EMPLOYMENT TRIBUNALS

Claimant	**Respondent**
v	
Mr John Page	**Public and Commercial Services Union**

Heard at: London South Employment Tribunal via CVP

On: 30 November – 4 December 2020
27 January 2021 (In Chambers)

Before: **EJ Webster**
Ms Blake
Ms Edwards

Appearances

For the Claimant: **In person**

For the Respondent: **Mr B Jones (Counsel)**

RESERVED JUDGMENT

1. The Claimant's claim for unfair dismissal fails and is dismissed.
2. The Claimant's claims for victimisation fail and are dismissed.

REASONS

The Hearing

1. The hearing took place by way of CVP with the agreement of both parties. Regular breaks were taken. The Tribunal was provided with over 1100 pages bundle and further documents were provided during the hearing.

2. The claimant represented himself but had in the past been a qualified barrister with some employment tribunal experience and ably represented himself. The claimant provide a witness statement and a supplementary witness statements. The Tribunal heard from the following witnesses for the Respondent:

Sian Manaz – Head of Communications and Engagement

David Tiley – Communications Manager

Nick McCarthy – Director of Campaigns and Communication

Lisa Burnell – HR & Personnel Manager

Jeff Evans – Director of Central Services

3. The issues had been agreed prior to the hearing and were reconfirmed with the parties at the outset of the hearing. The Claimant also helpfully clarified which alleged protected acts caused which alleged detriments. This is recorded below in the table at the end of the List of Issues.

4. At the outset of the hearing the claimant made an application to amend his claim in two ways both of which were granted and are reflected in the List of Issues set out below.

5. During the hearing the claimant withdrew the following victimisation detriments from the allegations against any of the individuals:

(i) Stating that the sanction would be taken into account when reviewing the claimant's appointment when deciding whether he would be confirmed in post;
(ii) Retrospectively introducing a probationary period;

This change has been reflected in the List of Issues below.

6. The respondent applied to have two documents added to the bundle. This was allowed.

The Issues

<u>Victimisation</u>

Protected Acts

7. It is admitted that the Claimant did a protected act:
   a. On 20th March 2018 by emailing Andrew Simpson to highlight that the version of the respondent's 'Policy Statement on Opportunities and Diversity' in use was not up to date with developments in equality law.

Did the claimant also do protected acts in each/any of the following alleged ways:

   b. From March 2019 onwards, leading a purported integration of work between the respondent's organising team and its equality team, in particular;
      (i) Undertaking specific responsibilities for liaising with the union's head of equalities,
      (ii) Advising the organising and regional teams on how to address under-representation of groups with protected characteristics within the union's structures, and
      (iii) Recommending that as part of the union's 'joiner journey', members with relevant protected characteristics be informed and invited to participate in the union's 'self organised groups' (on ethnicity, sexuality, gender and disability).
   c. Preparing and delivering training materials on 'organising for equalities' delivered to the union's regional activist meetings in advance of the strike ballot and to the aviation group at the respondent's national conference between 22 and 24th May 2018;
   d. At that same national conference, having a discussion with about integrating the respondent's organising and equalities agenda;
   e. On or around 23 June delivering a workshop to the Respondent's national women's seminar;
   f. On 25th June 2018 asserting '*I have been bullied and attempts have been made to intimidated me (including thorough the process of this complaint) for no other reason than I have a professional commitment (as well as an obligation under the union's equality policy) to promote the work of the equality team in the process of organising*.'
   g. Raising similar concerns throughout the disciplinary hearing. Including (by way of illustration) in his summing asserting: That the actions of Sian Manaz from 24 May onwards, including her conduct at John's desk on 7 June was bullying and victimisation as defined by the Equality Act'.

<u>Alleged Detriments</u>

8. Did the respondent subject the claimant to a detriment in any of the following alleged ways:
   a. By Sian Manaz:
      (i) From 24 May onwards, refusing to work with the claimant;
      (ii) On or around 24 May, 'blanking' the claimant;
      (iii) On or around 24 May Sian Manaz failing to respond to an email from the claimant requesting a meeting;

(iv) From 24th May to 7th June 2019, engaging in an email exchange to effectively avoid arranging a meeting;
(v) On or around 30 May undermining the claimant by asking his manager if he had authority to progress a piece of work;
(vi) Sometime between 24 May and 7 June, undermining the claimant by suggesting to his manager that she had received mixed messages from the organising team;
(vii) On or around 7th June 2018 undermining the claimant by telling an open plan office that he had not replied to an email of hers and then raising her voice over his; and/or
(viii) By complaining on the 7th June 2018 to the claimant's line manager about the incident, stating that the claimant had spoken 'very loudly' and misrepresenting the incident
(ix) Subsequently making a further complaint over the head of the claimant's manager this time making an untrue assertion that the claimant had 'shouted'

b. By Nick McCarthy:
(i) *'Systematically ignoring'* the union's disciplinary process in his handling of Ms Manaz's complaint by:
(A) On or about 13 July, issuing a notice of a disciplinary allegation before investigating the facts,
(B) On or about 4 August seeking to reframe the allegation including introducing two new disciplinary issues without raising these with the claimant during the investigation phase and not giving the claimant ten-days notice of these new allegations against him;
(C) Failing to particularise the allegations against the claimant at the hearing;
(D) Pursuing disciplinary allegations while depriving the claimant of the opportunity to question management witnesses by not calling live evidence from Ms Manaz or any of the management witnesses
(ii) On early August refusing to share his notes of investigation meetings;
(iii) In regard to the disciplinary hearing refusing to make available a copy of the original email of complaint between Sian Manaz and Peter Lockhart
(iv) On or around 13 June refusing to consider mediation between the claimant and Ms Manaz on the basis that the claimant had alleged victimisation on her part;
(v) Failing to pursue or actively concealing available documents that would indicate the veracity or otherwise of Sian Manaz's allegation that she had been receiving 'mixed messages' from the organising team about the content of the joiner journey, giving an assurance to do so, obstructing the

claimant's attempts to secure those documents, and subsequently declining to allow the Claimant to admit late documents into the disciplinary hearing following an adjournment

(vi) On 25th October 2018 finding that the claimant had breached the code of conduct;

(vii) Imposing a one year warning in respect of the breach of the code of conduct;

(viii) ~~Stating that the sanction would be taken into account when reviewing the claimant's appointment when deciding whether he would be confirmed in post;~~

(ix) ~~Retrospectively introducing a probationary period;~~

(x) Telling the claimant that if his allegations of bullying were found to be false then further disciplinary action could follow.

c. By Jeff Evans:

(i) On 17 August 2018 threatening the claimant with disciplinary action for raising concerns about the disciplinary process. It it's not acceptable for you to be calling into question the integrity of our HR disciplinary process… if this happens again, I will have no option but to take the appropriate course action'

(ii) Failing to provide a commitment that the claimant's appeal against his disciplinary outcome would be heard by someone more senior than the original hearing officer.

