EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107651/2019

Held in Glasgow on 12, 13, 14, 17, 18 and 20 February 2020

Employment Judge **L Wiseman**
Members **H Boyd**
D Frew

Ms Sarah Morag Robertson — **Claimant**
Represented by:
Mr M Allison - Solicitor

The Glasgow Clyde College — **Respondent**
Represented by:
Mr A Brown - Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided the claimant was unfairly dismissed.

The remedy to which the claimant is entitled will be determined at a remedy hearing.

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 9 July 2019 alleging she had been unfairly dismissed (section 98 Employment Rights Act) and victimised (section 27 Equality Act).

2. The respondent entered a response admitting the claimant had been dismissed for some other substantial reason, namely the breakdown in working relations between the respondent and the claimant. (The respondent's representative clarified that the breakdown in working relations was between the claimant and those she managed).

3. The claimant's representative confirmed, prior to the representatives' submissions, that the claimant was no longer pursuing the victimisation complaint. Accordingly, the issues to be determined by this tribunal were the

fairness of the dismissal and, if appropriate, remedy in circumstances where the claimant was seeking reinstatement or re-engagement.

4. We heard evidence from Mr Jonathan Vincent, Principal and Chief Executive of the respondent organisation who took the decision to dismiss; Mr David Newall, Chair of the Board of Management, who heard the appeal and from the claimant. We were referred to a large number of jointly produced documents (including a short statement of agreed facts). We, on the basis of the evidence before us, made the following material findings of fact.

Findings of fact

5. Glasgow Clyde College is the product of a merger of three colleges (Anniesland, Cardonald and Langside) in 2013. Cardonald was the host college into which the other two colleges merged, to provide three college campuses.

6. The staff employed at the three Colleges at the time of the merger retained their existing terms and conditions of employment. A national collective bargaining process has been put in place to review everything, and this process is ongoing. The “legacy policies” apply to staff employed prior to the merger. Staff employed after the merger are employed on the respondent’s terms and conditions of employment.

7. Mr Vincent is the Principal and Chief Executive of Glasgow Clyde College. He was appointed to that position in 2017. Mr Vincent reports to the Chair of the Board of Management, Mr David Newall.

8. The College is divided into 15 curriculum schools, managed through a four faculty structure. There are Curriculum Heads, whose role it is to provide operational leadership and line management for Lecturers and to work with the Curriculum Assistant Principals (that is, the Head of Faculty).

9. The claimant commenced employment in 1991 when she was employed at Anniesland College. She moved to Cardonald College on the 7 April 2000, where she worked as a Lecturer. The claimant was employed as the Head of Curriculum (that curriculum being Computing) at the time of these events. The

claimant earned a salary of £49,603.32. Her gross weekly pay was £953.91 and her net weekly pay was £688.64.

10. The claimant line managed 26 permanent staff across the three campuses, in addition to some temporary staff. The claimant reported to the Head of Faculty, Mr David Innes, who is also her partner.

Collective Grievance

11. On the 7 June 2018, Ms Paula Dixon, the EIS representative, emailed Mr Vincent to inform him, and attach a copy, of a collective grievance "*taken out under the legacy Anniesland Collective grievance policy".* Ms Dixon noted the individuals had not taken this action lightly.

12. The collective grievance (page 137 – 139) had been raised by six members of staff (from the Anniesland and Langside campuses) against the claimant. The grievance was in the following terms:

"Our members have been working in a culture of fear which is having an impact on their health and well-being. They want the behaviour to stop and to feel safe and valued in their place of work.

Examples of Ms Robertson's behaviour include:

- *sending emails to staff members at night, particularly on Sunday nights between the hours of 9pm and midnight.*
- *sending emails to staff members in the early hours of the morning between the hours of midnight and 2am.*
- *these emails carry instructions to attend meetings for the following day or for the day in which they were sent.*
- *when advised that these emails and their content was having a detrimental impact on the recipients' health both physical and mental, the emails continued.*

- *the content of the emails was advising that changes would be made to contracts where an employee is a part time worker. There were no changes to the contracts and no substance to the text.*

Further evidence to support that an individual is excluded for work events and training. For example, he has not been afforded the opportunity to attend SECC training, Cisco training, Sector panel computing conference … Not made aware of training at City of Glasgow College which other colleagues attended, Networking class was not offered to our member, but to other colleagues, not invited to inter college/campus competition at Cardonald campus, other colleagues invited and not asked to participate in STEM event at Anniesland campus.

This list is not exhaustive, as there are more examples of denial of opportunity and isolation. When our member raised the issue of exclusion from training Ms Robertson asserted that "training is secondary to students as they have been impacted on by strike". We are concerned therefore that our members are being penalised because they participated in strike action and because of their trade union activity. Ms Robertson also advised that due to others withdrawing from training "their place [has] been given to staff on the reserve list. They have also come back to thank me for the opportunity". This statement compounds her actions of consciously excluding our member from training and justifying that decision. We believe that this is a demonstration of bullying.

We are raising this collective grievance on behalf of our members and wish to have a meeting as soon as possible to discuss next steps.

Ms Robertson's behaviour on behalf of the college is unacceptable and she should desist. Several of our members have suffered a detrimental impact on their health, in particular their mental health. …"

13. Mr Vincent sought advice from Ms Nicole Patton, Head of HR, regarding how to proceed with this matter. She advised that Mr Vincent should ask a senior member of his team to speak to the individuals who had raised the grievance to understand the nature of the problem and how they wished to proceed.

14. Mr Vincent, acting on that advice, asked Mr Brian Hughes, Vice Principal to meet with the individuals.

15. Mr Hughes met with the six members of the computing staff and their EIS representative regarding the collective grievance on the 13 June. He reported back to Mr Vincent in an email dated 18 June 2018 (page 141). In that email, Mr Hughes confirmed that during the meeting each member of staff explained why they felt they had had to raise the grievance and provided both narrative and email correspondence to support their concerns.

16. Mr Hughes confirmed that having listened to their concerns and reviewed the documentation, he was sufficiently concerned to recommend to Mr Vincent that a disciplinary investigation be established to allow the matter to be fully explored. Mr Hughes confirmed the rationale for this recommendation was:-

- although some of the matters, taken in isolation, could be regarded as trivial, the staff saw the behaviour as intimidating;
- there was clearly a breakdown in trust between the individuals concerned and their line manager (the claimant): they dreaded communication with her;
- the staff felt their opinions and contributions were ignored and there was little discussion regarding decisions which were imposed on them and which undermined their professionalism and
- there were specific concerns about the way in which the claimant's behaviour has had a detrimental effect on the health of some individuals.

17. Mr Hughes concluded by stating he believed the role of a disciplinary investigation was to consider these matters more fully and to determine the validity or otherwise of the concerns being expressed. He was in no doubt that the matters raised needed to be addressed through the formal route.

18. Mr Vincent sought further advice from HR and decided to commence a disciplinary investigation. Mr Vincent asked Ms Janet Thomson, Vice Principal, to undertake the investigation. The College was in recess for the summer, and the investigation therefore commenced once staff returned in August.

Suspension

19. Mr Vincent, accompanied by Ms Patton, Head of HR, met with the claimant and her trade union representative on the 22 August 2018 to inform her a collective grievance had been raised, and that a disciplinary investigation was to take place, conducted by Ms Thomson. Mr Vincent advised the claimant that he considered it appropriate for the claimant to "*take a break from her role"* because, given the nature of the allegations, he did not want to exacerbate the situation of those who had complained and he did not want to put the claimant in a difficult position managing those who had complained.

20. Mr Vincent offered the claimant a period of paid annual leave during the investigation or, if the claimant did not wish to accept this, a period of suspension would be considered.

21. The claimant declined the option of paid annual leave. Mr Vincent, by letter of the 30 August (page 155) informed the claimant he had considered whether suspension was necessary and had concluded that it was. Mr Vincent confirmed this was a purely precautionary measure and that there was no intention to provide details of the reason for the absence outwith those who had a need to know. Mr Vincent confirmed that during the period of suspension the claimant was not to attend work, other than for the purposes of attending a disciplinary investigation meeting and must not contact colleagues, except for her trade union representative. The Disciplinary Procedure; the collective grievance and the report from Mr Hughes were enclosed with the letter.

22. The Disciplinary Procedure provides (page 56) that any period of suspension should be as short as possible, normally up to a maximum of fifteen working days, but this would depend on individual circumstances pertaining to a reasonable investigation being completed. The requirement for suspension is to be kept under review to ensure it is not unnecessarily protracted. The procedure recognises that in some circumstances management may decide to extend the period of suspension.

23. The claimant's suspension was kept under review. Ms Patton, Head of HR, wrote to the claimant on the 28 September 2018 (page 441) to inform her she

would remain suspended on full pay until further notice because the disciplinary investigation had not yet been completed. The letter assured the claimant the investigation was nearing its completion and that they would be back in contact with her towards the end of the week.

24. The claimant became distressed at the length of the suspension. The claimant contacted Ms Thomson on the 5 October (page 446) to say that despite assurances that she would have a decision by the end of the week, this had not happened. The claimant described being "extremely distressed" by this. The claimant sought confirmation she would have a decision by close of play Wednesday 10 October 2018. In fact the claimant did not receive a decision until November 2018.

Policies and Procedures

25. The claimant was a Cardonald College legacy staff member and the disciplinary policy applicable to her was produced at page 52.

26. There was in force, as at the 7 June 2018, a grievance policy and a bullying and harassment policy for each of the legacy Colleges. These policies were not used by the respondent to address the collective grievance.

The Investigation

27. Ms Thomson carried out an investigation into the collective grievance. She interviewed each of the six individuals who had raised the grievance, and notes of those interviews were produced at pages 157 – 178; 179 – 186; 189 – 192; 193 – 230; 231 – 237 and 239 – 306. The interviews took place on the 5 and 6 September 2018.

28. Ms Thomson noted in her Investigation Report (page 815) that during the process she was informed by the trade union representative that there were further staff members who wished to provide information regarding the circumstances within the School and in support of the grievance. Ms Thomson considered it appropriate to interview those members of staff and she did so between the 6 and 19 September (pages 307 – 380).

29. Ms Thomson also obtained witness statements from three additional people (pages 455, 457 and 461) one of whom was the claimant's previous line manager, Mr Anderson. He produced a note of a meeting he had held with staff on the 23 October 2015 (page 457) where staff members had wanted to air concerns regarding the claimant. The concerns were noted as a list of points including "*generally concerned they were treated without value; frightened to say no; apprehensive; stressful environment; afraid to challenge because they did not want to be the next victim; emotional bullying and some individuals were picked on".* The staff confirmed they had not addressed their concerns with the claimant because they were too scared. They did not want Mr Anderson to disclose their names to the claimant, but they wanted the claimant to know the impact she was having on staff morale and to change.

30. Mr Anderson had then met with the claimant informally to discuss these concerns. The claimant made clear to Mr Anderson that if he would not disclose the names of those who had complained, she was not willing to discuss matters unless it was done formally.

31. Mr Anderson subsequently received an email from the claimant detailing her interpretation of the meeting, stating she was seeking advice from her trade union representative and confirming she felt she was being bullied and harassed and that Mr Anderson, as her line manager, had allowed this situation to develop. Mr Anderson felt this last point was disingenuous in circumstances where he had made offers in the past to talk with staff, but had been told by the claimant that she was capable of dealing with it herself. The claimant had never asked him to intervene and so he had not.

32. A meeting had subsequently taken place, led by Mr Anderson, with the claimant and staff members present, on the 19 November 2015, to discuss what improvements could be put in place to help improve working relationships. Mr Anderson described the meeting as having been very open, professional and supportive.

33. Ms Thomson met with the claimant on the 20 September 2018 (page 381 - 395). The claimant, at this time, had still only been provided with a copy of the collective grievance where the names of the complainers had been redacted.

The claimant responded to the issues raised in the collective grievance as best she could, and also provided a written response to the grievance, with supporting documentation.

34. Ms Thomson wrote to the claimant on the 9 October (page 447) to inform her that some additional concerns and evidence had been presented. Ms Thomson, being conscious that the claimant had referred to not having received enough by way of specific detail to allow her to respond suitably, was prepared to let the claimant have more specific details. Ms Thomson apologised for the fact the investigation was taking longer than anticipated.

35. The claimant responded to ask for specific information regarding the number of emails sent to individuals out of hours; the timeline for the complaints and how many managers had been suspended for allegations of bullying.

36. Ms Thomson met with another member of staff (page 451) and obtained statements from three other members of staff.

37. Ms Thomson wrote to the claimant again on the 23 October (page 465) to confirm all fifteen members of staff had, to varying degrees, raised concerns regarding the claimant's alleged behaviours and the impact on the health and well-being of various members of staff. The broad area of most concern was that staff appeared to perceive that there was bullying and/or intimidating behaviour in various different respects. There was a general feeling that some staff were targeted.

38. Ms Thomson wrote to the claimant again on the 26 October (page 467) attaching a list of the examples of alleged behaviour about which she invited the claimant to comment.

