



EMPLOYMENT TRIBUNALS

Claimant: Mr P Holmes

Respondent: Kirklees Council

Heard at: Leeds **On:** 8, 9, 12 to 16, 19, 20 and 23 June 2023

Before: Employment Judge Cox

Members: Ms G M Fleming
Mr D Wilks

Representation:

Claimant: Mr Toms, barrister

Respondent: Mr Oldham KC, barrister

REASONS

1. After a period of early conciliation through ACAS which began and ended on 8 February 2022, the Claimant presented a claim to the Tribunal on 9 February 2022 alleging that he had been subjected to detriments and dismissed on trade union grounds. The Tribunal refused his application for interim relief. He also alleged that he had been unfairly dismissed under the test of reasonableness in Section 98(4) of the Employment Rights Act 1996 (the ERA). He withdrew an allegation of age discrimination after it had been made the subject of a Deposit Order and that part of his claim was dismissed.
2. The Claimant was an employee of the Respondent from 1 April 1986, having previously worked for its predecessor councils since 1973. Notionally, he was attached to the Legal Services Department, but from 1998 he was on full-time

release to act as the Branch Secretary of the Kirklees Branch of UNISON, one of the trade unions that the Respondent recognises.

3. The allegations in the claim related to the Respondent's actions in taking the Claimant through a disciplinary process, which involved him being suspended from work from 29 November 2019 and then summarily dismissed on 2 February 2022. The allegations were clarified to some extent at Preliminary Hearings for case management and were focused further at the main Hearing. In particular, the Claimant confirmed that his detriment allegations were against Mrs Lucas and Councillor McBride only.

The evidence

4. At the Hearing, on behalf of the Claimant the Tribunal heard oral evidence from the following:
 - a. The Claimant.
 - b. Ms Catherine Kinder, also an employee of the Respondent but Assistant Branch Secretary in the Kirklees UNISON Branch since 1998. She had a close working relationship with the Claimant and had, and continues to have, a very close personal relationship with him.
 - c. Mr Charles Carruth, Regional Organiser for UNISON's Yorkshire and Humberside Region, who was the Claimant's union representative during the investigation and disciplinary process.
 - d. Mr Antony Pearson, Regional Manager for UNISON's Yorkshire and Humberside Region's members in local government, who attended the disciplinary outcome meeting with the Claimant and represented him on his appeal.
5. For the Respondent, the Tribunal heard oral evidence from the following:
 - a. Mrs Deborah Lucas, Head of People Services for the Respondent until her retirement in September 2022. She was involved in the decision to suspend the Claimant, she appointed an external investigator to investigate the allegations against him and she managed the investigator's work. She also presented the management case at the disciplinary hearing.
 - b. Ms Julie Muscroft, Service Director for Legal, Governance and Commissioning and Solicitor to the Council, who was involved in the decision to refer the Claimant to a disciplinary hearing.

- c. Mr Colin Parr, Strategic Director for Environment and Climate Change, who made the decision to dismiss the Claimant.
 - d. Ms Melanie Meggs, Strategic Director for Children, Families and Communities, who chaired the three-person panel that dealt with the Claimant's appeal against dismissal.
6. The person who carried out the disciplinary investigation in the Claimant's case was an independent contractor who did not attend the Tribunal Hearing. Since the Tribunal made findings that were critical of that person's work without them having had the chance to make any comment, and given that their identity was not relevant to the Tribunal's findings, the Tribunal considered it appropriate to refer to them in its reasons as "B".
 7. The Hearing file ran to 3,431 pages. The parties provided the Tribunal with an agreed reading list of the pages that it should read.
 8. On the basis of the evidence it heard and read, the Tribunal made the following findings, all of which were unanimous.

Background findings

9. In order to give context to its conclusions on the allegations, the Tribunal made the following findings on the background facts.
10. The Kirklees branch of UNISON has around 10,000 members, of whom around 5,000 are employed by the Respondent. The Branch has around 150 union representatives, including shop stewards and Branch officers, who make up the Branch Committee. Officers are elected annually at an Annual General Meeting. The Branch Secretary is responsible to the AGM and to the Branch Committee. Whilst the Branch Secretary is the key role in the branch, there are other important officers, namely the Branch Chair, two Assistant Branch Secretaries and a Treasurer. At the relevant time, the Branch Secretary was the Claimant, the Chair was Mr Nick Ruff and the Assistant Branch Secretaries were Ms Kinder and Ms Kath McHendry. All four officers were employees of the Respondent. The Claimant, Mr Ruff and Ms Kinder worked closely together. In an interview during the investigation process, Ms McHendry commented that in the Branch they were nicknamed "the Holy Trinity".
11. As Branch Secretary, it was part of the Claimant's role to lead negotiations with the Respondent about collective issues, organise industrial action when negotiation failed, raise matters of concern on behalf of the UNISON membership employed by the Respondent and represent the Branch at public meetings and in the media. He led several high-profile disputes with the Respondent, including: a national strike over pensions in local government in 2012; a one-day national

strike over pay in 2014; a two-day strike of social work staff in 2017; and a number of disputes involving refuse collection between 2017 and 2019, including a one-week strike in 2018.

12. The Branch directly employed 14 staff, including five administrative/office staff, all of whom were women. These individuals were employees of the Branch only, not of UNISON regionally or nationally and not of the Respondent.
13. The person with whom the Claimant mainly dealt within the Respondent was the Head of People Services. He had a good relationship with a number of the people who held this post over the years, but not with Ms Redfern, who was appointed to the post in 2013. The Claimant believed that Ms Redfern was committed to breaking the union. She left the Respondent's employment in early 2017. Mrs Lucas took up the post in February 2018. The Tribunal heard no evidence that Mrs Lucas's attitude towards the Claimant was influenced in any way by Ms Redfern.
14. In Mrs Lucas's previous employment, also with a local authority, she had worked collaboratively with the officials of the recognised unions. She wanted to do the same in her employment with the Respondent. The Claimant was the lead negotiator for one of the Respondent's recognised unions and so she needed to establish a working relationship with him. She noted that, whilst the Claimant was notionally attached to the Legal Services Department, he did not have any active employment links back into the Council, and had not had for many years, since he began working full-time on union duties. This concerned her. The Respondent was his employer, with a duty of care towards him, and no one was monitoring his welfare or development. He had told her that he had been the subject of several physical attacks connected with his union work over the past few years. She suggested to him that she and he have 1-2-1 meetings at which these matters could be discussed and she could update him on Council communications. She asked him to provide timesheets and holiday records so that she could check that he was not working overlong hours and was taking breaks.
15. The Claimant was resistant to and resented Ms Lucas's approach. He felt that she was trying to manage and control him and he believed that she had no right to do so. The Respondent, he considered, had no right to interfere in any way with his work as a union official. He agreed to meet with Mrs Lucas but only on the basis that Ms Kinder would accompany him. Mrs Lucas was hoping to establish a collaborative relationship based on trust whereas the Claimant would not trust her until she demonstrated that she was worthy of trust by the way in which she acted in her dealings with the union.

