believed that the relationship with the claimant had broken down and there was no prospect of reconciliation.
106. On 9 November 2016 Dr Wardman met the claimant to advise as to the outcome of the grievance that Dr Ismail had raised and that the matter was to be remitted to a disciplinary hearing regarding the claimant’s conduct.

Claimant’s relationship with colleagues to be investigated

107. On 24 November 2016 Ms McManus, Head of HR, wrote to the claimant noting that the claimant had met Dr Wardman and been told that disciplinary proceedings would be instituted against the claimant. On the same day the claimant emailed the Chief Executive and others alleging bullying and harassment. Ms McManus stated that Ms Balson had replied stating there was no evidence in the email trail of any bullying or harassing behaviour.
108. Ms McManus stated that she was aware “that in the last 3 years the claimant had raised allegations against other senior colleagues relating to bullying and harassing behaviour and been subject to a formal conduct hearing where repeating patterns of behaviour, primarily associated with communication breakdowns which led to concerns being raised was concluded.
109. Ms McManus stated that she considered these matters and had “concerns that the working relationships between you and colleagues may have broken down and may have led to a position which is irreparable. With this in mind I have requested that the conduct matter against you is paused whilst an

investigation into your relationships with your consultant colleagues and senior medical management team is explored”.

110. She believed that the more important concern was any issue with regard to working relationships at that stage. She did not consider it appropriate or proportionate to continue with the disciplinary process until the relationship issues had been resolved. The independent Ibex Gale report gave rise to serious concerns about the working relationships which she wished to investigate. Informal concerns as to working relationships had been discussed at monthly Doctor concern meetings (which the divisional medical director, clinical director, operational director and HR attend). No formal grievances had been raised in relation to the claimant (other than by Dr Ismail).
111. The letter acknowledged that the investigation was not supported by an “expressed trust procedure” but would be progressed within the framework of investigations as used in the Maintaining High Professional Standards (MHPS) and disciplinary procedures and that a fair and reasonable investigation would be concluded with the claimant being able to respond.
112. The letter noted that the investigation was to be completed as promptly as possible. Ms Woods, Senior HR Business Partner, had been appointed to investigate with a completed investigation report to be submitted to Ms McManus which may result in a hearing being convened to deal with the claimant’s continued employment.
113. The letter gave the claimant terms of reference which confirmed that the purpose was not to investigate or reinvestigate any former or existing grievances or complaints but to focus on whether these issues resulted in the breakdown in working relationships between the claimant and his consultant colleagues and senior management team. The investigator was also to seek evidence as to whether the relationship could be repaired.
114. The letter stated that the aim was to complete the investigation by 9 December but that would be dependent upon availability of witnesses.
115. The terms of reference document attached to the letter stated that during the claimant’s employment he raised 2 grievances and had a grievance raised against him. A conduct matter was also raised against him which was resolved informally by identifying communication issues. The latest grievance against him was from the clinical director which concluded that the claimant’s actions could be considered bullying and/or harassment (subject to any hearing) and that the incidents arose from “a breakdown of working relationships between the claimant and Dr Ismail.”
116. The document stated that the purpose of the investigation was to focus on whether these issues have resulted in the breakdown in working relationships between the claimant and his consultant colleagues and the senior medical management team. The document listed those whom the investigator should interview (which included 22 people) with authority to interview others as needed. The stated aim was to conclude the investigation by 9 December 2016.

117. On 24 November 2016 Ms McManus sent an email to the claimant's union representative stating that "I have sent out a letter today to the claimant and terms of reference in respect of an investigation I have commissioned into the relationships between the claimant and his consultant and medical management colleagues as I am concerned on the number of grievances and issues raised via or in respect of the claimant and if we have reached a point where relationships are irreparable."
118. On 2 December 2016 the claimant emailed Ms McManus a document headed "grievance letter" which referred to the letter of 24 November 2016 "in which you informed me that the matter of my relationships with consultant colleagues and members of the senior management team is explored" and the disciplinary process is paused. He stated that "the fact you have decided to accelerate which is akin to a disciplinary procedure against me and interview several members of my colleagues and managerial team is designed to totally undermine me and the working relationships I have with my colleagues."
119. His letter said he had raised a grievance regarding the respondent's medical director at the beginning of 2016 and raised concerns about "multiple instances of bullying and harassment by the clinical director". He also referred to the grievance by the clinical director against him. He alleged that the trust had failed to progress his grievance quickly and had chosen to expedite the grievance by his clinical director quickly. He alleged that the investigation amounted to a "fishing expedition". He also criticised the respondent for not producing the specific allegations that Dr Ismail had made against him.
120. His letter concludes that "in simple terms to provide me with a letter fuelled with innuendoes and no facts I consider to be juvenile and wholly unreasonable. Consequently I am left with no alternative but to submit a further grievance regarding your failure to address my outstanding grievance as well as the additional matters in this letter."
121. On 9 December 2016 Ms McManus responded to the claimant's letter. She reiterated that the investigation was not related to conduct matters and so the disciplinary procedure was not engaged. She stated "the investigation is commissioned in response to my concerns about your working relationships with colleagues and will therefore explore this. The investigation is not to re-examine any previous grievance or conduct matter".
122. Ms McManus also stated that she had spoken to the Senior HR Business Partner team and had understood that all grievances raised by the claimant had been dealt with. He was asked to submit copies of any outstanding matters. She concluded that her aim was not to undermine the claimant but to carry out a balanced and reasonable investigation.
123. She stated "I have a responsibility to respond to matters that may be having a detrimental effect on our workforce which may in turn have a negative impact on service delivery. Strong positive working relationships are fundamental to this and are underpinned by the Trust values". She stated that she had hoped the investigation would be concluded by 9 December 2016 but this was likely to be 5 January due to availability of the individuals.

124. On 10 January 2017 Ms McManus wrote to the claimant noting that she had hoped the investigation would be concluded by 5 January 2017 but she noted that the claimant had not responded to requests by the investigator to meet. The investigator had met with each of the relevant individuals with exception of the claimant. The claimant was advised that if he did not respond by 20 January 2017, the investigation would conclude as it would appear the claimant did not wish to participate in the investigation. The claimant was advised that his contribution would have significant value to the investigation.
125. On 12 January 2017 the claimant sent an email to Ms McManus, copying his union representative, stating that he understood his union representative was seeking to contact the respondent. He said he was “still completely in the dark as to the investigation commissioned against me.” He reiterated his grievance and attached a letter stating that he was concerned about the investigation because he said the respondent had not drawn to his attention “what concerns you have with regards to my working relationships with colleagues” and that he did not know what aspect of his conduct, capability or performance or working relationships with colleagues was being investigated. He asked for the concerns about his relationships with colleagues to be provided together with dates concerns were raised, dates the investigations commenced, the purpose and outcome and names of those who complained together with details. He concluded by saying in the absence of such information he failed to see how any investigation can be fair and balanced.
126. On 16 January 2017 Ms McManus responded to that letter in a letter enclosing the letter of 24 November 2016 and the terms of reference which contained the evidence for consideration and persons to be interviewed stated that the concerns had been dealt with in the letter of 9 December 2016. She emphasised that she was pleased the claimant intended to participate in the investigation which would add significant value.
127. On 20 January 2017 the claimant’s union wrote to the respondent arguing that the investigation had no legitimacy. The letter concluded that “the lack of any contractual procedural legitimacy for this investigation, its serious flaws and ethical bankruptcy means it must stop.”
128. The respondent replied on 24 January 2017 stating that the investigation was lawful. While not commissioned under any specific policy, as it did not consider the claimant’s conduct, capability or health, the aim was to consider the claimant’s working relationships. The letter stated that the purpose of the investigation was to identify facts.
129. On 10 February 2017 Ms McManus wrote to the claimant stating that following the letter of 16 January 2017 neither the claimant nor his representative had been in touch. The claimant was given until 17 February 2017 to respond which failing the investigation was to be concluded. The claimant was advised that this contribution into the investigation would be highly valued and he was urged to make contact urgently.

Investigations

130. Pursuant to the terms of reference, Ms Woods investigated workplace relationships. She met with 19 individuals whose interviews were noted.
131. The report noted by way of background information that the claimant commenced employment on 25 April 2005. Dr Prabhu managed concerns around the claimant's attitude and behaviour informally on a number of occasions after joining the trust in 2010 and the claimant was warned in September 2012 that formal action would result if the behaviour was repeated.
132. The report stated that from September 2013 until January 2014 Dr Prabhu, the then medical director, became aware of a number of incidents regarding the claimant's attitude, behaviour and communication with colleagues. He commissioned a conduct investigation. The outcome of that process resulted in communication breakdowns being noted.
133. It noted that on 9 November 2016 the claimant met Dr Wardman to hear the outcome of a grievance against him by Dr Ismail when he was told disciplinary action would begin. On the same day the claimant emailed the respondent claiming to be subjected to bullying and harassment. The respondent found no evidence within the communication of bullying and harassment.
134. The report stated that in the last 3 years the claimant had raised allegations against other senior colleagues relating to bullying and harassment which were investigated and he had been subject to a formal conduct hearing where repeating patterns of behaviour associated with communication breakdown has been raised.
135. The background section concluded by stating "Due to a number of procedures invoked over recent years (conduct, disciplinary) and grievances which involved the claimant and repeating patterns of behaviour, primarily associated with communication breakdowns being identified, an investigation into the claimant's relationships with his consultant colleagues and senior medical management team has been undertaken."
136. The report noted that the claimant chose not to participate in the investigation.