39. The list (pages 468 – 470) set out a number of broad headings, such as "threatening/intimidating behaviour – bullying and harassment"; "targeting particular staff" and "unreasonable management of hours, timetables and time off" and then listed a number of bullet point examples. The examples did not provide details of who had made the allegation, those involved or the date when it was said to have occurred.

40. The claimant responded by email to Ms Thomson (page 471) requesting further information and clarification regarding who was involved in the examples cited and when they had occurred. For example, the claimant questioned what "exhibiting power over certain staff' meant, when it was said to have occurred and the context. Further, in relation to the allegation that "lecturer given courses to teach in areas which were not their skillset. Examples given in programming and in software development", the claimant asked who the lecturer was and when it occurred. The claimant confirmed she needed this information in order to be able to respond to the points.

41. Ms Thomson addressed the points raised by the claimant in a letter dated 5 November (page 481) which provided confirmation of the individual/s involved and the date/context of the allegation.

42. Ms Thomson met with the claimant again on the 9 November (page 491 – 501). The claimant was given an opportunity to respond to the allegations.

43. Ms Thomson produced an Investigation Report dated 22 November 2018 (pages 815 – 821). Ms Thomson noted she had interviewed 16 people (11 from the School of Computing) and received written statements from three others. Ms Thomson summarised the situation as follows:

"*In summary, this is a very difficult situation where there are two very different views of the circumstances. There are a range of staff in the School of Computing who believe Morag is behaving in a bullying manner and they find her very challenging to work for with several members stating that they feel it has affected their health. Some staff interviewed have said it cannot continue and if nothing changes then they felt they will have to leave. They have raised concerns informally before however have not felt they could take it to a formal route for fear of repercussion from Morag.*

By contrast, Morag believes she is the victim and indicated at the first of our meetings that she is being bullied by staff and that the staff in the School have been 'at pains to make her life a misery". She thinks some of her staff are harassing her and that they are uncooperative with them going against everything she does. She stated that five individuals have a problem with her

and they make her job very difficult where their starting point is to disagree with everything Morag says and does, with a complete lack of respect shown. Morag indicated in her first meeting during this process that in her view she was not in this disciplinary process because she was not doing her job; rather it was because she was doing her job. She stated that if the organisation can tell her what she has done wrong then she won't do it again."

44. Ms Thomson went on to say that *"From hearing both sides of this, I believe there is a breakdown in relationships within the School and that it is no longer functioning as effectively as it should be. From the interview discussions I believe there are some communication issues in the School and these appear to be getting worse as time passes. Emotions are running high in the School and the investigation meetings were upsetting for many of those involved including Morag … One theme which was running through the interviews also was that staff were uncomfortable with the way others were being treated and could not stand back and watch it any longer."*

45. Ms Thomson set out the areas highlighted during the investigation and summarised what had been said by the staff, and the claimant's position regarding the matter.

46. Ms Thomson then set out her conclusion which included the following points:

- *the evidence indicates there are significant issues within the School of Computing;*
- *the overwhelming evidence led her to conclude the situation could not continue for both the wellbeing of the staff team and for Morag herself;*
- *it may be possible to assess whose account or recollection was factually accurate for some points raised;*
- *certain matters had been raised and considered previously and Morag was frustrated to have them raised again;*
- *perceptions appeared to exist and there did not appear to have been a calculated attempt to undermine Morag;*

- *those interviewed appeared as genuinely distressed and*
- *there did not appear to have been collusion amongst staff.*

47. Ms Thomson went on to say that "*Given Morag did genuinely appear to believe that she had done nothing to explain or justify these complaints (other than doing her job) this does not appear to be a situation which should be treated as misconduct. However, it is something which calls for urgent action designed to address what appears to be a very significant breakdown in relationships between Morag and her staff and, perhaps, Morag and the College and where there is evidence of it resulting in considerable distress. On the basis that misconduct does not appear to be the explanation behind staff feeling the way that they do, there is no clear set procedure to follow in this scenario. However, it is important that Morag now be given access to all evidence gathered and be given the opportunity to be heard in relation to that evidence. Initially I had been reluctant to share all information as I considered that it may make a return to work more difficult, but the issues between parties appear to be of such significance that it is necessary for Morag to fully appreciate the apparent strength and widespread nature of the feelings being expressed by staff."*

48. Ms Thomson recommended a hearing be arranged with the aim being to identify the best way to resolve the current situation within a reasonable period of time. Ms Thomson believed the options to be considered were (i) mediation with a view to Morag returning to her role. This may involve some supportive guidelines and training for staff (and not just Morag) … and may also involve a change in line management to address the fact that some staff report a reluctance to escalate perceived issues regarding Morag (because her line manager was her partner); (ii) similar steps to (i) above but with Morag returning to an alternative vacancy rather than her current role; (iii) dismissing Morag and (iv) anything else Morag may be able to suggest.

49. Ms Patton wrote to the claimant (page 829) enclosing a copy of the Investigation Report and all of the evidence collected by Ms Thomson. Ms Patton confirmed the recommendation was that a hearing be arranged to consider how to resolve the apparent issues reflected in the evidence. Ms Patton referred to the evidence indicating a mutual distrust and/or breakdown in relationships which

was detrimental to the claimant and others. Ms Patton confirmed Ms Thomson concluded it was not a disciplinary matter, but urgent action was needed to decide what action was appropriate.

50. Ms Patton confirmed Mr Vincent would chair a meeting and decide what action was appropriate. She further confirmed no particular policy applied to the meeting. There would be consideration of alternatives to dismissal, but one potential outcome of the process was the claimant's dismissal.

51. The claimant had, between the first and second meeting with Ms Thomson, provided her with a list of seven people whom she wished to be interviewed. They were not interviewed and so the claimant gave the list of names to Mr Vincent. Mr Vincent checked with HR whether the people whom the claimant wanted to have interviewed had been approached during the investigation stage, and was advised that Ms Patton had tried to contact them but had received no response. The respondent accepted from this that the seven named by the claimant did not want to be involved in the investigation.

52. Mr Vincent invited the claimant to explain how the seven people named by her could add value to the process. The claimant confirmed they would support her commitment to the students. Mr Vincent was satisfied this issue was not in doubt: he accordingly questioned the relevance of the people named by the claimant and took no further steps to have them interviewed.

53. Four of those witnesses were subsequently spoken to on behalf of the respondent (in February 2020) and confirmed they had no recollection of having received any communication from Ms Thomson or anyone else within the respondent about giving a statement or their willingness to be a witness in relation to the disciplinary investigation regarding the claimant.

Allegations and claimant's response

54. The issues raised during the investigation included the following points.

    (i) Ms Thomson interviewed Helen Fee, Lecturer (page 327) who (amongst other things) complained about people being treated differently, and gave the example of time off to attend a funeral. Ms Fee stated she had

wanted to attend a funeral at 10am on a Monday morning. She had emailed the preceding week (the October break) and received no response. On the morning of the funeral she contacted Michael Griffiths (Senior Lecturer) who had said it was fine to go. Ms Fee attended the funeral but on her return she noted an email had been received from the claimant telling her not to go because classes needed to be covered. Ms Fee understood the claimant knew she was at the funeral when she sent the email.

The claimant told the tribunal that the return of students from the October break was a key time for student retention. She had not been told by Mr Griffiths that Ms Fee's class had been covered: if she had had this information there would have been no issue with Ms Fee attending the funeral.

(ii) Mr Gary Shevlin was interviewed by Ms Thomson (page 335) and told her that a few years ago he had received a phone call to say his mother-in-law had passed away. Mr Shevlin spoke with his Senior Lecturer who had told him to go. When he returned to work, the claimant asked to meet with him. Mr Shevlin told the claimant he had spoken with HR and been told he could have 5 days off. The claimant had responded "*Sorry your mother in law died, but you're not getting five days"*. Mr Shevlin felt the claimant could have been more sympathetic.

The claimant told the tribunal this was simply not true and she could not overrule HR. The claimant considered Mr Shevlin had told a number of lies during the interview.

(iii) Mr Ian Eyre was interviewed (page 189) and told Ms Thomson he felt uncomfortable with favouritism shown to him. He felt he had had more than his fair share of opportunities and that giving to others would enhance morale.

The claimant considered this was simply his view of things.

(iv) Ms Gillian Leitch was interviewed (page 193) and told Ms Thomson that when she became 0.6 full time equivalent (FTE), she was excluded from

emails. Ms Leitch referred to two other part time members of staff whom she believed the claimant picked on. Ms Leitch concluded in October 2017 that she was being bullied: she had a funeral to attend and so checked her diary to establish there were no meetings, but she was told by the claimant that she might need to call a meeting, and the implication was that Ms Leitch should not attend the funeral.

The claimant noted Ms Leitch had complained of being excluded from emails, but she had not produced any evidence to support that position. Further, with regard to the funeral, the issue was that the claimant did call meetings regularly and it was a question of what Ms Leitch would miss if she was not there.

(v) The claimant was referred to an email from Andrea Prosser to Ms Patton, HR dated 31 August 2016 (page 264) where there was reference to Ms Prosser stating she wished to establish some kind of working relationship with the claimant, but requesting Ms Patton's help with this.

The claimant accepted this at face value but explained Ms Prosser subsequently took out a grievance against her and then refused to participate in mediation. The claimant had taken out a Dignity at Work complaint against Ms Prosser, which was upheld, and it was only after this that Ms Prosser had attended mediation, which had been unsuccessful.

(vi) Ms Wendy Taylor was interviewed (page 307) and told Ms Thomson that timetabling was a big issue. She was contracted to work 0.5 FTE at Glasgow Clyde and 0.25 FTE at West. Ms Taylor felt the claimant had a problem with this and made the timetable as inconvenient as possible by spreading it over four days.

The claimant insisted Ms Taylor's contract had been for four days, and that she had not ever asked to have a Friday off. The claimant also noted that the incident referred to by Ms Taylor occurred in 2013, and had not been raised with her at the time.

(vii) Mr Michael Griffiths, Senior Lecturer, was interviewed (page 357) and told Ms Thomson that he understood it was part of his role to do timetabling, but he was not allowed to show or negotiate with staff without the claimant's permission. He referred to Ms Taylor's timetable being changed and that she was moved campus, and he stated part time staff were an inconvenience to the claimant. Mr Griffiths noted that he wished he had challenged it earlier.

Mr Griffiths also told Ms Thomson that he had told Ms Fee she could attend the funeral and that he would cover her class. He had then received a phone call from the claimant asking where Ms Fee was, and telling him that he should have told her she could not attend the funeral. Mr Griffiths stated there was no issue in circumstances where the class was covered. He questioned whether this was an issue of power for the claimant or just her being mean-spirited: he also referred to others getting time off for funerals, and referred to himself as being one of the favoured.

The claimant responded that Mr Griffiths had assumed this was her fault, but it was not, and he simply had not known this. The claimant denied telling Mr Griffiths to take Ms Taylor off the timetable, but she understood how one could jump to that conclusion.

The claimant denied telling Mr Griffiths that he should have told Ms Fee not to go to the funeral. She considered they had raked through information and persuaded themselves of what they thought had happened.

(viii) Mr Richard Copeland complained about not getting the opportunity to attend Palo Alto training. The claimant confirmed 18 of 35 staff had attended the training. Mr Copeland had been invited to attend the training and was on the original list of staff due to attend. He had then asked to be removed from the list.

The claimant's email to Mr Copeland dated 15 June 2017 (page 434) concerned the Palo Alto training. The claimant stated: *"I am not sure you*

should attend given that you have missed time to catch up with students. Also I have noticed you are not responding to my emails. Can you send me details of your students and attendances as well as results status please. If you are unable to give me this information by close of play tomorrow then I think it would be better that you don't attend the training and concentrate on getting that all done first."

Mr Copeland responded to the email the following day (page 435). He set out information regarding results, queried which other lecturers had had to do this, noted he had not received an update on the Cisco class, and asked to be removed from the Palo Alto training.

The claimant insisted she had emailed everyone to ask for an update regarding student status because there had been a strike and this had impacted on students who needed to make up time. The claimant accepted her response (page 185) to Mr Copeland was defending her position but stated Mr Copeland was "*always attacking me".*

55. The statements collected by Ms Thomson all included complaints about the way in which people had been, or felt they had been, treated; complaints about the way in which others had been treated; favouritism and repercussions for those who complained. Many of the complaints were historic in nature and had already been raised previously.

56. There have, since the merger, been difficulties/tensions between staff at the Anniesland/Langside campuses and the main Cardonald campus where all of the senior staff are based.

57. The claimant accepted there had been difficulties between herself and five members of staff. The claimant believed the breakdown in relationship with Ms Prosser occurred in December 2014 when Ms Prosser was not successful in her application for the claimant's job. The breakdown with Mr Copeland occurred in March 2016 when the claimant changed the Lecturer who was supporting Mr Copeland during his phased return to work and he fell out with the claimant about this. The breakdown with Natalie Stark occurred in August 2017 when the claimant had cause to speak to her about her language. The

breakdown with the other two occurred in or about October 2017 after a meeting the claimant had with them regarding poor performance indicators.

58. The respondent engaged an organisation called Pacific Institute to carry out a survey of employees in relation to the culture within the respondent's organisation. The feedback from that survey was produced at page 1176.

