EMPLOYMENT TRIBUNALS

Claimant: **Mr M Hussain**

Respondent: **Home Office**

Heard at: **Leeds by CVP**

On: **17-21 May and 13, 14 and (deliberations only) 15 October 2021**

Before: **Employment Judge Maidment (sitting alone)**

Representation
Claimant: **Miss C Brooke-Ward, Counsel**
Respondent: **Mr P Smith, Counsel**

RESERVED JUDGMENT

1. The claimant's complaint of unfair dismissal is well founded and succeeds. His basic and compensatory awards are, however, reduced by a factor of 100% on account of his conduct prior to dismissal.

2. The claimant's complaint of unauthorised deductions from wages is dismissed upon his withdrawal of it.

REASONS

Issues

1. The claimant was employed as an immigration officer until the termination of his employment on 18 March 2020. The claimant maintains that his dismissal was unfair. The respondent relies on his termination being by reason of misconduct, in particular his making of subject lookups on the respondent's computer systems without business reason.

2. The claimant separately brought a complaint alleging an unauthorised deduction from wages in respect of a non-payment of accrued holiday

entitlement. Such complaint was, however, withdrawn during the course of the hearing.

Evidence

3. The tribunal had before or at an agreed bundle of documents numbering in excess of 1968 pages together with a separate and supplemental bundle of documents provided by the claimant exceeding a further 200 pages.

4. Having identified the issues with the parties, the tribunal took some time to privately read into the witness statements and relevant documentation. The first 5 days of the hearing were conducted essentially as a wholly remote hearing, albeit in circumstances where the claimant and his counsel attended the Leeds Employment Tribunal to access videoconferencing facilities.

5. During this period of the hearing the tribunal heard evidence on behalf of the respondent from Ms Jill Rennie, Chief Immigration Officer, Mr Charles Devereux, Chief Immigration Officer, Mr Adam San, Her Majesty's Inspector, Ms Danielle Heeley, G6 Deputy Director and Mr Tim Gallacher, Chief Immigration Officer.

6. Unfortunately, the tribunal had insufficient time to complete the evidence and a delay in relisting the hearing was caused due to limitations in the parties' and their representatives' availability. When the hearing reconvened, however, it did so as a wholly remote hearing. The tribunal then heard from the claimant himself followed by the parties' submissions on the second day of the resumed hearing.

7. Having considered all relevant evidence, the tribunal makes the following factual findings.

Facts

8. The claimant was employed as an immigration officer ("IO") in the Leeds based Immigration Compliance and Enforcement ("ICE") team. His role involved, amongst other things, decision making regarding whether or not to arrest individuals regarding their immigration status. He had the power to enter property, carry out arrests and seize property. He would conduct interviews and prepare relevant paperwork relating to persons believed to be committing immigration offences and liable to removal from the UK. He was also part of the respondent's sham marriage investigation team. The claimant agreed that he held a position where a very high degree of trust was placed in him. He accepted that he had an obligation at all times to comply with the highest ethical standards and confirmed that he was bound by the Official Secrets Act.

9. The nature of the work conducted by the respondent's immigration teams necessitates the handling of a large amount of personal information. Upon joining the respondent, all employees are made aware of the importance of

personal integrity, the core values of the department and the responsibilities of being a civil servant. The respondent's employees undertake mandatory online training, including a 2 hour course on information management.

10. The respondent's case is that it operated a zero tolerance policy that personal data should not be accessed unless there was a business reason to do so. This indeed, it is said (and accepted), predated the message sent out to employees on 6 June 2013 by the Director Generals. This communication said that looking at the case records of high-profile figures was not acceptable unless the employee had been specifically asked to administer the case. Nor was it acceptable to look up information on the respondent's systems purely out of personal interest, such as looking up one's own surname or postcode. Inappropriately looking up information was said to be considered to be gross misconduct. Employees were urged to familiarise themselves with the respondent's 10 golden rules for handling personal data. The principle was stated as being: "Remember, it is need to know, not nice to know."

11. Employees regularly had to agree the Security Operating Procedures ("SOPs) on the respondent's systems which explained an employee's obligations when accessing personal data. The tribunal accepts that any form of fraud, corruption or misuse of information is taken extremely seriously by the respondent.

12. The respondent maintains that it was clear that should employees ever come across a relative or person known to them personally, this should be reported to a senior manager and recorded by the officer, including the circumstances and justification or mitigation.

13. The claimant confirmed that he was familiar with the Civil Service Code and the key principles which were to be upheld of integrity, honesty, objectivity and impartiality. He accepted that there was an obligation not to misuse his position. He accepted that making lookups on the respondent's confidential systems without authority and business need was obviously incompatible with the principles of the Civil Service Code. The claimant confirmed that he was familiar with the "10 golden rules for staff handling personal data". The first of these was: "Never access personal or protectively marked information, unless it is part of your job and you have a business need to do so." He recognised that he needed to adhere to the aforementioned zero tolerance message issued on 6 June 2013 and said that he was aware of the seriousness of a breach.

14. The claimant lived in areas of Bradford which gave rise to the potential for him to come across individuals who were known to him in the conduct of his work. The claimant had been with the respondent since 21 May 2001, initially in London, before he relocated to work in Leeds on 2 November 2002. He had lived at a BD8 postcode address in a house with his mother

until around September 2010 when he had moved to a house which he had purchased in the BD5 postcode area. His mother had remained at the BD8 address together with some siblings, although the claimant was unclear as to when those siblings, or some of them, may have moved out. The claimant confirmed in evidence that, in those circumstances, there was all the more reason for someone in his position to ensure that he was fully transparent in his dealings with subjects of interest and that he could evidence that transparency. His position in cross examination was that he made sure that that was the case at all times during his employment. He agreed that, despite moving house, he would still have connections to people who lived at or near his previous address (beyond indeed his mother, who continued to live there).

15. The claimant's line manager, Mr Tim Gallacher, Her Majesty's Immigration Inspector ("HMI"), first became aware around 27 September 2017, from the claimant himself, that the claimant had received a letter from Chief Immigration Officer ("CIO") Steve Heaton of the respondent's anti-corruption unit which detailed that he was currently under investigation on suspicion of an offence under the Misuse of Computer Records Act 1990 and misconduct in a public office. A report had been produced, signed off by Chris Williams of the respondent's data breach investigations team, dated 1 December 2016. The claimant was suspected of unauthorised lookups on the respondent's databases i.e. using the databases to search for individuals' details with no business need to do so. Mr Gallacher believed that this was a serious enough matter to necessitate the claimant's disciplinary suspension. A letter of suspension was prepared. Mr Gallacher then met with the claimant on 5 October 2017 to explain the content of the letter. He said that he should contact himself regarding any welfare issues. He did not refer to any regular contact with the claimant as he believed that would now be the role of the decision manager in the claimant's disciplinary proceedings. He now believed, he told the tribunal, that he should have ensured with the decision manager and he had agreed on the regularity of contact with the claimant during his suspension.

16. The claimant attended a voluntary "under caution" police station interview on 5 October 2017 conducted by Stephen Heaton of the anti-corruption team. The claimant was accompanied by his solicitor. He submitted a pre-prepared statement, but otherwise gave "no comment" answers on the advice of his solicitor. He referred in the statement to a document Mr Heaton had provided in advance of the interview summarising the lookups which were the subject of the investigation. He said he was unable to recall every computer search carried out as part of his job but said that he had always worked within the scope of his employment. The claimant was then taken through the respondent's policies and the audit of his allegedly improper lookups. Mr Heaton's document ("SJH5") summarising the claimant's system lookups and commenting on the nature of the subject of the lookups and additional investigations carried out, formed the basis of the respondent's disciplinary case against him. Issues have arisen as to the claimant's awareness of the detail of the allegations and disclosure

requests made by him during the disciplinary process. Whilst his answers to subsequent questions before the tribunal were inconsistent (at times denying access, including that the information was held by his criminal solicitor only), the claimant early in his cross examination confirmed that he had access to the information contained in Mr Heaton's document "SJH5" at all stages. The tribunal is clear that he did.

17. The work of immigration officers might be recorded on a number of different computer systems and applications. The CRS (central records) system was the predominant method of looking for information regarding an individual's immigration status, applications for visas or leave to remain and the sponsors of any application. This system was not 'owned' by the respondent, which was simply a user of it and it was not a system (it is agreed) into which immigration officers inputted information or placed notes. Searches could be carried out by name, date of birth, gender, nationality, visa type, postcode or a sponsor search. A postcode search would produce the names of all immigration subjects or sponsors on a particular street. A sponsor name would have linked with it entries for each application by visa number and the relationship to the applicant. The applicant's name would not be immediately shown but their details could be accessed by clicking into the visa number recorded against the sponsor's name. Immigration officers also had the ability to access CID (case information database). That included information on immigration, asylum and naturalisation applications made within the UK including notes on people who were in breach of immigration law, for example by way of an illegal entry or overstaying their visa permission. Immigration officers were able to put entries onto CID, for example to provide updates on whether any particular notice had been served on a subject or if the subject had been detained.

18. The tribunal has also heard evidence regarding additional systems. Mycroft/Athena was an intelligence system to which the claimant conceded he did not have access. He needed to ask an intelligence officer to access it (having provided a legitimate purpose for wanting to) and make a new record. It was clear from his evidence that the claimant had little idea as to its use. He agreed that someone who wished to record any conflict of interest on that system would be putting themselves to significant inconvenience when compared to the ability to send an email or make a recording in the immigration officer's individual personal notebook ("PNB"). All IOs kept and completed PNBs logging any noteworthy events or tasks carried out. Any intelligence received could be recorded on a PNB – ordinarily on a separate page to avoid any cross-contamination of data. PNBs were retained by the respondent for around 7 years.