Investigation findings

137. As part of the investigation process, Ms Woods interviewed colleagues of the claimant in order to establish the position with regard to working relationships.
138. Mr Ismail was interviewed. He stated that his relationship with the claimant had irreparably broken down. He stated that the claimant locked his office door on most occasions and if Dr Ismail wished to speak with the claimant he would require to take a colleague. The claimant appeared to have a lack of trust in Dr Ismail.
139. Mr Ismail believed that the claimant had done things to undermine him, including his comments on the report and at an audit meeting in front of colleagues.

140. Dr Ismail believed the situation was having a negative effect on his relationship with the claimant (whom he had to manage) and the department generally. He explained he felt stressed and frustrated because of the matter and considered stepping down as clinical director and he had considered leaving his employment.
141. Dr Temperley was interviewed and stated that he believed his relationship with the claimant had broken down over a long period of time and that they rarely communicate. He believed it was highly unlikely that the relationship could be repaired from what he had seen of the claimant's behaviour which had not improved despite support being offered.
142. Dr Temperley believed that the claimant had become very antagonistic with him and others in the department and that the claimant could become disruptive in meetings. The claimant's behaviour and opinions had become more volatile, and he gave some examples.
143. Dr Temperley stated that the claimant would react negatively to being questioned about his opinion and that the claimant was isolated. He suggested that others outwith the department had difficulties with the claimant, including orthopaedic surgeons and other clinicians,
144. He believed that his working relationships with the claimant had a service impact as they should be working closely together but there had been a clear breakdown in communication. Dr Temperley believed that the claimant was uncooperative, obstructive and did not listen to others' viewpoint and their communication and working relationships had totally broken down.
145. Dr Basu was interviewed and stated that he had been appointed in September 2015 and that the claimant had not communicated with him. He believed the claimant had always been negative. While he would be open to repairing and communicating with the claimant he did not see this happening as the claimant would not communicate. This had an adverse effect upon training within the department. Examples were given.
146. Dr Basu believed that the relationship issue had impacted on others within the department and was not healthy either for the claimant or the department. The claimant did not have any insight into his own behaviour. He said that he had contemplating leaving given the lack of team ethic from the claimant.
147. Dr Basu believed that everyone had tried to support the claimant but there was a negative impact on the department.
148. Dr Prabhu was also interviewed and he described his working relationship with the claimant as "very poor" and that many other consultants and clinical directors had expressed concerns about the claimant. Dr Prabhu did not believe the claimant had any insight into his behaviour. He stated that the claimant would often react by raising grievances.
149. He believed that the claimant's behaviour impacted on service delivery for the department since the claimant would blame others rather than working with them. He concluded that the relationships could not be repaired. He had tried

to help the claimant as other had but if issues are raised with the claimant, he goes off sick. He opined that the claimant had no insight into his own behaviour and shown no inclination to change. He believed that the claimant thought everyone was against him and his behaviour was worrying.

150. Dr Prabhu stated that the claimant would lock himself into his office and blame others. He said the claimant was not a team player and would not communicate well with those around him. He did state that 2 consultants had advised him that the claimant gave good reports.
151. He concluded by stating that the claimant's relationships with other consultants were not good, as well as the MSK radiologists and his clinical director. He gave examples.
152. Dr Husain was also interviewed and explained that while he had little professional contact with the claimant he had been case manager for a case relating to the claimant. The claimant was "a bit abnormal". The claimant had suggested that things were not right saying people were spying on him and there was an agenda to let him down and that there were listening devices.
153. Dr Wardman was interviewed and stated that while he had intermittent contact with the claimant there had been difficulties with the claimant. The claimant had relationship difficulties with several colleagues and all previous clinical directors. He had a mistrust of his appraiser colleagues and relationships with previous clinical directors had broken down. He commented on the claimant isolating himself by locking his door and the impact on service deliver was noticeable. There was a lack of team working.
154. He did not believe that the relationship issues could be repaired as the claimant's behaviour had been present for a number of years. His behaviour had impacted on a number of colleagues.
155. He gave a number of examples including the double reporting and patient safety issues. The claimant had used his own interpretation and methodology rather than following the clear instructions that were given to him. The claimant believed this was him being bullied and harassed.
156. Dr Poon was also interviewed and he stated that his relationship with the claimant was non-existent as the claimant refused to communicate with him. The claimant did not appear to wish to engage with those who had held management positions before. He believed the working relationships were not good.
157. Dr Reston in his interview noted that the claimant was insecure and prickly. He believed that the claimant wanted to control the work he got rather than share it amongst the team.
158. Dr Donnelly had a good relationship with the claimant, despite having little interaction with him. She noted that the claimant used audit meetings for his own agenda. It was no secret that the claimant had a very different relationship with those in the same speciality and he did not get on with them

159. Dr Rodgers noted that the claimant had the capacity to annoy others and would vent his own opinion. She did not believe the claimant had self awareness and others had become frustrated as a result.
160. Mr Gambhir was interviewed and as a colleague he initially found the claimant professional and amenable and had no difficulties. Recent years had changed following the rheumatology investigation. Mr Gambhir found his encounters with the claimant increasingly difficult. He thought that the claimant might have been ill. He said this because he found it hard to understand the claimant's behaviour unless there was some illness. He believed that the claimant had become increasingly difficult to manage.
161. Mr Ghambhir stated that he would ask one of the other 2 MSK specialists rather than the claimant if he wanted a difficult case analysed. He stated that the relationship issues had an impact on the service. He said that Mr Beatty had found the situation increasingly difficult and had difficulty in managing the MSK radiologists and getting them to work together.
162. Mr Gambhir believed that the relationship could not be repaired. The claimant had no real insight into the issues. He did not believe that the claimant would change. His communication style was poor.
163. The report in its summary of findings stated that a large number of those interviewed advised that their working relationships with the claimant had irretrievably broken down and did not believe the relationships could be repaired. That included Drs Prabhu, Poon, Ismail, Temperley and Bassu, an opinion shared by Drs Wardman, Husain and Gambhir. It was reported by those who were key to the MSK service that there was no communication with the claimant who would lock himself in the office. There was a lack of team working, communication, engagement and insight from the claimant.

Meeting the claimant regarding Dr Prabhu grievances

164. On 18 January 2017 Mr Gambhir met with the claimant and issued a letter on 19 January 2017 as a follow up to the investigation and grievance against Dr Prabhu. The claimant had been unable to meet with Mr Gambhir and the September letter had issued the report but a follow up meeting was arranged. The claimant indicated that he was not satisfied with a number of points in the report but any request to appeal would be considered by the relevant person.
165. On 20 January 2017 the claimant wrote to the appeal officer and asked to appeal the outcome. He noted that there had been a number of attempts to meet since July 2016. He noted that he was shown a copy of the letter of 15 August which the claimant said he had not received.
166. On 13 February 2017 Dr Arya, acting Medical Director, wrote to the claimant stating that as the original letter was issued on 8 September 2016 it was too late to appeal.

Clinical governance complaints

167. On 25 January 2017 the claimant raised a complaint about clinical governance and Dr Ismail's attitude to him at a clinical audit meeting on 24 January 2017. The claimant stated in a letter that "I feel that there is now a total breakdown in clinical governance within the department". He said he had been humiliated by Dr Ismail.
168. On 4 February 2017 Dr Arya, the acting Medical Director wrote to the claimant and stated that the Associate Director of Governance was being asked to complete a review of the processes surrounding the audit meetings and their terms of reference. She was also to look into what was on the agenda and how items were agreed for discussion.
169. On 16 March 2017 Dr Arya sent the claimant the report that was carried out into the governance review. The agenda of the meeting had been agreed in advance and the claimant's actions had caused surprise. He stated that "it is evident that the attendees felt uncomfortable with your approach and Dr Ismail left the meeting to avoid conflict, believing it was inappropriate for you to present details of the review of your work." He concluded that there were robust governance arrangements in place for the meeting but formal terms of reference for the meeting would be actioned.