16. In the Tribunal's view, Mrs Lucas made a significant error of judgement in trying to develop a personal work relationship with the Claimant. Their respective roles in industrial relations within the Council required them to relate to each other in an entirely different context and in an entirely different way. If the Respondent needed to re-establish an employment link with the Claimant, another manager, most logically in the Legal Services Department, could more effectively have performed that role. The Tribunal did not, however, consider that Mrs Lucas was motivated by a desire to bring the Claimant, and hence the union, under her control. It had no reason to doubt the reliability of her evidence, which was clear and convincing, that she was acting in good faith, trying to re-establish a link between the Respondent as employer and the Claimant as employee. In the event, only three 1-2-1s between the Claimant and Mrs Lucas took place, in November 2018 and February and October 2019.
17. The Claimant as confirmed in his suspicion that Mrs Lucas was not to be trusted when a disagreement arose between them about the provision of ballot boxes in around October 2019. At a meeting with management about a consultative ballot on a move to monthly pay, the Claimant asked Mrs Lucas whether the Respondent would provide the same support for the ballot as it had done on a ballot on single status held 10 years previously. She confirmed that management was happy to provide support for the ballot. The Claimant believed that Mrs Lucas had thereby agreed to the detailed arrangements that the union had reached with management a decade before. In fact, Mrs Lucas was unaware of the detail of the previous arrangement. On the previous occasion, the Claimant was sure that the Respondent had provided the ballot boxes and arranged their delivery and collection. On this occasion, Mrs Lucas said that the Respondent would not provide the ballot boxes, which needed to be available at all times for the Council's own electoral purposes. The Claimant maintained that Mrs Lucas was breaching her agreement; Mrs Lucas denied ever having agreed to provide the boxes. In a bulletin distributed to Branch members the Claimant said that management was accusing him of lying. The Tribunal found that this was in fact a simple misunderstanding between the Claimant and Mrs Lucas. She wrote the Claimant a detailed email explaining why this was so and suggested that they have regular "catch up" meetings so that in the future any concerns the Claimant had could be resolved before they became issues. The Claimant's interpretation of these events confirmed him in his belief that he could not trust Mrs Lucas.
18. The Tribunal accepted that the Respondent had gone through turbulent times in terms of industrial relations in recent years, with various industrial disputes in which the Claimant had been heavily involved. Although Mrs Lucas had not been in the Respondent's employment for most of that time, she would have been aware of that history and she was in the Respondent's employment during the latter part of the period of the refuse services disputes.

19. Mr Karl Battersby was Strategic Director for Economy and Infrastructure from early 2018 until he left the Respondent in 2020. He was the manager with overall responsibility for refuse services during the period in which they were affected by disputes with UNISON, disputes which were the subject of much local publicity. The Claimant believed that Mr Battersby was hostile towards him as a result. In May 2019 Mr Battersby liaised with Mrs Lucas about an article in the press. He considered that the content of that article indicated that the union had given out details that might identify individual workers, in breach of a settlement agreement that the Respondent had made with the union that neither side would do so. Mrs Lucas wrote to the Claimant asking him to refrain from giving details to the press that could lead to the identification of individual workers, in breach of the agreement that had been reached. She told the Claimant that if there was any reoccurrence of this behaviour, the Respondent might decide to formally investigate his conduct. The Claimant did not accept that he had breached the agreement. He interpreted Mrs Lucas's letter as a form of disciplinary warning, which she had issued before she had investigated the facts. He saw this as evidence that Mrs Lucas was working against him in collaboration with Mr Battersby. The Tribunal did not accept that that was so. She was giving support to a senior colleague who was concerned about the Claimant's conduct. But she made clear to Mr Battersby that any formal disciplinary action would not be appropriate, because there had been no investigation.

20. The Tribunal accepted that Mrs Lucas was exasperated with the Claimant's attitude and frustrated by her inability to form a positive and collaborative working relationship with him. The relationship between them was clearly dysfunctional. He did not trust her; she could make no headway in establishing a constructive relationship with him. The Tribunal did not accept, however, that that meant Mrs Lucas was ready to take the first opportunity that came her way to secure the removal of the Claimant because of his union activities. Nothing in her oral evidence about the disciplinary process or any of the related documents to which the Tribunal was referred indicates that she was acting other than in good faith. She was trying to deal fairly and appropriately with events as they unfolded during the course of the disciplinary process, focusing on the Claimant's alleged conduct, not on the history of their relationship. Indeed, given the Claimant's role and standing within the union and the Respondent's recent history of poor industrial relations, it would have been foolhardy of her not to be aware of the need to deal fairly with his case.

The initial complaints

21. The disciplinary process against the Claimant was initially triggered by two complaints that came to Mrs Lucas's attention.

22. The first complaint was by Ms Wendy Ellis, a chief steward in the Kirklees UNISON Branch and an employee of the Respondent. The Claimant considered her to be a very competent official and in recent years he had repeatedly asked her to stand against Ms McHendry for the Assistant Branch Secretary post, but she had always declined to do so.
23. Ms Ellis sent her complaint to Mr John Cafferty, UNISON Regional Secretary, on 26 November 2019, and copied it to Mrs Lucas. In it, she described some recent interactions between herself and the Claimant that had upset her a great deal. She first explained the background. Gary Cleaver, UNISON Regional Organiser, had offered her a secondment as a Branch Development Organiser, to begin on 2 December 2019. She spoke to the Claimant about the offer on 11 November, explaining why she was accepting it. He was angry about the possibility that Ms Ellis would be moving. He told Ms Ellis that she was not in a position to accept anything and she would be going nowhere. He said that Mr Cleaver had no authority to make the offer and it was a conspiracy by the Region to pick off his best activist. Only he had authority over Ms Ellis and it would not be happening. He asked Ms Ellis to promise that she would not have any further contact with Mr Cleaver. When she refused, he said that she was going down a dangerous path and it would not end well for her.
24. Ms Ellis's complaint went on to describe events on 20 November. In Ms Ellis's lunch break during a training session on that day, the Claimant told her he needed to speak to her at once. Rather than taking her to the meeting room, he took her to the finance room, the second smallest office in the building. He told her he was being lied to. He said that he had had a telephone call from Mr Ruff who told him that Ms McHendry had been upset about having heard about Ms Ellis's offer of a secondment seventh hand and had told Mr Ruff that Ms Ellis had been for an interview for the secondment role at the Regional office. That meant that Ms Ellis had lied to him. She said she had not: she had not been interviewed before the offer was made. The Claimant said that Ms McHendry was stirring things up for Ms Ellis and that it would be useful for both of them if Ms Ellis stayed to stand against Ms McHenry in the Assistant Branch Secretary election the following March. He would see to it that she won. By this point Ms Ellis had become very upset and wanted to leave the room. She told the Claimant that he needed to get out of her way, the Claimant having positioned himself between her and the door, and that she needed to speak to Ms McHendry. The Claimant continued to say that the Region was using Ms Ellis to destroy him and that if she accepted the secondment she would sacrifice every union principle she had ever had. Ms Ellis began to cry. The Claimant said he was going, he had a train to catch. He told Ms Ellis to stay where she was and think very seriously about her next move. He

asked her to promise not to speak to Ms McHendry, but she refused. He left Ms Ellis in the room on her own, very upset.

25. Ms Ellis went on to say in her complaint that, having composed herself, she confronted Ms McHendry and told her that her interference had led to her having an upsetting meeting with the Claimant. Ms McHendry was upset too and immediately telephoned Mr Ruff. Mr Ruff was unaware that Ms Ellis could hear the call. Ms McHendry told Mr Ruff Ms Ellis's account of what the Claimant had told Ms Ellis about Mr Ruff's call to the Claimant. Mr Ruff's response was that that was not the case and that Ms Ellis was lying. Ms Ellis realised at this point that she was being used and manipulated by the Claimant and Mr Ruff. She apologised to Ms McHendry for having confronted her. The following day, Mr Ruff 'phoned Ms Ellis to say that he had received an angry telephone call from Ms McHendry the previous day in which she claimed that Ms Ellis had been threatening and abusive towards her. Ms Ellis replied that she had been with Ms McHendry when she made that call, and that was not what she had said at all. Mr Ruff went very quiet at this point and ended the call shortly afterwards.