(iii) Not requiring the claimant to work his notice, or be on gardening leave, following his resignation on 10th December 2018.

(iv) On 25th October 2018 finding that the claimant had breached the code of conduct;

(v) Imposing a one year warning in respect of the breach of the code of conduct;

(vi) ~~Stating that the sanction would be taken into account when reviewing the claimant's appointment when deciding whether he would be confirmed in post;~~

(vii) ~~Retrospectively introducing a probationary period;~~

(viii) Telling the claimant that if his allegations of bullying were found to be false then further disciplinary action could follow.

d. By Dave Tilley:

(i) Producing a '*dishonest' witness statement that that falsely asserted that the claimant had shouted and that Sian Manaz was visibly upset* in respect of events of 7th June 2018 and/or

(ii) In early December 2018 refusing to provide materials requested by the claimant and instead suggesting

that he provide a 'timeline' of messaging that the organising team might require.

Protected Act	**Detriments arising from the actions of**
B – E	Sian Manaz:
F, G	Nick McCarthy:
A, F, G	Jeff Evans:
B – E	Dave Tilley:

Limitation

9. In respect of each of these acts that are out of time:
   a. Did they form part of a continuing act such as to bring them in time?
   b. If not, would it be just and equitable to extend time?

Victimisation

10. If the above named individuals (or any of them) subjected the claimant to a detriment as alleged under paragraph 2: was this because of the claimant having done any protected act(s), as alleged under paragraph 1?

Constructive Dismissal

11. If the respondent is found to have victimised the claimant:
   a. Did the relevant detriment(s) amount to a fundamental breach (or breaches) or contract and, if so;
   b. Did the claimant respond sufficiently promptly in response to any such breach?

Remedy

Has the Claimant suffered a loss as a result of any breach of s. 27 EqA. If so what remedy should be ordered by way of:

a. Compensation

b. Injury to feelings ; and/or

c. Recommendation(s)

i. That the Respondent within a three month timescale updates its HR policies to fully incorporate the protections against discrimination and victimisation afforded to staff as a consequence of the Equality Act 2020.

The Law

Victimisation

12. Section 27 Equality Act 2010 provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

13. S.136 EqA provides:

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

14. When considering whether a detriment has been caused by the protected act a tribunal should consider whether any protected act or acts was/were a ‘significant’ (more than trivial) influence on the doing of the detriment (Nagarajan v London Regional Transport [1999] ICR 877). This requires a consideration of the employer's motivation (conscious or unconscious). It is not a 'but for' test. Chief Constable of Greater Manchester Police v Bailey [2017] EWCA Civ 425.

15. To shift the burden of proof to the respondent, a claimant needs to show 'something more' than a difference in treatment between the claimant and someone who does not share the same characteristic, or in this case, has not committed the protected act. (Madarassy v Nomura [2007] ICR 867)

Unfair Dismissal

The dismissal of a qualifying employee will be unfair unless:

16. The employer can show that the reason (or principal reason) for the dismissal was one of the five potentially fair reasons *(section 98(1) and (2)*, ERA 1996).

17. An employee will be constructively dismissed if "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct" (*section 95(1)(c), ERA 1996*). Case law has established that there is a constructive dismissal when the following occur:

- There is a repudiatory breach by the employer of the express or implied terms of the contract.
- The employee resigns in response to that breach.
- The employee does not delay unreasonably before resigning

18. In *Western Excavating (ECC) Ltd v Sharp [1978] Q.B. 761* Lord Denning stated:
"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."

19. For the employee to show that the employer's actions have destroyed or seriously damaged trust and confidence, or were calculated or likely to do so. The employer must have had no "reasonable and proper cause" for the actions in question.

20. The employer's motives are not crucial in judging whether the term has been breached. If, when objectively considered, conduct is likely to cause serious damage to the employer/employee relationship, a breach of the implied term may have arisen.

21. As the respondent stated in submissions, not every act of discrimination or victimisation will be a repudiation and constructive dismissal does not automatically flow from a resignation in response to such a breach (as in Amnesty International v Ahmed [2009] ICR 1450). However it is likely that most acts of discrimination could amount to a fundamental breach of contract and each case must be taken on its facts.

22. In this case, the claimant must establish that any breach he has resigned in response to was an act of victimisation under the Equality Act 2010 as he has less than 2 years' continuous employment. It is not sufficient for him to establish that there has been a repudiatory breach of contract whether that be a breach of an express or implied term, any such breach must also be an act of victimisation.

Facts

General observations/Background

23. The claimant was employed by the respondent on 5 March 2018 as an Organiser, Band 4 within the Strategic Organising team. It is not in dispute that his role included working with the Equalities Team and the communications team. By necessity, his role included him carrying out a significant amount of work that referred to or relied upon the Equality Act 2010. His work involved involved 'organising' around the Equalities agenda and working with the Head of the Equalities team.

24. This claim essentially arises out of an altercation between the claimant and another member of staff and the subsequent investigation and disciplinary process that followed. The facts at a high level are relatively simple but the claim brought by the claimant relies upon the detail of the events leading up to the altercation, the altercation itself and the subsequent investigation. For that reason, the findings of fact are relatively lengthy.

25. It is not in dispute that shortly after joining the respondent he sent the email (p139) on 20th March 2018 expressing concern and surprise that the respondent's 'Policy Statement on Equality, Opportunities and Diversity' was not up to date and did not reflect the Equality Act 2010.

26. The response he received from Andrew Simpson confirmed that they were aware of the document being outdated and stated that the situation was being worked on with the staff union (GMB) and that they hoped it would be signed off soon. The respondent accepts that the claimant's email was a protected act for the purposes of s27 Equality Act 2010.

27. The claimant was given the remit, by his line manager, to work on what is described as 'The Joiner Journey'. This refers to the 'journey' that a new member would go on before, during and after becoming a member. The case before us involved discussion as to what that journey ought to consist of. There is, according to the witnesses we heard from, an ideological disagreement. within the respondent as to what new members ought to be promised and/or experience when they first sign up. Very simply, this split can be summarised into two possibilities:

(i) The journey should reflect a 'What can I get from my union?' message; or
(ii) The journey should reflect a 'What can I do for my union/how can I get involved?' message.

28. The claimant tended towards believing in the latter, as did Mr McCarthy who we also heard from. Others within the team apparently believed more in the former message which involved promising discounts on various products and services.