Relationship breakdown – case to answer

170. On 18 April 2017 Ms McManus wrote to the claimant sending him a copy of the report (with appendices including interview transcripts) noting that the investigation into the breakdown of working relationships had been concluded. She stated that she believed there was evidence the relationships had broken down and such a breakdown could be irreparable. She stated that it was appropriate to convene a hearing to consider this matter. While there was no formal process in place to deal with these matters, good practice would be followed. She noted that if the issue was upheld and working relationships were found to have broken down with no reasonable prospect of repair, his continued employment was at risk.
171. In the course of May 2017 the claimant's advisers and solicitors challenged the legitimacy of the meeting and procedure and asked that it be withdrawn. This was resisted by the respondent who advised they believed the investigation and process was lawful and fair. They explained the investigation was commissioned following concerns about the working relationships. The claimant should participate in the hearing and set out his position.
172. On 22 May 2017 Ms Balson wrote to the claimant to invite him to a hearing on 14 July 2017 following the letter of 18 April 2017. This was to consider the alleged breakdown in working relationships which may be irreparable. The letter stated that "at this hearing the question of action against you will be considered with regard to allegations that (1) workplace issues inclusive of any former or existing grievances or complaints have resulted in the breakdown in working relationships between you and your consultant colleagues and the senior medical management team and (2) that there has been a breakdown and the relationship is irreparable." The letter stated that if proven the claimant could be dismissed.

173. On 29 June 2017 the claimant claimed that he was shouted down at a meeting which was investigated with the response issued on 11 July 2017 finding that no untoward behaviour had taken place.
174. On 10 July 2017 the claimant's solicitors wrote to the respondent asking that the hearing be postponed given the ongoing issues. They stated that "the claimant has objected to the investigation and refused to participate due to his very serious concerns".
175. The respondent's solicitors responded on 11 July 2017 noting that the claimant had been aware of the hearing since May 2017. It was also stated that where issues arise whereby dismissal for some other substantial reason may be relevant, the formal internal processes would not be applicable.
176. On 13 July 2017 the claimant's union representative emailed Ms Balson to advise that there will be 2 representatives attending the hearing for the claimant and he would not call any witnesses.

Dismissal meeting

177. On 14 July 2017 the meeting was convened to consider the suggestion that the claimant's relationship with his managers and colleagues has broken down. The panel comprised Ms Law (Director of Nursing) and Ms Balson (now Director of Workforce). The panel was advised by a solicitor. The panel was chaired by Ms Law.
178. The respondent's case was led and presented by a solicitor (who was from the same firm as the solicitor that advised the panel). The claimant was represented by his union representative.
179. Ms Law opened the hearing stating that she would chair the hearing, the purpose of which was to consider the relationship between the claimant and his colleagues and clinical managers. The hearing was not part of any conduct, capability, ill health or grievance process and was about the claimant's relationships with team members and management team.
180. The claimant's representative asked why 2 lawyers from the same firm were in attendance and asked what safeguards were in place for impartiality. The solicitor advising the panel explained that he was advising the panel and the other solicitor was presenting the case for management. They had different roles to play. The agent asked that there be "no cross contamination between the 2 lawyers".
181. The solicitor advising the panel took no part in the deliberations of the panel and provided legal advice only.
182. The panel indicated that they would like to ask questions of Dr Temperley and Dr Ismail. The claimant did not call any witnesses.
183. The claimant's representative asked if it was appropriate for Ms Balson to sit on the panel. She explained that over the years there had been a number of hearings and meetings in respect of the claimant and all the senior team had

been involved in some form. This objection had not been raised before. The claimant's representative asked that the objection be formally noted.

184. The claimant was asked what his response to the issues were as he had not taken part in the investigation. His adviser stated that the claimant did not wish to participate in the hearing.
185. The respondent's case was presented by the solicitor who set out why the respondent believed there had been significant and irreparable breakdown in relationships between the claimant and key employees within the team. The report spoke for itself. The report and statements were considered and referred to and it was submitted that the working relationships had broken down irreparably. Those with whom the claimant worked said that there was no prospect of the relationships being repaired.
186. The respondent referred to the potential for mediation but noted that there was mistrust and a lack of insight on the part of the claimant. For mediation to work the claimant would need to accept the issues that had arisen. The panel was urged to consider the evidence carefully.
187. The claimant's representative stated that it was denied the claimant was solely responsible for the breakdown of any relationship. It was noted that a number of statements were from colleagues who had little interaction with the claimant and some had been on the receiving end of complaints made by the claimant who would be looking for reprisal. Their evidence was "coloured".
188. It was submitted that the evidence the claimant locked his door is hearsay. Many colleagues had no issues with the claimant. It was suggested that the respondent's case boiled down to 3 colleagues, Drs Temperley, Ismail and Basu and as they all had an issue with the claimant, dismissal was not an option.
189. It was suggested that 360 appraisals had shown good relationships. As this was new evidence that had not been produced before, the hearing was adjourned to allow the 360 paperwork to be produced and considered which the panel did.
190. The claimant refused to answer questions put to him by the panel and he did not engage with the hearing.
191. Although the panel considered the written investigation report they chose to hear oral evidence from Dr Ismail and Dr Temperley as both had been the claimant's manager (when they were clinician directors) and both worked closely with the claimant. The panel asked questions of Dr Temperley and Dr Ismail.
192. Dr Temperley noted that he was appointed in 1994. The claimant was not comfortable during his appraisals (when he was managed by Dr Temperley). He didn't trust Dr Temperley. When Dr Temperley was the claimant's manager, communication had broken down. He had to deal with a number of issues involving the claimant, including problems with communication.

193. He believed the majority of radiology communication issues were related to the claimant. The breakdown was gradual. He did not believe there was a relationship of trust with the claimant. There was no change in his behaviour despite attempts to help him. Contact was made with HR and the claimant did attend occupational health. There were a number of people complaining about the claimant's behaviours and its impact and the claimant had no insight into the issues his relationships caused.
194. He also stated the claimant locked his door regularly and isolated himself into his room. He stated that while communication within the team is good, when one member of the team isn't talking to the others communication is impossible. The claimant did not talk to Dr Temperley. Dr Temperley stated that others had raised issues about the claimant's approach
195. Dr Ismail told the panel that the working relationships had broken down. The claimant refused to have a conversation with him even when offering support. Dr Ismail pointed to the fact the claimant's door was locked regularly and he would have to take a witness. It was stated that consultants would not ordinarily go to the claimant for advice.
196. Both sides summarised their position. The claimant's representative stated that there were a large number of colleagues who were able to work with the claimant. The claimant was broadly liked and appreciated and there was nothing to justify his dismissal. If any sanction was applicable then mediation and reflection should be considered.
197. The respondent's agent noted that the claimant had chosen not to give evidence. 19 witnesses were interviewed including the claimant's line manager and colleagues. Key colleagues were interviewed and the investigation was proportionate. Key relationships had broken down. The claimant had not participated in the investigation or hearing and there were genuine concerns from key members of staff which had not been challenged. There was a clear pattern that the claimant had consistently poor relationships with his clinical directors.
198. He submitted that those who worked closely with the claimant felt their relationships were broken. Some considered leaving. The claimant's relationship with Dr Ismail and Doctors Temperley and Basu had broken down. Although the claimant had stated some of those were persons in respect of whom the claimant had raised a grievance, no issue had been raised by the claimant with Drs Poon and Basu who also believed the relationship with the claimant had broken down. The claimant had repeated issues with clinical directors and the relationships had broken down irreparably. It was noted that Dr Wardman was of the view that mediation would not work as the claimant had no insight into his own behaviour.
199. It was also noted that there had been numerous attempts over time to seek to remedy the situation but as Dr Temperley had shown, this had been without success.

Conclusion on issue of relationship breakdown

200. The panel considered matters carefully and in detail. They concluded that the claimant's relationship with his colleagues had broken down. A letter was sent to the claimant dated 17 July 2017. The letter noted that it was extremely disappointing that the claimant chose not to participate in the investigation or answer any questions. The panel had to proceed on the information it had before it. The panel considered three issues.
201. Firstly, it considered whether relationships were broken and if so to what extent. The letter noted that management presented evidence that relationships between the claimant and the people he worked closely with were broken beyond repair.
202. Mr Ismail stated that his relationship with the claimant was broken. The claimant did not enter into a conversation and he felt it necessary to ask a colleague to witness any conversation with the claimant. He highlighted that another MSK radiologist, Dr Basu, had asked for his job plan to be changed so he did not have to come into contact with the claimant and he considered leaving as a result of the relationship issues with the claimant.
203. A pattern of poor relationships among the claimant and clinical directors over the years had been shown, including with Drs Ismail, Temperley, and Poon.
204. Dr Temperley had stated the relationship had broken down and there was little communication. The claimant was described as uncooperative and unwilling to listen. There was no trust and despite attempts to support the claimant and looking for solutions to improve, the claimant lacked insight and did not make changes. He had no appreciation as to how his behaviour impacted upon others.
205. Dr Basu had considered leaving and felt there was a lack of a team spirit.
206. Dr Prabhu stated working relationships were very poor as had Dr Poon.
207. It was noted that the claimant's representative had presented new evidence in the form of 360 appraisals. As the claimant had refused to answer any questions, an administrator had been asked to provide information which the panel considered. The panel accepted that the 360 documents indicated relatively favourable responses but concluded that they did not relate to the people with whom the claimant worked most closely and did not include the claimant's clinical managers.
208. The panel concluded "Having considered all the information available, the panel concluded that the relationships between you and those you work most closely with are clearly broken. Additionally the relationships between you and the current clinical director is broken with no trust between you as has been the case with the clinical directors to whom you have previously reported. The information presented to the panel demonstrates that the breakdown is extremely significant and that you lack insight into your actions. Additionally it is evident that there is a notable lack of trust, communication and team work between you and your close clinical colleagues."