Meetings with Mr Vincent

59. Mr Vincent, accompanied by Ms McGaw, Assistant Principal, HR, met with the claimant, accompanied by her trade union representative Mr Waterson on the 20 December 2018. Notes of the meeting were produced at pages 851 – 859. The claimant's representative read out a statement on her behalf. The claimant went through a number of points relating to the investigation report: the points included (a) she had not been provided with the full information and this did not sit with her right to robustly defend herself; (b) a question relating to why the disciplinary procedure rather than the grievance procedure had been used, and noting that if the grievance procedure had been used the claimant would have been provided with all information; (c) the difficulty in trying to manage people only to be accused of bullying and (d) a response to many of the allegations made against her.

60. The claimant's trade union representative challenged Mr Vincent that these matters ought to have been addressed three years ago, instead of being allowed to fester. He considered there was an onus on the College to resolve matters.

61. Mr Vincent noted the current situation was unsustainable and that people, including the claimant, were unhappy. He further noted there was a duty of care to both sides. He acknowledged the claimant was a passionate believer in what the College did, and confirmed he wanted to explore options to positively come to a resolution.

62. The claimant's preference for resolving the situation was mediation. Mr Vincent acknowledged this but noted the majority of staff who had been asked about this (by Ms Thomson) had rejected it.

63. The claimant put forward two alternatives: the first being for a new role to be created to lead on STEM and Worldskills; and the second for a secondment. Mr Vincent did not consider a secondment to be a viable option in circumstances where the claimant would return to her substantive role at the end of the secondment. Mr Vincent invited the claimant to put together her proposals for a STEM/Worldskills role for him to consider.

64. There was also discussion regarding alternative roles within the College. The claimant indicated the Head of Curriculum for Digital Media could be of interest to her. Mr Vincent confirmed the interviews for this post had already taken place (on the 18 December) and an offer made to the successful candidate (on the 19 December).

65. Mr Vincent proposed the Head of Curriculum for Construction role which was currently vacant. The claimant rejected that proposal immediately because she believed there was one difficult member of staff who had been the reason for the previous Head leaving.

66. Mr Vincent considered this role would provide a fresh start for the claimant with a new team. He was confident that at this level of management it was not unusual for a manager to have no technical knowledge of the area they managed. He told the claimant she had undoubtable skills and the difficulties she had experienced within Computing did not cause him to believe she would not be able to manage another team. The claimant expressed her view that she did not want to accept the post only to have similar issues with a member of staff at a later date.

67. The claimant, following the meeting, put together her proposals for a new role in STEM/Worldskills (page 875). Mr Vincent discussed the proposals with senior people within the College to ascertain whether there was scope for a role to be created. He identified that one key area was commercial contracts. A job description (page 1013) and a job specification (page 1017) were created for the role of Contracts and Development Manager.

68. Mr Vincent met with the claimant and her representative again on the 17 January 2019 (page 879). Mr Vincent confirmed that the conclusion of the

previous meeting was that the claimant could not return to her substantive role: this was not due to a lack of willingness on the part of the claimant or any significant failing. Mr Vincent informed the claimant that the College had some opportunities in the Commercial department and that additional people were required to drive that growth. He explained he had taken the claimant's proposals and had come up with a "hybrid" between the role the claimant had drafted and the requirements of the College. The role had been put through the College job evaluation. Mr Vincent provided the claimant with a copy of the job description for her to consider.

69. The claimant's representative, following an adjournment to consider the role, noted the claimant wished to see more STEM in the role, and there were some issues regarding the terms and conditions. Mr Vincent acknowledged that in terms of national bargaining salary protection should be offered for four years, but in these circumstances, he was prepared to offer three years' salary protection. He also agreed with the claimant regarding location and pension. Mr Vincent left that meeting understanding the claimant was close to accepting the offer.

70. The claimant emailed Mr Vincent on the 21 January (page 883) to say that having considered the role over the weekend, she did not wish to accept it. The claimant confirmed that she struggled with being forced to leave the job she loved in circumstances where there had been no misconduct. The claimant felt the role she had been offered bore little resemblance to the proposals she had put forward. The claimant requested to be reinstated to her role as Head of Curriculum for Computing.

71. Mr Vincent wrote to the claimant (page 885) noting that given the reasons for rejecting the offer, there was nothing they could do to make the position suitable for her. Mr Vincent confirmed he had asked the Head of HR to contact members of staff to clarify their position regarding mediation. Mr Vincent wanted to know if the views of staff members had changed regarding mediation and if not, the reason why they were opposed to it. Mr Vincent sent the claimant a copy of the document prepared showing the (redacted) names of those spoken to and the reasons why they did not wish to participate in mediation. Mr Vincent concluded

mediation would not be successful if there was an attempt to force parties to participate. Mr Vincent confirmed he was giving consideration to dismissal.

72. The responses from members of staff regarding mediation (page 887) listed a number of reasons for not wishing to participate in mediation. The reasons included: (i) a person did not think the claimant would be wholehearted regarding mediation and the situation would deteriorate further; (ii) there was no common ground; (iii) retaliation and (iv) things had improved since the claimant had not been there.

73. The claimant responded to Mr Vincent (page 889) confirming her willingness to engage in training and mediation to resolve issues. However, if mediation was not possible, the option of training for all should be supported by the College as a starting point. The claimant referred to the College having serious issues with culture and rhetoric which had previously been highlighted, and which were compounded by a bias against former Cardonald College staff. The claimant noted these were the issues which required to be resolved.

74. Mr Vincent wrote to the claimant on the 12 February 2019 (page 891). Mr Vincent set out the discussions which had taken place and the options which had been explored to try to identify alternative employment. He confirmed that having taken everything into consideration, he had decided there had been a breakdown in relationships between the claimant and members of her team. He believed this breakdown was having a detrimental effect on the claimant and others and had to be addressed. He confirmed they had been unable to identify a solution other than redeployment, which the claimant had rejected.

75. Mr Vincent concluded the claimant was to be dismissed from her post with effect from 12 February 2019, and that she would be paid 12 weeks' pay in lieu of notice.

Appeal against dismissal

76. The claimant sent an email to Mr David Newall, Chair of the Board of Management, on the 21 February, enclosing her appeal against dismissal (page 896 – 900). The grounds of appeal were that the evidence did not support the conclusion reached; the resulting disciplinary action was inappropriate; the

evidence provided at the original disciplinary investigation was never challenged and College procedure had not been followed which had a material effect on the decision.

77. Mr Newall acknowledged receipt of the appeal and confirmed to the claimant (page 905) the membership of the appeal panel would be him as Chair, Ms Sandra Heidinger, Vice Chair of the Board of Management and Mr Graeme Whiteford.

78. The Clerk to the Board of Management, Ms Gillian Murray, wrote to the claimant (page 916) to confirm that although the claimant had been dismissed for reasons outwith the Disciplinary Procedure, that Procedure would be used as the framework for the appeal. Ms Murray set out section 8 of the Procedure regarding dismissals for reasons outwith the disciplinary process.

79. The letter confirmed the claimant had the right to be accompanied and the right to bring any new evidence, and/or call any witnesses.

80. Mr Vincent was asked, prior to the appeal hearing, for his comments regarding various parts of the claimant's appeal. He provided a written response (page 906 – 915). Mr Vincent noted, in relation to the first ground of appeal (that the evidence did not support the conclusion reached) that his *"ultimate decision was not based on a judgment of individual accusations being truthful or not. My decision was based on the total weight of evidence that pointed to the relationship between [the claimant] and a significant proportion of her staff, across all three campuses, which had irreconcilably deteriorated. I acknowledged during the hearings that [the claimant] did not share my view that the situation was irreconcilable. I also expressed the view that [the claimant] had tried her hardest over many years to improve her relationship with the team but ultimately her endeavours had been unsuccessful. In my opinion [the claimant] did not lack commitment to the College, her role or her responsibilities, but she had failed, despite her best endeavours, to form a positive and productive relationship with a significant proportion of her team and that had ultimately led to her position becoming unsustainable in that role."*

81. The appeal hearing took place on the 29 April 2019 and the notes of the hearing were produced at page 926. The responses made by Mr Vincent to the claimant's appeal were available at the appeal hearing and were discussed.

82. The claimant had asked for three witnesses to attend the appeal hearing, but they did not appear. The claimant had prepared a list of questions she wished to put to the witnesses (one of whom was Mr Anderson). The appeal panel took the questions and considered whether they should put them to the witnesses. The appeal panel considered the questions were confrontational and sought to challenge the evidence given by these witnesses. The appeal panel did not regard this as "new evidence".

83. Mr Newall did not consider a challenge to the evidence would justify the questions being put to the witnesses. The appeal panel focussed on what was going on in the School of Computing and whilst they acknowledged some details/incidents could be queried, the weight of evidence (the bigger picture) was that 13 people were uncomfortable with the claimant's style of management, and all had raised similar issues.

84. Mr Newall emailed the claimant on the 8 May (page 1027) to confirm the appeal Panel had rejected her appeal because they considered the original decision was fair and reasonable and that her dismissal had been the appropriate resolution to the matter. Mr Newall attached to the email, the appeal panel's report setting out their reasons for reaching their decision.

Reinstatement/Re-engagement

85. Mr Vincent considered reinstatement or re-engagement would be very difficult in circumstances where the respondent was going through a substantial restructuring affecting up to 98 post holders. One consequence of the restructuring would be that there would be substantially less management jobs. The fifteen Head of Curriculum posts would be deleted and, although the new structure was still subject to the consultation process, it was likely the new structure would contain four posts at the same/similar level. It was unlikely those posts would line manage lecturing staff.

86. The respondent will open a voluntary severance scheme, and there will be four years' salary preservation available for staff affected by the restructuring.

87. Mr Vincent also believed staff would be very concerned about being managed by the claimant again.

88. Mr Vincent was surprised and disappointed to note a victimisation complaint had been included in the claim. He understood the claimant to say that he had referred to gender during the meeting on the 22 August when the claimant was suspended. Mr Vincent felt the claimant was being dishonest about this. He had never had cause to previously question her honesty, but he did so now.

Since dismissal

89. The claimant commenced alternative employment on the 29 September 2019. She is on a probation period for six months. She is earning £2500 gross per month.

90. The claimant was in receipt of £300 per month Universal Credit prior to this.

Credibility and notes on the evidence

91. We found the claimant to be a credible and reliable witness. She dealt with evidence in chief and cross examination in a straightforward and matter of fact manner. The claimant accepted her communications could have been better, and accepted there had been a breakdown in relationships/trust between herself and five members of staff, which occurred in the period 2014 – 2017, however she had continued to work through this and had received three letters of recommendation in the past year.

92. The claimant's position regarding the allegations was that they were a mixture of lies, hearsay, inaccuracies, interpretation and perception. The claimant also felt very strongly that had she been given the opportunity to respond to the allegations, she would have been able to do so. We deal with this point below, but note we did not doubt the claimant could, and would, have responded very fully to each allegation. The difficulty however was that this situation was about much more than simply providing a response to the allegations. We say that because there was a subtlety which went beyond the allegations: it was about

how decisions or actions made people feel and perceived disparity of treatment. This was the crux of the matter in this case, and the issue which required to be resolved.

93. We found as a matter of fact there have been difficulties and tensions between staff at the Anniesland/Langside campuses and the Cardonald campus since the time of the merger. This finding was supported by the fact the Investigation Report noted some of the issues raised by staff had previously been raised; there was also reference to the meeting Mr Anderson held with staff in 2015, where many similar issues/concerns had been voiced by staff and there was reference by the claimant's trade union representative to the respondent allowing these issues to "fester". These points were not developed by the parties at this hearing.

94. There was also reference during the evidence to an issue between the EIS trade union and GMB trade union (the claimant being a member of the latter and the complainers being members of the former) but this was not pursued during the hearing.

95. We found Mr Vincent and Mr Newall to be credible and reliable witnesses. Mr Vincent did have a tendency to answer questions very fully, particularly in cross examination and he was cautious about agreeing to points about which he was unsure. We did not consider this undermined his credibility.

96. Mr Vincent was hampered in answering some questions because he had not been involved in the investigation. He, for example, did not know whether the complainers had been told the matter was being dealt with under the disciplinary procedure, or whether they had been told of any outcome to their complaint. Mr Vincent was straightforward in simply responding that he did not know the answer to these questions.

97. One issue highlighted in Mr Vincent's evidence to the tribunal was the reference made in the collective grievance to the impact the situation was having on the health (and mental health) of those involved. There was also reference to the health and welfare of the claimant. The respondent clearly attached weight to

these points, and equally attached weight to taking action to ensure this situation did not continue.

98. There was reference in cross examination of Mr Newall to Pacific Institute training in October 2018, the purpose of which was to improve management. Mr Newall had not seen the report produced at page 1078 and could not provide any information regarding this matter. Mr Vincent was not asked about this.

99. Mr Allison was critical of the respondent for not calling Mr Hughes or Ms Thomson to speak about their role in this matter. He invited the tribunal to draw an adverse inference from the fact they had not been called. We were not prepared to draw an adverse inference. We considered that it is a matter for a party to decide whom to call to a tribunal to give evidence. We considered that in circumstances where Ms Thomson concluded there was no misconduct by the claimant, it was understandable why she had not been called. We appreciated Mr Allison may have had a number of questions he wished to ask both Mr Hughes and Ms Thomson, but that is not the issue. We must determine the case based on the evidence before us: both representatives will be well aware of this and will have made their decision regarding witnesses in light of it.