26. Ms Ellis's complaint concluded as follows:

This has been one of the most difficult things I've ever had to do. I feel ashamed, weak and stupid. I have allowed myself to be abused mentally and emotionally and I am really struggling to come to terms with that. Every conversation has taken place when I have been alone with Paul [the Claimant] and therefore, I cannot prove any of it, but this statement is truthful and accurate.

27. The second complaint was made by Ms McHendry on 2 December 2019, after the Claimant had been suspended from work. In her email, Ms McHendry briefly set out her conversation with Ms Ellis on 20 November and her subsequent telephone call to Mr Ruff. Ms McHendry also said that she had attended a meeting between the Claimant and Steward Jackson, a chief steward. Mr Jackson believed that the Claimant was unjustifiably interfering in a sensitive case with which he was dealing and expressed his concerns at that meeting. The Claimant "*completely lost his temper balled his fists and twice stated you are getting near my knuckles I believe he would have punched Stewart if I had not stopped the meeting. Paul has also bullied the staff, a long, standing member of staff left due to him and [as] usual he got away it. I believe that he thinks he can treat people this way because he is untouchable.*"

Scope of protected trade union activities

28. The Claimant alleged that he had been subjected to various detriments for the sole or main purpose of preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time or penalising him for doing so, contrary to Section 146(1)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A). He also said that the sole or principal reason for his dismissal was that he had taken part in the activities of an independent trade union at an appropriate time, making his dismissal automatically unfair under Section 152(1) TULR(C)A. "An appropriate time" is outside working hours or within working hours with the employer's consent or under an agreed arrangement (Section 146(2)). It was not in dispute that UNISON is an independent trade union.
29. The union activities that the Claimant said led to the detriments and his dismissal were as follows:
- 29.1 His activities as Branch Secretary of the Kirklees branch of UNISON since 1998. This included the conduct of various disputes with the Respondent that involved the threat of, or actual, industrial action. The Tribunal accepted that all these activities were protected by Sections 146 and 152, other than the Claimant's participation in industrial action (Mercer v Alternative Future Group Ltd [2022] EWCA Civ 379). In Mercer, the Respondent accepted that planning or organising industrial action could fall within the scope of union activities if done at an appropriate time. In this case, the Tribunal assumed in the Claimant's favour that his activities in discussing and consulting with members about actual or proposed industrial action, in discussing and negotiating with management about possible or proposed industrial action, and taking organisational steps to prepare for and conduct industrial action were also covered by the protection.
- 29.2 The Claimant's discussions with UNISON members at the UNISON national conference in 2018.
- 29.3 The Claimant's participation in a meeting in September 2019 with Mr Jackson and Ms McHendry at the Branch offices (ie the subject of the second initial complaint).
- 29.4 The Claimant's conversation with Ms Ellis on 20 November 2019 at the Branch offices (ie the subject of the first initial complaint).
- 29.5 The Claimant's management of staff employed by the Kirklees UNISON Branch.
30. The Tribunal accepted that these were all union activities. The Tribunal was not referred to any agreement between the Respondent and UNISON on what

activities the union's officials were authorised to carry out in working hours. The Tribunal nevertheless assumed in the Claimant's favour that these activities were all carried out at an appropriate time, that is, in working hours with the Respondent's express or implied consent or in accordance with an agreed arrangement, or outside working hours.

31. The Respondent accepted that the conduct that led to the Claimant's suspension and dismissal occurred in the context of him carrying out the union activities in paragraphs 29.2 to 29.5 above. It also accepted, as the Employment Appeal Tribunal said in Lyon and another v St James Press Ltd (1976) ICR 413, that "the right to take part in the affairs of a trade union must not be obstructed by too easily finding acts done for that purpose to be a justification for dismissal". But it pointed out that the EAT had also said in Lyon that the special protection provided by the legislation "must not be allowed to operate as a cloak or an excuse for conduct which ordinarily would justify dismissal". This was a case, it said, where the Claimant's conduct could fairly be regarded as distinct from his trade union activities themselves because it was "wholly unreasonable, extraneous or malicious" (Morris v Metrolink RATP Dev Ltd [2018] IRLR 853).

Scope of "detriment"

32. The Respondent argued that the detriments about which the Claimant complained that related to the conduct of the disciplinary process did not contravene Section 146 because of Section 146(5A). That sub-section says that Section 146 does not cover anything that "amounts to dismissal". The Respondent said that Section 146(5A) should be interpreted by reference to the case law on the recoverability of damages for breach of contract by conduct leading to dismissal. That meant that any part of the process that led to the Claimant's dismissal should be viewed as being part of the dismissal and so were not capable of being a detriment. The Tribunal did not accept that argument. On a straightforward reading of Section 146(5A), it is intended to distinguish between two distinct potential causes of action available to employees: Section 152 if they want to challenge a decision to dismiss (including constructive dismissal) and Section 146 if they want to challenge any other detriment, whether or not that occurs during a process leading up to a decision to dismiss. The Tribunal saw no justification for applying case law in another area of law to the meaning of Section 146.

Issues in the detriment claims

33. The principal issues in relation to each of the detriment allegations were:
- 33.1 Did the Respondent subject the Claimant to a detriment, that is, did it treat him in a way that he could reasonably regard as putting him under a

disadvantage in his employment (Shamoon v The Chief Constable of the Royal Ulster Constabulary (2003) ICR 337)?

- 33.2 If it did, was the sole or main purpose of that treatment to deter him from, or penalise him for, his union activities, as opposed to conduct that could fairly be regarded as distinct from those activities, in the sense explained in Morris?
34. In deciding what the purpose of the Respondent's actions was, the Tribunal bore in mind at all times that it was for the Respondent to show the sole or main purpose of its actions (Section 148 TULR(C)A).
35. The numbering of the detriments is based on the agreed list of issues.

Detriment 1: Mrs Lucas suspended the Claimant without proper cause from 29 November 2019 to 2 February 2022

36. Having received the copy of Ms Ellis's complaint to Mr Cafferty and confirmed with Ms Ellis that she wanted the Respondent to investigate it, Mrs Lucas discussed the allegation with her colleague Ms Joanne Pearson, a Human Resources manager, and Ms Jacqueline Gedman, the Respondent's Chief Executive. They decided that the Claimant should be suspended from work while the matter was investigated. The ACAS Code on disciplinary procedure advises that where disciplinary action is being considered against a union official, it is advisable to discuss the matter with an official employed by the union, after obtaining the employee's agreement (paragraph 30). Mrs Lucas did speak to Mr Cafferty, UNISON Regional Secretary, about the Claimant's suspension, and then confirmed the fact of his suspension in writing, but she did not first obtain the Claimant's permission to do so. The Tribunal did not consider that that failure indicated she was acting with the purpose of penalising the Claimant for, or deterring him from, his union activities. Her purpose was to follow the Respondent's disciplinary procedure and disciplinary guidance notes for managers, neither of which mention contacting the employee before contacting the union.
37. It would clearly have been a detriment to suspend the Claimant for a lengthy period without proper cause. There was, however, proper cause for the decision to suspend the Claimant. Ms Ellis's complaint, objectively assessed, amounted to a complaint of bullying and manipulative behaviour by the Claimant that had left Ms Ellis very upset. It was a complaint that any manager would need to take very seriously and that was particularly the case for Mrs Lucas: she was the most senior human resources manager in the Council and responsible for ensuring that its values were adhered to by the workforce. The decision to suspend was in line

with the Respondent's management guidance on disciplinary matters, which indicated that an employee might need to be suspended if witnesses might be placed under considerable pressure if the individual were to remain at work or where dismissal was a possibility.