29. Ms Manaz started working for the respondent in 2006. The claimant went to some lengths to attempt to discredit Ms Manaz's dedication to the 'equality agenda'. The attempt to discredit Ms Manaz went to the extent of writing to a mutual connection who is now an academic to enquire whether Ms Manaz had indeed done some research for them on a book over 30 years ago as set out in her witness statement for this case. The academic confirmed that she had. The lengths to which the claimant went to in order to try to discredit everything that Ms Manaz says that she stood for was not borne out by the evidence we heard and the documentary evidence before us. However, the single-mindedness of the claimant in attempting to undermine Ms Manaz's reputation, reflected negatively on the plausibility of his evidence and allegations against her as it demonstrated an unwillingness to believe anything she said including something as relatively minor as her work experience many years ago.

30. The claimant placed great significance on a meeting he had with the general secretary at the outset of his employment with the respondent. He states that at the meeting the general secretary said that the argument for organising had been won but that there were still significant numbers of staff within the respondent who would push back at the messages that they had and that this would be something they would need to contend with and ought to resist. The claimant has recalled this in his witness statement at paragraph 16 and, as part of this case, has cast on some of the witnesses, as the people who the general secretary had warned him about at that meeting i.e. people intent on standing in the way of the movement. We note this here because it formed an important part of the picture that the claimant attempted to paint for us and to justify his behaviour towards Ms Manaz and the other managers during the subsequent disciplinary process.

Conference 22 May -24 May

31. Both the claimant and Sian Manaz attended the respondent's annual conference. Also attending the conference was PG who was head of the Equalities Team.

32. There was significant discussion around the relationship between Ms Manaz an PG. The claimant alleges that they did not get on and that Ms Manaz had a particular antipathy towards PG.

1. We find that there had clearly been difficulties in the relationship prior to the claimant's employment. Mr McCarthy and Ms Manaz gave evidence to say that this had been resolved through mediation and that although Ms Manaz and PG were not friends they had a functioning and professional relationship. We accept their evidence in this regard. The claimant was not able to provide any evidence to the contrary save for his allegations about what happened to him.

There were no historic or active grievances between Ms Manaz and PG, both remained employed by the respondent and continued to work at a senior level which required mutual co-operation and we were given no reason to disbelieve Ms Manaz's evidence in this regard given that it was confirmed by the other respondent witnesses as well.

2. The claimant placed huge weight on a conversation he had with Mr McCarthy where Mr McCarthy had said something along the lines of it being unhelpful that the claimant was inserting himself into the relationship between PG and Ms Manaz. In evidence, Mr McCarthy accepted that he had said something along those lines. However he also confirmed to us that the matter had been resolved some time earlier and that there were no grievances between the parties and the issue was over. Ms Manaz confirmed the same. We are therefore unclear as to the significance of the comment by Mr McCarthy other than it confirming historic difficulties between Ms Manaz and PG which everyone accepts were there but had been resolved.

33. The claimant states that whilst at conference he had a coffee with PG in the foyer at the conference centre. We have no evidence as to what they discussed save for the claimant's evidence – however we are prepared to accept that they may well have been discussing the equalities agenda given that it was an important part of both their roles.

34. However we do not accept that simply by associating with the PG, all of the claimant's professional activities with PG were automatically deemed to be about 'equality'. The claimant claimed that Ms Manaz had seen him with PG, overheard and/or known that they would be discussing the equalities agenda and had effectively changed her behaviour towards him thereafter. We address the subsequent incidents relied upon as demonstrating a change in behaviour below. However we conclude that Ms Manaz did not overhear the detail of this conversation nor that simply seeing two colleagues conversing would result in the claimant being now associated with equalities. He was already known to be an organiser working with the equalities team, at this stage nothing new had come to Ms Manaz's knowledge that could plausibly prompt a change in behaviour beyond a potential friendship with PG. Being friends with a colleague is fundamentally different from being associated with equalities or treated badly for a reason related to the Equality Act.

35. In relation to the occasion at the conference, we prefer Ms Manaz's evidence that she was extremely busy, that she was collecting inaccurate leaflets and that she did not overhear any part of the conversation between them. By the claimant's own evidence, he simply saw her and tried to make eye contact. He did not assert that she had stood nearby and actively listened. At best she may have overheard a snippet of conversation but we accept her evidence that she would have placed no relevance on it or remembered it. No plausible reason was put forward by the claimant as to why she would place any importance on seeing two colleagues having a conversation together.

36. We also accept Ms Manaz's account that she was trying to collect the incorrect leaflets as unobtrusively as possible and was concentrating on that

task so any failure to make eye contact with the claimant was not deliberate and did not amount to her actively snubbing the claimant or PG.

24 May – after the conference

37. At 11.23 on the last day of conference, the claimant sent Ms Manaz the email at page 213. In that email he requested a meeting to discuss the 'joiner journey' and the communications around that.

38. That afternoon, both Ms Manaz and the claimant ended up back at the respondent's offices. Ms Manaz stated that by this time she had not had time to see or properly engage with the claimant's emails. She accepts she did not respond to the email on the same day because she was very busy. We accept that she was very busy at this time. All witnesses including the claimant accepted that the union members had called a pay ballot at conference which would take place a few weeks later. Such a ballot would involve a huge amount of work for Ms Manaz and her team because the law around ballots had changed recently and this would be the first ballot under the new rules and they had brought the deadline to print the ballots forward.

39. The claimant states that the following occurred

I said, hello and that I had dropped her an email seeking to arrange a meeting. I expected her to be pleased that this was moving forward. However, she was very hostile. She pretty much grunted out one word replies, and made it absolutely plain that she did not want to speak to me, or arrange a date in the diary.

40. Ms Manaz accepted that when he approached her desk she had said she did not have time to look at his work. She had a lot of deadlines. However we accept her evidence that she realised she may have come across as rude and that she apologised and explained to him that she was in the middle of urgent work and could not give him the time right then. We do not accept the claimant's account that this was symptomatic of her trying to defeat his work or her anger at him having had coffee with PG. We accept that any rudeness, perceived or otherwise was caused by her workload and deadlines at the time.

41. The claimant then chased a response on 30 May also via email. Ms Manaz responded shortly thereafter, on the same day, and asked him for some text. The claimant interpreted that as requesting a framework, including timetable for the comms and meetings, which he had already been working on. Ms Manaz on the other hand was expecting some copy text that she could use to write into the emails etc that would have gone to members. Unfortunately neither individual appeared to understand the other's interpretation of what was needed at this stage until the Tribunal hearing.

42. The claimant duly sent his framework document on 30 May thinking that he had therefore provided the information Ms Manaz had requested. He assumed that what would then follow would be a meeting to discuss the process. Ms Manaz on the other hand did not progress the issue at this point as she felt she had not received what she needed. ~~However~~ Unfortunately she

did not tell the claimant that at this stage. However there was no refusal by Ms Manaz to work with the claimant – they were simply talking at cross purposes.