Respondent's submissions

100. Mr Brown invited the tribunal to find Mr Vincent an excellent witness, who had answered questions honestly, made concessions and accepted criticism where appropriate. Mr Vincent remained clear that he had wanted to retain the claimant as an employee. His decision and problem solving approach was within the range of reasonable responses.

101. Mr Newall was also an excellent witness. He was honest and clear in his thoughts. He had been very analytical when considering the precise extent of the problem. Mr Brown submitted there was no room to doubt the integrity of either witness or their genuine desire to ensure a fair process was followed.

102. The claimant was able to give very clear evidence and had a very good grasp of the documentation. However, there were times when she refused to accept alternative interpretations of correspondence, and other times when she

purported to interpret correspondence in ways which just could not be true. Mr Brown acknowledged that in the main the claimant had given her answers calmly, but her answers were calculated to create a picture, and for that reason, she was lacking in credibility in any of the contested points.

103. Mr Brown submitted it was well established that personality clashes and irreconcilable differences between colleagues can amount to some other substantial reason (SOSR) where the conflict has caused or has the potential to cause substantial disruption to the respondent's business (***Perkin v St George's Healthcare NHS Trust 2005 IRLR 934)***. Mr Brown suggested the current case went beyond this because both the claimant and the complainers were claiming to have suffered ill health as a result of the clashes.

104. Mr Brown acknowledged the claimant was not dismissed under any particular procedure, and submitted dismissal did not have to be under any particular procedure. In ***Ezsias v North Glamorgan NHS Trust UKEAT/0399/09*** which concerned a collective grievance lodged against an individual and culminated in a dismissal for some other substantial reason, no set procedure was followed.

105. Mr Brown submitted the respondent's approach in this case had been within the band of reasonable responses in circumstances where the respondent had identified the problem and tried to deal with it. There was an investigation; a hearing; the claimant was given advance notice of the potential outcome of the hearing; the claimant was told what the hearing would consider; alternatives to dismissal were considered and there was an appeal hearing.

106. Mr Brown submitted that if a procedure was required, then section 8 of the respondent's Disciplinary Procedure was followed. The claimant took issue with the fact the Grievance Procedure or Bullying and Harassment Procedure were not used, but Mr Brown questioned how that could possibly have worked in circumstances where members of staff from different campuses had different procedures. Mr Brown noted it was not suggested by the claimant that use of those other procedures would have been quicker or fairer. It was submitted it had been entirely proportionate for the respondent to investigate the matter under the disciplinary procedure.

107. The reason for the claimant's suspension were set out in the letter at page 155. This was well within the band of reasonable responses and protected all parties. Mr Brown reminded the tribunal that alternatives had been considered and offered, but the claimant did not wish to have a period of paid annual leave.

108. Mr Brown acknowledged that one of the claimant's arguments was that she had not been provided with information during the course of the investigation. Mr Brown submitted that if the respondent had been preparing itself for a dismissal, and to defend that dismissal in Tribunal, then full disclosure of information at the outset would have been advantageous. However, the respondent did not want to dismiss the claimant and this much was evident from the way in which Ms Thomson and Mr Vincent approached matters.

109. Ms Thomson specifically explained why she had not wanted to disclose all information until absolutely necessary. She was conscious of not further damaging relationships if there was a chance the parties were to work together again. Mr Brown acknowledged it was understandable why the claimant wanted more information, but this had only lengthened the process.

110. Mr Brown submitted Ms Thomson had several careful attempts at providing enough information to allow the claimant to answer the points without witnesses being identified. Ms Thomson explained (page 481) that she had been trying to avoid the return to work being difficult. That, it was submitted, was a reasonable approach to take particularly when it was becoming apparent to her that this was not a misconduct case but a complex case in which any return to work was going to be difficult to achieve and she did not want to exacerbate this. Mr Brown suggested that if Ms Thomson had prematurely released the 13 statements and exacerbated the difficulties with the relationships, she could have been criticised for that. Ms Thomson made a judgment call and her motivation for doing so was exactly as it should have been in a case such as this, and her caution and reticence understandable, despite having the unfortunate effect of extending the process.

111. Mr Brown submitted that through the various requests made of Ms Thomson and through the Subject Access Request, the claimant obtained everything she

wanted to obtain. She answered each of the 42 points set out and provided hundreds of pages in support of her position, prior to any decisions being made.

112. Mr Brown submitted that given the reason for dismissal and particularly the findings of Ms Thomson, the process followed was fair.

113. The claimant argued her witnesses had not been interviewed and suggested HR had not contacted them. Mr Brown submitted this suggestion did not stand up to scrutiny. He reminded the tribunal that following the first meeting with the claimant, interviews had been held with two witnesses at the claimant's request. There would be no reason for HR to contact them and not the others and then lie about it.

114. Mr Brown acknowledged four of the witnesses referred to by the claimant now said they had no recollection of receiving any contact to take part in the process, but submitted this was very far from evidence that they had not been contacted particularly as it was over a year ago. Mr Brown also suggested (i) the witnesses were bound to say they had no recollection because they failed to return calls and, in the context of a tribunal hearing, it might be difficult to acknowledge or explain that failure; (ii) witnesses requested by the claimant to attend the appeal hearing had not done so; (iii) the claimant had had an opportunity to tell Mr Vincent whom she thought was relevant and why in order that he could consider whether it was appropriate to take steps to obtain their evidence and (iv) Mr Vincent, having ascertained from the claimant why she wanted to have the witnesses interviewed, was satisfied it related to a matter not under investigation and not in dispute, that is, the claimant's commitment to students.

115. Mr Brown submitted the ACAS Code makes clear that witnesses must be "relevant". The claimant had argued that she understood she could only call new evidence at the appeal hearing, so she had called the three witnesses who had given written statements because their oral evidence would be new. The claimant had not thought the evidence of the other four witnesses would be new. This, it was submitted, made no sense. The letter informed the claimant she could call "any witnesses" and, if the four witnesses had not been interviewed previously, they would, in any event be giving new evidence. Mr Brown

acknowledged the real reason for the claimant not calling these witnesses was not known, but it was not for the reason stated.

116. Mr Brown referred to the appeal panel outcome letter (page 1033) where the appeal panel noted that even if additional witnesses had been more supportive of the claimant and her management style, this would not have changed their view that there had been a significant breakdown in relationships between the claimant and a significant proportion of her staff and that this could not continue.

117. Mr Brown submitted the respondent's approach to the issue of missing witnesses was well within the range of reasonable responses. The issue of missing witnesses was a red herring: they were not required but they claimant could have called them to the appeal hearing, but chose not to do so.

118. The case of ***Strestha v Genesis Housing Association Ltd 2015 EWCA Civ 9*** was cited as authority for the proposition that whilst in a misconduct case the onus is on the employer to conduct a sufficient investigation, it is not required to extensively investigate every line of defence put forward by an employee.

119. The claimant also took issue with having only one stage of appeal. Mr Brown submitted the respondent followed section 8 of the Disciplinary Procedure, which applied to dismissals falling outwith the disciplinary policy. Section 8 made clear the respondent should hold an appeal hearing, if necessary, and inform the employee of the final decision. This is what the respondent did and their approach was within the band of reasonable responses.

120. Mr Brown submitted the respondent had considered alternatives to dismissal. The claimant had been invited to a meeting with Mr Vincent to discuss resolution of the situation and was advised to consult the intranet for vacancies. The hearing took place on the 20 December. Mr Vincent was unaware, prior to this meeting, that the claimant may be interested in the Head of Media and Performing Arts.

121. The post of Head of Engineering was not discussed at the meeting on the 20 December. The claimant acknowledged she had been aware in October 2018 that there would be a vacancy as the Head was leaving. The post was never

referred to by the claimant at any time until the appeal hearing, and by then the post had been filled late December/early January.

122. Mr Brown invited the tribunal to accept the offer made by Mr Vincent regarding the Head of Curriculum for Construction post was genuine and not, as the claimant suggested, a deliberate attempt to set her up to fail. The offer was a reasonable resolution in the circumstances, and Mr Vincent's explanation of why not having knowledge of a subject matter does not affect an individual's ability to manage that area, should be accepted. Mr Brown suggested the claimant had not really challenged Mr Vincent's evidence and had instead referred to not feeling in a position to learn something new having had her confidence damaged, and especially not in an environment where she had heard she would have to manage an individual who was difficult.

123. Mr Brown reminded the tribunal that Mr Vincent had sought to persuade the claimant that she was mistaken regarding this individual, but the claimant was not interested. Her refusal of the role for the reason that there was one difficult member of staff (as she saw it) was not reasonable or consistent with her desire to return to Computing where there were a number of difficult members of staff to manage. Mr Brown submitted the real reason the claimant refused this role was because she mistakenly believed she was being set up to fail.

124. The respondent went to considerable efforts to create a role based on the claimant's thoughts regarding STEM and Worldskills. The parties appeared to have come close to reaching an agreement, but ultimately failed to do so. Mr Brown submitted it was not unreasonable for the claimant to have refused this offer, but equally it was not unreasonable for the respondent not to have negotiated further on the matter.

125. Mr Brown noted the claimant had fairly accepted in her evidence that it was reasonable for the respondent to conclude she should not return to her role without something happening. Mr Brown suggested that what that "something" was, and when it should have been offered, was the real battle ground in this case.

126. Mr Brown reminded the tribunal the claimant's approach, after reading and considering the Investigation Report and the statements, became more conciliatory. She accepted people had genuine perceptions and she suggested mediation. Mr Brown submitted it had been reasonable for the respondent to explore redeployment first because it had a better chance of swiftly and successfully returning the claimant to work. Mediation was not ruled out, but both parties agreed the fact employees had refused to participate posed a challenge.

127. Mr Brown submitted it was reasonable for the respondent to conclude that some form of enforced mediation had no reasonable prospect of success in the circumstances, and may have been irresponsible. The ACAS guide regarding mediation makes clear that mediation is a voluntary process. The respondent asked the employees twice if they would be willing to participate in mediation and they refused. The claimant suggested training for all, but this proposal was too speculative to be reasonable.

128. Mr Brown referred to the claimant having described the views of the complainers as being "groupthink, based on misunderstandings, lies and hearsay". Mr Brown invited the tribunal to note Mr Vincent and the appeal panel had considered this point. They each considered the concerns/perceptions could not be dismissed so easily. This was not a small number of people interpreting her behaviours in this way; there was a pattern and numerous people interpreted her behaviours as controlling, favouritism and bullying. The respondent did not conclude the claimant was faultless: Mr Vincent described that his offer to the claimant of the Head of Construction role was not without reservation but he believed the internal process would have been a learning experience and with support the claimant could have made a success of it.

129. Mr Brown, in cross examination, had taken the claimant through nearly all of the statements identifying some of the various parts of direct evidence given by the witnesses. He submitted a number of the email exchanges were capable of being interpreted as controlling, aggressive or intimidating. Mr Brown submitted the fact the respondent chose to give the claimant the benefit of the doubt and accept her stated motivations, did not mean that it failed to consider whether

the witnesses' perceptions were unreasonable. The perceptions were genuinely held and the problems existed regardless of whether the claimant was at fault or whether the witnesses overreacted.

130. Mr Brown acknowledged the claimant believed some instances were lies. One of the examples cited by the claimant related to the Palo Alto training. The respondent accepted the claimant's position that the employee had withdrawn from the training rather than having been denied the opportunity to go. However, looking at the correspondence, it was clear the employee withdrew under duress. So, when the employee said he was not allowed to go, this was not a lie, and nor could the claimant have genuinely believed it to be so.

131. There had been reference to the fact that some of the allegations went back many years. Most, of course, related to the period following the merger. Mr Vincent diplomatically accepted the trade union's position that more could have been done to address issues at an earlier stage. Mr Brown submitted Mr Vincent's concession had gone too far in circumstances where Mr Anderson gave evidence to the effect he had taken steps to assist staff and to support the claimant and he appeared to have (wrongly) believed this meeting had been a success. In any event Mr Vincent's approach was to look forward and address what should happen.

132. Mr Brown acknowledged the claimant had raised concern regarding the length of time the process had taken. He noted the length of time had been regrettable, but had to be seen in the context of lengthy holidays; the number of staff to be interviewed and the number of documents to be examined. Mr Brown submitted the real timescale to consider was the period between 22 August, when the claimant was told of the collective grievance, and the 23 November, when the investigation outcome was issued. This was a period of three months, which included a period of holidays in October.

133. Mr Brown submitted an investigation period of three months was not sufficiently long to have made the dismissal unfair. Mr Brown referred to the case of ***Secretary of State for Justice v Mansfield UKEAT/0539/09*** which was a case involving a delay of over a year.

134. Mr Brown invited the tribunal to find the dismissal was fair. However, if the tribunal found the dismissal unfair, Mr Brown submitted it would not be practicable to order reinstatement or re-engagement.