19. An application known as WICU was used by UK border force and an immigration officer would have to go through border force for them to upload any information onto WICU. The claimant agreed that no one would record a conflict of interest on that system when other options existed. The National Operations Database ("NOD") concerned operational matters and

the recording of tasks required/carried out on operations. The claimant confirmed that if there was a police callout and referral, then a person's name might appear on that database. The claimant before the tribunal firstly did not necessarily agree that it would be inconceivable for a subject of operational interest and recorded on NOD, not to appear also on either CRS or CID. He sought to give the example of an individual who had overstayed their visa permission and who might be searched for through NOD. If they were recorded on NOD, however, he agreed that they would also be noted on CRS/CID. When put to him that an entry on NOD would not explain any of his allegedly improper lookups, he said that he could not comment as he had not been given access to NOD. When pressed he said that it was a "bit of a minefield", other systems could have additional information on a subject of interest, but he couldn't think off the top of his head.

20. Ms Jill Rennie, CIO, was appointed as the investigation manager in respect of allegations of misconduct (separate from the criminal charges) against the claimant in November 2017. She was sent various information by email by Steve Heaton's team which she was aware was involved in investigating the potential criminal aspects of the claimant's behaviour. She was informed that they had identified that the claimant had accessed Home Office records without a legitimate business reason. Ms Rennie had not undertaken this role before and had received no training. She did not agree that Mr Heaton was gathering evidence solely pointing to the claimant's guilt to support a prosecution. She believed that she could still investigate impartially despite an apparent conclusion by Mr Heaton's team that records had been accessed by the claimant without a business reason. She said that she did not speak to anyone on the team.

21. The information provided to her included CRS records and a record of telephone calls the claimant had made from his work phone. Some of the numbers he had phoned corresponded with the mobile numbers of individuals on visa applications on the CRS records. She considered that it was unusual for the claimant to contact these individuals on their mobile telephones, even with a legitimate business reason to do so. She could not recall seeing the data breach investigation security report prepared by Mr Chris Williams (dated 1 December 2016), but suggested before the tribunal that she had the information which was in it although not in the same format. She accepted that some of the wording she used in her own subsequent investigation report came directly or indirectly from the Williams report as suggested by the similarities in her report's conclusion. She was certainly aware of the existence of the report – it had been referred to in an email into which the claimant was copied on 7 November 2017. It was suggested that the Williams report had been withheld from the claimant because of the view it expressed on the claimant having not committed a criminal offence. Ms Rennie said that she knew nothing about that.

22. The tribunal considers that the Williams report was concerned, amongst other things, to identify whether there was a business need for the

claimant's lookups. Mr Williams described his report (within the body of it) as being compiled to facilitate any disciplinary investigation deemed appropriate. He had concluded that whilst inappropriate accessing of information might constitute criminal activity, in the claimant's case it was considered that it did not meet the criminal threshold.

23. On 11 November 2017 the claimant was invited to an investigation meeting with Ms Rennie to take place on 17 November. This was rearranged, however, to allow the claimant to be represented. The claimant had informed her that he would be accompanied by a union representative from the Community union, but she (accurately) did not believe that was a union recognised by the respondent. She took HR advice, which confirmed on 22 November that a person from this union would be an appropriate representative. Ms Rennie, the tribunal accepts, was unclear as to the wide scope of the right of accompaniment (beyond recognised unions) and there was a genuine sensitivity about the security of information when the recipient might not be a civil servant (and bound by the Civil Service Code).

24. A meeting then on the 23 November had to be rescheduled due to the claimant's ill-health. The claimant subsequently informed Ms Rennie that he could not attend a meeting on 13 December as his union representative was again unavailable. Ms Rennie explained to him that she would need to take HR advice once more given the number of requests made to cancel and rearrange the interview. The claimant was advised on 13 December of some proposed revised dates in January 2018. She asked that he responded by email as she wished to avoid any further confusion.

25. On 21 December 2017 the claimant was charged with the aforementioned criminal offences by West Yorkshire Police.

26. The claimant did then attend the internal investigation meeting on 10 January 2018. The claimant was not accompanied at that meeting. Ms Rennie did not recall him saying that he had no choice but to carry on in the absence of a union representative. In any event the claimant was clear that he wished to continue with the interview. She did not recall saying to the claimant, as was his suggestion: "are you going to say no comment in this interview as you had done in your previous interview" (a reference to the interview under caution with Mr Heaton). In cross-examination, however, she conceded that she could have said it. She had not contradicted the claimant when he produced his comments on the interview notes and she had referred to the claimant's stance when asked questions by the anti-corruption unit. On balance, the tribunal finds that the comment was made.

27. The claimant was being asked about actions taken by him up to 5 years previously, with the earliest lookups being questioned dating from late 2013. In cross examination, Ms Rennie agreed that she was not surprised he couldn't be specific and recognised that the passage of time may have

hindered his ability to defend himself. She agreed that he could potentially have been assisted if allowed to access CID. She said that there had been around 10 CIOs in Leeds at the time – it was suggested that the claimant was being expected to recall the name of a CIO he had spoken to. She had not gone through each of the telephone numbers it was said the claimant had called from work to see if he had a business need – she accepted that she had come to a "generalised view" and that he might have had cause to call the telephone number of a visa applicant. It was put to her that there had been no investigation by her into whether the claimant had a legitimate business reason for a contact he had made. Ms Rennie agreed, said that she could not recall if she had asked the claimant that or not and said: "I didn't do any investigation". She accepted that she had not looked to find any legitimate business reason. She had seen the material from Mr Heaton where some actions were highlighted as having no business reason behind them.

28. It was put to Ms Rennie that her referring in her evidence to an opportunity for the claimant to put forward "any mitigation" inferred that she already considered him to be guilty. She denied this saying it was a misuse of terminology.

29. She accepted that she had not sought to further understand the claimant's role beyond how she described it herself. She was unaware that the BD8 postcode area was "a hot spot" (as put to her) for immigration issues. She accepted that it would have been relevant for her to know that. She was unaware that the claimant had received an award for excellence in 2017 – she said this would have been important for the decision maker to know, but she did not omit it to make the claimant look bad.

30. Whilst the claimant asked for specifics of the lookups being investigated, he was told by Ms Rennie that details had previously been given to him in disclosure (a reference to the criminal proceedings). The claimant confirmed that he had a copy – this was a reference to Mr Heaton's document. The claimant was taken through the respondent's various policies. He confirmed that in his work he had come across someone who was known to him personally. When asked what had happened, he said he had been made to deal with it. When asked if he had ever highlighted any conflict of interest, he said he had "informed a CIO verbally and in writing but I don't know which CIO". When asked if that situation had occurred on more than one occasion, he couldn't recall, but he did recall that it had occurred on one occasion. When asked if he had conducted searches linked to his home postcode, he said that he may have done. When asked if he could remember specifics he referred to: "one phone call I was given a postcode BD8 XXX [the claimant's postcode up to Summer 2010] and I can't recall who the CIO was but I asked for authorisation to run checks and it was my previous postcode, this has happened on a number of occasions." There was discussion regarding a lookup involving the claimant's ex sister-in-law, BI, on 31 December 2013 (on the claimant's volunteering that he had

made a lookup in her name) which he accepted he had made, but only he said with the approval of a CIO. He accepted that he had also looked up her ex-husband, GH, saying this was for a travel check based on specific intelligence for bringing another person into the UK and that he had run it past his CIO. Again, he could not remember which CIO. Ms Rennie accepted that she could have retrieved the duty lists to see which CIOs were working at the time and then referred the claimant to them to help identify who he said he had obtained approval from. The dates in question were of a very limited number. She could not say why she had not done so. When asked if there was an audit trail of his checks, the claimant said that: "we don't send emails for CRS authorisation". Ms Rennie suggested that having checked on a person linked to him, there should be a clear business reason recorded as to why he had conducted the check. The claimant said that this did not occur in Leeds.

31. The claimant has produced an amended version of his notes which recorded that at this point he had stated that he had obtained verbal authority. Ms Rennie did not accept that she shook her head at the claimant during the interview at this point as he had also noted. On balance (and given the resolution of the other discrepancies in accounts of this interview) it is more likely than not that she did shake her head.

32. The claimant was then asked if he had an audit trail for the authorisation which was required to conduct a NBTC check (the travel check relevant to GH). He said that he could not remember. Again, he was asked if he should not have clear audit trails for checks where there may be a conflict of interest. The claimant said that it didn't happen like that in Leeds.

33. The investigation meeting lasted around 29 minutes. When asked in cross examination if that was long enough to go through 3 years' worth of unauthorised lookups, Ms Rennie responded that with hindsight possibly it was not.

34. Ms Rennie could not point to any policy requiring an audit trail if a superior's approval had been given. She based her view as to policy on the training she had received, which she agreed post-dated that received by the claimant when he joined the respondent. She did not check what his training had encompassed.

35. Ms Rennie did contact Julie Curle, who held an HMI position in Leeds (MS Rennie was based in the North East), by email on 22 January 2018. The question was asked as to the process for an immigration officer should they check for a person or place known to them personally. Ms Curle replied: "Staff member should make a manager aware immediately if they are asked to perform a check on a person, address or business that is known to them. If this information comes to their attention during the check, again I would expect this to be raised with a manager immediately and the staff member

not to proceed with any further action without a manager authorising this. This should be noted in their PNB with an additional note from the manager." As regards record-keeping of potential conflicts she responded: "As above, I would expect the CIO or above to countersign the person's PNB or have an email record of a conflict including details and any action taken. There is no central register." Ms Rennie agreed that there was no reference in these responses to a policy or any local written instructions.

36. It was raised with Ms Rennie that she did not refer to the content of the email she had received from Ms Curle in her investigation report. She agreed that the content was important and could have affected the outcome of the disciplinary hearing.