Altercation on 7 June

43. On 7 June the claimant chased Ms Manaz by sending her another email asking her when they could meet or whether he could meet with another member of her staff to discuss the Joiner Journey. Ms Manaz responded saying that she had already asked him for some text and reiterated that request. The claimant felt that he had already complied with this by sending his framework document and did not understand why she was still asking for something. This is because they both continued to misunderstand what the other was talking about in terms of 'text'.

44. Shortly thereafter the claimant and Ms Manaz had what is best described as a verbal altercation near the claimant's desk. The claimant asked Ms Manaz whether she had even read his document sent on 30 May. There was some dispute about whether either person shouted or raised their voices. We find that this was a bad-tempered conversation with raised voices that could easily be interpreted as shouting. The difference between raised voices and shouting in a bad-tempered conversation is of little importance if the intent behind the volume is the same. We accept that they probably interrupted each other and that it was an unpleasant altercation within the workplace. The Claimant admitted that he said 'Whatever' at the end of the conversation.

45. We accept that Ms Manaz was upset by the exchange and had to leave the room to collect herself. We also find that the claimant then sent the email at 11.48 having had that altercation even if he, by his own evidence, had started drafting it before the altercation; he pressed send afterwards. The email at *page 207 reads:*

Hi Sian,

Perhaps you did not see my reply (attached again for your info)?

I am disappointed that you are progressing this without input from the organising team, particularly as I have asked repeatedly for a meeting.

It makes no sense for this to be progressed separately.

There clearly is a problem here, I am just unaware what it is.

Regards,

John

46. We do not accept that Ms Manaz was avoiding having a meeting with the claimant between 24 May to 7 June about the Joiner journey. We accept that Ms Manaz felt that she had requested a text that would contribute to the emails in a Joiner Journey and had not received that from the claimant. She reiterated that request when chased. Whilst this was a key piece of work for the

claimant we also accept that Ms Manaz was, at the time, trying to organise the pay ballot material and had a huge amount of work on that took precedence. The claimant tried to assert that it would have been the best opportunity for new joiners to have the new joiner journey set out whilst the ballot was ongoing. This may have been the case but that does not prevent the reality being that Ms Manaz was very busy and had other priorities.

47. In between the emails between Ms Manaz and the claimant, Ms Manaz forwarded the email and attachment that the claimant had sent her on 30 May to his line manager, Peter Lockhart. The claimant alleges that this was a deliberate attempt by Ms Manaz to undermine the claimant by asking the manager as to whether he had authority to progress the piece of work. He also asserts that her statement that this was mixed messages from the organising team was a deliberate attempt to undermine him.

48. We disagree. We conclude that Ms Manaz had read the document and felt that firstly it was not a text that she could use to populate emails to members and secondly that it appeared to be different from the requests that another organiser (SF) had requested around his project of 'Boundless'. SF had requested that new member communications include information about the benefits available to members such as discounts etc. The claimant's comms request was more around what members could do for the union e.g. activism and engagement in the cause. Before us the claimant asserted that the two were not mutually exclusive and were not conflicting. Ms Manaz stated that given that all the comms was going to new members, there had to be a balance in content and she therefore felt that there was a potential conflict. She sought clarity on the team's priorities from the manager.

49. We conclude that her actions in forwarding the email to Mr Lockhart demonstrates that she was not ignoring the claimant or his requests. Further we conclude that she was not undermining him, merely seeking confirmation from the team leader as to what the team's priorities were at a busy time. The requirement to prioritise or clarify the situation is supported by Mr Lockhart's response at page 184 when he says,

"Oh bloody hell. I'll sort out."

50. Shortly after the altercation Ms Manaz contacted Mr Evans to discuss the incident. He recommended that she set it out formally. She did not want to escalate it but she did want to record it. She sent it to the claimant's line manager (PL) on a timed delay because he was on bereavement leave. That email does not make reference to shouting but it does talk about raised voices and the claimant 'ranting'. As stated above we find that the reality of any difference between people's perceptions of shouting and raised voices is minimal. She clearly describes an upsetting altercation with a colleague that she found difficult to deal with. We do not consider that sending this email was unreasonable behaviour in the circumstances. It is also clear that the motive for sending the email was the incident on 7 June.

51. Much was made by the claimant of the alleged differences between the claimant's interpretation of the altercation on 7 June and Ms Manaz's. However, the only meaningful difference that the claimant relies upon is the volume at which the conversation took place which we find to be a largely subjective measure in these circumstances. Ms Manaz's account in her initial email to PL does not refer to shouting but loud voices and ranting. Her subsequent formal complaint does say that he shouted towards the end. We do not find that this is a significant difference or one that was engineered to misrepresent the altercation. Clearly both experienced the conversation differently but their accounts of what was said are broadly the same and it is common for subjective aspects of tone and volume to differ between the participants of any meeting or conversation.

52. An investigation was carried out about the altercation and witnesses statement were taken. The Claimant contends that Mr. Tilley, whose manager is Ms. Manaz, produced a dishonest witness statement. We conclude that Mr Tilley's witness statement was not dishonest given that there was a range of accounts as to how loudly people were talking and we have previously stated that how loudly someone is talking can be very subjective. Further, the case put to Mr Tilley and to us was that Mr Tilley had been told to write the statement by Ms Manaz as her 'puppet'. If that is the case, it is again clear that his motivation was not anything to do with the equalities work the claimant undertook, but to do with the altercation between the two colleagues.

53. PL raised the situation with the claimant. There was no note of that conversation although the claimant emailed PL on page 204 saying that he was unhappy about Ms Manaz's 'dishonest allegations'.

54. Subsequently the claimant sent the email at page 210 on 13 June again chasing Ms Manaz. The longer email included the following three paragraphs:

"*As I said in my email of 7 June, you appear to have a problem with arranging a meeting and working collaboratively with me. However, unless you tell me what that problem is, it is difficult for me to resolve it.*
I am therefore asking, once again for a date to be put in the diary to progress the 'joiner journey' discussion. This is a crucial element of the union's current organising strategy and if we get It right it will contribute significantly to delivering on the aspiration of having 10,000 advocates by 2020.
If you are unwilling to meet with me, or delegate responsibility to someone in your team, can I ask you to provide mw with an explanation as to why not? That way, I can decide whether it is something within my power to resolve."

55. We find that the tone of this email was objectively aggressive in the context of there having been a previous altercation between the parties. The email makes allegations that Ms Manaz (a more senior member of staff) was failing to work with him properly in a very difficult tone. The Tribunal accepts, given the tone of the conversation only 5 days earlier that Ms Manaz felt it was appropriate to escalate the situation and make it more formal.