135. Mr Brown noted Mr Vincent had given evidence about his concern for other staff if the claimant were to be reinstated. The claimant accepted in cross examination that mediation was a necessary precursor for that to be successful, and the tribunal has no power to force witnesses to mediate. The claimant accepted there had been a breakdown in the relationship with at least five of her staff. It was submitted the balance of evidence was very strongly to the effect reinstatement would not be practicable.

136. Mr Brown invited the tribunal to note it had not been suggested to Mr Vincent that it would be practicable to re-engage the claimant into any particular role. Similarly, no clear position was advanced by the claimant regarding a role which she would be able to perform. She suggested a role in the new structure still under consultation, but she had given too little information regarding that to allow the tribunal to come to the view that re-engagement to any such role would be practicable.

137. Mr Vincent developed a mistrust for the claimant after noting she claimed gender was discussed during the meeting at which suspension was discussed. Although the position was clarified to him, he remained resolute in his position that there was no discussion of gender at all.

138. Mr Brown submitted the breakdown had been bilateral. The claimant repeatedly described that the lists produced by Ms Thomson were designed to make matters look worse. She considered the respondent was gathering one sided evidence until something stuck. She felt the respondent had been determined to dismiss. But perhaps the most compelling evidence was given at the Hearing when the claimant, if she was being honest in her evidence and ET1, believed she was being victimised from the outset.

139. The claimant stated, in relation to the Head of Construction role, that “they wanted me to take it and fail”. The claimant also stated, “John was trying to punish me and was trying to make it clear to staff that he was trying to punish

me". The claimant also said she would have to "rebuild the relationship". The claimant said the appeal panel was not listening, paid lip service and wanted it to come to an end as quickly as possible.

140. Mr Brown referred the tribunal to the case of ***Nothman v London Borough or Barnet (No 2) 1980 IRLR 65*** where the EAT refused to grant a reinstatement or re-engagement order due to the fact that the allegations of conspiracy made by the teacher against members of staff rendered her reinstatement unthinkable. The EAT noted that "*anyone who believes that they are a victim of conspiracy and particularly by their employers, is not likely to be a satisfactory employee in any circumstances if reinstated or re-engaged."*

141. Mr Brown invited the tribunal to make deductions from compensation because of a failure to mitigate loss in respect of the refusal to make an effort to succeed in the post of Head of Construction. He also invited the tribunal to make a deduction in respect of contributory conduct. Mr Brown submitted the claimant had, at least to some degree, contributed to the breakdown in relationships, and she had, by her unreasonable refusal of the job offer, turned that breakdown into her own dismissal.

142. Mr Brown submitted, in terms of ***Polkey***, that nothing had been identified that would have made a difference to the outcome. Regardless of what policy was used, the breakdown in relationships was clear, mediation was not a viable option and redeployment was refused.

143. Mr Brown confirmed the representatives had agreed there had been an omission in the schedule of loss to deduct notice pay, and this should be done. Mr Brown also suggested the claimant's accrued holiday pay should be taken into account when determining loss. Mr Brown submitted that had the claimant remained in employment, she would have been on holiday at some stage and she would have been paid as normal. The fact holidays were paid in lieu meant that the earnings that would have been paid during that period of time had not been lost.

144. In conclusion, Mr Brown noted there were many aspects to this case which have made a very hard result for the claimant, and one could not help but sympathise.

However, that did not mean, in all the circumstances, that the respondent's decision to dismiss was unfair. He invited the tribunal to dismiss the claim.

Claimant's submissions

145. Mr Allison acknowledged that, ostensibly, in evidence in chief, Mr Vincent had been an impressive witness. He was confident, his answers focussed on the questions. This changed in cross examination. The impression given was that Mr Vincent's evidence was heavily scripted, and he was unwilling or unable to deal with questions which deviated from the script. He was tangential; gave lengthy, unfocussed answers and refused to give concessions when the circumstances cried out for them. His inability to identify a number of emails as his own, despite the obvious context, suggested he was evasive, particularly when compared with his almost flawless recollection of events in chief. He, in summary, was focussed more on what the implications of any answer might be rather than simply answering the question.

146. Mr Allison suggested Mr Newall's evidence was of limited value to the tribunal. He was evasive in cross examination, with lengthy pauses before answering even straightforward questions.

147. Mr Allison invited the tribunal to find the claimant had given her evidence in a straightforward, matter of fact way. There had been no attempt to embellish matters. The claimant answered questions and when she disagreed with a proposition, she clearly explained her position in a forthright way. She was an entirely credible and reliable witness.

148. Mr Allison submitted significance had to be attached to the evidence not led by the respondent. They had not called either Mr Hughes or Ms Thomson despite the key roles they had played. This left the tribunal in an unsatisfactory position where procedural decision could not be properly scrutinised and large swathes of evidence rested on Mr Vincent's hearsay based on the documents.

149. Mr Allison submitted the claimant contested the reason for dismissal. He referred to paragraph 23 of the ET3 where there was reference to a breakdown in the relationship between the claimant and the respondent; whereas the letter

of dismissal referred to a breakdown in the relationship between the claimant and members of staff.

150. Mr Allison submitted the onus was on the respondent to identify the reason for dismissal. The reason for dismissal which the respondent had led evidence about, was not that set out at paragraph 23 of the ET3. There was no evidence of a breakdown in trust and confidence between the College and the claimant as at February 2019. Mr Vincent had stated in evidence there was no breakdown in the relationship between the claimant and the respondent.

151. Mr Allison submitted that in any event the evidence suggested that the breakdown in relationships was not the true reason for dismissal. The investigatory report made no findings of conduct: it made no findings on the disputed facts between the complainers and the claimant, or on the veracity of the allegations against the claimant. It talked of "perceptions". Mr Vincent made it clear that he did not look behind the conclusions of the investigation report. As such, the reason advanced at the time was, at its highest, a purported breakdown in relationships between the claimant and certain colleagues based upon the colleagues' perceptions.

152. Unfortunately, Mr Vincent's own evidence cast considerable doubt upon that as the reason for dismissal. As he went on, he repeatedly referred to behaviour on the part of the claimant. He said in chief "*we saw a pattern of behaviour they had experienced or seen others experience that was of a deeply concerning nature".* It was submitted that it was absolutely clear from this that Mr Vincent had in his mind (i) that the conduct complained of had occurred and (ii) it was blameworthy conduct.

153. The only reasonable inference to be taken from the evidence was that Mr Vincent had in his mind at the time of the dismissal that the claimant was guilty of blameworthy conduct.

154. Mr Allison submitted that even if the tribunal accepted the reason for dismissal was SOSR, the claimant's position was that it did not amount to some other substantial reason justifying dismissal. This was because a personality clash could not of itself amount to SOSR. Mr Allison referred to the case of ***Perkin v***

St George's Healthcare NHS Trust 2006 ICR 617 (paragraphs 59 and 60) and submitted the decision of the Court of Appeal in this case made it clear that what elevates such an issue into the realms of SOSR was evidenced conduct and evidenced consequences. Mr Allison told the tribunal that neither were present here: the investigation failed to establish the former, and the latter was simply not addressed. However fixed the perceptions, there was no evidence that the strained relationships between the claimant and the members of staff (which had existed for some time) had had any meaningful impact on the functioning of the department. There was no damage to the respondent's ability to perform its business and no likelihood of this happening.

155. Mr Allison submitted there had been a failure to use the correct procedures. The matter had been raised as a collective grievance. A legacy grievance policy applied for each complainer. Further, a bullying and harassment policy applied to cover this very conduct. Mr Allison submitted the respective policies all shared one common theme, and that was that a decision required to be made regarding the truth of the allegations. No findings were made regarding whether the allegations actually had any substance, and the claimant was prejudiced by the decision to proceed under the disciplinary policy. The suggestion that a person with an axe to grind can determine the extent to which the accused person is afforded rights offends common sense and is axiomatically unfair. The clear inference was that this was simply not properly considered.

156. The failure to follow the disciplinary procedure was fundamentally unfair. The disciplinary policy requires facts to be established and a failure to do so is a failure to apply the policy properly at its fundamental and basic core. This tainted what occurred thereafter and was not rectified at either subsequent stage.

157. There was a failure to put the claimant on notice of the allegations against her. The claimant was entitled to have notice of the specific allegations against her (paragraph 1.2 of the disciplinary procedure) and that requires to be at the moment the investigating officer is appointed and requires to be in writing (paragraph 3.4.4). This was not done. The fact the claimant saw the written grievance was no answer. This was a disciplinary case and no longer a grievance. The respondent elected to interpret the grievance as the tip of the

iceberg. The failure to give this notice could either be viewed as symptomatic of the respondent's failure to manage the scope of the enquiry, or as the cause of that failure.

158. Mr Allison submitted that in any event it was a fundamental issue. He referred to the cases of ***Spink v Express Foods Ltd 1990 IRLR 320*** where it was stated that it is a fundamental part of a fair disciplinary procedure that an employee know the case against him; and ***Strouthos v London Underground Ltd 2004 IRLR 636*** at paragraphs 38 and 39. Mr Allison submitted the respondent lost control of the scope of the allegations against the claimant and lost sight of what the allegations were against the claimant.

159. The claimant was suspended on the 22 August 2018: this decision was irrational (***McLory v The Post Office 1992 ICR 758***). The claimant had been left in post in a managerial role, with the persons bringing the grievance against her for 22 days before and 14 days after the end of term. This sits uncomfortably with any suggestion that suspension was necessary. In any event the disciplinary policy sets out that suspension should not normally last more than 15 days: in this case, suspension lasted almost 6 months. It was not kept under review. Mr Allison suggested that no policy, procedure or contractual right to suspend after the 23 November 2018 had been identified; and, if the claimant had returned to work on that date, it would have put a completely different context on subsequent discussions about both whether she could return to work and mediation.

160. The claimant was not given the documents upon which the investigating officer relied to reach conclusions, until after those conclusions had been reached. Mr Allison acknowledged the respondent is permitted to look at other substantial matters that arise during a disciplinary investigation, this was only so provided the employee is given notice of those matters (***Neary v Egerton-Rothesay Ltd UKEAT/0061/05***). It was submitted that this failure was so material it was, of itself, insurmountable.

161. The investigating officer reached conclusions about those other matters: she identified a breakdown in relationships which might justify dismissal. Her report led to the claimant's continued employment being at risk. Mr Vincent did not

look behind the report. In those circumstances, her report and the conclusions in it had a direct bearing upon the claimant's ultimate dismissal. It was submitted this went to the heart of the cogency of the conclusions reached. (***A v B 2003 IRLR 405***).

162. The claimant identified witnesses whom she wished to be interviewed. The respondent has led hearsay evidence that Mr Vincent was told efforts had been made to speak to them. The parties agreed that none of the four persons whom the claimant identified as witnesses, have any recollection of any communication from the respondent during the investigatory process. There was a possibility of memory failure but the fact all four said the same created a clear and necessary inference that they were not spoken to.

163. In any event the respondent acted unreasonably by not speaking to these individuals at the dismissal or appeal stage. The claimant had put the respondent on notice that she challenged whether these persons had been spoken to: she considered them to be material. A reasonable employer would have spoken to them. The respondent has an obligation to investigate not only information which supports the claimant, but also information which supports the employee. The respondent had allowed other witnesses to come forward, and there was a fundamental imbalance.

164. There was failure by the respondent to consider the reasonableness of the perceptions. The respondent did not reach any view on whether the allegations were reasonably held. It was enough for the respondent that they were genuinely held. The failure to establish whether the allegations were true means the respondent could not have said whether the perceptions relied upon were reasonably held. The respondent, therefore, cannot be said to have a reasonable belief that relationships had broken down, absent some enquiry into the reasonableness of the perceptions upon which that conclusion was founded.

165. There was a partial use of the disciplinary procedure at the appeal stage. The respondent used section 8 of the disciplinary procedure, which it was entitled to use. However, section 8 is devoid of any procedural rules or guidance. The respondent elected to use part of the standard disciplinary procedure to govern

its conduct of the appeal. In practice, it used every aspect of sections 4.2 to 4.4 under exception of the second right of appeal, and this prejudiced the claimant.

166. Mr Allison submitted the respondent had not adequately explored alternatives to dismissal. The respondent was, it was submitted, required to explore all available alternatives before taking that step (***Turner Vestric Ltd 1980 ICR 528***). In particular:

- there was a failure to meaningfully explore mediation. The claimant had been away from her role for 6 months, so it was not unexpected for employees to refuse to participate in mediation. The respondent took no steps to try to resolve matters at ground level;
- there was a failure to follow any training;
- Head of Curriculum for Media and Performing Arts – the post could have been left open rather than being filled the day before Mr Vincent met with the claimant;
- Head of Engineering;
- Head of Construction role – the claimant felt she was being set up to fail. The refusal of the role was reasonable because the claimant had no experience of the subjects within the role. There were no Heads of Curriculum who did not have experience of the subjects within their role and
- STEM/Worldskills – there was a failure to meet with the claimant to discuss her proposal and try to agree something mutually suitable and there was a failure to follow up after her rejection of the role in circumstances where this was the last option before dismissal.