37. The claimant, in his evidence, was taken to Ms Curle's email. He agreed that when checking for a person or place known to the immigration officer personally, a manager should be made immediately aware. He agreed that if this information only came to light during a check, there was an expectation that the matter would be raised with a manager immediately. He then agreed that the immigration officer should not proceed any further without authority. He disagreed, however, that the authority should be noted in his PNB. In theory that was the case, but in practice it did not happen, he said. He said that he wouldn't make a note in his notebook and that would only be done if he was asked by a manager to do it. He agreed then, however, with Ms Curle that there would be an expectation that CIOs would countersign the person's PNB or have an email record of a conflict. He agreed that if he had notified someone, he would expect there to be a record somewhere of that. He agreed that if he had notified a CIO, the paper trail would be there. The claimant then said that he did not during the disciplinary process have access to his computer and that he made records on the computer system and would have been able to provide an answer. Later in cross examination, the claimant said that if he had had access to his PNBs there would be evidence of a record of a declared conflict of interest. It was put to him that he had just said that such records were not kept. He responded that, without looking at the records, he couldn't say and that if there was a need to write something down he would. He disagreed with the proposition that it was inconceivable that a system was in place where only a verbal authority would be given for lookups where a conflict of interest existed. He disagreed that such practice would defeat the aim of transparency. The claimant did agree that, if he had ever wanted to record something, then the two obvious methods of doing so would be to make a note in his PNB or send an email.

38. The tribunal notes that Ms Curle had in fact submitted a statement dated 6 December 2017 in the criminal proceedings. She referred to an awareness of occasions where the claimant had been asked to be excused from visiting specific premises. She said that to her knowledge the claimant had not made management aware of any conflict of interest when conducting lookups. She went on: "all actions should be fully noted including powers

and grounds for use …. in MHK's Personal Note Book or onto CID or Form ISCP4."

39. Ms Rennie said that she was unaware of a previous disciplinary issue raised against the claimant. This arose on 22 November 2013 and, as referred to in Ms Curle's police statement, was when the claimant did not wish to be involved in an enforcement visit because it was close to his home and his brother-in-law was a friend of the relevant business owner. There was an issue regarding the manner of the visit, but it was put to Ms Rennie that the claimant had previously refused to carry out a visit because of a conflict of interest. She agreed.

40. It is suggested by the claimant that the incident showed that the Home Office was not concerned about conflicts of interest when it suited them in circumstances where he was forced to attend an operation having disclosed that he was known to the owner of the business which was to be the subject of a raid. The claimant's evidence before the tribunal was noteworthy in that, having sought to raise these points in some detail when specifically questioned on what had happened, he later said he did not remember. The evidence in fact was that the claimant had identified a conflict of interest concerning him and had ensured that a typed note was on the operation paper file which highlighted his concerns regarding his personal safety. Furthermore, the claimant had not been required to take part in the enforcement visit. He had only attended the local police station to brief the officers there. The evidence is of CIO Flanagan recording that this and other steps would be a proportionate action to safeguard the claimant. CIO Dobbin had also recorded the claimant raising his concerns with him and an allowance being made so that the claimant was not present. The claimant was subsequently invited to a disciplinary investigation meeting where his stating that he did not wish to conduct an enforcement visit was certainly the background. However, the tribunal concludes that the potential disciplinary issue related to how the claimant had spoken to CIO Dobbin. No further action was ultimately taken against the claimant.

41. Ms Rennie was referred to the schedules of lookups produced and the audit trail. When put to her that this was not something she investigated, but had been put together by someone else, she said that she had used the information provided by the team of experts (the anti- corruption team). When put to her that she had therefore regurgitated the criminal prosecution report, she agreed.

42. It was pointed out that the claimant had left his previous address in 2010 which had a BD8 postcode. There was some confusion as to dates in the report.

43. She accepted that she ought not to have asked the claimant about him sponsoring someone for a visa in 2001 which predated his employment with

the respondent. In re-examination she explained that she had made the enquiry because it was under his postcode and for a potential family member.

44. Ms Rennie compiled her investigation report dated 9 March 2018 using the minutes of her investigation meeting with the claimant and the material she had been sent. The evidence suggested to her that there had been a significant and repeated breach of the Civil Service Code and unauthorised access of data held on the respondent's computer systems. She therefore concluded that there was a case to answer. Her evidence was that in a compliance role such as the claimant's, he would normally deal with people who were in the UK after their visa application had been dealt with. He wouldn't often need to speak to them on the telephone and she was not sure what need there would be for such contact prior to a visa being issued. However, there could be a need to speak to people for many reasons once they were in the UK. She couldn't recall however whether the accusations against the claimant were of speaking to someone once they were already in the UK or before. She then forwarded the report to Mr Steve Harrison, HMI, based in Manchester, who was to be the decision maker in the claimant's disciplinary case. There is evidence that there was some discussion then between Ms Rennie and Mr Harrison regarding the report and that Mr Harrison was involved in some amendments being made to it. The extent of those amendments is not however known.

45. HR had advised on 1 March 2018 on the report saying that there could be more detail of the specific allegations against him. Ms Rennie agreed that she had not put to the claimant specific allegations or given him an opportunity to respond to them. She had not looked at any other systems to establish a business need and had not spoken to any CIO to see if they had given the claimant authority regarding any lookups. The claimant emailed Ms Rennie on 15 March to say that there were witnesses who could assist. She did not ask who they were.

46. The timeline of her investigation was put to her, with 2 months from the claimant's suspension to the first letter of invite to a meeting. She agreed that the process was "more delayed" than she would have expected.

47. The claimant subsequently received the report. He was not sent the 700 pages or so of CRS lookups which had been collated. An email from HR of 9 March 2018 said that from their perspective, since the CRS information was "critical to proving or disproving the allegation" then it was important for the claimant to be given ample time to access it before the disciplinary hearing with time allowed to adjourn the hearing if he wished to refer to it again. Ms Rennie responded that he had had the specific lookups put to him in the criminal investigation. She was including a transcript of his interview as an annex to the report "so he is aware of all this information". She agreed in cross examination that the investigation was run on the basis of what the claimant had had in the criminal case. When suggested to her

that the respondent's attitude had been that, since he had an opportunity to answer a year previously there was no need for the claimant to look at the information again, Ms Rennie said that she was not sure that is what was meant by this correspondence. She agreed that she had failed to collect and record facts.

48. On 27 March 2018 the CPS advised the respondent that waiting for the outcome of the criminal case would probably be the best option in relation to whether or not the disciplinary proceedings should proceed. The claimant entered a not guilty plea on 7 September 2018. A crown court trial was originally listed for January 2019, but then relisted for 14 July 2019.

49. Ms Rennie was referred to the transcript of a Crown Court hearing on 28 May 2019. The respondent's counsel at that hearing described to the Judge that: "… When we took that matter further we recognise that there were certain loopholes in the system and that we could not, therefore, satisfy our disclosure obligations at all. It looked as though there may well have been, for example, incidents where it looked as though he had secured unauthorised access to the various material that he was prevented from doing so, but there may well have been legitimate reasons for accessing that material. So we could not be satisfied that there wasn't occasions where he was entitled to authorise the material – access the material, and so for those reasons the Crown do not think that we have a realistic prospect of conviction and we are concerned about the disclosure." A not guilty verdict was entered, the prosecution offering no evidence. Ms Rennie confirmed that Mr Heaton had not come back to her to advise of any misleading information or anything else which had been discovered since. When put to her that if the investigation had been done properly, she would have uncovered the same material which suggested that there was a genuine business reason for the lookups, she responded in the affirmative.

50. Mr Harrison informed the claimant on 5 July 2019 that the disciplinary proceedings would resume.

51. As a result of the delay, Mr Charles Devereux, CIO, based in Manchester was asked to provide a new and refreshed investigation report. The claimant was informed of this development by Mr Harrison by letter of 25 July 2018. Like Ms Rennie, he had never undertaken such an investigation before. Nor had he received any training. He agreed that his involvement came after the collapse of the criminal trial. He read Ms Rennie's report as well as the CRS Guidance: Security Operating Procedure, the respondent's 10 Golden Rules for Staff Handling Personal Data and the respondent's disciplinary procedure. He wrote to the claimant on 14 August 2019 to confirm that he was taking over the investigation and to arrange an interview with the claimant on 4 September.

52. The claimant raised a grievance on 2 September and requested that this be concluded before meeting with Mr Devereux. In this he questioned the need to be re-interviewed. Under the heading of "evidence", he said that he required access to his work computer to provide evidence required to defend himself. He alleged that Mr Heaton had not been open and honest about his investigation which was biased and selective. HR advice to Mr Devereux was that the grievance related to matters separate to the investigation, which he was indeed able to progress. Mr Devereux did not see the grievance himself. Having been told in cross examination that the grievance involved a request of the claimant for access to information, he agreed that this knowledge might have impacted on his decision to continue and that there was an error in the advice he was given. It was noted that a new decision manager would need to be appointed in place of Mr Harrison who had been named in claimant's grievance. That new decision maker was to be HMI Adam San.

53. An investigation meeting with the claimant was then arranged for 9 October. Mr Devereux wanted to focus on several specific CRS lookups and for the claimant to have an opportunity to present any mitigating evidence. He explained to the claimant that if he did not wish to attend the meeting, Mr San would potentially be reliant on the original report compiled by Ms Rennie. The claimant confirmed by email that he would not attend any investigation meeting until this grievance was concluded.

54. Given the timescale required to address the grievance and the fact that the claimant had been given previous opportunities to attend the investigation meeting, Mr Devereux decided that he would update the original report without interviewing the claimant. His own report appending relevant supporting documentation was completed on 9 October 2019. On reviewing that evidence, he agreed that there was a case to answer. He described himself to the tribunal as disappointed to have no opportunity to interview the claimant as he noted that the claimant had previously been questioned generally on the CRS lookups rather than pressed directly regarding specific CRS lookups relating to the claimant's family members. He said that he would have been interested to hear what justification or mitigation the claimant would have raised and his explanation for what would be a clear breach of the respondent's policy. Mr Devereux's conclusion was that there was likely to have been a breach of the respondent's zero tolerance policy. The data breach report had uncovered unauthorised lookups and identified 33 instances since the introduction of policy. The claimant's Home Office issued mobile phone contained contact numbers associated with sponsors noted within the unauthorised lookups. The claimant had stated in his meeting with Ms Rennie that he had business needs. However, he had provided no evidence and had been unable to provide the details of the CIO he informed at the time. He was not able to explain the checks conducted on family members, his address(es) or the links to the phone records relating to visa applicants. There were no records held by the Yorkshire and Humber ICE team to reflect that such conflicts of interest were notified to management.