<u>The disciplinary process</u>

56. Mr McCarthy then spoke to the claimant on 25 June 2018. We accept Mr McCarthy's evidence that he had hoped to try to resolve the situation informally at this point because it appeared to be a disagreement between colleagues. However this changed because the claimant handed in a detailed document (page 280) which made a series of allegations against Ms Manaz. Mr McCarthy's approach also changed when the claimant said that if Mr McCarthy wanted to preside over a work environment where this behaviour was tolerated then that was up to him. In effect the claimant was making an allegation about Mr McCarthy's professionalism as well.

57. Given the seriousness of those allegations and the fact that the claimant appeared to be unwilling to tolerate any criticism of his behaviour without responding formally and making allegations against anyone else involved; we find it was not unreasonable for Mr McCarthy to move the matter to a formal disciplinary process.

58. The claimant alleges that it was moved to that process without going through a proper investigation. We disagree. This was the preliminary investigation stage which provided a platform from which Mr McCarthy could make a decision about whether a disciplinary process should follow. Mr McCarthy had substantial information from both Ms Manaz and the claimant concerning the incident and the emails that had been exchanged about it. Where he needed clarification he emailed the claimant and the claimant provided a lengthy defence of his behaviour and answers to those questions. He therefore had enough information to establish whether a process should be started or not and that was the only decision he was making at this point.

59. The claimant failed to demonstrate to us what any further investigation may have elicited in the circumstances. It would have been better practise to obtain any witness statements from other witnesses before sending the letter of 13 July. However we do not accept that it would have changed the material facts that were being put to the claimant nor did it put him at any disadvantage as he was provided with any further information from the witness accounts before the disciplinary hearing itself.

60. Whilst the claimant cross examined Mr McCarthy and the HR representative in some detail about the timings of various information and documents being provided to him, we are satisfied that where any meeting was organised outside the contractual disciplinary policy time frames, Mr McCarthy duly adjourned the meetings and allowed the claimant more time so that the contractual time frames were adhered to.

61. In addition a key complaint by the claimant was that the allegations against him were 'reframed'. It is not disputed that the letter dated 13 July telling the claimant that the matter was being dealt with formally, only included one allegation. It also did not attach any documentary evidence or an investigation report.

62. Subsequently on 3 August 2018 the claimant was sent the investigation report. That report contained two allegations. At no point was a revised letter,

similar to that of 13 July, sent to the claimant formally confirming that he was now facing two allegations.

63. However, it is clear that the claimant understood from the investigation report, that he was facing two allegations. All the subsequent emails between him and HR clearly demonstrate that he was aware of the allegations and intended to respond to them. In addition, at the hearing on 21 August, Mr McCarthy agreed to adjourn the meeting to enable the claimant to consider the allegations further should he wish to do so. This was part of the reason for the meeting on 4 October 2018.

64. The claimant also raised a grievance on 16 August asserting the concerns he had about the process including the addition of an extra allegation. He subsequently withdrew that grievance once he had been given additional time to respond to the allegations. He was therefore clearly aware of the allegations against him and was given an opportunity to refute them by the time a decision was reached by the respondent.

65. It is further clear that the claimant was not disadvantaged by the addition of the second complaint because Mr McCarthy concluded at the end of the disciplinary proceedings that it had not been made out sufficiently and no disciplinary sanction was meted out as a result.

66. The claimant states that the allegations against him were not clearly particularised. The claimant wanted to know whose witness evidence the respondent preferred before the process had been concluded. The main focus of that requirement for clarification was whether he was alleged to have shouted or just raised his voice. The claimant insisted he couldn't properly respond to the allegation until he knew which of these he was being accused of. This requirement for clarity is the source of a lengthy exchange during the meeting on 21 August 2018. The claimant asserts that he needs to know what the respondent has decided it believes in terms of the witness evidence in order to be able to respond to the allegations. We disagree. This seems to be putting the cart before the horse and asking the respondent to reach a conclusion as to what the witness evidence showed before having finalised the disciplinary process and meetings. It is objectively clear from all the documentary evidence we saw that the claimant is being asked to respond to an allegation that during the course of the altercation with Ms Manaz that he was rude and disrespectful. We cannot see that this required clarification. The claimant clearly knew what events were being spoken about and how to respond. The volume of voices was not what he was being 'charged' with; it was an aspect of the situation that Mr McCarthy had to consider.

67. The respondent's disciplinary policy does not state that an individual must be allowed the right to cross examine witnesses when at a Stage 1 or 2 disciplinary process. This was intended to be a low-level allegation that could not result in dismissal or serious sanction. The disciplinary policy at page 83 of the bundle states:

"*Witnesses and supporting evidence may be produced by both management and the employee/*"

It does not say that either party has to produce witnesses. The claimant chose not to call witnesses either.

68. Had the respondent chosen to call witnesses then the policy states that the claimant ought to have been given the right to question them. (pg 96, paragraph 4). In the respondent's view this was a low-level disciplinary process and they wanted the claimant to address the concerns rather than put forward what they termed 'an adversarial' defence similar to the criminal courts. We accept that this was the reason they decided not to call witnesses and there was no contractual/policy obligation on them to do so in any event.

69. Whilst it is surprising, within a trade union, that Mr McCarthy did not keep notes of his meetings with the various witnesses, there are statements from the witnesses confirming their views of the events of 7 June which they had been asked to put together. JP at 10.01 email (pg 584 and 586) to which the response is at 14.41 and PL and SM provide a witness statements. On balance we find that it is very unlikely that the respondent or Mr McCarthy would have hidden notes of a meeting if they existed.

70. On balance we believe it is possible that the claimant was not sent the original email from Ms Manaz to PL about the incident. We understand that the claimant now seeks to rely on the difference between shouting and talking loudly as a key indicator of Ms Manaz's unreliability and that the version of events found by the respondent was not accurate. However we find that the claimant was disciplined for his rude and disrespectful behaviour against a senior manager not for whether he shouted or simply raised his voice. We accept Mr McCarthy's evidence that he took the lowest common denominator of the witness evidence about the 7 June and found that even if it had just been raised voices, the claimant had been rude and disrespectful.

71. If the claimant did not receive the email, we do however accept the respondent's evidence that they thought it had been provided to him. The Tribunal finds that there was no intention to deprive the claimant of evidence – to the contrary, the respondent was trying at all stages to meet the requests of the claimant throughout the process in order to bring it to a close over what they had initially felt to be a relatively minor matter.

72. The Claimant complaints that the Respondent failed to consider mediation. The Tribunal finds that mediation was considered by Mr McCarthy at the outset but it was not pursued because the claimant's response to the allegations was to accuse Ms Manaz of dishonesty and to approach the process in a combative and adversarial manner. At all stages when asked, Mr McCarthy stated that it remained an option and we accept Mr McCarthy's evidence that had the claimant returned to work after the disciplinary process had been concluded, it was almost certain that some form of workplace mediation would have to have been entered into to restore the claimant's working relationship with Ms Manaz.

