



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant and Respondent

Mr Jack Murley

BBC

Held at: Exeter

On: 18-22 and 25 to 27 November
2024 (with parties)
28 November 2024 (Tribunal deliberation)

Before: Employment Judge Smail
Mrs N. Christofi
Mr I. Ley

Appearances

Claimant: Mr N. Toms (Counsel)
Respondent: Mr J. Crozier (Counsel)

RESERVED JUDGMENT

1. The Claimant's claims in Part 1 of the litigation between the parties fail and are dismissed.
2. The full merits hearing for Part 2 of the litigation will take place over 5 days, 6 – 10 October 2025 in person at **10.00am** at **Exeter Employment Tribunal 2nd Floor, Keble House, Southernhay Gardens, Exeter, EX1 1NT**; if practicable before the same Tribunal as in the present case.
3. A Preliminary Hearing will be held in public in person at **10.00am** at **Exeter Employment Tribunal 2nd Floor, Keble House, Southernhay Gardens, Exeter, EX1 1NT** over 1 day, 12 March 2025, reserved to Employment Judge Smail, with view to case managing the October hearing.
4. Any applications to be made at the Preliminary Hearing are to be sent by the parties to the other side and the Tribunal by 28 February 2025.

REASONS

1. By a claim form presented on 11 November 2023 the Claimant claims direct sexual orientation discrimination, harassment connected with sexual orientation and detriments related to undertaking trade union activities. The claim takes us up to the point of the Claimant being charged with disciplinary allegations by the Respondent for breach of the Respondent's Editorial Standards and its Social Media Guidelines (15 September 2023), the rejection of the Claimant's grievance appeal (21 December 2023) and a decision on disclosure within the disciplinary process (9 January 2024) Subsequently, on 26 March 2024, the Claimant was dismissed for alleged gross misconduct. That event will be the subject of a second hearing in 2025 relating to case no. 1402481/2024.
2. From 1 June 2013 the Claimant was a presenter on BBC Radio Cornwall. He was also the presenter of the BBC's LGBT Sports Podcast. In the course of a reorganisation, which formed the subject of an industrial dispute relevant to this matter, the Claimant secured a promotion to Senior Presenter/Producer.
3. The Claimant is a gay man. He has promoted gay rights in the course of his work. His creativity and ability as a broadcaster are confirmed by all in this case. He is a member of the National Union of Journalists. Latterly, he was Father of the Chapel (the shop steward) of the Radio Cornwall branch of the NUJ.
4. The problem alleged by the Respondent is a disregard for the Respondent's Editorial Standards and its Social Media Guidelines. This is alleged to have been shown on 2 platforms: first, social media tweeting; secondly, in the 'Loosest Goose' segment of the Claimant's Sunday midday Radio Programme on Radio Cornwall. The Claimant tweets extensively on Twitter (X) and has a following there.
5. The issues were identified and agreed before Employment Judge Volkmer at a Preliminary Hearing on 9 May 2024. The issues were further narrowed before this Tribunal. At a Preliminary Hearing before Employment Judge Livesey on 17 October 2024 it was determined that this hearing would proceed as Part 1 of the overall dispute between the parties with the events surrounding the dismissal being treated as Part 2 in 2025. Employment Judge Livesey determined further that the Investigation Report prepared by the BBC Corporate Investigations Team dated 17 July 2024 in respect of whistleblowing made by the Claimant in relation to homophobic abuse, and the alleged failure of management to protect him from it, be disclosed in these proceedings. The Respondent had resisted that unsuccessfully all the way to the Employment Appeal Tribunal. We deal with that report below.

6. The parties have agreed that if a complicated remedy hearing is required, that will take the form of hearing Part 3. If an uncomplicated remedy is to be awarded, that can take place at the end of Part 2.

THIS HEARING

7. On the Claimant's side we heard from the Claimant himself and Raj Ford, a NUJ Official seconded to BBC Nations and Regions.
8. Called by the Respondent were:-
 - (a) Emma Clements, Executive Editor of BBC Devon and Cornwall;
 - (b) Stephanie Marshall, Senior Head of Content Production for the West and South West;
 - (c) Jason Horton, Director of Production for BBC Local (England);
 - (d) Tim Burke, whose roles include Head of Compliance and Head of Editorial Standards;
 - (e) Elena Williams, Human Resources Business Partner within the Radio & Music Team;
 - (f) Colin Paterson, Senior Head of Content Production (Cardiff and Bristol);
 - (g) David Pembrey, Chief Operating Officer of Content;
 - (h) Tomos Livingstone, Senior News Editor.
9. We had a principal Hearing Bundle which started out at 904 pages but was added to in the course of the hearing.