55. Mr Devereux commented that his investigation report was not the end of the matter and that the claimant would still have a further opportunity to provide "mitigation evidence". He said that it was fair to say "mitigation evidence" as he had concluded that there was a case to answer of making lookups without a business reason. He had agreed with Ms Rennie's report, having seen a lot of the data behind it and that on the balance of probabilities the claimant had accessed information without business need. He had also been in possession of annexes L and H which he said showed the bulk of the CRS lookups and a summary of what essentially comprised the report of Mr Williams in the anti-corruption investigation.

56. He agreed that he could have looked to see which CIOs had been on duty when the claimant made specific lookups to then check with them whether the claimant had made them aware of any potential conflict. It would have been an option, he said but he didn't do it.

57. He had seen Ms Curle's email to Ms Rennie of 22 January 2018. He agreed, when put to him in such terms in cross examination, that she took the view that in the claimant's workplace an audit trail wasn't required. He said, however, that in his experience, he had never come across an IO who would access information about family members on multiple occasions. If so, he would expect that person to keep a record or otherwise it would have been justifiable for the claimant to pass the check on for a colleague to complete. The claimant hadn't been able to give a name of any senior manager who had authorised a search of family members or associates which represented a "blatant" conflict of interest. It was put to him that within the claimant's team there was no requirement to keep an audit trail (with which he agreed) and therefore he was holding the claimant to a standard which was not implemented. Mr Devereux said that this was a standard all civil servants would abide by and it beggared belief that the claimant would do multiple checks on family members and associates. When put to him that almost 5 years on, it was not significant that the claimant was unable to recall a manager's name, he said that if he had looked up an ex brother-in-law, he would have recalled that.

58. It was explored with Mr Devereux whether he had considered that there was a greater chance of the claimant coming across family members on multiple occasions because he lived in an area with a large BAME population. The claimant had lived in the BD8 postcode until July 2010 and thereafter in the BD5 area. He agreed that that could be part of an explanation as to why the claimant was more likely to come across people linked to him. Mr Devereux said that his conclusions were based on the civil service code and if he had ever been given an M33 postcode to search (the area where Mr Devereux resided) he would have given serious consideration as to whether he should do the check and if the subject was someone he knew. He told the tribunal that he had not been aware of the demographic/profile of the area in which the claimant lived. He agreed, on it being clarified that the

majority population of the claimant's areas of residence were British Pakistani and the nature of the community meant, for instance by attending the local mosque, that people knew their neighbours more than in many communities, that this could explain why the claimant came across more people known to him when he was working. He said that that would not have affected his findings, but it was something he would have made reference to in his report.

59. Any delay from receiving the information to inviting the claimant to an investigation meeting was, Mr Devereux said, down to the long time it took him to familiarise himself with the data. Mr Devereux said he was unaware that the claimant had asked for any particular witnesses to be interviewed. In an email to Ms Rennie of 15 March 2018 he had referred to there being witnesses who could assist, but he did not name them.

60. Mr Devereux said that he noted in particular that the claimant's ex brother-in-law's father had been the subject of 5 lookups, his ex-sister-in-law 3 and his ex-brother-in-law 5.

61. Mr Devereux had met with Mr Harrison and Mr Heaton in July 2019 (after the criminal case had concluded). Mr Heaton summarised the substantial amount of data and passed him some of the annexes which couldn't be forwarded electronically. He received the form MG5 sent to the CPS for advice on whether the claimant could be prosecuted. He agreed that by then Mr Harrison and Mr Heaton would have been aware of the ending of the criminal case. Mr Devereux did not ask them about its progress - he said he wanted to maintain a distance and he just looked at the data. The criminal prosecution he said involved a different standard of proof and his role was to refresh the original investigation and look into the question of business need. When put to him that the allegation in the criminal jurisdiction was almost identical, he agreed. When put to him that the same evidence in the criminal investigation had been discovered which would have assisted the claimant's defence in the disciplinary process, he said that the evidential threshold was different. He then conceded on further questioning that this might have included evidence that the claimant had a genuine business reason for the lookups or some of them. When put to him that he should have asked about this evidence he responded: "That's fair. Yes. Perhaps I should have asked." He said that Mr Harrison had simply advised that he wanted Mr Devereux to refresh Ms Rennie's report and give the claimant an opportunity to explain. When asked why there was a need for a refreshed investigation, he said that, without criticising Ms Rennie, there was a need for further investigation into some of the CRS lookups, continuing that individual lookups had not been put to the claimant. It was an opportunity to rectify some omissions. Ultimately, the information that Ms Rennie had and which was in her report was, he said, enough for him to conclude that there was a case to answer for at least one breach. When put to him that before he had tried to meet with the claimant he had taken the view that there was a case to answer, Mr Devereux said that he agreed with Ms Rennie's report

but that if the claimant was going to bring up further evidence, this would potentially change his findings. He did not prejudge the claimant but simply felt that there was a case to answer. His report again was not the end of matters or the last opportunity for the claimant to provide a justification for his actions.

62. It was put to Mr Devereux that within his report a crucial bit of information for the decision manager would be the collapse of the criminal trial. He did not agree. He did not know the specifics of why it had collapsed in any event.

63. Mr Devereux was asked whether it occurred to him that there were other systems within the respondent which had not been checked. He said that it was not immediately apparent that there was an error and the most important thing was to press the claimant on his alleged unauthorised lookups. He considered that he was not aware what systems had been interrogated and formed the basis for Mr Williams' report. He did not consider approaching the intelligence team to see whether the claimant had passed on any information saying that he felt that based on the weight of evidence it was likely that a breach had occurred. The decision manager could take the matter forward. He thought that the claimant had ample opportunity to provide evidence and justification for his lookups and none was provided other than him allegedly having verbal authority.

64. He agreed that a failure to interview the CIOs could fairly be viewed as a breach of the disciplinary policy which provided for the investigating manager interviewing relevant witnesses. Similarly, as anticipated in the policy regarding investigation reports, he did not address the issue of whether proposed witnesses were not deemed necessary or relevant and the reason for that decision. He agreed with the proposition that in the absence of the CIOs being interviewed, the report he produced could not be regarded as comprehensive. He rejected again, however, the accusation that the report was neither objective nor fair.

65. Mr Devereux confirmed that the claimant had never asked him for access to his computer or PNBs. He reiterated that he would expect IOs to make a note in their PNBs if they had obtained authority in circumstances of a potential conflict of interest. He expected an auditable record of conflicts. In particular, given the area in which the claimant lived, he felt it would be inappropriate for an IO to continue to be involved with subjects in that area or there would be a need to ensure that all his actions were auditable.

66. Mr San was given a copy of the investigation reports of Ms Rennie and Mr Devereux (and appendices) as well as the summary MG5 from the anti-corruption criminal investigation. He told the tribunal that he had been approached by a Mr Ken Ruddock in July 2019 to ask if he would be willing to take on the role as decision manager. He described that he was advised

that it was a gross misconduct case involving a member of staff "who had accessed" databases without a business reason. He refuted the suggestion in cross examination that this suggested that a decision had already made as to the claimant's guilt. He was not initially aware of the timeline of the claimant's case and did not know why there was a delay between the production by Mr Williams of his report on 1 December 2016 and the claimant's suspension on 5 October 2017. He agreed that the longer an investigation was left, the harder it was to defend oneself, that the allegations dated from 2013 (with the dismissal decision only in March 2000) and that the names of any specific CIOs involved would be difficult to recall.

67. Mr San said that he was unable to send certain documentation to the claimant which contained personal data of the individuals on whom the claimant had conducted lookups. He said that the advice he got from HR was that this information would be made available to the claimant during the hearing instead. He agreed this documentation was necessary for the claimant to have to be able to defend himself. It was pointed out to him that HR had advised Ms Rennie on 8 March 2018 that the claimant needed to have sight of all the documents prior to the disciplinary hearing and that it may be easier to send them to the claimant electronically. He agreed that by the time he was involved the advice from HR was now different – namely, it was important was that the claimant was given ample time to access the information prior to the hearing and time allowed for him to adjourn during the hearing should he wish to refer to it again. He said that this was not the advice he was given. He agreed that the information could have been provided to the claimant with names redacted. Again, however, access was allowed to the lookups evidence, only if it was necessary and in accordance with a business need. It was not, he said, necessary to send 700 pages of data to the claimant. When suggested to him that providing evidence to an accused in a gross misconduct case couldn't be a breach of the respondent's data protection principles, he said that he believed that it would on the advice of HR and that he wouldn't be comfortable sending information to someone who was on suspension and therefore had had their security clearance temporarily suspended.

68. It was accepted by the claimant that he had been provided with this documentary evidence as part of the criminal proceedings. There was no enquiry of him by the respondent as to whether he still had it, however.

69. Mr San wrote to the claimant on 17 October to introduce himself as the new decision manager in his case and sent an invitation to a disciplinary hearing set for 7 November. With this he attached relevant documentation but explained that there were certain documents on the respondent's systems that he was unable to send in that manner due to security restrictions. These documents contained personal data of the individuals the claimant had conducted lookups on. Mr San had spoken to HR who had agreed that the information could be made available to the claimant during the hearing. He

was told that these documents had already been seen by the claimant during the anti-corruption investigation.