167. The respondent failed to meaningfully test and assess the reason for dismissal. The claimant had worked in the face of these issues for several years; no issue had been raised by the respondent; no grievance against the claimant had ever been upheld and none brought since 2015 and the cohort of complainers was a small minority (6 out of 33 staff).

168. Mr Allison submitted the dismissal had been unfair and he invited the tribunal to make an order for reinstatement or re-engagement to a Head of Curriculum or equivalent level 3 post. Mr Allison submitted there was ample evidence that it was practicable to reinstate or re-engage the claimant. He suggested the current re-structuring gave greater flexibility regarding where the claimant could end up and it removed any issue or concern about the claimant managing staff.

169. Mr Allison submitted there had been no misconduct and accordingly there could be no contributory conduct by the claimant. Further, the claimant's rejection of the Head of Curriculum role had been reasonable.

170. Any suggestion by the respondent of a breakdown in trust and confidence should be rejected by the tribunal in circumstances where the respondent had been happy to offer the claimant a Head of Curriculum role in February 2019.

171. Mr Allison referred the tribunal to the schedule of loss where the figures had been agreed with the respondent. The payment of notice (£5397.07) required to be deducted. The only matter in dispute related to the respondent's submission that holiday pay should be deducted. The statutory cap would apply to the award.

Discussion and Decision

172. We had regard to the terms of section 98 Employment Rights Act which provide:

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

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

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

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

(b) relates to the conduct of the employee …

(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."

The reason for dismissal

173. The first issue for this tribunal to determine is whether the respondent has shown the reason for the dismissal of the claimant. The respondent asserted the reason for dismissal was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the claimant held: namely, a breakdown in the relationship between the claimant and members of her staff. The claimant challenged that position because (i) the ET3 was drafted in terms of the breakdown in relationship being between the respondent and the claimant; (ii) there was no loss of trust and confidence between the respondent and the claimant and (iii) neither Mr Vincent nor the investigatory report made findings in respect of the disputed facts or the veracity of the complainers' perceptions.

174. We were referred to the case of ***Perkin v St George's Healthcare NHS Trust*** (above) which involved difficulties between colleagues which were described as "*those of personality and inter-relation with colleagues and of management style".* In paragraph 59 of the Judgment it was said:

" *.. I agree with Mr Langstaff that personality, of itself, cannot be a ground for dismissal within ERA 1996 section 98. For there to be a potentially fair reason for dismissal, an employee's personality must, it seems to me, manifest itself in such a way as to bring the actions of the employee, one way or another within the section. Whether, on the facts of a particular case, the manifestations of an individual's personality result in conduct which can fairly give rise to the*

employee's dismissal; or whether they give rise to SOSR of a kind such as to justify the dismissal of an employee holding the position which the employee held, the employer has to establish the facts which justify the reason or principal reason for the dismissal. Provided the employer can do so, section 98(4) then kicks in."

175. We also referred to the case of ***Abernethy v Mott, Hay and Anderson 1974 ICR 323*** where the Court of Appeal noted the burden of proof on employers at this stage is not a heavy one. A "reason for dismissal" was described as "a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee".

176. In the Court of Appeal case of ***Gilham v Kent County Council (No 2) 1985 ICR 233*** it was stated that "the hurdle over which the employer has to jump at this stage of an inquiry into an unfair dismissal complaint is designed to deter employers from dismissing employees for some trivial or unworthy reason. If he does so, the dismissal is deemed unfair without the need to look further into its merits. But if on the face of it the reason could justify dismissal, then it passes as a substantial reason, and the inquiry moves on to section 98(4) and the question of reasonableness."

177. We, with these authorities in mind, turned to consider the arguments advanced by the claimant. There was no dispute (in relation to point (i) above) that in the ET3 at paragraph 23 the respondent asserted the claimant was dismissed for some other substantial reason. It was stated:

"*The dismissal was due to the breakdown in working relations between the respondent and the claimant, and the loss of trust and confidence on the part of both parties, and included:*

- *the respondent could not resolve these matters through mediation because 10 individuals had refused to mediate for various reasons;*
- *action taken against those who the claimant had raised concerns about was not justified;*
- *there were no other suitable vacancies and*

- *there were no other alternative ways of the claimant performing her role that would be appropriate."*

178. We, in considering this matter, had regard to the letter of dismissal (page 891) where it was clearly stated Mr Vincent had decided there had been a breakdown in relationships between the claimant and members of her team. He also believed this breakdown was having a detrimental effect on the claimant and others, which had to be addressed.

179. We were entirely satisfied, having had regard to the letter of dismissal and the evidence heard in this case, that the breakdown in relationships was between the claimant and members of her team. We considered the reference in the ET3 to "the respondent" was a generic use of that word and this did not undermine the position of the respondent.

180. The ET3 did refer to a breakdown in trust and confidence between the respondent and the claimant, however this was not relied upon in evidence at this tribunal. In fact Mr Vincent, when asked whether there had been a breakdown in trust and confidence between the respondent and the claimant, expressly denied it. (Mr Brown, in his submissions, suggested there had been a bilateral breakdown in trust and confidence between the respondent and the claimant affecting the practicability of reinstatement or re-engagement. We deal with this matter below).

181. Mr Vincent did, in his evidence in chief and cross examination, on occasion refer to the claimant's behaviour, rather than her alleged behaviour. On one occasion he referred to "behaviour of a deeply concerning nature". It was suggested to Mr Vincent that that sounded like he was describing misconduct. Mr Vincent rejected that suggestion and referred to having received evidence that described a pattern of behaviour, but the Investigation Report had clearly found there was no misconduct on the part of the claimant and he had accepted that. Mr Vincent rejected the suggestion that in reality he had viewed it as misconduct.

182. Mr Allison, in his submission, invited the tribunal to draw an inference that Mr Vincent had in his mind, at the time of dismissal, that the claimant was guilty of blameworthy conduct, and that this was the real reason for the dismissal.

183. We could not accept Mr Allison's submission and we declined to draw an adverse inference. We considered it important to bear in mind the fact that Mr Vincent was giving evidence about matters which occurred approximately 12/18 months ago. Mr Vincent stated clearly that he accepted the conclusion of Ms Thomson that there was no misconduct on the part of the claimant, but there was an issue regarding the breakdown of relationships between the claimant and her staff and patterns (or themes) of behaviour about which the staff had complained. We did not consider, against this background, that Mr Vincent's occasional reference to misconduct, rather than alleged misconduct, or to acts which had occurred rather than may have occurred, undermined the respondent's position regarding the reason for dismissal in this case.

184. We next considered the argument that a breakdown in relationships could not have been the reason for dismissal in circumstances where Ms Thomson made no findings regarding the veracity of any of the allegations. We shall return to consider this point more fully below, but at this stage, when considering the reason for dismissal, we accepted the respondent believed relationships had broken down between the claimant and members of her staff. In fact, we found (below) that the respondent had reasonable grounds upon which to sustain that belief, based on all of the information obtained during the investigation. The respondent's belief was also supported by the fact the claimant accepted there were difficulties/a breakdown in relationships with five members of staff.

185. We could not accept the submission that this was about personalities: neither the claimant nor the members of staff made reference to the personality of the other. This was about managerial style, communications, curriculum planning, timetabling: it was about people, including the claimant, who had become very unhappy with the way in which others behaved.

186. We concluded, having had regard to all of the above points, that the respondent had shown the reason for dismissal was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the

employee held. The substantial reason was the breakdown in relationships between the claimant and members of her staff. This is a potentially fair reason for dismissal falling within section 98(1) above, which could justify dismissal, and the tribunal must now continue to determine whether dismissal for that reason was fair or unfair.

Fairness of the dismissal

187. We must decide the fairness of the dismissal by asking whether the decision to dismiss fell within the band of reasonable responses which a reasonable employer might adopt. This will involve the tribunal in looking at procedural matters and, crucially in this case, alternatives to dismissal.

The Investigation

188. We considered it would be appropriate to start by looking at the investigation carried out by the employer. However, there are some procedural points which require to be addressed before this.

(i) *Procedure*

189. The claimant argued the matter (the collective grievance) should have been addressed under the grievance or bullying and harassment policy, both of which, it was said, require a decision to be made regarding the truth of the allegations. There was no dispute regarding the fact there was in place, at the time of these events, a grievance policy and a bullying and harassment policy for each of the legacy colleges.

190. We were not persuaded by the argument that because a collective grievance had been raised, the grievance policy should have been followed. We say that because the crucial issue is how the matter is addressed, rather than under which policy. If an employer addressed a grievance under a Dignity at Work policy, would that of itself be an error? We think not, and we think the task of this tribunal is to look at the substance of what happened, and whether there was any unfairness to the employee arising from the procedure the employer followed.

191. The respondent did ask the employees who had submitted the collective grievance how they wished the matter to be taken forward. We considered this fell within the band of reasonable responses which a reasonable employer might have adopted in dealing with a collective grievance about a line manager. We say that because the employees may have wanted the employer's assistance to deal with it informally or may have wished to proceed with it formally. In this case, in any event, it was Mr Hughes and not any of the complainers who recommended the matter should be progressed under the disciplinary policy; and it was Mr Vincent who decided to proceed in that way.

192. The claimant argued the grievance policy and the bullying and harassment policy involved a decision requiring to be made about the truth of the allegations, and only if there was truth/substance to the allegation might the disciplinary procedure be used. The disciplinary procedure however also states the role of the investigating officer is to establish the facts. In the circumstances of this case, it was Ms Thomson who decided not to establish the facts in respect of each and every allegation made: this was not dictated by the choice of policy used to address the complaint. There was nothing to suggest Ms Thomson would have conducted the matter any differently even if another policy had been used to govern the investigation.

193. We concluded the respondent's decision to deal with the collective grievance by way of an investigation under the Disciplinary Policy was a decision which fell within the band of reasonable responses which a reasonable employer might have adopted. The decision was based on a recommendation from Mr Hughes who had spoken with the complainers and obtained a flavour of the complaints they wished to raise.

(ii) *Suspension*

194. The claimant also argued the respondent had breached the disciplinary procedure by suspending her for almost six months. There was no dispute regarding the fact the Disciplinary Procedure (page 56) provides that suspension will not normally be imposed unless it is felt necessary to protect the interests of the College, the employee concerned or other employees. Suspension may be appropriate where relationships are strained or if it would

be helpful to investigate the alleged misconduct. The policy noted that any period of suspension should be as short as possible, normally up to a maximum of 15 working days, but this would depend on individual circumstances pertaining to a reasonable investigation being completed. The requirement for suspension should be kept under review to ensure it is not unnecessarily protracted, and in certain circumstances management may decide to extend the period of suspension.

195. The collective grievance was submitted on the 7 June 2018, just prior to the summer holidays. The respondent took the decision not to proceed with an investigation until after the summer holidays. The respondent met with the claimant upon her return to work in August to inform her of the complaint and also to discuss the fact Mr Vincent considered it appropriate for the claimant to "take a break from her role". In real terms this meant either a period of paid annual leave or a period of suspension. The claimant refused a period of paid annual leave, and Mr Vincent decided suspension was necessary given the nature of the allegations and the wellbeing of all involved.

196. We considered the decision to suspend the claimant fell within the band of reasonable responses which a reasonable employer might have adopted because an investigation was to take place and there was a need to protect all parties including the claimant. We accepted the respondent's position that it would not have been appropriate for the claimant to have been left in post managing those who had complained about her (and whose complaints included an impact on mental health), and leaving the claimant exposed to further complaints.

197. The claimant was suspended for a period of almost six months. This was a lengthy period, but it was determined by the fact, and length, of the investigation and the efforts to find either a resolution to allow the claimant to return to her post, or alternative employment. The suspension was kept under review per the terms of the policy.

198. The claimant argued there had been no right to suspend her after the conclusion of the investigation found there had been no misconduct. We considered the difficulty with that submission was that this issue was not solely about

misconduct: there was the underlying and essential issue that Ms Thomson identified, and that was a breakdown in the relationships between the claimant and members of her staff. In those circumstances, and given the duty of the employer to protect and have regard to the wellbeing of staff (including the claimant), we considered there could be an implied term permitting suspension of an employee to protect their wellbeing as well as the wellbeing of other staff.

199. We considered we were supported in that view by the fact the claimant accepted she could not return to her post without some form of resolution (be that mediation or training) to the situation. There had, for the wellbeing of all concerned, to be a solution to the situation which had arisen.

200. We concluded, for these reasons, that the suspension of the claimant was within the terms of the respondent's Disciplinary Policy, and that it was kept under review as required. (We return to the issue of the length of suspension when dealing with mediation below).

(iii) Notice of the allegations

201. The claimant challenged the fairness of the respondent's investigation because she had not been provided with adequate notice of the allegations against her and accordingly had not been able to fully respond to the allegations.

202. The claimant was advised of the fact a collective grievance had been raised when she met with Mr Vincent on the 22 August 2018. The claimant was provided with a copy of the collective grievance, albeit the names of the six complainers had been redacted, and advised Ms Thomson would be carrying out a disciplinary investigation.

203. There was no dispute regarding the fact the allegations were not presented in a format which gave the date, what was alleged to have happened, the names of those involved and any witnesses. The allegations in the collective grievance were much more general: for example, sending emails to staff members late at night, an individual being excluded for work events and training and denial of opportunity.