209. The second issue the panel considered was the impact of the relationship on other members of the team, the functioning of the department, quality and patient safety.
210. The panel noted the evidence they had received which included a number of consultants considering stepping down from management positions or leaving the respondent entirely as a primary result of the claimant's relationship with them. The panel concluded that the claimant's relationship with key colleagues cause significant negative implications for the effective functioning of the department and on the quality and safety of services.
211. Finally, the panel considered whether there was any prospect of the relationships being repaired. The panel noted that the extent of the relationship breakdown was so significant that many colleagues felt there was no likelihood of any actions resulting in positive change. Many of those interviewed felt the claimant had a lack of self-insight. The claimant was one of a small number of radiologists specialising in MSK. The panel believed that basic skills of communication and team working are essential in all areas.
212. The panel concluded that the relationships had broken so significantly and the situation had not changed. There was a lack of trust between the claimant and key colleagues and the claimant had shown no insight into his behaviour and relationships. The panel had no confidence that remedial interventions such as mediation would resolve the issues and the claimant lacked basic insight and communication required in any area to be an effective team member. The panel concluded that as a result the relationships are irreparable and the situation cannot continue in the interests of a safe and effective service.
213. The panel concluded that breakdown in relationships was so significant that it caused serious potential risk not only to the effective functioning of the department but also patient safety and as a result, the claimant was dismissed with notice.

Appeal against dismissal

214. On 31 July 2017 the claimant appealed against the decision. He argued that his dismissal was automatically unfair because of protected disclosures, that an unreasonable investigation took place and that there were outstanding disciplinary and grievance issues. He said he believed the decision to dismiss was predetermined by Ms McManus and that there was a fishing expedition. He believed the whole process was fundamentally flawed because of the lack of detail provided to him. He believed the trust approached the matter with a closed mind. He said he believed he got on well with all his colleagues on a professional basis.
215. On 6 September 2017 the claimant was told that an appeal hearing would be convened for 13 October 2017. The panel would comprise Ms Fleming, Director of Operations and Dr Arya, Medical Director.
216. The claimant was sent the management case on 20 September 2017 which set out the evidence that supported the assertion working relationships had broken down irreparably and that dismissal was a fair outcome. The

management case in respect of the appeal was lengthy and referred to the evidence in detail, running to some 9 pages. Part of the submission stated that: "There is a clear evidence base both through the information gathered during the investigation and in at least 4 formal processes that there is a significant and fundamental breakdown in the claimant's working relationships with those he works most closely with". No specific detail is given as to the "formal processes" but reference is made to the investigation and interviews.

217. The claimant's agent had submitted his response which stated that the claimant sought his job back. The claimant was open to repairing any "conceived breakdown" as well as mediation. It was alleged that the process was unfair and a fishing expedition. It was alleged that the witnesses had colluded to claim the claimant had a lack of insight.
218. The appeal hearing took place on 13 October 2017. Ms Fleming noted that the purpose of the appeal was to decide whether the decision taken (namely to dismiss the claimant) had been reasonable and fair.
219. The claimant's agent set out why she considered the process to be unfair. She believed that the issues had been vague and the investigation amounted to a fishing expedition. The evidence was uncorroborated and general with repeated use of "lack of insight". She argued no one knew what this meant.
220. The respondent put its case noting that the claimant had refused to participate in the investigation process or answer any questions at the hearing. The investigatory report had raised very significant concerns about the claimant's relationship with his colleagues and at no point had the claimant responded to the issues about relationship breakdowns. The claimant did not appear to be contesting that evidence.
221. It was submitted that the evidence of a relationship breakdown was clear. Lack of insight was clearly understood since it was about how personal behaviour impacted on others. There had been no suggestion mediation would work.
222. The claimant was asked whether he recognised that at any point there was a breakdown in relationships. Following an adjournment, the claimant answered the question but said he had difficulty in doing so. He said he had tried his best to comply with the restrictions placed upon him. He did not know what the allegations were and believed the staff in his department had no issues. He had never been contacted about the issues.
223. The claimant was asked whether he felt his colleagues were wrong in saying the relationship had broken down. The claimant refused to answer. The claimant's representative said she would respond on his behalf. She said that the claimant believed he had a professional working relationship with all his colleagues and he had not been aware of a breakdown. She asked which colleagues and was told Drs Ismail, Temperley, Basu and Poon. She noted that no specific dates were provided. The claimant was not aware of any relationship breakdown.

224. The claimant's agent said that he was not aware of any issues regarding impact on service and nothing had been raised with him.
225. The claimant's agent also said that he believed he had a professional relationship with each of his clinical directors. The fact grievances had been raised did not make a difference and did not reflect a lack of relationship. The claimant was saying he had good working relationships with clinical directors (with exception of Dr Ismail) which he felt to be effective.
226. The claimant was asked to provide details of the protected disclosures that he had said led to his dismissal. The claimant said he would not answer this question because of the risk of retaliatory action.
227. The parties then made their final submissions.
228. The respondent argued that the reason for dismissal was some other substantial reason because of breakdown in relationships and not conduct. This was not about the claimant's performance or ability. The claimant's performance was not disputed. Nor was it on the basis of misconduct. This was about a breakdown in trust and confidence from the claimant's colleagues. The original panel had found the investigation report compelling and evidence from Drs Temperley and Ismail showed the relationships had broken down. Dr Poon had shown that the relationship was non-existent and Dr Basu had considered leaving as a result.
229. While there was a lack of specific times as to when this happened specifically this was because the relationships had deteriorated over time.
230. The claimant had consistently refused to participate in the investigation or original hearing. The panel could only go on the basis of the uncontested evidence. There was no substantive basis to discount the evidence.
231. The respondent noted that the claimant did not accept a breakdown in relationships. There was no acceptance that the claimant had any involvement in the deterioration. This was indicative of a lack of insight. The claimant had been given plenty of opportunity to provide his response but had not done so.
232. Mediation was a potential way forward but given the lack of recognition by the claimant and scepticism from other team members as to the utility of mediation, this was not appropriate.
233. For the claimant it was noted that 19 witnesses had been interviewed and yet there was no clarity as to the material reason for the breakdown in relationships. Reference to lack of insight was very general. The witnesses relied on had described the claimant negatively yet managers had a duty to manage their staff effectively by using internal procedures.
234. There was no evidence to believe service delivery was affected. There were no professional issues with Dr Ismail but the claimant was entitled to raise a grievance, some of which had been upheld.

235. General statements had been used to dismiss the claimant. It was not right that there was reliance on minor issues to dismiss. There had been no formal complaints given to the claimant.
236. With regard to the claimant's non-participation, the claimant had been concerned that he would prejudice his case further. The claimant had an exemplary record.
237. The claimant sought reinstatement. All opportunities should have been explored to salvage the relationship. The claimant was open to mediation.
238. The panel adjourned to consider the matter.
239. On 19 October 2017 the claimant was asked to provide details in respect of any public interest disclosures that he maintained he had provided but he did not provide any details and the panel was to proceed to conclude its deliberations.
240. The panel having considered matters wished to obtain a statement from Mr Beatty (radiology directorate manager) to get an operational perspective in respect of the alleged breakdown in relationships. Mr Beatty stated that the claimant would isolate himself in his office. Mr Beatty believed that the claimant "wasn't well". The claimant's relationship with colleagues was stated to be "very poor. It became a nightmare". He believed that people were trying to work around the claimant. Nearly all his colleagues had, in Mr Beatty's view, a poor relationship with the claimant, which in his view even included secretaries who were previously loyal to him but did not want to work with him at the end.
241. Mr Beatty stated that the problem in respect of relationships with the claimant and his colleagues had persisted for around 4 years following an issue with regard to rheumatology which led to restrictions on the claimant's practice.
242. With regard to the impact on service Mr Beatty believed that people were "walking on eggshells all the time and were frightened to ask him anything" in case they claimed he was harassing him or made a complaint about them. His MSK colleagues would not work with him as they were worried about him making a complaint.
243. Mr Beatty's statement was not sent to the claimant.
244. The panel considered all the evidence presented to them and on 20 November 2017 send the outcome of the appeal to the claimant.
245. The panel decided that they were satisfied there was a serious breakdown in working relationships between the claimant and his colleagues. The statements from his colleagues were clear. The panel were uncertain whether the claimant was aware of the relationship breakdown but on balance felt it was something the claimant was likely to have had some appreciation of given the fact the claimant would lock his door which suggested a deliberate barrier between colleagues.