70. The hearing was initially postponed due to the unavailability of the claimant's union representative but, as referred to already, he raised concerns that his grievances ought to be heard first. Mr San was unaware as to the nature of the claimant's grievance and did not want to know. He had been instructed by HR at the outset that it wasn't relevant to the disciplinary process. Mr San subsequently confirmed that he would suspend the disciplinary process until the grievance outcome. HR advice remained that the grievance would not affect the disciplinary process, but he was told that the grievance was likely to be resolved very soon so that it was not unreasonable to delay the disciplinary process. Subsequently, Jo-Anna Irving confirmed that she had made her decision on the grievance and Mr San emailed the claimant on 17 February 2020 saying that he was now in a position to continue with the disciplinary case. Mr San was not aware that she had decided that part of the grievance was outside her remit and that it should be raised by the claimant during the disciplinary process. The claimant replied on 24 February that in order to defend himself he required access to his personal work computer. Mr San sought advice from HR but told the tribunal that he did not believe access could be given as the claimant was suspended and wouldn't have a genuine business reason to access information. The anti-corruption team, he believed, had already conducted the necessary analysis of data.

71. Mr San did not believe that accessing systems other than CRS and CID would provide relevant evidence. He accepted that he didn't do the claimant's job and possibly he might have gone on to other systems and recorded information, but felt that that was unlikely. The claimant was looking for immigration offenders and information on them was primarily provided through CRS and CID. There had been a search of those systems and no notes made by the claimant had been found.

72. After the grievance hearing in November 2010, Mr Gallacher was asked by Jo-Anna Irving to resume regular contact with the claimant to send him his most recent contractual documentation which detailed the allowances he would be paid on top of basic salary. After he had messaged the claimant on 20 February 2020 to say this was being done, the claimant replied to thank him. He texted the claimant further on 2 and 6 March to check that the claimant had received them. The claimant responded on 7 March saying that due to ongoing concerns he was not in a position to comment. Mr Gallacher accepted in evidence that he could have contacted the claimant more during his suspension.

73. The claimant was then invited on 17 February to a disciplinary hearing scheduled for 28 February 2020. The claimant responded that he had not been given the final outcome of the grievance. He also sought access to his work systems upon which Mr San took further HR advice. Mr San told the

tribunal that he was never going to give the claimant access to the restricted databases on the Home Office systems as he felt this was not necessary. The claimant was to be given access to his computer so that he could look at the shared drive.

74. Ultimately, the claimant confirmed that he was available to attend a disciplinary hearing on 12 March and explained that he believed the respondent's systems held information which would help including CID, CRS, WICU and NOD and the claimant's personal folders and notebooks. Mr San explained that the claimant would not be able to access the CID, CRS and NOD systems as these were live systems and he was not allowed to access them given the disciplinary charges. Mr San explained that the security protocols only allowed access to systems for business reasons and he did not deem a disciplinary hearing to be a business reason to access personal data of immigration subjects and applicants or that access to the systems would provide mitigation for the claimant's case.

75. The claimant was accompanied by his union representative at the hearing. He was given access to his personal drive (through his laptop) and notebooks two and a half to three hours before the hearing was scheduled to commence. He could access his desk/pedestal. Mr San's view was that he chose to spend that time consulting with his union representative. The claimant requested a delay in the hearing to review the documents and Mr San granted a further 30 minutes as he felt that the claimant had had sufficient time. Mr San said that the claimant did not in fact access his computer.

76. The vast majority of the lookups in question occurred on 2 dates with almost half on the single day of 28 December 2013 and another cluster on 15 November 2015. When put to the claimant that he could quickly have ascertained from his PNBs what he had recorded on the relevant dates, he said that he wanted to check all parts of the PNBs to see if they contained any additional information. He agreed before the tribunal that he did inspect the entries for 28 December 2013 - it just showed that he had been at work on a late callout. He disagreed that he would be able to quickly access emails sent around those dates from his computer. He then said he was not given an opportunity to look at the computer. In fact, as had been promised, he was provided with the computer. The tribunal rejects the claimant's suggestion that he was ever denied access to it. The claimant's evidence was then that Mr San told him he could look at it during the disciplinary interview. Ultimately, the claimant conceded that Mr San allowed access during the hearing if he had wished. When put to the claimant that it was not Mr San's fault if the claimant did not ask, he said then that he did ask and the access was not given. He said he did not even know if his login details would still be valid. There was little consistency and coherence in such evidence – later in his cross-examination the claimant said that he may not have asked for access to the computer as he was "preoccupied" at the time. The tribunal does not accept that the claimant could not have

requested access to his computer or that it would have been withheld had he raised it in the morning immediately prior to the disciplinary hearing commencing and during the hearing itself. Neither the claimant nor his union representative raised any complaint during the hearing.

77. At the hearing, Mr San said that he was not here "as an investigation but to hear any mitigating circs based on the facts of the case." Mr San referred to the alleged unauthorised lookups and asked the claimant to respond. The claimant spoke at length complaining about the process, referring to the criminal investigation and saying that he had been stitched up by Mr Heaton. When asked to respond to the alleged unauthorised lookups the claimant referred to his PNB showing on 28 December 2013 that he was on a late callout shift. He said he remembered receiving a call from someone wishing to pass on information in Urdu. He said that he could not remember exactly what was said but it related to information in connection with a number of Pakistani nationals associated to postcode BD8 XXX. Any checks that he had done on that day were associated with that postcode. He agreed that he had previously lived there. When asked if he had informed the CIO, he said that he had and was not told to log this in his PNB. Mr San then sought to take the claimant through a number of specific lookups seeking his explanation for them. The claimant was unable to provide much by way of response.

78. The claimant was alleged in the investigation to have conducted unauthorised lookups identifying 33 occasions. The claimant did not disagree that he had conducted the searches. Mr San considered that he had failed to provide mitigation or justification as to why the searches had been conducted. He said that sometimes the system allowed employees to enter information into other records that were linked, but Mr San did not believe there was any evidence of this. He felt that instead of providing a business reason or mitigation for his access, the claimant wished to speak about his criminal case which, Mr San explained to him, was separate to this disciplinary process. The claimant produced the transcript of the final criminal hearing. Mr San told the tribunal that he did not know what material had undermined the prosecution case and why the case was not pursued. He felt that the disciplinary case was completely different. He agreed, however, that if Mr Heaton had provided him with evidence which undermined the case there may have been a different outcome.

79. Following the hearing, the claimant sent Mr San a set of "mitigating documents", but Mr San did not believe they contained anything which he had not already seen. There was also a submission completed by the claimant after the hearing, but Mr San did not consider this to corroborate claims that he had received intelligence on a subject or address.

80. Mr San paid particular regard to a document to which the tribunal has been referred as Annex J, a schedule with explanations of evidence considered and compiled by Mr Heaton as part of the criminal investigation and

covering what were said to be unauthorised lookups since 6 June 2013. This contained similar references to information as that contained in the report of Mr Williams. Mr San also considered a list of mobile phone numbers called by the claimant and linked to visa sponsors.

81. Mr San concluded that there were no business reasons for the 33 lookups highlighted in the investigation. The checks were all of a similar nature in terms of the conflict issue/lack of business need and he considered them as a whole. There was no evidence as to why the claimant would carry out the searches he had. His activity needed to be auditable. Regardless of any policy as to how the audit trail might be created, the claimant had to be accountable. If a check arose which involved a conflict of interest, he would have expected the claimant to pass this on to someone else, but if he had involved himself there ought to have been an audit showing the reason and that he had the appropriate authority. He would expect that standard to apply across the whole of the respondent. The claimant was not an intelligence officer and should not be "fishing" for information unless he was acting in the role of intelligence officer. It was not the claimant's role to do checks on behalf of intelligence officers. The databases were to be used if the respondent had direct intelligence or to find someone's identity. Mr San considered that the number of searches the claimant had conducted in breach of the zero tolerance policy, the civil service code and the 10 golden rules made the claimant untrustworthy as an immigration officer and warranted the sanction of dismissal. A lesser sanction he felt would not have taken into consideration the number of data breaches with no business reason. Mr San confirmed his decision to the claimant in writing on 18 March and gave him the right to appeal. This stated: "On the balance of probability, I hold a genuine belief the 33 checks you conducted on CRS were not conducted for business reason. There is also further evidence that you made contact with sponsors of applications on a number of occasions from your official Home Office mobile telephone linked to the 33 unauthorised checks."

82. Ms Danielle Heeley, who held a senior management position outside the claimant's line management structure, volunteered to hear the claimant's appeal. She had not acted as an appeal decision-maker previously. She was provided with a pack of documentation. The claimant's Appeal Notification Form set out the reasons for his appeal as being that he had new evidence to submit, that the process had not been applied correctly and that the decision was unreasonable. This was received on 24 March 2020, just after the announcement of a national lockdown as result of the coronavirus pandemic. She sought to arrange a virtual hearing, but the claimant did not believe that to be appropriate given his IT access and suffering from dyslexia. Following the easing of restrictions in July 2020, Ms Heeley sought advice from HR. However, once she was notified that the claimant had brought this employment tribunal claim she understood that she should put on hold the internal proceedings until their conclusion. However, this was clarified/corrected in early September 2020 at which point she understood the need to continue with the internal process. Local

lockdowns again called into question the appropriateness of a face-to-face hearing and the claimant's union representative confirmed on 21 October that the claimant would consider a virtual hearing if held after 6pm.

83. The hearing took place of 17 November and lasted for around 2 hours. The claimant was accompanied by his union representative. Ms Heeley explained that the purpose of the meeting was to determine whether the decision-making process had been followed correctly and, whilst she had requested all new evidence to be sent before the hearing, the claimant had not sent this. The claimant said he would send it after the meeting had concluded.