73. At the disciplinary hearing the claimant requested more information about the emails around there being conflicting requests from the organisation team. Mr McCarthy did ask Mr Lockhart for a copy of the emails but Mr Lockhart could not find them and instead provided a summary at page 390. It is clear that Mr McCarthy then asked Ms Manaz and she forwarded the email exchange at pg 391. However this did not reach Mr McCarthy until after his return from a 2 week holiday. The title of the email was "Email slots" and we accept that it was reasonable that he may have overlooked it initially given the volume of emails he receives. It is clear from this evidence that he did attempt to follow up this issue contrary to the assertion of the claimant. We also conclude on balance that he did not deliberately conceal that information from the claimant during the process. We refer back to our comments above that the respondent was keen to conclude the process and move on given that they viewed it as relatively unimportant incident in the scheme of things that was taking an inordinate amount of time.

74. The claimant states that he was not able to produce evidence at the hearing. That is not in dispute. The respondent's disciplinary policy states that no new evidence should be produced when the employee is at the stage of summarising his case at the disciplinary hearing (p96, paragraph 8) unless both parties agree. We accept Mr McCarthy's evidence that the disciplinary policy was the reason the claimant was not allowed to introduce the new statement. In any event we also accept that the new statement was considered by the respondent because the claimant cited it verbally during his submissions to Mr McCarthy in any event. The respondent did not uphold this allegation against the claimant.

75. The outcome letter at page 881 finds that the claimant had breached the Respondent's code of conduct and imposed a 1 year written warning. The fact that this happened is not in dispute. We accept that it happened for the reasons set out in the respondent's letter as opposed to being motivated by any of the alleged protected acts. The respondent had clear grounds for reaching its conclusion which are evidenced by the investigation report, the notes of the disciplinary process and the evidence we have heard during the Tribunal. Other than the claimant's assertion, we have been provided with no evidence that suggests that it was motivated by anything other than the altercation with Ms Manaz (which the claimant accepts occurred) and the claimant's subsequent attitude towards the incident being raised with him.

76. In the letter dated 25 October 2018 from the respondent to the claimant (pg881-884) , the respondent states that it is launching an investigation into the allegations that the claimant made about his managers and the bullying and harassment that he alleged. We conclude that their decision to do this was motivated by the claimant's allegations within the first disciplinary process. The documentary evidence, including the notes of the relevant meetings and the correspondence from the claimant that we have seen confirm that the claimant was confrontational and adversarial at all stages of the process and he made several serious allegations against the managers involved. We conclude that it was this behaviour that motivated the respondent's decision to commence another investigation.

77. Mr Evans did state on 17 August 2018 that if the claimant continued in the same tone of correspondence with the HR team that he would be subjected to disciplinary process. We conclude that this was motivated by the emails sent at page 612 and page 384 as per Mr Evan's witness statement.

"Unfortunately it introduces yet more confusion, is inconsistent with the facts and appears to have no regard for the disciplinary procedure. Given the number of times I have complained about victimisation, I am actually staggered that the procedures are still being treated with such disrespect.
….
I would also like an explanation of how you came to give such an obviously false answer (was it confusion, were you misinformed, or what)?"

We think that the tone and content of these emails support the respondent's assertion that their reason for the threat of a disciplinary process was the claimant's tone.

Mr Tilley

78. We do not accept that Mr Tilley's emails at page 1076 demonstrate the claimant's work being obstructed by Mr Tilley. The claimant asks for the recruitment leaflet which had not been signed off yet so Mr Tilley suggested a way forward. Mr Lockhart then asked for a different leaflet which was supplied. We cannot see any negative actions by Mr Tilley in this email exchange and do not accept the claimant's assertion that it represented gloating by Mr Tilley or could reasonably be interpreted as such. The Tribunal dealt with the allegation that Mr. Tiley provided a dishonest witness statement during the investigation at paragraph 54 above.

Appeal

79. It was not in dispute that the procedure states that an appeal ought to be heard by someone more senior than the person making the original decision. The respondent stated that it was custom and practice that, where this was the general secretary, any appeal was in fact heard by someone in a different department at the same level.

80. We accept that this was the case. On balance it seems unlikely and unwieldy that a general secretary would have to deal with an appeal against a first written warning. We accept the Respondent's evidence that the general secretary and the assistant general secretary had not heard a disciplinary matter in 8 years. We find that this practice, albeit one which may have breached their written processes, wasthe reason behind the claimant not being guaranteed such an audience.

Notice pay

81. It was not in dispute that the claimant was paid in lieu of notice as opposed to being able to work his notice. We accept the respondent's explanation for this namely that the claimant said he was not working in a safe place and that he had recently been off sick. The evidence supports this as his letter makes it clear he does not feel safe at work.

82. The difference between being on garden leave as opposed to being paid in lieu of notice was not dealt with by the witnesses in their statements or either party in cross examination. It is therefore difficult for us to understand what the claimant says was the difference for him between being on garden leave and being paid in lieu of notice. On the assumption that the detriment could be around his actual date of termination, we have considered the documents we were provided with and conclude that on balance it is likely that the claimant's email (pg 980) on 12 December that he did not want to attend the meeting on 12 December was the reason that they decided to terminate his employment as opposed to maintaining him as an employee.

Summary Conclusions

Time

83. The respondent asserted that any incident prior to 18 October 2018 was out of time. We accept that on the face of it the incidents related to Ms Manaz during and following the conference are out of time but we believe that given that it led to the disciplinary process, the conclusion of which is in time, that the events from the conference onwards form part of a series of incidents that culminated in the claimant resigning. If we are wrong in that we believe that it is just and equitable to extend time given that the events all form part of one overall situation and process which was not finalised until the respondent sent its outcome letter from the claimant's disciplinary process.

Protected Acts

84. It is not in dispute that the original email sent by the claimant regarding the policies was a protected act. The respondent does dispute whether the remaining matters relied upon are protected acts.

85. Many of the claimant's professional commitments involved discussing or educating members and staff about the Equality Act. The alleged protected acts b, c and e are on the face of it vague and in essence summarise the claimant's role that he was employed to do by the respondent. They are:

(b) From March 2019 onwards, leading a purported integration of work between the respondent's organising team and its equality team, in particular;

(i) Undertaking specific responsibilities for liaising with PG the union's head of equalities,

(ii) Advising the organising and regional teams on how to address under-representation of groups with protected characteristics within the union's structures, and

(iii) Recommending that as part of the union's 'joiner journey', members with relevant protected characteristics be informed and invited to participate in the union's 'self-organised groups' (on ethnicity, sexuality, gender and disability).