246. The panel took into account Mr Gambhir and Mr Beatty's suggestion that the claimant could be ill. They also took account of the statement by Mr Husain (which was obtained during the investigation) who stated that such behaviour was how the claimant normally acted; It was his personality. There had been no suggestion by the claimant that his health was in issue. The panel looked at all the evidence and concluded there was no need to seek medical input.
247. The appeal panel considered that there was overwhelming evidence that the working relationships with those in clinical leadership roles and his specialty colleagues had fundamentally broken down. They concluded that there was a clear pattern of relationship breakdowns amongst the claimant and those in clinical leadership roles and those specialist colleagues with whom he closely worked.
248. The more difficult question for the panel was whether dismissal was a fair and reasonable response. The panel considered whether mediation was more reasonable but noted that colleagues felt the situation was irreparable. There was no evidence of any ulterior motive when colleagues said this and found the evidence credible.
249. The panel was also concerned about the claimant's limited insight and engagement. While the claimant considered himself to have a professional relationship with his colleagues, he did not engage in the process which started at the end of 2016. They considered that the claimant did not acknowledge that there was a problem with his relationships and as such mediation was not likely to bear fruit. Had the claimant shown insight and a genuine desire to enter into mediation, this would have been considered further. On the information before the appeal panel, they concluded there was no reasonable prospect of that being successful and there was no point therefore in progressing with it.
250. The panel reached the conclusion that mediation was very likely to be fruitless and there were no alternatives, such as redeployment. They took into account all the surrounding circumstances and submissions from both parties. The panel shared the conclusion from the original panel that dismissal was fair and reasonable.
251. His appeal was therefore dismissed.

Outstanding conduct issue

252. In accordance with the MHPS procedure, the respondent was required to take any outstanding conduct issues to a final conclusion.
253. On 1 December 2017 the respondent advised the claimant that the disciplinary issues that arose following the grievance by Dr Ismail against the claimant would have been remitted to a disciplinary hearing to determine had he remained in employment.

Conclusion of GMC Process – No action

254. On 18 August 2019 the GMC concluded their investigation. They concluded that having reviewed the claimant's actions, his approach had not fallen below the standard of a reasonably competent radiologist and as such no action was to be taken and the case was closed.

The law

255. Section 98 (1) of the Employment Rights Act 1996 states:-

"In determining 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."

256. Section 98(4) of the Employment Rights Act 1996 states:

"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 reasons 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".

257. Where there has been a fundamental and irretrievable breakdown in work relations between an employee and colleagues and the employee was dismissed because of the fact of the breakdown, rather than conduct that caused it (ie who was to blame for the breakdown was not relevant to the employer's reason for dismissing), dismissal may be for some other substantial reason - **Ezsias v North Glamorgan NHS Trust** [2011] IRLR 550.

258. That case followed the Court of Appeal authority in **Perkin v St George's** 2005 IRLR 934. Both cases emphasise that it is important to identify what the reason for the dismissal was, the set of facts or beliefs held by the employer that cause the employer to dismiss. It is necessary to consider whether the action taken was related to the claimant's conduct (para 47 **Ezsias**) or some other substantial reason.

259. It is possible for a dismissal to be for some other substantial reason even if the employer could have taken action because of the claimant's conduct (see para 50 **Ezsias**). That was a point made in **Perkin** since it was the claimant's manner and management style which led to the breakdown in relationships but the dismissal was still for some other substantial reason. The fact the claimant was, in the main, to blame for the relationship breakdown, may be immaterial as to why the claimant was dismissed. The distinction is vital: was the claimant dismissed for his conduct in causing the breakdown of relationships or dismissed for the fact that the relationships had broken down. If the dismissal was due to conduct, the employer would be obliged to follow whatever disciplinary procedure is appropriate for conduct dismissals.

260. Keith J notes at para 58 of **Ezsias** that “We have no reason to think that employment tribunals will not be on the lookout to see whether an employer is using the rubric of “some other substantial reason” as a pretext to conceal the real reason for the employee’s dismissal.”

Range of reasonable responses

261. The Tribunal must ask whether dismissal fell within the range of reasonable responses of a reasonable employer and this test applies both to the decision to dismiss and to the procedure. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances. The band of reasonable responses test applies as much to the question of whether the investigation was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss.
262. The starting point should always be the words of section 98(4) themselves. In applying the section, the Tribunal must consider the reasonableness of the employer’s conduct, not simply whether it considers the dismissal to be fair. In judging the reasonableness of the dismissal, the Tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer; it is not for the Tribunal to impose its own standards. The Tribunal has to decide whether the dismissal and procedure lay within the range of conduct which a reasonable employer could have adopted.
263. In many cases there is a band of reasonable responses to the employee’s conduct within which one employer might take one view, and another might quite reasonably take another. The function of the Tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair. If the dismissal falls outside the band it is unfair. However, the band is not infinitely wide and is not a matter of procedural box ticking.
264. The Tribunal must not substitute its decision for that of the employer and must look at the matter through the lens of a reasonable employer: could a reasonable employer have carried out the procedure that was undertaken, and could a reasonable employer have dismissed for the reasons relied upon in this case? In other words, it is important not to substitute the Tribunal’s decision for that of the employer, and the matter must be looked at in the round to decide whether or not the respondent acted reasonably: **Sainsburys v Hitt** 2003 IRLR 23.
265. The reasonableness of the decision to dismiss is scrutinised at the time of the final decision to dismiss – at the conclusion of the appeal process (**West Midland v Tipton** 1986 ICR 192).

Reasonableness issues

266. In **Polkey v AE Dayton** [1987] IRLR 503 the then House of Lords considered an important question which had not been the subject of judicial consideration at that level, namely where dismissal was for a potentially fair reason, but

there had been procedural deficiencies, to what extent was it relevant that such procedural deficiencies would have made no difference in considering the fairness of the dismissal.

267. The (then) House of Lords found that if an employer failed to take appropriate procedural steps the Tribunal is not permitted to ask, in applying the test of reasonableness, the hypothetical question whether it would have made any difference if the appropriate procedural steps had been taken. If the Tribunal is able to conclude that the employer himself at the time of dismissal acted reasonably in taking the view that in the exceptional circumstances of the particular case the procedural steps normally appropriate would have been future, could not have alerted the decision to dismiss and could therefore be dispensed with.
268. Where the taking of appropriate steps would not have affected the outcome, that could lead to a finding of unfair dismissal but no or reduced compensation.

Discussion and decision

The reason for dismissal

269. The first issue in this matter is to determine what the reason for the dismissal was, the set of facts and beliefs held by the respondent which caused them to dismiss the claimant.
270. The claimant's counsel submitted that in reality this was a dismissal by reason of the claimant's conduct and not because of the relationship breakdown *per se*. Counsel argued that the dismissal would be unfair if the underlying reason for the dismissal was the belief that the claimant's conduct was responsible for the breakdown.
271. Counsel for the respondent submitted that the reason for the dismissal was not the claimant's conduct but the fact that working relationships had broken down.
272. Counsel for the claimant accepted that if the dismissal was found to be because the dismissing panels saw a dysfunctional group of staff without apportioning blame and decided the relationships had broken down and dismissed the claimant as a result, that could be a fair dismissal but he argued the dismissing officers saw the claimant at fault and that his behaviour led to the relationships faltering which meant, in counsel's submission, that the dismissal was by reason of the claimant's conduct. He argued in this case the claimant was seen as the problem and it was his conduct on which the parties focussed, his attitudes and behaviours. There was a blend of relationship and conduct issues.
273. Both counsel were agreed that the key issue is what the reason for the dismissal was. It was accepted that if the set of facts or beliefs that caused the respondent to dismiss were the fact the claimant was responsible for a breakdown in relations that would be a conduct dismissal (and unfair). If the

reason was the fact there was a relationship breakdown (irrespective of whose fault that was) the dismissal was potentially fair.

274. The reason of the employer is the set of facts or beliefs held by the respondent that caused them to dismiss. Having carefully considered the evidence led before the Tribunal and the productions to which I was directed, I have concluded the reason for the dismissal was the fact that the relationships within the MSK team and his line managers had broken down. The claimant's relationship with his colleagues and line managers was the principal reason for his dismissal.
275. The respondent (at both the original meeting and appeal meeting) carefully considered the evidence that had been laid before it. The claimant chose not to participate in the original hearing despite attempts by the respondent to encourage the claimant to do so, given the seriousness of the matter. The claimant did not contest the clear evidence that was presented to the panel, namely that the stated relationships had broken down.
276. The reason for the dismissal, the set of facts that caused the respondent to dismiss, was the fact the relationships had become unworkable. The reason for such relationships breaking down, that is, the conduct of the parties that led to the breakdown, was not the reason.
277. The evidence from both panels clearly showed that the dismissal was because the working relationships had broken down (and not, for example, relating to the claimant's conduct that led to the relationships faltering).
278. I have also taken into account the authorities in this area and as cautioned I have been on the lookout to see whether an employer is using the rubric of "some other substantial reason" as a pretext to conceal the real reason for the employee's dismissal. I am satisfied that this is not the case in the current situation.
279. It is clear that the reason for the dismissal, as shown by the respondent, is for some other substantial reason, namely a potentially fair reason. The dismissal of the claimant is therefore *prima facie* fair.