84. This was subsequently received and considered. However, Ms Heeley did not consider this to be new evidence, having compared what the claimant provided against the evidence available during the disciplinary process. She felt both Ms Rennie and Mr San had given the claimant a reasonable opportunity to present his facts. Notes had been taken of the meetings which the claimant had been given the opportunity to review. She believed that Mr San's dismissal letter provided adequate information to explain how he had reached his decision and that he had considered all of the evidence. She agreed that there should have been more contact with the claimant during the suspension period but did not believe that this had affected the decision. Ms Heeley wrote to the claimant on 1 February 2021 rejecting his appeal - this had taken longer to produce than expected because of the time she spent reviewing the evidence. It was concluded that given all the evidence provided to the investigating manager and the decision manager, no new evidence had been provided to change any decision that had been made. Ms Heeley continued that since the claimant had been dismissed as a result of misconduct which was covered by the Cabinet Office's definition of internal fraud, details of his dismissal should be sent to the Cabinet Office to be included on a database of civil servants dismissed for internal fraud. She told the tribunal this was a standard paragraph added following HR advice. The claimant wrote to ask for a detailed explanation of the appeal decision. None was provided.

85. As regards the collapse of the criminal trial, Ms Heeley considered the threshold the respondent was looking at in the disciplinary case to be different from the criminal standard. She was satisfied that the dismissal conclusion had been reached on the balance of probabilities.

86. Mr Tim Gallacher, HMI, had been the claimant's line manager from May 2015. He gave evidence to the tribunal. He said that the claimant had authority to investigate matters pertaining to investigations allocated to him and that the results of such research would be recorded on investigation paper files. He did not have authority to receive potential intelligence on breaches of immigration law from members of the public and then conduct checks on the respondent's systems based only upon a verbal authority from a CIO. He should not have been conducting checks on persons known

or close to him and the risk of doing so should have been raised with a manager or Mr Gallacher himself. All staff were aware that public denunciations were handled by designated intelligence teams. At Leeds, on the enforcement team, there was a duty desk function which received incoming calls on a broad range of matters. Where a caller was wanting to pass on intelligence, the caller was directed to the intelligence team or provided with their direct number. All of the immigration officers, including the claimant, from time to time answered the "duty" phone. If a caller was struggling to speak English then any officer with language skills could assist, as the claimant did, for the purpose of signposting the call appropriately. The duty desk role was not for the purpose of directly gathering intelligence or researching information.

87. Immigration officers were also required to have their PNBs signed on a monthly basis by their line manager to ensure standards of reporting working activities were compliant with policy. If an immigration officer received intelligence from the public, then that information could be recorded on a fresh page of a notebook (to protect the source and to avoid crossover with evidence in the notebook). That information would then be directed to the intelligence team on the officer's return to the workplace. Research on the respondent's databases as part of a tasked piece of work should have been recorded on the paper working file and/or the National Operations Database. Mr Gallacher was clear that he never had and was confident that no other manager would have agreed with the claimant either verbally or in writing that he should continue researching an investigation via the respondent's databases in circumstances where he had raised a potential conflict of interest. When pressed in cross examination, Mr Gallacher said that the respondent's managers would not authorise staff to research a case where the subject had been raised as giving rise to a potential conflict of interest. He said that on a couple of occasions he had given the claimant verbal authority not to take part in an activity (and therefore there would be no audit trail), but he did not agree that there would ever be verbal authority the other way round. It simply didn't happen. There had never been an instance where he had given authority where there was a conflict of interest. He agreed with the interpretation of Ms Curle, as set out in her above-mentioned email, that there was no specific policy. Nevertheless, his expectations matched hers. All officers he said were bound by the civil service code. When asked if there was ever a situation where information might be on NOD but not anywhere else he said that this would only be if there was, for instance, a description of the layout of premises or if someone was encountered on an enforcement visit but was not a person subject to immigration control.

88. It was put to him that an immigration officer might sometimes answer the duty phone and be told something of an intelligence nature. Mr Gallacher was clear that the officer needed to direct the call to the intelligence unit. There was a need to be very careful in protecting sources. Any incoming intelligence had to be sanitised so that the source was protected and staff protected in the event of a future enforcement visit - there would be steps

taken to ensure that the recipient of the information did not risk coming into contact with the source. The claimant wouldn't be researching intelligence information from a member of the public without more senior authority. He might transfer the call to the intelligence unit or ask someone to call them directly. If the intelligence was effectively 'blurted out' by the informant, the officer would put it through then to intelligence, but in his experience those sort of disclosures were unlikely.

89. The claimant and Mr San in particular were questioned in detail on a range of the claimant's lookups which were under investigation.

90. The claimant conducted lookups of SB who on 3 October 2005 had made an application for entry on a spouse visa as the wife of the sponsor AH1, who lived at the claimant's old BD8 postcode address. He identified SB as his estranged sister-in-law though couldn't recall when she separated from his brother, AH1. A visa was granted on 19 December 2005. The claimant had viewed the visa application on 17 March 2008 and again on 25 July 2009 before the 2013 zero tolerance message and when he still lived at the property. The claimant agreed that he had. He volunteered that this could have been part of a training need and he did a lot of entering of searches when he was mentoring people on the systems. The tribunal does not accept that explanation. He viewed SB again on 28 December 2013 following a postcode search for the road. CID records indicated that the applicant had been granted leave to remain until December 2009 and then indefinite leave to remain in July 2010. It was recorded that it was not clear what business interest the claimant would have in an applicant residing at his (previous) home address (where his mother still resided), who had valid leave to be in the UK at the time of the lookups and was not of interest to the local immigration enforcement team. The claimant said he was trying to eliminate people from enquiries and did not accept that this was an action that would stick in his memory.

91. As with all of the lookups referred to, the claimant does not dispute that he made the lookups. The information from CID was transposed by Mr Heaton into his document which constituted a schedule of the alleged improper lookups and which was prepared for the criminal proceedings. The claimant has called into question Mr Heaton's integrity. The tribunal has no basis however for concluding that the descriptions of the corresponding CID records and the various subjects' immigration history are not accurate.

92. The claimant accepted that this lookup was exactly the type of situation where he would know that there was a need to be transparent.

93. The claimant had made a number of lookups in respect of GH, on 17 July 2013, who lived at the claimant's previous BD8 address. CID indicated that GH had been granted indefinite leave to remain in 2002 before being naturalised in 2009. The claimant accepted before the tribunal that GH was

the ex-husband of his sister, who used to live at the claimant's mother's address/his old address. GH had also lived there for a period. The claimant's sister had been his sponsor for an initial visa which was issued on 1 December 2000. The claimant had in fact conducted sponsor searches identifying GH in 2010. The claimant had provided information during his interview with Ms Rennie that he had looked up GH for a travel check based on specific intelligence and that he had run it past his CIO. He told the tribunal that was accurate. When put to the claimant that it was unusual surely to be asked to search for a brother-in-law he replied: "not necessarily". He did not accept that it was something that would stick in the memory. Nor did he accept was something that he would ensure was recorded - the situation was different he said from the recording he made about the reason for not attending the enforcement visit in November 2013. It was put to the claimant that he recalled that the information came from direct intelligence, yet he couldn't recall the identity of the CIO he claimed to have spoken to. The claimant raised that he had accessed the NBTC (travel check) system through an intelligence officer who had been in the office, Liam Dillon. Mr Dillon conducted the check for him. It was put to the claimant that there was no evidence that GH ever been of interest to local enforcement. He was not referred to on CID and since he was not of operational interest he wouldn't be on the other systems. The claimant accepted that he wouldn't appear on WICU, Athena or NOD. The claimant then said that GH was facilitating someone to come into the UK by fraudulent means – something he had learned from an anonymous phone call. It was put to the claimant that this was not information he had previously provided. There is evidence that the claimant emailed Mr Dillon regarding an NBTC check on GH – this was, however, on 8 November 2015.

94. The claimant logged onto CRS on 28 December 2013 at 18:49:02. He conducted a search against his former BD8 postcode. He agreed that alarm bells should have been ringing before he pressed the search button. He then searched by sponsor, date range and a seven digit visa number. He agreed that from this number he would know the identity of the individual who had made the application. The individual was "SM1" who lived next door but one to the claimant's old BD8 address (and his mother's current address). The claimant's position was that he did not know SM1. When put to him that it was imperative that he gave a legitimate business reason for looking up a former neighbour, he said that he did give a reason although he could not recall what it was.

95. The claimant then referred to him speaking Urdu and receiving a phone call where he was given his old postcode and asked for authorisation to run checks on it. The claimant referred to answers he gave in his interview with Ms Rennie.

96. The CID records indicated that SM1 had been granted indefinite leave to remain in 2016, had valid leave to be in the UK at the time of the lookups and was not of interest to local enforcement. SM1 had applied for a visa on

10 July 2013 and it was issued on 6 November 2013. It was put to the claimant that it was not a coincidence that he was looking this person up around 6 weeks later. The claimant's response was that he was conducting a number of checks and not specifically looking at this person. He said that there was nothing untoward in him looking up SM1 twice on this date.

97. The claimant conducted a number of searches on CRS on 28 December 2013 from 19:03:13. The search was conducted by name, nationality, sex, date of birth and a range of dates. The claimant confirmed to the tribunal that he knew who he was looking for. He agreed that he also knew the street that this individual lived on. The individual was identified as SM2 and was sponsored by a person who lived next door to his previous BD8 address. The claimant had completed 2 separate lookups of SM2. The claimant said that he did not know the individual. He said that the check was conducted as part of his job to look for information to eliminate people from enquiries.

98. SM2 had applied for a spouse visa on 17 June 2013. The visa was refused on 9 September and an appeal against that decision dismissed on 24 July 2014. The claimant's lookup therefore took place whilst the visa application decision was still under appeal. The claimant confirmed that there was no record of SM2 in his PNB. When it was put to him that, as a person of no interest to local enforcement (a person who had not entered the UK), this was a person who would not be on the WICU or NOD databases, the claimant said that he could not comment.