(c) Preparing and delivering training materials on 'organising for equalities' delivered to the union's regional activist meetings in advance of the strike ballot

and to the aviation group at the respondent's national conference between 22 and 24th May 2018;

(e) On or around 23 June delivering a workshop to the respondent's national women's seminar;

87. The claimant did not expand on these protected acts nor give us context as to how they specifically referred to rights under the Equality Act 2010 beyond what is set out above. However we conclude that it is possible that they did constitute 'doing any other thing for the purposes of or in connection with' the Equality Act (s27(2)(c) EqA 2010) and that they amount to protected acts.

88. Nonetheless we do not accept that simply by associating with PG, head of the equalities team, and liaising with her as part of his role, this meant that the claimant was perceived by the respondent's witnesses or staff as 'persona non grata' and was somehow committing a protected act or associated with the equalities agenda simply by being associated with her. The claimant provided no evidence that the respondent viewed PG in those terms let alone that they perceived the claimant as being somehow associated with her. We find that this apparent argument of victimisation by perceived association was not evidenced and is not a correct interpretation of the law of victimisation.

89. Taken at its highest the claimant's argument, at least in part, was that it was his association with PG that caused the negative treatment. This is not the same as being associated with the Equalities Agenda or making a protected disclosure. Further we have seen no evidence that substantiates this attitude by the respondent to PG or to him or towards the Equalities agenda.

90. The Tribunal asked whether anyone within the Equalities team, including PG, had complained that Ms Manaz or the comms team generally had treated them or their comms agenda badly to which we were told that there had not been nor were there any outstanding grievances in relation to this.

91. What we do conclude is that the claimant has provided us with no evidence whatsoever, that even if, issues b, c and e do amount to protected acts because they were for the purposes of or in connection the Equality Act 2010, they caused or were linked to the claimant's treatment by any of the respondent's witnesses.

92. We find that protected act (d) is capable of being a protected act but do not accept that Ms Manaz overheard the conversation or that she would have relayed its contents to Mr Tilley (or anyone else). It cannot therefore have caused any of the alleged detriments committed by Ms Manaz or Mr Tilley.

93. We find that the protected act (e) has fallen away insofar as it caused any of Ms Manaz's actions as it is dated 23rd June and the detriments carried out by Ms. Manaz end on 7 June and thus predate protected act (e).

94. The remaining protected acts were:

d. At that same national conference, having a discussion with about integrating the respondent's organising and equalities agenda;

f. On 25th June 2018 asserting '*I have been bullied and attempts have been made to intimidated me (including thorough the process of this complaint) for no other reason than I have a professional commitment (as well as an obligation under the union's equality policy) to promote the work of the equality team in the process of organising*.'

g. Raising similar concerns throughout the disciplinary hearing. Including (by way of illustration) in his summing asserting: That the actions of Sian Manaz from 24 May onwards, including her conduct at John's desk on 7 June was bullying and victimisation as defined by the Equality Act'.

95. We accept that the remaining protected acts (d, f and g) did occur and could amount to protected acts because they were for the purposes of or in connection with the Equality Act and now consider whether the detriments occurred and if so whether they were caused by any of the protected acts. Some of this will be a repetition of the facts found above but we have set them out again for clarity.

Causation

96. In summary, we find that no evidence has been provided by the claimant to show that any of the protected acts caused any of the alleged detriments. The claimant failed to show either through oral or documentary evidence that there was any link whatsoever. He presented incidents or alleged incidents and asked us to assume that they must have been caused by his links to PG and/or equalities or the other protected acts. There was no 'something more' provided to shift the burden of proof.

97. We reject the premise that the respondent and its witnesses associated the claimant with PG to the extent that he contends, nor that they treated him badly for any association with her. In any event, we conclude that a claim based on any such treatment would not be a contravention of s27 Equality Act 2010 as the claimant would not be proving negative treatment caused by a protected act. Instead he would be proving treatment caused by an association with a colleague who also happens to be head of the Equalities Team. The intrinsic link (that the claimant effectively tried to assert) between one the one hand being associated with the Head of Equalities and on the other his actions therefore falling under the definition of protected act has not been established.

Further we found no evidence to link any proven treatment to any of the following:

i. The claimant's alleged association with PG
ii. The claimant's work relating to equalities or the Equality Act specifically
iii. Any protected act relied upon

98. To ensure that we have not omitted any conclusions we set out the alleged detriments below in the same format as in the claimant's claim and underneath each set out whether we conclude that it happened and if so whether it was caused by a protected act.

99. By Sian Manaz:

i. *From 24 May onwards, refusing to work with the claimant*;

We have concluded that Ms Manaz did not fail to work with the claimant. There was no detriment.

ii. *On or around 24 May, 'blanking' the claimant*;

We have found that if this occurred it occurred because Ms Manaz was busy. Therefore if there was a detriment it was not caused by any protected act relied upon.

iii. On or around 24 May Sian Manaz failing to respond to an email from the claimant requesting a meeting;

Ms Manaz did not fail to respond, she responded and asked the claimant for more information. There was no detriment.

iv. From 24th May to 7th June 2019, engaging in an email exchange to effectively avoid arranging a meeting;

There was no attempt to avoid arranging a meeting. There was therefore no detriment to the claimant.

v. On or around 30 May undermining the claimant by asking his manager if he had authority to progress a piece of work;

We find that Ms Manaz was not undermining the claimant; she was seeking clarification from the claimant's line manager about what work the team was carrying out. In any event the decision to forward the claimant's email to his manager was caused by two members of the same team seeking to have two different sets of information included in the Joiner Journey. There was therefore no detriment and any actions by Ms Manaz in this regard were not caused by any of the protected acts relied upon.

vi. Sometime between 24 May and 7 June, undermining the claimant by suggesting to his manager that she had received mixed messages from the organising team;

This email did not seek to undermine the claimant and in any event this was caused by two members of the same team seeking to have two different sets of information included in the Joiner Journey. There was therefore no detriment and any actions by Ms Manaz in this regard were not caused by any of the protected acts relied upon.

vii. *On or around 7th June 2018 undermining the claimant by telling an open plan office that he had not replied to an email of hers and then raising her voice over his;*

We conclude that this incident occurred but it was not in an effort to undermine the claimant and occurred due to a genuine misunderstanding by both the claimant and Ms Manaz as to what the other was seeking in terms of 'content'.

viii. *By complaining on the 7th June 2018 to the claimant's line manager about the incident, stating that the claimant had spoken 'very loudly' and misrepresenting the incident*

Ms' Manaz choosing to speak to the Claimant's line manager about the incident was not in any way caused by any protected acts but caused by the incident on 7 June. We do not consider that Ms Manaz misrepresented the incident and that if she did there is no evidence whatsoever that this was caused by the protected acts relied upon; it was caused by the altercation on 7 June.

ix. *Subsequently making a further complaint over the head of the claimant's manager this time making an untrue assertion that the claimant had 'shouted'*

We have found that Ms Manaz did believe that the claimant had shouted. Her decision to complain was caused by the incident itself and the claimant's subsequent email which was not one of the protected acts relied upon.

b. By Nick McCarthy:

i. Systematically ignoring the union's disciplinary process in his handling of Ms Manaz's complaint by:

1. On or about 13 July, issuing a notice of a disciplinary allegation before investigating the facts,

This occurred but no evidence has been presented to us that it was caused by the protected acts. We conclude that it was caused by an oversight as stated by Mr McCarthy.