Fairness of the dismissal

280. The next issue, in respect of which the onus is neutral, is to determine whether the respondent acted fairly and reasonably in dismissing the claimant for that reason taking account of size, resources, equity and the substantial merits of the case. I apply the legal tests as set out above in this assessment.

Genuine belief?

281. The first issue to be determined is whether or not the respondent genuinely believed in that reason. Having carefully considered the evidence from the dismissing and appeal officers I am satisfied that the respondent genuinely believed that the principal reason for dismissal was properly to be considered as some other substantial reason. The evidence clearly showed that this belief was genuinely held.

Reasonable grounds?

282. Next, I need to consider whether or not there were reasonable grounds for the respondent to hold that belief. Given the evidence that was presented to both panels and having carefully considered the evidence of in respect of the reason for the dismissal I am satisfied that the respondent had reasonable grounds to sustain that belief. The clear issue that both panels considered was whether or not the working relationships had broken down and whether or not it was possible to repair such relationships. The evidence presented to and the reasoning adopted by both panels very clearly demonstrated that there were reasonable grounds for holding the belief.

Was the investigation reasonable?

283. In order for a dismissal to be fair, a respondent must form the relevant belief having carried out as much investigation as was reasonable. I have carefully considered all the evidence in this case and analysed in detail the investigation that was carried out. I am careful to avoid using my judgment to decide what I would have done but instead, as with each of the issues, I must decide whether or not the respondent acted fairly and reasonably in all the circumstances, namely within the range of responses open to a reasonable employer.

284. Having taken a considerable period of time to consider the facts of this case and the submissions of the parties, I am satisfied the investigation that was carried out was reasonable in all the circumstances. I address each of the challenges raised by the claimant below. In addition to those challenges I considered the full circumstances of this case in my assessment of the procedure and dismissal to consider whether or not the process was fair. I am satisfied that the approach adopted by the respondent fell within the range of responses open to a reasonable employer.

285. The claimant had argued that he did not know what the specific allegation was and that he felt it was a fishing expedition. It was put to the claimant in cross examination that he had been given the terms of reference and associated correspondence (which he accepted he read) which clearly set out the nature of the process. He had also seen the Ibox Gale report. He chose not to participate in the investigation process and give his input.

286. In cross examination the claimant was asked "Instead of cooperating with the investigation and putting your side, you tried to raise further concerns to be considered a grievance with the aim of stopping the other set of proceedings". He responded: "That is correct". It is of course open to the claimant to raise relevant concerns but the issue in this case relates to the fairness or otherwise of the claimant's dismissal because of workplace relationship breakdowns based on the information before the respondent at the time.

287. The claimant was told as to the basis of the investigation, which was the concerns about a potential relationship breakdown with colleagues given the terms of the Ibox report. The claimant accepted in cross examination that some months before the meeting which was considering the matter (which had, as a potential outcome, his dismissal) he was given the full investigation

report which reiterated the terms of reference and a copy of each of the interview notes. The claimant also accepted that he had the opportunity to interview those persons or seek to bring his own witnesses and evidence to counter the clear evidence he had received.

288. The investigation was thorough, detailed and clear and the claimant had a number of months to prepare any rebuttal or to raise any issues or concerns.
289. Counsel for the claimant argued that there were 10 individual actions (or inactions) each of which individually or cumulatively rendered the dismissal unfair. He confirmed there were no other actions or inactions relied upon in support of the claim that the dismissal was unfair. I shall address each in turn.

4 formal processes not being detailed

290. Firstly, it was argued that the respondent by relying on “4 formal processes” as evidencing, at least in part, an intractable breakdown in relationships between the 3 specialist radiologists, clinical directors and the claimant, the respondent should have detailed the outcomes of those processes to give both panels the full picture.
291. The claimant argued that management approached both panels in an adversarial way with prosecuting counsel seeking dismissal. They did not highlight the formal processes used despite relying upon them to persuade the panel that the relationships had broken down.
292. Counsel for the respondent argued that the 4 processes were not by themselves factors that featured in the dismissing panel members’ minds. The processes led Ms McManus to conclude that an investigation into the relationships should be undertaken but were not part of the reasoning that led to dismissal. The respondent’s position was that following the investigation it was concluded that at the centre of the relationship issues was the claimant and he was the person with whom people could not work and who had raised processes to deflect or distract from the fact that working relationships had broken down.
293. I considered both parties’ submissions on this issue and prefer the respondent’s position in this regard.
294. Both panels carefully considered the evidence that was before it. The process requires to be reasonable in all the circumstances. It is not a counsel of perfection and while some employers may well have articulated the specific processes that led to the belief that relationships may have broken down, the reason for the dismissal was the fact that the relationships had broken down and now how this had occurred. The fact the claimant or others may have contributed to the breakdown by reason of raising of a grievance or informal concerns was not the reason why the respondent dismissed the claimant.
295. The processes themselves were not directly relevant to the panels’ conclusion that workplace relationships had broken down. Reference to the “4 processes” was in part of the respondent’s submission at the appeal hearing. That

conclusion was drawn principally from the various witness statements the claimant's colleagues had produced.

296. While some employers might well have set out the detail underlying the processes, in my view, it cannot be said that what the respondent did in this case was not reasonable. Their approach in relation to this issue, the failure to consider the specifics behind the 4 processes, fell within the range of responses open to a reasonable employer in the circumstances.
297. It is relevant that this was not a point raised by the claimant at any stage during the dismissal process. It was open to the claimant at either meeting to have raised this issue and shown why, in his view, if that was his position, this issue ought to have changed the outcome. The claimant chose not to do so but the respondent did what it could from the evidence placed before it and acted reasonably in so doing.
298. Reasonable enquiries were made by both panels. The dismissing panel comprised the Head of HR who herself was aware of the processes, not least since she was the disciplinary chair in the first of the 4 processes. A counsel of perfection is to be avoided in deciding what is reasonable. It is important the respondent carries out a fair procedure, one which is fair in all the circumstances taking account of the equity and substantial merits of the case.

Failure to put specifics as to previous processes to dismissing officers

299. Secondly, it was argued that the 4 processes had 3 beneficial outcomes for the claimant which would have weighed heavily in the panels' minds had the information been communicated to them and could have altered the outcome:
 - a. The 2015 disciplinary hearing overseen by Ms Balson resulted in no disciplinary action being recommended but counselling being advised.
 - b. The grievance against Dr Wheeler which Dr Wardman oversaw resulted in (amongst other things) Dr Wheeler being asked to apologise to the claimant and the claimant's claims were found to relate to mismanagement and misinformation.
 - c. While the majority of the claimant's grievances against Dr Prabhu were not upheld, were and these (the claimant submitted) were very serious and part of the reason why Dr Prabhu left the respondent's employment. Further, there was no evidence that the claimant's complaints against Dr Prabhu were malicious
300. Counsel for the claimant argued that these facts should have been brought to the panels' attention when considering who was to blame, if anyone, for the relationship breakdown and why the relationships had broken down. This was disputed by the respondent.
301. This point is essentially a development of the foregoing point. These are issues the claimant chose not to raise at the time. Ms Balson was aware of them. I do not consider the failure to provide the information now relied upon

resulted in the procedure being carried out being unreasonable in all the circumstances.

302. Ms Balson obviously knew the outcome of the original hearing, which she chaired, which did consider there to be communication issues on the part of the claimant.
303. The grievance against Dr Wheeler did not find any evidence of discrimination or harassment as alleged by the claimant. That was significant since the claimant had raised over 30 allegations. None of the bullying allegations was upheld. The 2 allegations which were upheld were in relation to the nondisclosure of documents.
304. That was a serious matter, and acknowledged as such, but the fact so many allegations were raised and not upheld and there was no evidence of bullying and harassment as the claimant alleged is not irrelevant, as is the fact that 2 allegations were upheld. The detail in this regard would as much support the respondent's position as to the claimant's approach to workplace relationships as it did support the claimant's position.
305. Similar points arise in relation to the grievances against Dr Prabhu. While some were upheld I do not consider it a sound proposition that no reasonable employer would have carried out the procedure in the way the respondent did in the particular circumstances of this case.
306. Further, the reason why the panels chose to dismiss the claimant was because they believed the workplace relationships had irretrievably broken down. The points raised by counsel for the claimant at this stage did not alter the fact that the relationships had broken down. The panels did not consider who was at fault for the relationship breakdown but considered whether or not the relationship was broken or not.
307. This specific failure did not render the dismissal unfair in all the circumstances.