99. It was put to the claimant that he had said that an anonymous phone call had led to his lookups in respect of SM1 - was he now saying that that call related to SM2 as well? He said that he had received a phone call on his late callout shift regarding certain individuals in this postcode who were said to be immigration offenders. He had been given an age range and postcode and was looking on the system to see if there was any merit in taking the case forward. The claimant said that he had not been given a proper opportunity to explain this to Mr San and then Ms Heeley on his appeal.

100. Another lookup on 28 December 2013 involved the individual AK at the claimant's old address. There were no CID records for that person. The individual had applied for a six month visit visa as the son of the sponsor JK and had been granted the visa on entry to the UK on 6 October 2004. The claimant accepted that JK was his grandfather who resided at his mother's address. The claimant said that he did not know the identity of AK - from the description just given, he would be the claimant's uncle or father. It was put to the claimant that this search warranted a cogent explanation and must have raised the reddest of red flags. Again, he said that he was trying to eliminate individuals from enquiries.

101. The claimant had conducted another search on AK on 15 November 2015. AK had been granted a 5 year family visit visa as a relative of AH2

on 27 October 2010. The claimant denied knowing who AH2 was. He accepted however that the records showed him as living next door to the claimant's current address. There were again no CID records for AK, who it was said in Mr Heaton's schedule had never been of interest to enforcement. The claimant reiterated that he carried out checks based on information he received to eliminate people from his enquiries. It was put to the claimant that if, as appears likely, AK was related to him, he would have a strong personal reason to remove that person from the scope of any investigation. He responded: "not necessarily". He couldn't give any specific information regarding why he had conducted this check.

102. The claimant had undertaken lookups of UA on 10 May 2014 and 1 August 2014. UA had applied for an accompanied child visa on 13 April 2014. The sponsor was recorded to be AH2 and said to be the cousin of the claimant. The claimant agreed again that AH2 was his next-door neighbour. He agreed that he knew he was searching his own postcode in getting information about this application. It was suggested that, as a child, it was hardly likely that UA would be an intelligence target. The claimant said that he could not say, but could not recall what legitimate business reason he had for making this lookup.

103. Mr Heaton's records showed UA to be the son of AK. The claimant did not respond when it was put that he must be related to UA in circumstances where AK appeared to be his uncle. There was also information that UA's grandmother, BB, lived at the claimant's mother's address.

Applicable law

104. In a claim of unfair dismissal, it is for the employer to show the reason for dismissal and that it was a potentially fair reason. One such potentially fair reason for dismissal is a reason related to conduct - Section 98(2)(b) of the Employment Rights Act 1996 ("ERA").

105. In cases of misconduct a Tribunal is normally looking to determine whether the employer genuinely believed in the employee's guilt of misconduct and that it had reasonable grounds after reasonable investigation for such belief. The burden of proof is neutral in this regard. When considering the standard of reasonableness in the case of **A –v- B EAT/1167/01**, Elias J said as follows:

"Serious allegations of criminal misbehaviour, at least where disputed, must always be the subject of the most careful investigation, always bearing in mind that the investigation is usually being conducted by laymen and not lawyers. Of course, even in the most serious of cases, it is unrealistic and quite inappropriate to require the safeguards of a criminal trial, but a careful and conscientious investigation of the facts is necessary and the investigator charged with carrying out the inquiries should focus no less on any potential evidence that may exculpate or at least point towards the

innocence of the employee as he should on the evidence directed towards proving the charges against him."

106. This, however, is simply part of the Tribunal's fundamental application of Section 98(4) of the ERA which provides:

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

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) *shall be determined in accordance with equity and the substantial merits of the case."*

107. The Tribunal must not substitute its own view as to what sanction it would have imposed in particular circumstances. A Tribunal has to determine whether the employer's decision to dismiss the employee fell within a band of reasonable responses that a reasonable employer in the circumstances might have adopted. It is recognised that this test applies both to the decision to dismiss and to the procedure by which that decision is reached including the investigation.

108. A dismissal, however, may be unfair if there has been a breach of procedure which the Tribunal considers as sufficient to render the decision to dismiss unreasonable. The Tribunal must have regard to the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015.

109. If there is such a defect sufficient to render dismissal unfair, the Tribunal must then, pursuant to the case of **Polkey v A E Dayton Services Ltd [1998] ICR 142** determine whether and, if so, to want degree of likelihood the employer would still have fairly dismissed the employee had a proper procedure been followed. If there was a 100% chance that the employee would have been dismissed fairly in any event had a fair procedure been followed, then such reduction may be made to any compensatory award. The principle established in the case of **Polkey** applies widely and beyond purely procedural defects.

110. In addition, the Tribunal shall reduce any compensation to the extent it is just and equitable to do so with reference to any blameworthy conduct of the claimant and its contribution to his dismissal – ERA Section 123(6). Under Section 122(2) of the ERA any basic award may also be reduced

when it is just and equitable to do so on the ground of any kind conduct on the employee's part that occurred prior to the dismissal. In relation to blameworthy conduct, the test is whether it actually occurred (a decision on the balance of probabilities for the tribunal), not the more general unfair dismissal test of whether the employer reasonably believed it happened

111. Applying such principles to the facts, the tribunal reaches the conclusions set out below.

Conclusions

112. The respondent formed a genuine belief that the claimant was guilty of misconduct in conducting lookups without business reason in circumstances where those lookups involved a potential conflict of interest and where therefore specific and auditable authority ought to have been obtained from a more senior manager. The claimant has not pointed to any hidden or ulterior motive for the respondent's decision to terminate his employment. It is accurate that the disciplinary process flowed from a separate investigation conducted by the anti-corruption team and which led to an aborted criminal prosecution of the claimant. The claimant maintains a lack of honesty and integrity on the part, in particular, of Mr Heaton who was involved in that criminal investigation. There is no basis upon which the tribunal could conclude however that the information he provided was fabricated or inaccurate. Certainly, no such lack of honesty or integrity has been raised as an attempt to impugn the dismissal decision-maker, Mr San, nor Ms Heeley on appeal.

113. The tribunal rejects the proposition on behalf of the claimant that the respondent was unable to satisfy the tribunal of the completion of a reasonable investigation without calling Mr Heaton or Mr Williams as witnesses. The tribunal had before it substantial evidence of the product of their investigations. Mr Williams' opinion that the evidence did not meet the criminal standard in respect of the criminal charges pursued against the claimant does not of itself render the degree of investigation or reliance on the fruits of the criminal investigation in the disciplinary case unreasonable.

114. It is however accurate that neither Ms Rennie nor Mr Devereux conducted any great substantive investigation, save in Ms Rennie's case her obtaining of the additional information from Ms Curle and her own interview of the claimant.

115. There was no consideration of either investigator interrogating other systems available within the immigration service to see whether they contained any information which might corroborate a business need of the claimant for any of the contentious lookups. Both were essentially satisfied with what they had been given by the criminal investigators. No questions were raised of the CIOs who might have given the claimant verbal

authorisation for the lookups. This was in the context of the lapse of a substantial period of time between the lookups and the claimant being questioned on them within the disciplinary process. Mr Smith, in questioning the claimant, referred to the vast majority of the lookups having taken place on only two dates, with reference to the relative ease of the claimant's task in ascertaining whether he made any entries in his PNBs or sent relevant emails. Ms Brooke-Ward makes the point that therefore the task of the investigators was narrower in ascertaining who might have given the claimant any necessary authority. Certainly, the claimant was telling Ms Rennie during their interview that he had received intelligence on 28 December 2013 and had spoken to a CIO. No enquiry was made to see who had been on duty.

116. Ms Rennie did not appreciate the potential lack of local policy and practice in operation at Leeds as regards notifications of conflicts of interest. The respondent did not recognise that within Mr Williams' report were recommendations regarding the need for staff to declare any potential conflict of interest.

117. Ms Rennie's interview of the claimant was astonishingly brief given the complexity and scope of the allegations and that the transcript of the claimant's interview by Mr Heaton was unilluminating in the context of a "no comment" interview under caution. Mr Devereux did not interview the claimant at all.

118. Mr San did not see himself as having any investigative role nor understand his ability to open new lines of enquiry which had not previously been pursued. He was content to accept uncritically as sufficient the reports produced by Ms Rennie and Mr Devereux and their appendices.

119. Again, the respondent showed a surprising lack of interest in the reason for the collapse of the criminal proceedings in respect of allegations which were based on the same facts as those in play in the internal disciplinary process.

120. The tribunal revisits a number of concessions made by the respondent's witnesses.

121. Ms Rennie recognised that Mr Heaton's team had concluded that records had been accessed by the claimant without a business reason. She felt she had information from a team of experts She agreed that she had regurgitated the criminal prosecution report. However, she did not know that Mr Williams had concluded that the criminal threshold was not met and why. When put to her that if the investigation had been done properly, she would have uncovered the material which derailed the criminal prosecution, she responded in the affirmative. Ms Rennie at one point said: "I didn't do any investigation". She accepted that she had not looked to find any

legitimate business reason. She referred to the claimant having an opportunity to put forward "any mitigation" inferring that she already considered him to have committed misconduct.

122. Ms Rennie's reference to the claimant's no comment interview displayed a lack of openness. Yet she agreed that she was not surprised the claimant couldn't be specific given the passage of time. She herself formed a generalised view after a 29 minute interview which she accepted was not long enough to go through the relevant lookups,

123. She accepted that she had not sought to further understand the claimant's role. Ms Rennie could not point to any policy requiring an audit trail if a superior's approval had been given. She based her view as to policy on the training she had received without checking what the claimant's training had encompassed. It was raised with Ms Rennie that she did not refer to the content of the email she had received from Ms Curle in her investigation report. She agreed that the content was important and could have affected the outcome of the disciplinary hearing.

124. She was unaware of the demographic of the BD8 postcode area. She accepted that it would have been relevant for her to know that. Ms Rennie accepted that she could have retrieved the duty lists to see which CIOs were working at the time and then referred the claimant to them to help identify who he said he had obtained approval from.