2. On or about 4 August seeking to reframe the allegation including introducing two new disciplinary issues without raising these with the claimant during the investigation phase and not giving the claimant ten-days notice of these new allegations against him;

There was no re-framing of the allegations. The respondent was considering whether the claimant had

acted as alleged once they had received the various witness statements. There was no detriment to the claimant.

3. Failing to particularise the allegations against the claimant at the hearing;
The claimant was aware of all the allegations during the hearings. There was no detriment to the claimant.

4. Pursuing disciplinary allegations while depriving the claimant of the opportunity to question management witnesses by not calling live evidence from Ms Manaz or any of the management witnesses

There was no contractual requirement for the respondent to call live evidence for this level of disciplinary process. There was therefore no detriment to the claimant.

ii. On early August refusing to share his notes of investigation meetings;

We accept that there were no notes to share. There was no detriment.

iii. In regard to the disciplinary hearing refusing to make available a copy of the original email of complaint between Sian Manaz and Peter Lockhart

We accept that this email was not shared. However the claimant was fully aware of the allegations against him thus meaning that there was little or no detriment to the claimant. We were given no evidence of a link between this and the protected acts and conclude that any failure to provide the original email was not caused by any of the protected acts.

iv. On or around 13 June refusing to consider mediation between the claimant and Ms Manaz on the basis that the claimant had alleged victimisation on her part;

There was no refusal to consider mediation. Mediation was considered by Mr McCarthy at the outset but it was not pursued because the claimant's response to the allegations was to accuse Ms Manaz of dishonesty and to approach the process in a combative and adversarial manner. We accept that had the claimant returned to work after the disciplinary process had been concluded, it was almost certain that some form of workplace mediation would have to have been entered into to restore the claimant's working relationship with Ms Manaz. There was no detriment to the claimant.

v. *Failing to pursue or actively concealing available documents that would indicate the veracity or otherwise of Sian Manaz's allegation that she had been receiving 'mixed messages' from the organising team about the content of the joiner journey, giving an assurance to do so, obstructing the claimant's attempts to secure those documents, and subsequently declining to allow the Claimant to admit late documents into the disciplinary hearing following an adjournment*

We accept that Mr McCarthy tried to obtain the email from PL and did not see the exchange when it was sent to him by Ms Manaz whilst he was on leave. Further we find that there is no link between this failure and any of the protected acts.

vi. *On 25th October 2018 finding that the claimant had breached the code of conduct;*

We accept that this decision was based on the evidence that the respondent had heard during the disciplinary process and not caused by any of the protected acts.

vii. *Imposing a one year warning in respect of the breach of the code of conduct;*

We accept that this decision was based on the evidence that the respondent had heard during the disciplinary process and not caused by any of the protected acts.

viii. ~~Stating that the sanction would be taken into account when reviewing the claimant's appointment when deciding whether he would be confirmed in post;~~

ix. ~~Retrospectively introducing a probationary period;~~

x. *Telling the claimant that if his allegations of bullying were found to be false then further disciplinary action could follow.*

We accept the respondent's evidence that an investigation was initiated due to the serious allegations that the claimant had made during the first disciplinary process. This was not caused by the protected acts. This decision was caused by the allegations the claimant made about senior managers. No evidence was provided to suggest otherwise.

c. By Jeff Evans:

i. *On 17 August 2018 threatening the claimant with disciplinary action for raising concerns about the disciplinary process. It it's*

not acceptable for you to be calling into question the integrity of our HR disciplinary process… if this happens again, I will have no option but to take the appropriate course action'

We accept that this email was caused by Mr Evans' view of the tone of the claimant's communications and not caused by any of the protected acts.

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ii. *Failing to provide a commitment that the claimant's appeal against his disciplinary outcome would be heard by someone more senior than the original hearing officer.*

We accept that this was caused by the respondent's practice that the general secretary and assistant general secretary did not deal with grievances any more and not caused by any of the protected acts.

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iii. *Not requiring the claimant to work his notice, or be on gardening leave, following his resignation on 10th December 2018.*

It is not clear how this is alleged to be a detriment as this was not set out to us during the hearing. We accept in any event that the claimant was paid in lieu of notice because he indicated that he felt unsafe in the work place.

iv. *On 25th October 2018 finding that the claimant had breached the code of conduct;*

We accept the respondent's evidence that this decision was based on the evidence that they had heard during the disciplinary process and not caused by any of the protected acts.

v. *Imposing a one year warning in respect of the breach of the code of conduct;*

We accept the respondent's evidence that this decision was based on the evidence that they had heard during the disciplinary process and not caused by any of the protected acts.

vi. ~~Stating that the sanction would be taken into account when reviewing the claimant's appointment when deciding whether he would be confirmed in post;~~

vii. ~~Retrospectively introducing a probationary period;~~

viii. *Telling the claimant that if his allegations of bullying were found to be false then further disciplinary action could follow.*

An investigation was initiated due to the serious allegations that the claimant had made during the first disciplinary process. This was not caused by the protected acts. This was caused by the allegations he made about senior managers. No evidence was provided to suggest otherwise.

d. By Dave Tilley:

i. Producing a 'dishonest' witness statement that falsely asserted that the claimant had shouted and that Sian Manaz was visibly upset in respect of events of 7th June 2018

We do not accept that Mr Tilley's witness statement was dishonest as stated in paragraph 52 above.

ii. In early December 2018 refusing to provide materials requested by the claimant and instead suggesting that he provide a 'timeline' of messaging that the organising team might require.

We have found that Mr Tilley did not refuse to provide materials, the materials requested by the claimant had not been signed off and were not available to share as stated in paragraph 78 above.

100. The claimant's claims for victimisation therefore fail as no link has been made between the protected acts relied upon and any proven detrimental treatment.

Unfair dismissal

101. As the claimant has less than 2 years' continuous employment, his constructive unfair dismissal claim relies upon any repudiatory breach being an act of victimisation. As none of the alleged acts relied upon as being repudiatory breaches have been found to be acts of victimisation under s27 Equality Act 2010, the claimant's claim for constructive unfair dismissal fails and is dismissed.

Employment Judge Webster

Date: 24 February 2021