204. There was also no dispute regarding the fact the claimant, as at the time of her first interview with Ms Thomson in September 2018, had not been provided with any information other than the collective grievance. In fact, the claimant was not provided with all of the information, in terms of allegations and statements, until after the conclusion of the Investigation Report. We accordingly accepted that the claimant was not given adequate notice of the allegations and could not, therefore, fully respond to those allegations until after the conclusion of the investigation.

205. Mr Brown, in his submission to the tribunal, invited the tribunal to focus on the procedure followed by the respondent and why that procedure had been adopted.

206. The procedure followed involved Ms Thomson releasing information to the claimant regarding the allegations and supporting evidence on a step-by-step basis. The claimant did eventually receive details of the allegations made and by whom, and had an opportunity to respond to that; albeit the claimant did not receive the statements obtained by Ms Thomson until after the Investigation Report had been produced. There was no suggestion Ms Thomson had deliberately acted to withhold information from the claimant in order to disadvantage her. We accepted the reason Ms Thomson adopted this procedure was because she was conscious of not further damaging the relationship between the claimant and the members of staff and jeopardising the claimant returning to her role.

207. Ms Thomson told the claimant this in her letter of the 5 November 2018, where she said that she was keen to avoid providing more detail at this stage regarding names etc than was necessary, particularly because of the nature of the allegations and the impact which witnesses had described and the concerns which they expressed over potential retribution from you. Ms Thomson stated she was very keen to avoid a situation where this process itself made a return to work any more difficult for any individual than it might otherwise be. Ms Thomson however accepted at that stage that the claimant did not consider herself able to address the points without further details, and she therefore agreed it was now necessary to provide further details as requested.

208. We acknowledged this was not a misconduct dismissal, but these allegations were being investigated by Ms Thomson under the respondent's disciplinary procedure. The ACAS Code of Practice on handling disciplinary issues makes clear that employers must normally follow steps which include carrying out an investigation to establish the facts of the case and informing the employee of the problem. The collective grievance was in very general terms and Ms Thomson, having interviewed those who submitted the grievance and a number of other employees, had gathered a great deal of information. Ms Thomson delayed providing that information regarding the allegations to the claimant.

209. This delay impacted on the claimant's ability to respond to the allegations. The fact Ms Thomson had good reason to release the information on a step-by-step basis, and the fact she ultimately found there was no misconduct by the claimant, do not trump the fact that as a matter of natural justice, the claimant ought to have been provided with details of the allegations against her and given every opportunity to state her case in respect of those allegations.

(iv) Witnesses

210. The position regarding the witnesses the claimant wished to have interviewed was far from clear. There was no doubt the claimant asked for a number of witnesses to be interviewed by Ms Thomson and Mr Vincent. The witnesses were not interviewed. Mr Vincent told the tribunal that he had made enquiries of HR to establish why they had not been interviewed, and he had been told that attempts had been made to contact the witnesses, but there had been no response. The respondent took from this that the witnesses did not wish to be involved.

211. The agreed statement of facts reflected that four of the witnesses whom the claimant had named had been contacted by the respondent in February 2020 and had confirmed they had no recollection of having been contacted. Mr Allison invited the tribunal to infer from this that there had been no contact. Mr Brown invited the tribunal to accept there may be good reason why the witnesses would say they had no recollection. We were not prepared to draw an adverse inference based on the evidence before us. We considered it a leap too far to infer there had been no contact and that HR had, effectively, lied about this. We

accepted there had been attempts to contact the witnesses the claimant wished to have interviewed, but, for whatever reason, those attempts did not result in a response.

212. We were further satisfied the claimant had an opportunity to call those witnesses to the appeal hearing, and she did not do so. The claimant told the tribunal she thought she could not call them. We found this to be a weak explanation from the claimant who is a competent person, and who was represented by a trade union representative who would have been familiar and knowledgeable about the respondent's appeal procedure.

(v) Testing the allegations

213. The claimant argued the respondent had not adhered to the disciplinary procedure because Ms Thomson had not established the facts. The claimant also challenged that Ms Thomson had not tested the allegations in terms of whether they were genuinely held or whether the perceptions of people had been reasonable.

214. There was no dispute regarding the fact Ms Thomson was appointed to carry out an investigation under the terms of the disciplinary procedure. The principles of the Disciplinary Procedure (page 54) state "The procedure is designed to establish the facts quickly ..' and 'The purpose of an investigation is to establish the facts. No supposition that any misconduct has taken place will be made, judgements will be made on the facts pertaining from the investigation." The disciplinary procedure also provides (at paragraph 3.4.5, page 57) that *"The investigating officer will seek to establish the facts by carrying out the investigatory interviews with relevant persons …"*

215. There was no dispute regarding the fact Ms Thomson did not address each allegation and establish whether the allegation was substantiated and/or upheld. Ms Thomson adopted the approach, having spoken to a number of staff, of identifying the main themes which emerged from those interviews, noting the claimant's position and her conclusion. So, for example, Ms Thomson identified, with regard to managerial approach, the general issues raised by staff: for example, different treatment of different staff; if the claimant did not like you she

would take action to make your working life more difficult; fear of repercussions; the claimant was deliberately overbearing. Ms Thomson then set out the claimant's response to these general issues: for example, she noted the claimant believed she did treat staff equally and followed the respondent's rules. Ms Thomson concluded "*there are clearly two different perspectives here and I believe there is an issue with the way information is asked for by Morag and how staff feel about these exchanges plus a more reasonable approach on small allowances with staff should be taken."*

216. In relation to behaviour Ms Thomson noted staff were afraid to approach the claimant; felt ignored by her; did not feel supported; felt the claimant operated in a bullying manner to some staff and that there was poor staff morale. Ms Thomson noted the claimant had indicated she had low morale and felt she did not have any power and was being bullied and harassed by the staff. Ms Thomson concluded that in her view "*the issue with behaviour is that Morag doesn't see any of her actions as being other than following rules, however it is the way they have been communicated for some staff which upsets them. I do not believe Morag is considering how others feel about her actions and how best to act to get the most from the team. Some of the staff on the other hand have clearly been speaking to one another about Morag and therefore are presenting a group position with some shared examples."*

217. Ms Thomson concluded, with regard to correspondence and communication that there was frequent use of short emails and that there needed to be an amnesty on the emails being sent and to use better email etiquette in terms of detail. She did not think staff should be expected to reply to emails at inappropriate non-working times.

218. In relation to planning of the curriculum and timetabling Ms Thomson concluded there were very different perceptions between the claimant and the staff in respect of the issues causing concern.

219. Ms Thomson concluded that having conducted a full investigation, the evidence indicated there were significant issues within the School of Computing. She accepted it may be possible to assess whose account or recollection was factually accurate; and she further accepted some issues had been previously

raised and that perceptions may be misplaced. However, she was satisfied perceptions appeared to exist and that those interviewed presented as genuinely distressed and trying to provide their views. She did not believe staff had colluded, although she recognised that over time staff had discussed matters which may have coloured their recollection and/or views.

220. Ms Thomson noted there did appear to be a collective loss in the necessary trust and respect for the claimant and vice versa; and she considered the number of people who came forward to provide evidence to be significant and the fact the claimant only considered there to be five individuals who had particular issues with her.

221. Ms Thomson equally took into account the fact the claimant considered herself to be the victim. She noted the claimant's distrust for her staff and commented it may have extended to the college.

222. Ms Thomson concluded there was no misconduct on the part of the claimant, but that urgent action was required to address what appeared to be a very significant breakdown in relationships between the claimant and her staff, which was resulting in distress.

223. We have stated above that there was no doubt Ms Thomson did not address each allegation, establish the facts and decide whether it had been substantiated. We did not however consider that this corrupted the investigation or its conclusions. We say that because the real issue was not the rights and wrongs of each allegation, but what lay behind them. By this we mean, for example, a member of staff may have been denied time off for a funeral, and this may have been a competent decision within the respondent's policy, but the real issue was either the way in which the decision had been communicated or a feeling others may have been allowed the time off. Another example which illustrated this point was the Palo Alto training, where the complainer said he had been denied the opportunity to attend the training course and this, on the face of it, was wrong. The claimant said he had had the opportunity to go but had withdrawn and on the face of it that was correct. However, the subtlety of the complaint lay in why the complainer had withdrawn. The claimant may have been justified in asking the complainer about outstanding work, but the issue

came down to the manner in which this was done and the pressure felt by the member of staff not to attend the training.

224. We concluded the approach adopted by Ms Thomson fell within the band of reasonable responses which a reasonable employer might have adopted in the circumstances. We say that because of the volume of information collected by Ms Thomson and the subtlety of what was being said by the complainers (referred to above). We accepted that whilst Ms Thomson did not establish the facts relating to each allegation, she did build up a bigger picture of common themes emerging from the interviews she conducted. Those themes were reflected in the Investigation Report; and it was those themes which led her to conclude there had been a breakdown in the relationship.

225. We could not accept that Ms Thomson did not test whether views were genuinely held or perceptions reasonably held, because this matter was addressed in the Investigation Report. Ms Thomson very reasonably accepted in her report that some complaints may not have been factually accurate or may have been raised and considered previously or perceptions may have been misplaced. However, she went on to say that the crucial point was that perceptions appeared to exist, she did not believe there had been collusion and those interviewed had presented as genuinely distressed.

226. The claimant also argued that she had not been given notice that a breakdown of relationships was the matter under investigation. We accepted that on the face of it this is correct, but the breakdown of relationships was not the matter under investigation: it was the outcome of the investigation. Further, there was no suggestion the claimant would have brought forward any different information if a breakdown of relationships had been the matter under investigation.

227. We concluded that based on the information gathered which included the claimant's responses to the allegations, Ms Thomson had reasonable grounds to sustain her belief that there had been a breakdown in the relationship between the claimant and members of staff. We say that because regardless of the rights and wrongs of the allegations, the number of people who came forward, with similar points to make regarding the claimant and her

management style (the patterns or themes of behaviour), were sufficient grounds for the respondent to conclude there had been a breakdown in relationships.

228. We considered this conclusion was supported by the fact the claimant accepted there were difficulties with five members of staff (who were the ones named in the collective grievance). There was evidence, for example, of difficulties between the claimant and Ms Andrea Prosser going back to 2013 when Ms Prosser was not successful in her application for the claimant's job. There was also evidence of a grievance by Ms Prosser, a Dignity at Work complaint by the claimant, a failed mediation, ongoing complaints by Ms Prosser, the claimant noting Ms Prosser would not attend a meeting with her. This alone, in the opinion of the tribunal, was indicative of a broken relationship.

229. We concluded (above) that the claimant had not been given fair/adequate notice of the allegations and that this impacted on her ability to respond to the allegations. We asked ourselves whether that conclusion could sit comfortably with our further conclusion that Ms Thomson had reasonable grounds upon which to sustain her belief there had been a breakdown in relationships between the claimant and members of staff. We considered it could and we say that because we were entirely satisfied that even if the claimant had been given full details of the allegations and statements, and even if the claimant had defended each allegation, at the end of the day this would have made no difference to the outcome because the crucial issue (the breakdown in relationships) did not turn on the rights and wrongs of the specific allegations.

230. We acknowledged the claimant would have argued that if all allegations had been rebutted then that perception could not have been reasonably held, but this matter was considered by Ms Thomson. The respondent recognised that even if the allegations were not factually correct, it did not mean the person was lying about how they felt or their perception of what had occurred.

231. We concluded that even if the claimant had countered each and every allegation, this would not have changed Ms Thomson's conclusion that there had been a breakdown in the relationship between the claimant and members

of staff. We say that because of the subtlety underlying the complaints and the fact so many members of staff complained about the same types of issue.

(vi) Conclusion regarding procedure and investigation

232. We concluded the use by the respondent of the Disciplinary Procedure to investigate the collective grievance, the suspension of the claimant, the respondent's attempts to interview the claimant's witnesses and the approach to the investigation were all matters which fell within the band of reasonable responses in the circumstances of this case.

233. We concluded the respondent's approach to disclosing details of the allegations and supporting evidence in a step-by-step manner was a procedure which fell outside the band of reasonable responses because it impacted on the claimant's ability to respond to the allegations.

234. We were satisfied, for the reasons set out above and notwithstanding the fact the respondent did not provide adequate notice to the claimant of the details of the allegations, that Ms Thomson had reasonable grounds upon which to sustain her belief that there was a breakdown of relationships between the claimant and members of staff.

235. We next considered the alternatives to dismissal.

Alternatives to dismissal

236. We were referred to the case of ***Turner v Vestric Ltd*** (above) and it is helpful to set out the decision of that case. The EAT held that where a dismissal was due to a breakdown in a working relationship it was necessary, before deciding whether or not the dismissal was fair, to ascertain whether the employers had taken reasonable steps to try to improve the relationship; and, that to establish the dismissal was not unfair, the employer had to show not only that there had been a breakdown but that the breakdown was irremediable.