125. Mr Devereux too was focused on the claimant having an opportunity to present any "mitigating" evidence whilst recognising that individual lookups had not been put to the claimant.

126. He told the tribunal that he had not been aware of the demographic of the area in which the claimant lived. He agreed it was something he would have made reference to in his report.

127. He agreed that he should have asked about the evidence which ended the criminal prosecution.

128. He was not aware what systems had been interrogated and formed the basis for the anti-corruption team's report. He agreed that he could have looked to see which CIOs had been on duty when the claimant made specific lookups. He agreed with the proposition that in the absence of the CIOs being interviewed, the report he produced could not be regarded as comprehensive.

129. Mr San was advised that he was to hear a gross misconduct case involving a member of staff "who had accessed" databases without a business reason. He was not there to conduct an investigation but to hear any mitigating circumstances. Mr San was not aware that the claimant had

been told that parts of his grievance should be raised during the disciplinary process.

130. The investigation of the claimant's case is indicative of inexperience on the part of those conducting the investigation and determining the claimant's guilt. Their omissions were not deliberate and it has to be recognised that this was a complex case. The tribunal appreciates that a standard of perfection ought not to be placed on an employer and that an investigation with flaws may still be a reasonable one. Nevertheless, the interrogation of available evidence was flawed here to the extent that the investigation fell outside the band of reasonable responses.

131. Many other criticisms have been made of the respondent's conduct of the case against the claimant from a more purely procedural viewpoint.

132. The claimant was suspended for a significant period. Perhaps the most surprising delay was from the emergence of allegations of wrongdoing to the claimant's notification of those and his consequential suspension. Otherwise, the delay was predominantly down to the ongoing criminal proceedings and the obvious prejudice which might have been caused to the claimant had he been required to answer the disciplinary allegations with a criminal trial still pending. Indeed, the claimant requested the pausing of the internal investigation. Otherwise, delays in progressing the matter were for a variety of reasons including availability issues and the need for different people to familiarise themselves with a significant amount of documentation. The period taken to resolve the claimant's case was not in itself unreasonable.

133. There is an issue as to whether the claimant could have had a fair hearing in circumstances where the lookups under question were so long ago by the time the dismissal decision was reached. The tribunal concludes however that a fair hearing was still possible, not least in circumstances where the lookups in question were of such a nature as would be expected to stick in the memory and where the claimant was still able to give detailed accounts of events in 2013. He had been aware of the specific charges for some time. The delay was clearly not helpful to the claimant, but he was not prejudiced in such a manner as to have rendered the respondent's decision to progress the matter to a dismissal decision in early 2020 unfair.

134. The allegations were put to the claimant in a manner from which he understood what was being said and relied upon in evidence. Mr Heaton's schedule, which the tribunal has found the claimant had access to at all material times, was very detailed and clearly set out the information reviewed and considerations which led the respondent to consider that the claimant had no business need for the particular lookups in question. Much has been made of the claimant's inability to access particular information systems used by the respondent. There is no basis for concluding that the

summaries presented of the claimant's CRS activities or the information contained on CID were inaccurate. The claimant maintains that Mr Heaton was selective in what he referred to in suggesting some form of impropriety on his part. He was only selective in the obvious context of him focusing on a number of suspicious lookups which seemed to involve the claimant in a potential conflict of interest. The claimant has at times suggested that there was a bigger picture and looking at the totality of his CRS activity would have been illuminating. He has not explained how. Further, the reference to the claimant's need to access other databases was ultimately somewhat of a red herring in circumstances where the claimant could not provide to the tribunal any basis upon which those might have contained relevant information.

135. Prior to the disciplinary hearing the claimant was given access to his PNBs and computer, where he could have looked up any relevant emails or notes he might have placed himself on his hard drive. His case is that emails and PNB entries would have been the most convenient places for him to have recorded relevant information. The claimant has maintained that the time given for access was insufficient. That appeared to have some force which lessened however when consideration was given to the limited number of dates which were under investigation. The claimant could and did quickly access his PNBs. If he did not do so or not for particular dates then that was his choice. The claimant's allegations regarding a denial of access to his laptop have been rejected. Again, if he did not take an opportunity to search activity stored within his personal drive/outbox, then that was his choice.

136. The respondent's failure to adhere to its own procedures regarding witness evidence has been highlighted but is certainly on its own insufficient to render dismissal unfair. The tribunal has not identified any breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures.

137. No argument of inconsistency of treatment with any other employee of the respondent has been pursued.

138. These procedural criticisms add nothing to the tribunal's conclusion that in the absence of a reasonable investigation, in all the circumstances, the claimant was unfairly dismissed.

139. That might lead the tribunal to consider, pursuant to the case of **Polkey** whether and, if so, with what degree of certainty the claimant would have been fairly dismissed in any event. Such exercise always involves some element of what might be termed speculation and the respondent's witnesses have on various occasions, when their failings have been pointed out to them, accepted (often over submissively, the tribunal considers) that the taking of further steps might have made a difference. This includes the taking of steps to interrogate different IT databases in circumstances where

that has indeed never occurred and the tribunal itself has no evidence of what the systems show. Such exercise is, however, rendered otiose in circumstances where, on the evidence before the tribunal, it has been able to make its own findings in respect of the misconduct alleged against the claimant.

140. The respondent has inevitably submitted that if dismissal is found to be unfair any basic and compensatory award ought to be reduced in their entirety to reflect the claimant's conduct.

141. The claimant was not a good witness in his own cause. He showed a reluctance to directly answer difficult (for him) questions and a propensity instead to seek to give evidence and examples of his workplace conduct unrelated to the question in issue. His evidence lacked consistency.

142. The respondent's zero tolerance policy was clear, including to the claimant. The only deficit was in a policy specifically directing how a conflict might be recorded.

143. When asked if he had ever highlighted any conflict of interest (the question was clearly related to lookups), the claimant said he had informed a CIO verbally and in writing, certainly on one occasion. He agreed that when checking for a person or place known to the immigration officer personally, a manager should be made immediately aware and that the immigration officer should not proceed any further without authority. He disagreed, however, that the authority should be noted in his PNB. In theory that was the case, but in practice it did not happen, he said. He said that he wouldn't make a note in his notebook and that would only be done if he was asked by a manager to do it. He agreed then, however, that there would be an expectation that CIOs would countersign the person's PNB or have an email record of a conflict. He agreed that if he had notified someone, he would expect there to be a record somewhere of that. Later in cross examination, the claimant said that if he had had access to his PNBs, there would be evidence of a record of a declared conflict of interest. It was put to him that he had just said that such records were not kept. He responded that, without looking at the records, he couldn't say and that, if there was a need to write something down, he would.

144. Whilst it was accepted by Mr Devereux that within the claimant's team there was no express requirement to keep a particular kind of audit trail, he said that this was a standard all civil servants would abide by and it beggared belief that the claimant would do multiple checks on family members and associates. The tribunal agrees.

145. It is fortified by the evidence of Mr Gallacher as to the practices applied at Leeds which the tribunal accepts as accurate. The claimant should not have been doing checks into someone known to him. No one

would have agreed verbally or in writing to him conducting those checks. Ms Curle's expectations as to the conduct of immigration officers was accurate

146. The claimant accepted that certainly some of his lookups involved exactly the type of situation where he would know that there was a need to be transparent. When put to the claimant that it was unusual surely to be asked to search for a brother-in-law he replied: "not necessarily". He did not accept that it was something that would stick in the memory. Nor did he accept that it was something that he would ensure was recorded. The tribunal rejects that evidence and finds to the contrary.

147. The tribunal cannot conceive that the claimant considered it appropriate to conduct these lookups or that he would even consider it appropriate to seek authority. The obvious course of action (as per Mr Gallacher) would be for someone else to have undertaken the task. Certainly, if the claimant had not recognised this and had sought authority, he would have wished to ensure, for his own self-preservation, that there was a record of the reason for the searches in question. Keeping such a record was very straightforward. He had managed to record for instance on 28 December 2013 in his PNB that he was working a late callout shift. He could have easily recorded the problematical searches, his reason for those searches and details of anyone he had spoken to in order to gain authority to do so. Clearly, he did not make any record. He concedes that there was no further entry in his PNB and his lack of interest in looking up all the dates in question in his PNB and looking at his own computer in particular as regards any potentially relevant emails is indicative of there clearly being nothing to corroborate a legitimate business activity. The tribunal can conclude on the evidence of these particular lookups that it is unlikely that any information would have existed on any other system or database to which the respondent had access or used directly or through another agency. The claimant could himself only say that other systems could have additional information on a subject of interest, but he couldn't think off the top of his head.

148. Ultimately, the tribunal has to conclude that on the balance of probabilities the claimant was responsible for a number of lookups for which there was no business reason. A number of his lookups involved individuals with whom he had close familial links in circumstances where indeed the reddest of red flags ought to have been raised within his mind. The tribunal does not accept that those lookups all arose out of intelligence calls the claimant received which led him to look for individuals within a particular area and where the names of the individuals searched simply arose out of an indication that there might be some persons of interest within a geographical area. Tribunal agrees with Mr Smith that the claimant's evidence involves an acceptance of an astonishing set of coincidences without any evidence of any reason at all as to why the claimant would be

looking at the immigration history of the persons in respect of whose lookups the respondent was concerned.

149. The claimant's conduct was of a gross misconduct nature. The claimant was well aware of the rules by which he had to abide and the expectations of him. The claimant breached the respondent's zero tolerance policy and acted contrary to the civil service code. He held a position in which he accepted that a significant level of trust had to be placed in him. His actions amounted to a fundamental breach of trust. In such circumstances the tribunal has concluded that the claimant was wholly to blame for his dismissal such that any compensatory award ought to be reduced to nil and that his conduct further renders it just and equitable for there to be no entitlement to any basic award in these circumstances.

Employment Judge Maidment

Date 20 October 2021