THE ISSUES LITIGATED BEFORE THIS TRIBUNAL

10. These have narrowed to the following:

1. Direct sexual orientation discrimination (Equality Act 2010, section 13)

1.1 The Claimant describes himself as a gay man. He compares himself with heterosexual people.

1.2 Did the Respondent do the following things:

1.2.1 on or around 30 June 2023 remove the Claimant from his on-air duties;

1.2.2 delay the disciplinary investigation in that:

1.2.2.1 the Claimant was not notified of the allegations against him until 15 September 2023;

1.2.2.2 not informing the Claimant in writing that he was the subject of a disciplinary process until 19 July 2023;

1.2.2.3 repeatedly failing to schedule the disciplinary hearing, citing staffing issues;

1.2.3 fail to investigate the Claimant's grievance lodged on 19 July 2023 and, in particular, his concern that he was being treated less favourably because of his sexual orientation;

1.2.4 - (withdrawn)

1.2.5 on 15 September 2023 charge the Claimant with alleged gross misconduct and/or the content of the allegations alleged to amount to gross misconduct;

1.2.6 on or around 29 June 2023 Ms Emma Clements failed to offer the Claimant support when he received serious homophobic abuse on social media and, instead, bringing disciplinary charges against him based on his rebuttals of the same.

1.3 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated. The Claimant says he was treated worse than Greg James, Julie Skentelbery and Dick Straughan. In the alternative the Claimant relies upon a hypothetical comparator who does not share his sexual orientation.

1.4 If so, was it because of sexual orientation?

1.5 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to sexual orientation?

2. Harassment related to sexual orientation (Equality Act 2010 s. 26)

2.1 Did the Respondent do the following things:

2.1.1 the alleged acts set out at 1.2.1 to 1.2.6;

2.2 If so, was that unwanted conduct?

2.3 Did it relate to the Claimant's sexual orientation?

2.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

2.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

3. Detriment (Trade Union and Labour Relations (Consolidation) Act 1992 s.146(1)(b))

3.1 The parties agree that the National Union of Journalists ("NUJ") is an independent trade union.

3.2 Did the Respondent do the following things:

3.2.1 pursue disciplinary action against the Claimant for his social media activity;

3.2.2 not inform the Claimant in writing about the disciplinary charges that were being brought against him for more than 70 days (between 30 June 2023 and 15 September 2023) in breach of the ACAS Code of Conduct;

3.2.3 from September 2023 onwards, refuse to disclose key evidence (complaints about the Claimant's show referred to in the disciplinary allegations) to the Claimant after he requested them from Thomas Livingstone (Hearing Manager) Elena Williams (HR adviser) which prevented him from mounting an effective defence;

3.2.4 - (withdrawn)

3.2.5 not inform the Claimant in writing that he was the subject of a disciplinary process until 19 July 2023; and/or

3.2.6 repeatedly fail to schedule the disciplinary hearing, citing staffing issues.

3.3 By doing so, did it subject the Claimant to detriment?

3.4 If so, are the following trade union activities:

3.4.1 being the seen as the trade union representative ("Father of the Chapel)" leading the campaign against the BBC's proposals for Local radio.

3.4.2 making social media posts such as those made between 24 April 2023 and 30 June 2023 about why the NUJ was opposing the BBC's proposals for Local Radio, namely

3.4.2.1 the Claimant 'quote-tweets' official NUJ accounts;

3.4.2.2 the Claimant 'quote-tweets' official BBC news stories about the proposed changes to BBC Local;

3.4.2.3 the Claimant 'quote-tweets' other NUJ representatives who are on the picket line;

3.4.2.4 a Tweet from the Claimant posted from the picket line itself.

3.5 If so, were they being done at an appropriate time?

3.6 If so, were the alleged detriments at 3.2 done by the Respondent for the sole or main purpose of preventing or deterring the Claimant from taking part in the activities at 3.4?

11. Further, although the issues remain numbered in that way, Mr Toms for the Claimant suggested we should deal first with the Trade Union detriment element in deliberations. The submissions from Counsel were structured in that way.

THE LAW

12. We are grateful for the exhaustive research conducted by both Counsel, especially on the concept of 'the activities of an independent trade union'. We have the submissions of Counsel in mind even where we do not expressly refer to them.

Trade Union Detriment

13. S.146 of the Trade Union and Labour Relations (Consolidation) Act 1992 ('TULR(C)A') provides as follows:

(1) A worker has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place for the sole or main purpose of—

[...]