Failure to disclose occupational health adviser's suggestion

308. Thirdly, the failure to inform the panels that in March and April 2016 Occupational Health, soon after the claimant's return to work from stress related illness and apparent relationship problems had come to the fore, that mediation and/or a facilitated discussion with a senior employee should be considered to improve relations. Not telling both panels about this recommendation, argued the claimant, rendered the dismissal unfair. The respondent disputed this.
309. It is important to consider the context in this matter and the wording from occupational health which I have considered carefully. The occupational health reports predated the dismissal by some months. The adviser was not saying that mediation or a facilitated discussion was mandatory but that it could be considered. Both panels did consider this suggestion, even if not because the occupational health consultant recommended they do so.

310. While some employers might well have provided details as to what the occupational health consultant said, I am satisfied that a reasonable employer in the circumstances would have done as the respondent did. The claimant at no stage referred to this during the process. The panels considered whether or not mediation would be a fair outcome and for clearly articulated reasons chose not to do so. This failure did not result in the procedure being unfair.

Failure to disclose desire to mediate

311. Fourthly, it was argued that the claimant had asked for mediation (both in an email on 25 April 2016 and at the appeal hearing) and this had been ignored. Counsel for the respondent also argued that upon close inspection of the interview notes, Doctors Temperley and Bassu had both indicated they would be willing to try mediation.
312. Counsel for the respondent argued that the claimant had shown a lack of insight such that it was clear mediation was not realistically likely to be successful. Most of the respondent's witnesses had concluded that the relationship with the claimant had broken down. The fact the claimant did not participate in the process underlined how the claimant dealt with matters.
313. The respondent had considered mediation and looked into matters and concluded that mediation was futile. This was evidenced by Dr Ismail, the claimant's line manager, who was initially prepared to proceed but then concluded the relationship had irretrievably broken down.
314. Even although the claimant, suggested mediation, counsel for respondent noted that the claimant's behaviour thus far had been to deflect issues and refuse to accept any responsibility. His approach had been to criticise others.
315. Both panels weighed up the competing positions on this point. They concluded, after careful deliberation, that mediation would be fruitless. While it may be a conclusion with which some would disagree, even a reasonable employer, in my view it was not an unreasonable conclusion to reach and the approach taken fell within the range of responses open to a reasonable employer.

Failure to disclose investigations regarding claimant's practice

316. Fifthly it was argued that neither panel had been told that that at the time the relationships were alleged to have broken down the claimant was under 2 investigations regarding his clinical practice for over 3 years, one internal investigation (under the MHPS process) and one in relation to the professional body, GMC. It was argued that had the panels been made aware of this, they may have discounted the claimant's responsibility for any apparent breakdown in relationships.
317. Counsel for the respondent argued that this was not a conduct dismissal and the investigation and process was in relation to the fact that relationships had broken down. The reason for the breakdown (and liability in respect of that) was not an issue. The claimant was arguing that once the clinical issues were dealt with the issues would disappear but that was not borne out by the facts.

Moreover Ms Balson was on the first panel and she had an oversight of the issues pertaining to the claimant.

318. Counsel for the respondent argued that the historical issues and the relationship issues predated the formal clinical issues arising showing that the real issue was the fact that the relationships had broken down, irrespective of the clinical investigations. This was not a matter the claimant had raised at the time.
319. I prefer the respondent's submissions in this regard which are well founded. The issue was whether or not workplace relationships were broken (or not) and whether or not, if they were, it was possible to salvage them.
320. The reason for the dismissal was the fact that workplace relationships had broken down which was considered to be irreparable. The evidence before the panel was such that serious relationship issues had pre-dated the internal and external clinical issues. While a reasonable employer might well have referred to this issue, I do not consider that failing to specifically raise it was unreasonable. Those who provided evidence to the panel were aware of the ongoing issues and processes, which included individuals against whom the claimant had not raised any grievances or concerns (and vice versa).
321. There could be no doubt that the processes pertaining to the claimant would have caused him stress and that some of those responsible for those processes were his colleagues. But that does not explain why his approach was the same in relation to those colleagues who had no involvement in the formal processes. The theme that emerged following the respondent's investigation was that the workplace relationships the claimant had with his senior colleagues had broken down. That had been the position for some time. The fact there were outstanding investigations did not alter that fact. The respondent reasonably considered the information it had before it and reached a conclusion that fell within the range of options open to a reasonable employer.
322. The respondent's approach to this matter did not fall outwith the range of reasonable responses. Their approach was reasonable.

Failure to disclose fact disciplinary process against claimant was paused

323. Sixthly, the panels were not told that the disciplinary process that had been initiated against the claimant (in respect of his comments towards Dr Ismail) had been suspended. Had that process continued, it is possible that the claimant may have received a warning which could have led to an improvement in the relationship.
324. The respondent's position was that the claimant's lack of insight into the relationship issues rendered any warning futile. It was argued that at no point did the claimant realistically accept that there was an issue with regard to relationships or that there was a real problem.
325. The respondent decided to pause the disciplinary process to allow consideration to be given if workplace relationships had fundamentally broken

down. It was not unreasonable to do so given the history and evidence in support of that proposition. The failure to specifically advert to this in my view does not render the dismissal unfair. It was reasonable for the respondent to pause the disciplinary process and look at the factual position. The claimant had the opportunity to raise any issues with the evidence presented. The issue is whether the respondent acted fairly and reasonably in all the circumstances in light of the approach it adopted.

326. Ms Balson clearly did have knowledge of the pausing of the process. Those who provided evidence to the process also knew.
327. The evidence before the respondent showed that the relationships had been broken for some time and that the claimant lacked insight. While a reasonable employer may well have advised the panel as to the pausing of the disciplinary process, it cannot be said a reasonable employer would not equally do what the respondent did given the circumstances. This failure did not therefore render the process unfair.

Failure to check potential for conflict of interest

328. Seventhly, the failure to establish whether or not there was a conflict of interest between one solicitor from the firm seeking to persuade both panels to dismiss, with another solicitor from the same firm advising both panels. The argument here was that it was possible one solicitor could be more senior than the other, even if both were partners. For example, it was possible that the solicitor seeking dismissal panel could be the most senior equity partner with the solicitor advising the panel could have been a newly promoted and most junior partner. That, said the claimant, could potentially create a conflict of interest.
329. Counsel for the respondent maintained that there was no impropriety in 2 solicitors from the same firm being part of this process. It was no different to barristers within the same chambers. There was no suggestion that there was any impropriety or conflict. The respondent was entitled to rely upon the professionalism of the solicitors. Without any specific suggestion of impropriety the respondent was entitled to proceed as it did. These were professional solicitors and without any specific conflict arising, there was no issue.
330. It is important to ensure that a fair process is followed prior to dismissing an employee. Natural justice should be followed, albeit the ACAS Code is not applicable to a some other substantial reason dismissal. The decision maker in this case were employees of the respondent. They were advised by a solicitor. A solicitor from the same firm led management case. The respondent considered the professionalism of the respective solicitors and resolved to proceed.
331. The clear evidence before the Tribunal was that the decision makers were the respondent's employees. They made their decision from the evidence presented. There was no suggestion they were influenced improperly by their adviser whose role was to provide legal advice. Employers are entitled to rely upon the professionalism of solicitors. Had the decision maker been a solicitor

from the same firm, clearly the position would have been markedly different but that was not the position here.

332. The evidence showed the panel carefully considering the evidence presented and reaching a decision in their own view. The failure to take steps to verify the standing of both solicitors did not affect that position. I do not consider the respondent to have acted unreasonably. Their approach in this regard did not render the dismissal unfair.

Predetermination of mediation

333. Eighthly, the claimant's counsel argued that the outcome of mediation was predetermined with no genuine consideration given to its potential utility. The claimant suggested mediation in April 2016 but his request was ignored. The respondent argued that it was reasonable from the evidence for the respondent to conclude that mediation would have been pointless.
334. The panels both gave very clear and compelling reasons why they considered mediation to have little prospects of success. While the evidence before the panel did suggest that some of the parties were amenable to reparation, there was clear evidence that some of the claimant's colleagues considered the position to have become irreparable. There was very clear evidence that the claimant and his line manager, the current clinical manager's relationship had broken down and there was no reasonable prospect of it being fixed.
335. There was a history of the claimant being unable to work with clinical managers and those occupying that position found it exceedingly difficult to manage the claimant. Again other reasonable employers may well have decided to delay and try mediation but this is not a counsel of perfection and the question is whether the respondent acted fairly and reasonably in all the circumstances. The failure to proceed with mediation fell within the range of responses open to a reasonable employer in these circumstances.
336. The respondent did not act unreasonably in concluding that mediation had little prospect of success.