38. The second initial complaint, by Ms McHendry on 2 December 2019, amounted to a complaint that the Claimant had behaved in a way that threatened violence. That also clearly needed to be taken very seriously by Mrs Lucas. Mrs Lucas received further statements, discussed further below, which also involved allegations of bullying and harassment by the Claimant. Although all these allegations involved incidents that happened in the context of the Claimant carrying out his union activities, they were all, on their face, about aspects of the Claimant's conduct that she considered could fairly be regarded as distinct from his union activities. The Tribunal accepted that that was her view, and itself considered she had objective grounds for it.
39. The length of the Claimant's suspension was the result of multiple factors, some of which are discussed further below in paragraphs 66 to 69 and 97 to 100. There was no evidence to support the Claimant's assertion that Mrs Lucas intentionally drew out the process to penalise him for his union activities. Indeed, had she wanted, as he alleged, to rid herself of the Claimant because of his trade union activities, it would have been more likely that she would have wanted to move the process along as speedily as practicable.
40. The Tribunal noted that the Respondent's disciplinary guidance notes provide for suspensions to be kept under review and there was no evidence put to the Tribunal that the Claimant's suspension was reviewed before 19 April 2021. But this did not affect the Tribunal's conclusion that the principal purpose of the Claimant's lengthy suspension was not to penalise him for, or deter him from, any of his union activities. The purpose was to ensure that the investigation into allegations that he had been guilty of bullying behaviour could proceed without the risk of witnesses coming under pressure, and because he was accused of serious misconduct that might lead to his dismissal. That situation remained unchanged throughout the period of his suspension.

Detriment 2: Mrs Lucas conducted an unfair and unbalanced investigation

41. In the light of the Claimant's senior position in the union, Mrs Lucas decided that it would be appropriate to appoint an independent contractor to carry out the investigation into his conduct. At the Tribunal Hearing, the Claimant accepted that B conducted the investigation and he withdrew any allegation that B subjected him to a detriment for trade union activities. The Claimant confirmed that he in fact wanted to allege that **Mrs Lucas interfered with B's conduct of the**

investigation in a way that resulted in the investigation being unfair and unbalanced. The Respondent did not object to that amendment to his allegation and the Tribunal proceeded on that basis. The Tribunal accepted that if Mrs Lucas had indeed interfered with the investigation in a way that resulted in it being unfair and unbalanced, that would amount to a detriment.

42. The Claimant made various specific allegations about Mrs Lucas's alleged interference with B's conduct of the investigation. Before addressing those, the Tribunal made the following general findings.

General findings on conduct of the investigation

43. The Tribunal understood the reasoning behind Mrs Lucas's decision to refer the investigation to an external investigator, given the Claimant's senior role in the industrial relations between the union and the Respondent and Mrs Lucas's existing relationship with him. By making that decision, she reduced the degree of control she had over the conduct of the investigation. Although the Claimant argued that she later interfered with the investigation, her original decision to contract it out appeared to undermine the Claimant's case that she was from the outset looking for an opportunity to get rid of him because of his union activities.
44. The Tribunal considered, however, that Mrs Lucas managed the investigation badly. As far as the Tribunal was aware, Mrs Lucas never put B's terms of reference in writing. In her original email to B, Mrs Lucas stated: "Thank you for agreeing to undertake an independent investigation into a complaint of alleged bullying that we have received. Please find attached the two complaints that relate to this matter." She attached the two initial complaints, the disciplinary guidance notes for managers, the Dispute Resolution Grievance Policy, the Dispute Resolution Grievance Procedure and an Employee Support Pack. She met with B on 9 December and it was agreed that B would investigate the complaints from Ms Ellis and Ms McHendry in accordance with the Disciplinary Procedure. Mrs Lucas would provide B with administrative support but otherwise would have no role in the conduct of the investigation. B would be expected to submit an investigation report.
45. On around 23 December, Mrs Lucas was contacted by Mr Mike Forster, an Assistant Branch Secretary at the UNISON Kirklees Branch until his retirement in 2016, who said that he had evidence to give about how the Claimant had bullied him and other staff. Mrs Lucas asked him to put the details in writing and he did so on 6 January 2020. She forwarded his statement to B. On 3 January 2020 Mrs Lucas received an unsolicited email attaching a statement from Jean Goodison, a senior shop steward who retired in 2014, which stated that the Claimant had bullied staff. She forwarded this to B. On 12 January 2020 Mrs Lucas received a

statement from Ms Kathie Hirst, formerly a member of the Branch staff, giving details of bullying, harassing and intimidating conduct by the Claimant. Mrs Lucas forwarded this to B “to inform your investigation”. Also in January, Mrs Lucas received an unsolicited statement from Monique Slattery, a steward and branch officer at the Kirklees Branch until 2014, detailing intimidating and bullying behaviour by the Claimant. Mrs Lucas forwarded this to B. On 16 January 2020 Mrs Lucas received an unsolicited email from Ms Heidi Garcha, a former member of the Branch office staff who was dismissed in 2004, referencing bullying and harassment by the Claimant, and she forwarded this to B. On 27 January 2020 she received an email from Ms Yvonne Spink, formerly a Branch shop steward. Ms Spink wanted to help Ms Goodison by providing some further details about the Claimant’s handling of Ms Goodison’s equal pay claim, but she also said: “I want it noted I have no problems with Paul”. There was no documentation to support this having been forwarded to B. The Tribunal accepted Mrs Lucas’s evidence that if she had not done so, that was an oversight on her part, not because she did not want B to know that Ms Spink had no problems with the Claimant.

46. It was unclear from Mrs Lucas’s evidence what B was told about the task they were being given. Was it simply to investigate what happened? If so, was it to investigate all of the allegations in all of the complaints and statements forwarded by Mrs Lucas? Was B being asked to assess whether any of the Claimant’s conduct fell within the Respondent’s definition of bullying in its dignity at work policy? Was B being asked to assess by reference to the Respondent’s rules of conduct whether the Claimant’s conduct was potentially misconduct or gross misconduct? Or were these last two matters for the Respondent to decide? Should B be identifying whether any conduct of the Claimant that was raised for the first time in B’s interviews with witnesses were potential additional disciplinary matters?
47. B interviewed all those involved in the two initial complaints, those who had made statements and others who were referred to in the complaints and statements, and the witnesses that the Claimant asked B to speak to. B decided not to interview Mr Foster because he had attempted to contact Ms Ellis and B did not want Ms Ellis to be put under pressure from him.
48. B eventually produced a draft investigation report for Mrs Lucas to comment on. The appendices to the report brought together all the statements that B had gathered during those interviews as well as the two initial complaints. The report itself presumably was presumably intended to analyse the evidence and reach some sort of conclusion about what it showed, but unfortunately its quality and analysis were poor. The first draft in particular was unclear in places and very poorly structured. Some of this lack of clarity was possibly due to the lack of clear terms of reference from Mrs Lucas. It was striking, for example, that the opening

paragraphs of the first draft stated that the purpose of the report was to investigate a grievance from Ms Ellis rather than, as was actually the case, to carry out an investigation into an employee's conduct in the context of a disciplinary process.