237. The respondent in this case considered a number of alternatives to dismissal.

(i) Mediation

238. Ms Thomson, in her Investigation Report, noted one of the options to be considered was mediation with a view to the claimant returning to her role. She also referred to some supporting guidelines and training for staff (not just the claimant). Twelve of the members of staff who had been interviewed were asked (during the investigation) if they would be willing to participate in mediation and all indicated they would not be willing to do so. There was no dispute regarding the fact Mr Vincent subsequently asked that the members of staff be asked again if they would be willing to mediate, and to provide reasons if they were not willing to do so. The members of staff indicated again that they would not be willing to mediate for a variety of reasons (page 1019).

239. We accepted mediation is a voluntary process and it would not be conducive to a successful outcome for an employer to instruct employees to attend a mediation. However, that said, there was no evidence to suggest to the tribunal that the respondent had tried to resolve the employees' unwillingness to engage in mediation. There was no evidence, for example, (i) to suggest the respondent had discussed, with the members of staff, the outcome of the Investigation Report and the finding there had been no misconduct on the part of the claimant; or (ii) to suggest the respondent had discussed with the members of staff how they thought the matter could be resolved.

240. Mr Vincent told the tribunal that he was "confident" it was not realistic to persuade the 12 people to mediate. There was, however, no evidence to suggest he/the respondent tried to persuade or encourage people to mediate. Mr Vincent stated in cross examination that "even if some had agreed to go to mediation or training, we would have worked with that". We considered, against that background, there was scope for the respondent to do whatever it took to engage some members of staff in the mediation process, and to build on relationships from there. The respondent did not however do so.

241. We accepted that although there was good reason to suspend the claimant, this meant she was not in the department and not line managing the members of

staff who had complained. The claimant was suspended for six months. We considered that against that background, and, put simply, the fact the complainers had achieved the removal of the claimant from the department, it was not surprising they did not wish to engage in mediation which may see the return of the claimant to that department. Be that as it may, it was for the respondent to manage the situation and we considered a simple acceptance of the unwillingness to mediate fell outside the band of reasonable responses in the circumstances and given the outcome of the investigation.

(ii) Training

242. The respondent did not put in place any training either for the claimant or the members of staff. Mr Vincent, when asked about this, said there was an issue with training regarding when it would take place and how its success could be judged. We did not doubt these matters may have been issues for the respondent to resolve, but we considered there was considerable scope for the respondent to put in place a training plan which not only worked towards resolving the relationship difficulties, but also addressed these concerns. We concluded that training was not fully explored or considered by the respondent as a way to resolve the situation.

(iii) Resolving the relationship difficulties

243. The respondent took no action to try to resolve the difficulties between the claimant and the members of staff to allow the claimant to return to work. Mr Vincent effectively limited himself to considering the options noted by Ms Thomson in the investigation report. No consideration was given to options which would, for example, have allowed the members of staff to be line managed by someone else.

244. The claimant was line managed by the Head of Faculty, Mr David Innes. Mr Innes is the claimant's partner. This had been raised as an issue by the members of staff who felt they could not complain to Mr Innes regarding the claimant. Mr Vincent told the tribunal that there had been ongoing discussions regarding moving Computing to a different faculty, and there were emails in early August 2018 (pages 1081 and 1082) to this effect. Mr Vincent believed

that if Computing had been moved to a different Faculty there would have been a "strong reaction" (that is, strong argument) from the claimant. Mr Vincent did not however explain why moving Computing to a different Faculty had not been proposed, or put in place, as a measure to address or resolve the situation. This was particularly so in circumstances where such a move would have addressed one of the concerns raised by members of staff.

245. The respondent did not consider options such as (i) returning the claimant to her post but removing line management responsibility even for an interim period or (ii) returning the claimant to her post but having her report to a different line manager. We concluded the respondent did not take sufficient steps to try to resolve the relationship difficulties.

246. We also had regard to the fact there appeared to be acceptance by the respondent that relationships generally between staff on the different campuses had not been positive since the merger. There appeared to be tensions between Cardonald campus and the two other campuses at Anniesland and Langside. The claimant spoke of colleagues at Cardonald "dreading" visiting the other campuses.

247. There appeared to be no dispute regarding the fact management knew of the difficulties and tensions, but there was no evidence (other than a reference to the Pacific Institute survey) to suggest anything had been done to try to tackle these historic and ongoing issues. Mr Vincent told the tribunal that the collective grievance was his first opportunity to tackle the issue.

(iv) Secondment

248. The claimant raised this as an alternative to returning to her post. Mr Vincent did not take this further because he considered it did not resolve the core issue in circumstances where the claimant would return to her substantive role. The respondent took no steps to investigate whether secondment options were available with the third parties identified by the claimant and if so, the length of any available secondment options.

249. We acknowledged the claimant would, if seconded, have a right to return to her substantive role, and this would have needed careful management. However

this would not have prevented other options being explored at the time of the claimant's scheduled return. We say that particularly in light of the fact there is a reorganisation taking place which will mean significant changes to the Head of Curriculum posts and line management responsibilities.

250. We concluded no other reasonable employer would have dismissed the option of secondment without exploring or having regard to what options may exist for the claimant at the time of any future return.

(v) Alternative posts

251. The respondent knew, from the 23 November 2018 when the Investigation Report was produced, that Ms Thomson had identified what she described as a "very significant breakdown in relationships between [the claimant] and her staff". The respondent also knew the staff had been asked about mediation and indicated they would not be willing to engage in that process. Ms Thomson recommended a meeting be arranged to discuss how best to resolve the situation.

252. Mr Vincent did not meet with the claimant until the 20 December 2018: he, however, was aware from the 23 November of the above points. Mr Vincent, knowing the members of staff were not willing to mediate, must have known redeployment was going to be key to retaining the claimant. There was no evidence to suggest the respondent took any measures such as a freeze on recruitment pending resolution of the claimant's position.

253. The facts of what occurred with the Head of Curriculum for Media and Performing Arts demonstrate this point. The interviews for the post were held on the 18 December and an offer made on the 19 December, that is, the day before Mr Vincent met with the claimant. Mr Vincent explained he had not been aware this may have been of interest to the claimant. We accepted that, but it did not detract from the point that the onus is on the respondent to take reasonable steps to resolve the situation. There are only 15 Head of Curriculum posts and three of them were vacant at or about the time of these events. We considered that no other reasonable employer would have failed to hold those posts pending discussion with the claimant in circumstances where there was

no misconduct on her part but it was unlikely she would be able to return to her post.

254. The Head of Curriculum for Engineering post was also vacant. The evidence regarding this post was confused because it appeared the claimant did not identify this post at the time of discussions with Mr Vincent as possibly being of interest to her. It was only at this tribunal that this was said. We concluded that in circumstances where the claimant was aware of the vacancy but expressed no interest in it at the time, there could be no issue of unfairness attached to the respondent not exploring this further with the claimant.

255. The claimant was offered the post of Head of Curriculum for Construction. Mr Vincent acknowledged the claimant did not have experience of any of the subjects within Construction, but was of the opinion that at that level of management there was no requirement to have technical knowledge of the area being managed, because technical expertise rested with the Senior Lecturers.

256. The claimant rejected the offer for two reasons: (i) she did not feel confident accepting a post in which she had no experience of the subject matters. The claimant described that she felt she was being set up to fail in the post. And, (ii) the claimant understood the current Head of Curriculum had left the post because of a difficult member of staff.

257. Mr Vincent disputed that the current post-holder had left because of a difficult member of staff, and insisted he had retired. Mr Vincent investigated the claimant's concerns regarding the member of staff and confirmed the person was "robust" but not unmanageable.

258. We considered the reasons put forward by the claimant masked the real reason why she did not want to accept the post, and that was because the claimant believed she had done nothing wrong and was resistant to moving from her current post.

259. The claimant did invite the respondent to construct a bespoke role involving her interests in STEM and Worldskills. Mr Vincent agreed to consider this and invited the claimant to put forward her ideas. Mr Vincent also gave the claimant

direction regarding the points to which the respondent would be receptive, for example it had to be commercial and generate income for the respondent.

260. Mr Vincent took the claimant's proposal to the senior leads in the College and one Head identified opportunities within his department for the claimant's proposals. Mr Vincent acknowledged the job formulated from this was not identical to what the claimant had proposed, but insisted the job was based on that.

261. Mr Vincent and the claimant met on the 17 January 2019 to discuss the job role and Mr Vincent left that meeting understanding the role would be acceptable to the claimant. Mr Vincent was surprised and disappointed to receive the claimant's rejection of the role. Mr Vincent did not meet with the claimant again to discuss the role. He told the tribunal, when asked about this, that he "was not prepared to enter into further negotiations regarding that role".

262. Mr Vincent did not explain why he was not prepared to enter into further negotiations with the claimant regarding the role. In the absence of an explanation we considered no other reasonable employer would have adopted this approach in circumstances where this was the last option on the table for the claimant before dismissal.

(ii) Conclusion regarding alternatives to dismissal

263. We concluded, having had regard to all of the points set out above, that the respondent did not adequately explore the alternatives to dismissal before deciding to dismiss the claimant, particularly given the circumstances of the case. The circumstances being that Ms Thomson, in the Investigation Report, stated: "*Given that Morag does genuinely appear to believe she has done nothing to explain or justify these complaints (other than, as she has explained, doing her job) this does not appear to be a situation which should be treated as misconduct."*

The Appeal

264. The claimant argued that the respondent had breached its Disciplinary Procedure by only allowing her one appeal against dismissal. The claimant

accepted the respondent had relied on section 8 of the Disciplinary Procedure (page 66) which applies to dismissals for reasons outwith the disciplinary process; and that this section provides for an appeal hearing to be held. Mr Allison, in his submission, invited the tribunal to find the respondent had followed the provisions of section 4 of the disciplinary procedure in the arrangements for the appeal hearing with the only exception being to deny the claimant a second appeal hearing.

265. We could not accept Mr Allison's submission in circumstances where section 8 of the respondent's disciplinary procedure was applicable in the circumstances of this case. The fact the respondent applied the same arrangements to an appeal under that section as they would have done to an appeal under section 4, did not equate to the respondent applying section 4. In any event section 4 provides for a first appeal to be heard by the Principal and Chief Executive, which would have meant the first appeal being heard by Mr Vincent. This would not have been appropriate.

266. The highest appeal body is the appeal panel and this is the body which heard the claimant's appeal against Mr Vincent's decision.

267. We were satisfied the respondent acted in terms of section 8 of its procedure. The claimant was entitled to an appeal hearing and this is what took place.

Decision

268. We have set out above that we were satisfied the respondent has shown the reason for the claimant's dismissal was SOSR. We have also set out above our conclusion that Ms Thomson had reasonable grounds upon which to sustain her belief there was a breakdown in relationships between the claimant and members of staff. We considered the crucial issue in this case to be the efforts of the respondent to explore a resolution to that situation and, for the reasons set out above, we concluded the respondent had not adequately explored alternatives before deciding to dismiss the claimant.

269. We reminded ourselves that the question we must ask is not whether we, the members of this tribunal, would have dismissed the claimant. We must ask whether the respondent's decision to dismiss the claimant fell within the band

of reasonable responses which a reasonable employer might have adopted (***Iceland Frozen Foods Ltd v Jones 1983 ICR 17)***. We decided that in the circumstances of this case, given the conclusions of Ms Thomson, that no other reasonable employer would have (i) failed to attempt to persuade members of staff to mediate, or explore how they could make mediation work for staff; (ii) failed to explore training; (iii) failed to take forward considerations of moving Computing to a different Faculty, or consider returning the claimant to her post and removing line management responsibility or any other solutions which could have been put in place to resolve the difficulties; (iv) failed to explore secondment; (v) failed to have considered putting in place a stop on recruitment for Heads of Curriculum until Mr Vincent had met with the claimant and (vi) failed to try to negotiate an acceptable resolution regarding the STEM job role.

270. We, for these reasons, decided the respondent's decision to dismiss the claimant fell outside the band of reasonable responses. The dismissal was unfair. We must now continue to consider the remedy for the unfair dismissal.

Remedy

271. The claimant, if successful, sought an order for reinstatement or re-engagement. We, in considering whether to make such an order, had regard to the fact the respondent is undergoing a restructuring affecting up to 95 members of staff and significantly reducing the number of people employed in management. Mr Vincent told the tribunal that the fifteen Head of Curriculum posts would be deleted and that it was likely there would be perhaps four posts at that level. There was also consultation ongoing regarding whether those posts would have line management responsibility and if so, for whom.

272. This tribunal is seriously contemplating making an order for reinstatement or re-engagement, particularly where the new structure may mean the removal or limiting of line management responsibility. We considered, however, that it would be appropriate for the tribunal to have up-to-date information regarding the restructuring. We say that particularly against the background of the impact of the Coronavirus and any delays that may have been caused to the restructuring process.

273. We accordingly have decided it would be appropriate to arrange a remedy hearing to provide parties with an opportunity to update the tribunal regarding the restructuring. The tribunal will, in its Judgment following the remedy hearing, deal with all points and arguments (including Mr Brown's argument that there was a bilateral breakdown of trust and confidence) relevant to determining whether to order reinstatement or reengagement, or compensation.

Employment Judge: **Lucy Wiseman**

Date of Judgment: **30 April 2020**

Entered in register and copied to parties: **23 May 2020**