Appeal panel considering additional evidence

337. Ninthly, counsel for the claimant submitted that the fact the appeal panel considered additional evidence which was not presented to the claimant, the statement from Mr Beatty (which itself contained another red flag suggesting the claimant's health could be an issue) rendered the dismissal unfair. The appeal panel went beyond the reasons for the original dismissal and took account of facts not even known to the claimant – since the statement suggested that other staff (secretaries) were unable to “get on” with the claimant: that had not been put to the claimant for his comment.
338. Counsel for respondent argued that there was sufficient information within the original report to evidence the fact that the relationships had fundamentally broken down. The appeal panel chose to check an additional witness but there was no evidence that the appeal panel would have reached a different decision, absent the additional evidence. The suggestion that the additional

statement would have made a difference was not put to the appeal panel in cross examination.

339. The decision to dismiss is a process ending upon the appeal decision. I have considered this issue carefully. There was no evidence that suggested the appeal panel would have reached a different conclusion to the original panel absent the additional evidence, which they found to confirm the position of the original panel. The clear evidence from the appeal panel was that they concurred with the original panel and that the overwhelming evidence they had supported the decision that workplace relationships had broken down irreparably.
340. Had there been a suggestion that the evidence before the original panel was incomplete or erroneous and had that not been put to the appeal panel the position may have been different. The additional evidence obtained corroborated the existing evidence (and in some ways suggested that relationship breakdowns had gone beyond medical staff).
341. The approach adopted was not consistent with good practice since the claimant ought to have been able to comment on the evidence. But there was no suggestion had he done so the outcome would reasonably have been materially different. The appeal panel were satisfied the original decision (based on the information before the original panel) was reasonable and fair. The additional evidence they obtained did not alter that fact. The information obtained by the appeal panel confirmed what the original panel's view was and on that basis did not alter the outcome.
342. Ultimately even although the failure to seek the claimant's comments on the information was not good practice, I am not satisfied the respondent acted unreasonably in all the circumstances given the nature of this issue. The appeal panel were satisfied the decision taken by the dismissing panel was reasonable and fair on the information available before them. The additional information supported that position. This issue did not render the process or dismissal unfair. The approach taken by the respondent fell within the range of responses open to a reasonable employer in the circumstances.

Failing to make health enquiries

343. Finally, counsel argued that the failure to make any inquiries into the claimant's health position rendered the dismissal unfair. Mr Gambir and Mr Beatty in their statements indicated that the claimant's health could potentially be a factor in relation to the claimant's behaviour. The fact this was not raised at all by the claimant did not assist the respondent, argued the claimant's counsel, because the respondent had a duty to send the claimant to occupational health. Any reasonable employer would recognise the need to refer the claimant to occupational health particularly given the history of the claimant complying with occupational health referrals.
344. Counsel for the respondent submitted that the medical evidence before the respondent was that there were no medical or health issues affecting the claimant. While 2 of the respondent's consultants thought the claimant's health could be an issue, there was no basis for that assertion (other than

conjecture) and other disputed this, some by suggesting the behaviour was simply the way the claimant acted.

345. Further the claimant himself at no point suggested his health was in any way affected and in cross examination conceded that (in his view) in fact there was no health issues.
346. At no stage did the claimant or his advisers (who were in contact with the respondent regularly) argue that medical intervention should be sought. The claimant himself conceded that there were in fact, in his view, no health issues pertaining to him in this matter. The occupational health consultant was not saying there were health issues (and indeed the suggestion was to the contrary). Further while 2 of the witnesses suggested there may be health reasons for the claimant's behaviour, others (such as Mr Husain) pointed out that this was the way in which the claimant acted at work. It was his personality.
347. The decision by the panel not to seek medical input in the circumstances was not unreasonable. The claimant himself was a medical professional and could have raised any issue if he or his advisers believed there to be an issue. He did not believe there were any such issues. He was not an expert in this area, but neither was Mr Gambhir and Mr Beatty. The claimant during cross examination conceded there was in fact no issue.
348. The clear evidence was that workplace relationships had broken down. The failure to seek medical input as to the claimant's position when this was not clearly an issue was not unreasonable. While some employers might well have done so, the failure in these facts was not unreasonable.
349. The panel reasonably considered all the evidence and reached a conclusion which was a reasonable conclusion in the circumstances.

Did the decision to dismiss fall within the range of reasonable responses?

350. The final issue was to determine whether or not the decision to dismiss fell within the range of responses open to a reasonable employer
351. Counsel for the claimant argued that the relationship issues could have been resolved had the "red flags" been picked up. He submitted that the absence of any grievances from the previous clinical directors created an issue for the respondent. The claimant argued the difficulties stretch back to 2005 and yet there were no issues raised formally. Managing consultants can be challenging and the department appears to function successfully from 2005. It is weak to argue that for 9 years before 2014 there were problems to such a degree that dismissal in 2017 is justified.
352. Prior to 2013 (with exception of August 2010) there were no issues arising, including with several clinical directors. There was 3 years presumably when no issues arose. Even if the respondent is correct and the claimant did not get along with the clinical directors, that did not cause any substantive issue

353. Even if the relationship with one manager had fundamentally broken down, in counsel for the claimant's submission, the dismissal would still be unfair unless the case actually presented by the respondent, that the relationship had fundamentally broken down, is established. This is because the panels both dismissed the claimant on that basis
354. Counsel for the claimant argued that there were significant procedural and "reasonableness" failings by the respondent which render the dismissal unsafe. Consideration should be given to equity and the substantial merits of the case. The claimant is a long servicing consultant. The fact he did not participate in the investigation cannot result in any culpability.
355. It was argued that the claimant did have insight into the relationship issues, shown by the email in April 2016. Mediation ought to have been progressed given the evidence. It was important to look at the omissions in this case since not taking something into account when such matters ought to have been taken into account is a powerful reason why the dismissal can be unfair.
356. I note that the claimant accepted in cross examination that all clinical directors that he had worked with had said their relationship had broken down. In answer to whether or not his considered the relationship to have broken down the claimant believed that his role did not require significant interaction with his MSK colleagues but rather other clinicians. He did not believe that interaction with his colleagues was as significant as they did. He also believed that he had to close his door to reduce noise. Nevertheless the claimant's colleagues' evidence on this point was very clear. They considered there to be very serious issues with regard to the workplace relationships with the claimant. The claimant was unable to provide any basis for challenging that evidence. It was important for colleagues to work together and for teams to operate effectively.
357. The respondent was reasonably concerned that issues had arisen with regard to the claimant and his working relationships. They sought to firstly establish the facts. They spoke to those who worked with the claimant and approached the matter with an open mind. The respondent actively encouraged the claimant to provide his input into the investigation so they could consider any issues he raised. The claimant chose not to participate in the process.
358. The claimant did not substantively challenge the evidence that had been obtained at all during the process. The evidence he presented, by way of the 360 appraisal feedback, did show working relationships with other staff but had no bearing on those with whom the claimant worked as part of the MSK team, in respect of which cogent evidence had been presented evidencing a serious breakdown in workplace relationships. That included colleagues about whom the claimant had no issue.
359. The claimant did not specifically challenge the evidence of those who said their working relationships with the claimant had broken down. There was no reason for those individuals to invent or exaggerate the position. The individuals were senior professionals. There was no suggestion from the claimant that there were specific reasons why, as medical professionals, those individuals would be swayed by some pre-determined desire to remove

the claimant unfairly. They provided their considered position in relation to the workplace relationship position.

360. The process the respondent undertook was not perfect. The failings identified by the claimant above were not irrelevant and I have considered those individually and cumulatively very carefully in assessing the fairness of the dismissal. Many reasonable employers would have adopted the process suggested. Ultimately the test is one of reasonableness in all the circumstances but that is not to say what the respondent did (or did not do) falls outwith the range of responses open to a reasonable employer.
361. Both panels gave clear evidence that they considered the full picture and all the evidence in their possession. They looked at the claimant's position and the evidence from his colleagues. The conclusion they reached and the process they adopted fell within the range of responses open to a reasonable employer.
362. I have also taken a step back to look at the process undertaken generally in light of the statutory wording and the test in this area. I carefully assessed the approach taking account of the failings identified by the claimant. On balance it cannot be said that the process that was undertaken in light of the prevailing facts fell outwith the range of responses open to a reasonable employer. While many reasonable employers would have conducted it differently I am satisfied that the respondent's approach and dismissal of the claimant fell within the range of responses open to a reasonable employer.
363. I require to consider whether or not the dismissal of the claimant for the stated reason was fair and reasonable in all the circumstances taking account of size, resources, equity and the merits of the case. I have carefully looked at the evidence presented and the prevailing circumstances in this assessment and I have concluded that in all the circumstances the dismissal and process undertaken was fair.
364. In all the circumstances the decision to dismiss was fair and the claim is not well founded. The claims are therefore dismissed.

Employment Judge Hoey

Dated: 1 April 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

7 April 2020

FOR THE TRIBUNAL OFFICE

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