49. The Tribunal found it unsurprising, giving the poor quality of the initial draft, that Mrs Lucas and Ms Pearson made a number of comments on it. As a result of their comments, B made several changes to the draft. During the course of the Tribunal Hearing, the parties agreed the extent of the changes that had been made. The more significant ones were as follows.
50. The initial draft said that there was insufficient evidence to support a threat of violence towards Mr Jackson. In the final version, this became a statement that there had been "threatening behaviour towards Stewart".
51. In a section headed "bullying, intimidatory and manipulative behaviour" a final sentence was inserted in the final draft: "*It is hard to believe that so many people, including Wendy Ellis, would come forward and share this view of his behaviour if there was not some element of truth to it*".
52. In the section headed "summary", the first draft stated that incidents where B considered that the Claimant had acted in a bullying and controlling way "*might be considered low level in nature*". This phrase was removed in the final draft as a result of a comment by Mrs Lucas that the Respondent would not consider them low level.
53. Confusingly, in both the initial and final drafts, B said in relation to the 20 November 2019 meeting between the Claimant and Ms Ellis: "*I am unable to make a finding to support the allegation that he behaved in a bullying and threatening way towards [Ms Ellis]*". But then, in the summary section, after stating that some of the Claimant's behaviours were bullying and controlling, both versions said: "*having taken that view it is not impossible to believe that he may have behaved in a bullying way towards [Ms Ellis] over the secondment issue as she alleges . . .*" And it was "*possible to say that there might be some element of bullying in the behaviours described and the Council might want to consider what action, if any, they want to take in respect of this.*"
54. The Tribunal finds that Mrs Lucas's comments on the draft report, like those of Ms Pearson, were largely an attempt to improve the quality of the report. Mrs Lucas had identified from the evidence that B had gathered, which was set out in the appendices, that the Claimant had a disciplinary case to answer. On the Tribunal's own objective assessment of those statements, she had reasonable and well-evidenced grounds to conclude that that was so. Mrs Lucas's comments

on the report were not made with the purpose of penalising the Claimant for, or deterring the Claimant from, his union activities. Her purpose was to improve the quality of the report sufficiently to ensure that those aspects of the Claimant's conduct that she considered might amount to misconduct and could fairly be regarded as distinct from his union activities should be captured for the purposes of deciding whether the matter should go forward to a disciplinary hearing.

Detriment 2.1: Mrs Lucas asked B to investigate the Claimant's work in the union's Branch office and not work he did for the Respondent.

55. Mrs Lucas asked B to investigate the Claimant's conduct within the Branch office. That was not work he was doing for the Respondent, but for the union.

56. It could be argued that the scope of the investigation was not a detriment for the Claimant: once allegations had been made, the Claimant had as much interest as anyone that they should be thoroughly investigated, so that his innocence of misconduct could be established. For the purpose of considering this allegation, however, the Tribunal was prepared to assume, without finding, that it was a detriment.

57. The Tribunal was clear that Mrs Lucas's purpose in setting the scope of the investigation to cover the Claimant's conduct in the Branch was not to punish him for, or deter him from, his union activities but to investigate allegations relating to the Claimant's conduct which, although committed in the context of his union activities, she regarded as distinct from them. (As previously explained, the Tribunal accepted that was her view and itself considered that she had reasonable grounds for it, objectively assessed.) His conduct towards stewards in the Branch who were employed by the Respondent were clearly squarely within its area of legitimate concern, since these people were its own employees. But the Claimant's conduct towards Branch employees was also the Respondent's concern, given his role and standing in the union and its concern to ensure that he, like its other employees, was complying with the standards of behaviour it set.

Detriment 2.2: The investigation dealt with matters that were internal UNISON affairs, which the Respondent was not entitled to investigate.

58. The investigation did indeed deal with matters that were also UNISON's internal affairs, in the sense that during the course of the investigation employees and ex-employees of the Branch were interviewed. On the same basis as for detriment 2.1 above, the Tribunal was prepared to assume, without finding, that this amounted to a detriment. But on the same basis as for detriment 2.1 above, the Tribunal did not accept that Mrs Lucas's purpose was to deter the Claimant from, or punish him for, his union activities. Even though the allegations were to do with

the Claimant's conduct in the context of union activities, Mrs Lucas had a legitimate purpose which was to investigate whether the Claimant, the Respondent's own employee, was guilty of conduct that on its face appeared to her to amount to potential misconduct, as distinct from union activities.

59. The Tribunal noted that when, at the time of the Claimant's suspension, Mrs Lucas contacted Mr Cafferty to inform him that the Respondent would be conducting an investigation into Ms Ellis's complaint, he did not raise any objection that the Respondent should not be doing so because it was an internal union matter.

Detriment 2.3: Mrs Lucas allowed the investigation to develop into an "open-ended investigation into anyone who had a grudge against the Claimant"

60. Mrs Lucas did refer statements she received from ex-Branch employees to B. This was not open-ended, in the sense that she drew a line at end of January 2020 to forwarding any further statements. Her purpose in allowing the investigation to be widened in this way was not to deter the Claimant from, or penalise him for, his union activities, but to ensure that further allegations that the Claimant had acted in a bullying and harassing way were investigated. Her purpose was not to facilitate anyone in pursuing grudges against the Claimant. Indeed, the Tribunal heard no evidence that she was aware that any of the individuals who had made complaints or sent in statements bore the Claimant a grudge.

61. As already stated above, however, the Tribunal acknowledged that it was not helpful for Mrs Lucas to refer these further statements to B without making clear whether and how they should be viewed as affecting the scope of the two statements that B had already been asked to investigate.

Detriment 2.4: Mrs Lucas referred the matter to a disciplinary hearing even though there was no basis for doing so in the investigation report.

62. This allegation is dealt with in paragraph 65 below.

Detriment 2.5 Mrs Lucas interfered inappropriately with the investigation and the preparation of evidence

63. The Claimant alleged that Mrs Lucas worked with Mr Forster, who had been a political opponent of the Claimant when they worked together at the Branch, to find witnesses who would give evidence against him. The Tribunal accepted Mrs Lucas's evidence that she had one conversation only with Mr Forster, whom she did not know. She asked him to put what he wanted to say about the Claimant's

behaviour in writing. There was no evidence before the Tribunal that she colluded with him in any way to build a case against the Claimant.

64. The Claimant alleged that Mrs Lucas caused B to re-write the investigation report to change its conclusions. As already recorded above, the Tribunal accepted that Mrs Lucas did make comments on the initial drafts and these did lead to some changes to B's report. Mrs Lucas's purpose was not to penalise the Claimant for, or deter him from, his trade union activities but to improve the quality of the report to ensure that it properly reflected the evidence in the appendices.
65. The Claimant alleged that Mrs Lucas interfered with or was responsible for the decision that the Claimant had a disciplinary case to answer that needed to go forward to a hearing, even though there was no basis in the investigation report findings for the case to go to a disciplinary hearing. The Tribunal found that it was in fact Ms Muscroft who made the decision that there was a case to answer, at a meeting with Mrs Lucas on 7 April 2021. The Tribunal accepted that Ms Muscroft made that decision after discussing the matter with Mrs Lucas at the meeting. Although Mrs Lucas's advice and views clearly influenced Ms Muscroft's decision, the Tribunal found that it was entirely appropriate for Mrs Lucas to share her advice and views with Ms Muscroft, given Mrs Lucas's role was the Respondent's most senior human resources manager. The Tribunal did not accept that Mrs Lucas's purpose in offering her views to Ms Muscroft was to penalise the Claimant for, or deter the Claimant from, his union activities. It was to ensure that Ms Muscroft was aware of all the evidence that had been gathered during the course of the investigation on whether the Claimant had a case to answer before making her decision.

Detriment 4: Mrs Lucas caused the investigation and disciplinary process to last over two years

66. During the course of the Tribunal Hearing, the parties agreed a chronology of the investigation and disciplinary process and the Claimant made comments on it. From those comments, it appeared that he attributed two aspects of the length of the process to Mrs Lucas's actions.
67. The first aspect was that, if the whole process had been limited to the two initial complaints, it could have been concluded much earlier than it was. The Tribunal accepted that that was the case, but, as set out above, it did not accept that Mrs Lucas's purpose in allowing its scope to be widened was to penalise the Claimant for, or deter him from, his union activities.
68. The second aspect was that the process of Mrs Lucas commenting on the investigation report caused a delay in it being finalised. For the reasons already

set out above, the Tribunal did not accept that Mrs Lucas's purpose in making comments on the draft report was penalise the Claimant for, or deter him from, his union activities.

69. Indeed, it was unclear to the Tribunal why Mrs Lucas would want to draw out the disciplinary process unnecessarily if her purpose was, as the Claimant alleged, to get rid of him because of his union activities. It would have been more likely that she would want the case to proceed to a disciplinary hearing as soon as practicable.

Detriment 3: Councillor McBride comment in an email.

70. At around the same time as the Respondent suspended the Claimant, UNISON suspended the Claimant, Mr Ruff and Ms Kinder. An article about this appeared in the local media, the Huddersfield Examiner. On 3 December 2019, Ms Gedman wrote to all the Respondent's councillors informing them that a UNISON investigation was ongoing, that it was serious and confidential and that whilst this was happening the Branch would be under the supervision of the UNISON Region. One of the councillors, Councillor McBride, responded the following day by email to Ms Gedman and all his fellow councillors: "So there is a Father Christmas".

71. As the Claimant did not present his claim until 9 February 2022, this allegation was made substantially outside the time limit set down in Section 147 TULR(C)A. The Claimant did not seek to argue that it was not reasonably practicable for this allegation to be presented in time. The Tribunal therefore dismissed this allegation on the basis that it had no jurisdiction to hear it.

Unfair dismissal

72. The parties agreed that the Claimant was dismissed on 2 February 2022 without notice. The issues in the unfair dismissal claim were:

72.1 What was the reason, or, if more than one, the principal reason for the Claimant's dismissal? If it was the Claimant's union activities, the dismissal would be automatically unfair under Section 152 TULR(C)A.

72.2 If the reason related to the Claimant's conduct, did the Respondent act reasonably in treating it as a sufficient reason for dismissing the Claimant in all the circumstances, taking into account the Respondent's size and administrative resources (Section 98(4) ERA)?

Who made the decision?

73. The manager who conducted the disciplinary hearing and confirmed the decision to dismiss the Claimant was Mr Parr. The Claimant argued that this was the type of case contemplated by Jhuti v Royal Mail [2019] UKSC 55, where the decision-maker, in the Claimant's case Mr Parr, had been manipulated by another person, in the Claimant's case Mrs Lucas, to reach the decision he did. Mrs Lucas had effectively engineered the Claimant's dismissal because of his trade union activities.
74. The Tribunal heard and saw no evidence to support that contention. It was satisfied that the decision to dismiss was taken by Mr Parr. He was a very senior manager within the Council and more senior than Mrs Lucas in the corporate structure. There was no evidence that he was influenced or manipulated by Mrs Lucas in any way. He was a clear and authoritative witness who gave straightforward and credible evidence about how he reached the decision he did. He made his own, direct assessment of the evidence that had been given to B and that he himself heard in the disciplinary hearing.
75. For completeness, the Tribunal also found that there was no evidence to support an inference that Mr Parr made the decision he did because of the influence of Mr Battersby. Mr Parr and Mr Battersby did work together for a few weeks when Mr Parr first joined the Council, as he was taking over the responsibility for refuse services from Mr Battersby. There was no evidence that that led Mr Parr to approach the disciplinary hearing of the Claimant with any form of bias against him, union-related or otherwise.

Reason for dismissal

76. Mrs Lucas formulated the management case for the disciplinary hearing. In the letter she sent to the Claimant inviting him to attend, she set out the three allegations against him:
- 1. That at a meeting in September 2019, with Kath McHendry and Stewart Jackson, you became angry, you raised your voice and clenched your fists towards Stewart, leading him to believe that you were going to hit him. If proven, this allegation potentially constitutes gross misconduct.*
 - 2. That you have bullied, intimidated and manipulated a number of colleagues over a number of years which has had an impact on them professionally and personally, in particular with regard to their mental health, wellbeing and confidence; these colleagues include but are not limited to: Anita Ambler, Georgina Bottomley, Cheryl Watson, Hayley Reid, Susan Stublely, Wendy*

Ellis, Angela Waller, Monique Slattery and Heidi Garcha. If proven, this allegation potentially constitutes gross misconduct.

3. That you have created a culture of unnecessary control with colleagues by deliberately withholding the use of e-mail technology from them, preventing them from effectively carrying out their duties and leaving them feeling deskilled. If proven, this allegation potentially constitutes serious misconduct.

77. After a disciplinary hearing lasting 12 days, Mr Parr decided that the first two of these allegations were proven, that they amounted to gross misconduct and that the Claimant should be dismissed without notice. The reason he dismissed the Claimant related to his conduct. He concluded that:

77.1 the Claimant had threatened Stuart Jackson with violence during the meeting in September 2019 and

77.2 the Claimant had been guilty of bullying, intimidating and manipulative behaviour towards his colleagues (which included but was not limited to his conduct towards Ms Ellis in the meeting on 20 November 2019).

78. The Tribunal accepted Mr Parr's evidence that he kept in mind at all times the protection that the Claimant had against being dismissed for his union activities. He had taken legal advice to ensure that this distinction was clear in his mind. For that reason, he did not consider it appropriate to take into account matters that had emerged in the course of the investigation that he viewed as part of the cut and thrust of union politics, namely, the Claimant's actions in relation to the election of the Assistant Branch Secretary. Nor did he consider it appropriate to subject the Claimant to any disciplinary sanction in relation to the working practices of the Branch, even if they were antiquated and may have shown a controlling way of working, since they were the result of the union's democratic processes and part of the union's activities. He therefore did not uphold the third allegation.

79. Mr Parr was satisfied, however, that the Claimant had made a threat of violence towards Mr Jackson and been guilty of a pattern of bullying, intimidating and manipulative behaviour that had caused distress to his colleagues in the Branch. Mr Parr believed that this conduct could fairly be regarded as distinct from the Claimant's trade union activities.

80. The Tribunal therefore dismissed the claim of unfair dismissal contrary to Section 152 TULR(C)A.

Reasonableness of the decision

81. Having concluded that the reason Mr Parr dismissed the Claimant related to his conduct, the Tribunal turned to consider the reasonableness of Mr Parr's decision to dismiss for that reason. The Tribunal applied the principles in British Home Stores Ltd v Burchell [1978] ICR 303.
82. The Tribunal accepted that Mr Parr genuinely believed that the Claimant had been guilty of the conduct set out in paragraph 77 above. The Tribunal was also satisfied that he had reasonable grounds for that belief, based on a reasonable investigation. B had interviewed all those involved in the complaints against the Claimant and those witnesses that the Claimant had asked B to speak to, namely Ms Kinder, Mr Ruff and Mr Scargill. Mr Parr had read all 27 resulting statements, which were set out in the appendices to the investigation report. The disciplinary hearing took place over 12 days. During the course of it Mr Parr himself questioned all the witnesses to the investigation and some others: there were 30 witnesses at the disciplinary hearing.
83. In relation to Allegation 1, Ms McHendry and Mr Jackson were interviewed during the investigation and the Claimant had a copy of Ms McHendry's complaint and their statements in advance of the disciplinary hearing. He had a fair opportunity to question them at the hearing. During the hearing, Georgina Bottomley, one of the Branch office staff, gave evidence that at a meeting between herself, the Claimant and Ms Kinder after the meeting with Mr Jackson, the Claimant had boasted that during his meeting with Mr Jackson he had threatened to hit him. Mr Carruth was given a fair opportunity to question Ms Bottomley about this evidence during the disciplinary hearing. Mr Parr considered that, whilst the accounts of Mr Jackson and Ms McHendry of what had happened in the meeting were not identical, the broad thrust of both was that the Claimant had behaved in a way that involved a threat of violence towards Mr Jackson. That was supported by Ms Bottomley's evidence on what the Claimant had said after the meeting. The Tribunal was satisfied that Mr Parr had reasonable grounds for concluding that Allegation 1 was made out.
84. In relation to Allegation 2, the Claimant argued that he had not had a fair opportunity to put his side of the case because he had not been told in advance of the disciplinary hearing exactly what he was said to have done that amounted to misconduct. It was not until Mr Parr set out in his letter confirming the Claimant's dismissal the specific incidents that he considered to be misconduct falling under Allegation 2 that the Claimant was aware of the case he had had to answer. Those incidents are set out in paragraph 89 below. The Claimant had not, therefore, had a fair opportunity to prepare his response to Allegation 2.

85. The Tribunal accepted that this was a significant shortcoming in the Respondent's management of the disciplinary process. Just as Mrs Lucas did not identify to B the conduct that she considered might amount to misconduct and needed to be investigated, she did not identify from the multiple statements in the appendix to the investigation report what conduct she was referring to when she framed Allegation 2. As a result, in advance of the disciplinary hearing, the Claimant did not know which particular incidents within the 27 statements that had been gathered were regarded by management as falling within Allegation 2, whether in relation to the individuals named in the invitation to the disciplinary hearing or others as yet unnamed. (Allegation 2 gave a list of the colleagues the Claimant is alleged to have bullied, intimidated and manipulated but stated that the list was not exhaustive.) He did not, therefore, know in advance what he should focus on in preparing for the hearing.
86. The Tribunal considered carefully whether this was a failing that made Mr Parr's decision to dismiss the Claimant unreasonable. In doing so, it took into account the contents of the ACAS Code on disciplinary procedures, as it was required to do (Section 207(2) TULR(C)A). Paragraph 9 advises that the employee be given "sufficient information about the alleged misconduct . . . and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting."
87. Having given the issue careful consideration, the Tribunal concluded that in all the circumstances Mr Parr's conclusion that Allegation 2 was made out was reasonable.
88. The Claimant had fair notice of what was alleged in relation to his conduct towards Ms Ellis under Allegation 2. He knew the content of her initial complaint and had a copy of her witness statement in advance of the disciplinary hearing. He had a fair opportunity to put his side of the case at the disciplinary hearing. The evidence Ms Ellis gave in the disciplinary hearing was detailed and consistent with her initial complaint and her statement to B. Towards the end of her evidence, when describing how terrified she had been during and after the meeting on 20 November, she broke down in tears and had to leave the hearing. Mr Parr found her evidence credible and the Tribunal accepted that he had reasonable grounds for doing so.
89. In his dismissal letter, Mr Parr recorded that multiple witnesses had given evidence that the Claimant was bullying, intimidating, manipulative, made misogynistic comments and would cold-shoulder people. He identified various specific incidents of this. These were, in summary:

- 89.1 In 2019 in a stewards' meeting the Claimant had acted in a threatening way towards Hayley Reid.
- 89.2 In 2010 at a union meeting the Claimant had said to Monique Slattery that he knew she didn't like him but that he didn't care, everything had to go through him.
- 89.3 At a UNISON conference in 2018, he had asked Angela Waller "are you telling me to fuck off?"
- 89.4 At various times he had told Wendy Ellis to shut up or called her an idiot.
- 89.5 He had mocked the accent of a Russian employee, Natalia, in comments he made to Heidi Garcha and Kathie Hirst.
- 89.6 He had undermined and derided the attempts of the office staff (Hayley Reid, Anita Ambler, Bev Foster, Sue Stubley and Georgina Bottomley) to clear their desks before they went on leave, refusing to see them before they went.
- 89.7 He had made a comment to Hayley Reid: "oh women just don't get that joke".
- 89.8 At a Branch Christmas event "a few years ago" he had ignored Monique Slattery: in a food queue when she said "hi".
- 89.9 After Joanne Pearson made a complaint about a missing election nomination form, the Claimant had ignored her for two years.
- 89.10 The Claimant had ignored Bev Foster after an incident when she had challenged the comment made in a conversation to which the Claimant was party "oh blooming women members".
- 89.11 The Claimant had ignored Stewart Jackson after their meeting in September 2019.
90. Whilst the Claimant did not know in advance that these were the incidents that Mr Parr would choose to illustrate his conclusions, the Tribunal was satisfied that there was a substantial amount of evidence before Mr Parr from many witnesses, including all five current office staff, that gave him reasonable grounds to conclude that the Claimant's behaviour was routinely bullying and intimidating in nature. The Claimant had a fair opportunity to question all of these witnesses during the course of the disciplinary hearing. He chose not to question the office staff about their evidence because he did not have any issue with them and felt

that they had the right to make a complaint about him if they wanted to. In the event, Mr Carruth did ask a few questions of some of these witnesses.

91. At the appeal stage, Mr Pearson told the Respondent that he may want to present two further statements which, he said, “may be relevant as a consequence of the detail of the dismissal letter itself”. In the event, he forwarded a character reference from Gail Gillespie, who had worked with the Claimant at the Branch until 2014, and a letter from Mick Donoghue, a convenor and former steward with a substantive post in the cleansing department, about the disciplinary outcomes in other cases involving violence that had not resulted in dismissal. These were taken into account by the appeal panel when they confirmed the decision to dismiss. If there was other evidence or documentation that the Claimant wanted to put forward to challenge the basis of his dismissal that he had not had the opportunity to advance before because Allegation 2 had not been particularised, he had the opportunity to do so at the appeal stage.
92. In any event, Mr Parr considered at the time he was making his decision whether he would have dismissed the Claimant for Allegation 1 alone. He concluded that he would. In relation to Allegation 2, he confirmed in his evidence to the Tribunal that he regarded the more recent incidents as the most significant. The Claimant’s conduct towards Ms Ellis on 20 November 2019 was the most recent incident he considered, and the one that had set the whole disciplinary process in motion. As already stated above, the Tribunal accepted that Mr Parr had very clear grounds for concluding that Ms Ellis’s account of that incident was correct.
93. Mr Parr took into account that there had been no previous complaints about the Claimant’s behaviour and that various witnesses gave evidence on the Claimant’s behalf that they had not seen him acting in a bullying way. In Mr Parr’s view, the fact that they had not seen him doing so did not mean that he had not.
94. In summary, Mr Parr concluded in relation to Allegation 2 that the Claimant had “displayed a set of inappropriate behaviours over a sustained period of time”, outside the values and behaviours expected of all the Respondent’s employees. He had shown a lack of awareness or disregard of the impact of his behaviour on others. The Tribunal accepted that Mr Parr had reasonable grounds for his conclusions.
95. In his closing submissions, the Claimant said that Mr Parr took the opportunity to get rid of a troublesome trade union official whose return might directly impact on industrial relations in his department, which included refuse services. Alternatively, Mr Parr simply took the “easy option” to go along with the management case presented by Mrs Lucas regardless of the actual evidence. He implied that Mr Parr had not upheld Allegation 3 to give an impression of fairness.

The Tribunal found that, on the contrary, Mr Parr conducted a very fair and extremely thorough disciplinary hearing, took account of all the evidence he had heard and gave very careful consideration to whether the management case had been made out.

Other points on reasonableness

96. The Claimant made a number of further criticisms of the disciplinary process.
97. The first was that the length of the process made the decision to dismiss the Claimant unfair. It was a striking feature of the Claimant's disciplinary process that it lasted for over two years. The ACAS Code says that any period of suspension should be as brief as possible and kept under review (paragraph 8). Although the Claimant's period of suspension continued for over two years until his dismissal, the Tribunal heard no evidence that it was reviewed before 19 April 2021. That did not, in the Tribunal's view, mean that Mr Parr's decision to dismiss the Claimant was unreasonable.
98. During the course of the Tribunal Hearing, the parties helpfully agreed a chronology of the disciplinary process. The Tribunal did not, therefore, need to make findings of fact about what happened when. It was clear from the chronology that there were multiple reasons why the process became a protracted affair, not least of which was that there was a national lockdown because of COVID from 23 March 2020. The Claimant argued that if the investigation had been limited to the first two complaints, which it reasonably should have been, the whole process could have been completed by then. The Tribunal accepted, however, that the Respondent acted reasonably in including the further statements sent to Mrs Lucas as part of the investigation. These statements contained evidence that could be relevant to whether the Claimant had been guilty of bullying behaviour. It took three months for the investigation report to be finalised, but, as explained above (paragraphs 48 to 54), the Tribunal accepted that Mrs Lucas and Ms Pearson had good reasons for wanting to comment on the drafts and that any time taken to enable that to happen was reasonable. Throughout this period Mrs Lucas was responsible for leading the Respondent's response to the COVID pandemic as it related to the Council's workforce. In addition she led on the resourcing of testing centres and the vaccination programme, including working at centres herself. Clearly, these important matters added massively to her normal workload.
99. Some of the delay was due to the Claimant being unable to access audio files to agree the transcripts of his interviews with B. There were also some delays in communication between Mrs Lucas and B and the Claimant arising from the fact that the Claimant would not communicate by email or use video technology. The

disciplinary hearing was spread over the period from 6 September to 1 December 2021 but the Claimant made no criticism of that. The transcript of the hearing confirms that it involved a thorough exploration of the evidence from multiple witnesses. While it took two months from the conclusion of the disciplinary hearing for Mr Parr to notify the Claimant of his decision, that was reasonable in all the circumstances. Mr Parr had a substantial amount of material to analyse and assess, the Christmas and New Year holidays fell in the relevant period and on the date initially set for him to deliver his decision, which was 12 January 2022, he and his son had COVID.

100. In summary, in all the circumstances, the Tribunal did not consider that the time taken over the disciplinary process, although unusually long, made the decision to dismiss the Claimant unreasonable.

101. The Claimant alleged that the witnesses had been coached by Mrs Lucas on what to say during the disciplinary hearing. The Tribunal accepted that Mrs Lucas did provide witnesses with a short list of questions that she would be asking them in the course of presenting the management case at the disciplinary hearing. She did this because she knew that they were very apprehensive about giving evidence and she wanted them to know broadly what questions she was going to put to them. When the Claimant became aware that this had happened, he challenged it and Mr Parr took care to ask each witness whether they had been coached to answer questions in a particular way. They each confirmed unequivocally that they had not. The Tribunal found that Mr Parr took reasonable steps to assure himself that the witnesses had not been coached and had a reasonable basis for his conclusion that they had not.

102. The Claimant alleged that it was not reasonable for Mr Parr to give credence to the evidence of witnesses who were associated with Mr Forster, who was a political opponent of his and a member of the Socialist Party. In his submissions, he said that those who were tainted in this way were Ms Garcha, Ms Hirst, Ms Waller, Ms Slattery, Ms Pearson "and possibly some of the office staff". The Tribunal noted that the Claimant himself was unable to identify which witnesses were tainted by association with Mr Forster. It is unclear how Mr Parr was supposed to identify whether they were. In any event, Mr Parr assessed the evidence of these witnesses on its merits and, whilst taking into account that it related to events that had happened some time previously, found it credible. The Tribunal found that he acted reasonably in doing so.

Reasonableness of the sanction

103. Having concluded that Allegations 1 and 2 were well-founded, Mr Parr decided that they amounted to very serious misconduct. They contravened various provisions in the Respondent's disciplinary procedure. In particular, they fell within two categories of conduct classified as gross misconduct, namely, "serious bullying or harassment" and "failure to comply with the Council's procedures or expectations for conduct or behaviour which seriously undermine trust and confidence in the employee by the Council as the employer". The Tribunal found that Mr Parr acted reasonably in viewing the Claimant's behaviour as gross misconduct.
104. The Claimant had very long service and a clean disciplinary record, but Mr Parr considered that that was no reason to excuse his behaviour. Although the Claimant was working in a separate environment from the Respondent's workplaces and had been without any line management for many years, Mr Parr did not consider that that meant he was unaware he should not conduct himself in the way he had. The Tribunal accepted that he acted reasonably in taking that position.
105. Mr Parr took into account that the Claimant had at no point recognised that his behaviour had been unacceptable or reflected on the impact his behaviour had had on his colleagues. (Whilst the Claimant had offered to take part in mediation with the office staff when he learnt that his case was going forward to a disciplinary hearing, he did not raise the issue of mediation again with Mr Parr.) The Claimant had maintained throughout that the allegations were exaggerated, inaccurate or fabricated. Mr Parr was satisfied that there was no basis for concluding that they were in fact exaggerated or the result of collusion.
106. In all these circumstances, the Tribunal accepted that Mr Parr's decision to dismiss the Claimant, rather than to impose a lesser disciplinary sanction, was within the range of possible reasonable responses in all the circumstances.

The appeal

107. The Claimant appealed against his dismissal. In accordance with the Respondent's disciplinary procedure, the appeal was heard by a three-person panel. The panel was chaired by Ms Meggs. The appeal was a review of Mr Parr's decision, not a complete rehearing, although the panel did consider the two additional statements that the Claimant supplied. The appeal was unsuccessful. The Claimant made various criticisms of the appeal.

108. He alleged that the appeal panel did not approach his appeal with an open mind, as evidenced by the fact that they asked very few questions. The Tribunal accepted Ms Meggs's evidence, which was clear and credible, that the panel did approach the appeal with an open mind. The panel asked only a small number of questions because they had identified in advance what they wanted to ask and focused on those matters. Some of the questions they would have asked had already been addressed by Mr Pearson at the beginning of the appeal hearing. In any event, their role was limited to reviewing a decision already made, not to rehear the case.
109. The Claimant said that the panel had unreasonably failed to consider Mr Donoghue's statement about disciplinary outcomes for various other individuals, which he said showed that others had been treated more leniently than him. The Tribunal accepted Ms Megg's evidence that the panel did consider Mr Donoghue's statement but did not believe it showed that the decision to dismiss the Claimant was unreasonable. Each disciplinary case was unique and all the circumstances of the case were relevant. Mr Donoghue's statement did not give enough detail to establish that the decision to dismiss the Claimant showed inconsistency of treatment between truly comparable cases. The Tribunal accepted that the panel's treatment of Mr Donoghue's statement was reasonable.
110. The Claimant argued that the appeal panel had unreasonably concluded from the way in which Mr Pearson had put his questions at the appeal that the Claimant accepted that he had raised and clenched his fist during the meeting with Mr Jackson. Having read the transcript, the Tribunal accepted that the panel had misinterpreted what Mr Pearson said at the appeal hearing. That error did not affect the Tribunal's conclusion that, overall, the appeal panel had reasonable grounds for concluding that Mr Parr's decision to dismiss was sound.
111. The Claimant said that the appeal panel had failed to explain or provide reasons for its decision. The Tribunal found that that was not the case. The letter setting out the panel's decision gave its conclusions on each ground of the Claimant's appeal.
112. The Claimant said that the appeal panel failed to address or correct the unfairness in the disciplinary process. The only failing in the disciplinary process that the Tribunal found to have any substance was the failure to particularise the conduct to be addressed under Allegation 2. For the reasons set out above, the Tribunal did not consider that that made the decision to dismiss the Claimant unreasonable. He had an opportunity to submit further evidence at the appeal stage and the panel took into account the additional statements he provided.

Summary and conclusion

113. The Tribunal found that the Respondent acted reasonably in all the circumstances in treating the Claimant's conduct as a sufficient reason for dismissing him. His claim of unfair dismissal under Section 98(4) ERA therefore failed and was dismissed.

Employment Judge Cox
Date: 8 August 2023