(b) 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.

14. "Appropriate time" is defined at s.146(2) TURL(C)A. An appropriate time is either: a time outside C's working hours in accordance with the contract, or some time within working hours at which C is given consent by his employer, or is otherwise acting in accordance with some agreement, that it is permissible for him to participate in the activities of a trade union.
15. The Supreme Court recently confirmed that an appropriate time could not include time on strike, i.e. time at which an employee was obliged to be working but was withdrawing their labour: Mercer v Secretary of State for Business and Trade [2024] ICR 814, SC at [59].
16. This case does not turn on 'at an appropriate time'. If tweeting on personal social media is a trade union activity, no arguable point is taken as to when the tweeting was undertaken.
17. "Activities of an independent trade union" is not defined in the statute. What falls within and without the activities of a trade union is essentially a question of fact and degree: Lyon v St James Press Ltd [1976] IRLR 215, EAT, per Phillips J:

"the special protection afforded... to trade union activities must not be allowed to operate as a cloak or an excuse for conduct which ordinarily would justify dismissal; equally, 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. The marks are easy to describe, but the channel between them is difficult to navigate."

And later:

"We do not say that every such act is protected. For example, wholly unreasonable, extraneous or malicious acts done in support of trade union activities might be a ground for a dismissal which would not be unfair."

18. It can be a defence for an employer to show that the action taken against an individual was based on the manner in which he carried out the union activities and not the activities themselves: see *Morris v Metrolink Rtp dev Ltd* (2019)1 ICR 90 (a case concerning dismissal for trade union activities). However, this exception is narrowly defined given the importance of the statutory protection of trade union activity. In *Morris*, Underhill LJ referred with approval to the passage from the judgement of Phillips J in *Lyon v St. James Press Ltd* [1976] ICR 413 (above). Having reviewed various further authorities, Underhill LJ stated at para 19,

19. In my view, the principle underlying these cases is – as so often – most clearly stated by Phillips J. If Slade J in *Mihaj* intended to suggest that there was some difference between his approach in *Lyon* and that taken by this Court in *Bass Taverns* I would respectfully disagree. At the risk of simply repeating less succinctly what Phillips J says in the passages which I have quoted, there will be cases where it is right to treat a dismissal for things done or said by an employee in the course of trade union activities as falling outside the terms of section 152 (1), because the things in question can fairly be regarded as a distinct reason for the dismissal notwithstanding the context in which they occurred; and his reference to acts which

are "wholly unreasonable, extraneous or malicious " seems to me to capture the flavour of the distinction. That precise phraseology should not be treated as definitive (any more than Slade J's formulation in *Mihaj*); but the point which it encapsulates is that in such a case it can fairly be said that it is not the trade union activities themselves which are the (principal) reason for the dismissal but some feature of them which is genuinely separable. *Azam* is a good illustration of such a case: the employee's deliberate breach of confidence could fairly and sensibly be treated as a reason for dismissal distinct from the fact that it occurred in the context of trade union activities."

20. However, as Phillips J points out, this distinction should not be allowed to undermine the important protection which the statute is intended to confer. An employee should not lose that protection simply because something which he or she does in the course of trade union activities could be said to be ill-judged or unreasonable (NB that Phillips J, I am sure deliberately, says "wholly unreasonable"). *Bass Taverns* is a good illustration of this: the employee was held to fall within the scope of the section even though he had gone "over the top."

19. In British Airways Engine Overhaul v Francis [1981] ICR 278, EAT, Slynn J emphasised that the statutory language is that of "activities of..." and not "trade union activities". Whilst the activities of an independent trade union should not be interpreted restrictively, it is nonetheless possible for "for an act to be done by a person who is a member of a trade union, in his own capacity. A person may take up some campaign on his own which is not part of the activities of an independent trade union". In Francis, the union representative had left a TU meeting (attended as a union rep) to give a press statement representing the views expressed by her TU members in that meeting. This was a trade union activity.

20. An employee (and trade unionist) who takes up and arranges for representations to be made to an employer (alongside unionised and non-unionised employees) off his own bat was not carrying out the activities of a trade union per se: Chant v Aquaboats Ltd [1978] 3All ER 102, EAT, per Kilner-Brown J at 104. The EAT went on to say that:

"The Tribunal [below] was very conscious of the distinction which has been drawn in a number of cases between the activities of an individual who may happen to belong to a trade union and activities which are the activities of the trade union itself. They refer to a number of cases in which industrial Tribunal, or this appeal Tribunal, have been satisfied that what a particular individual was doing was not the activities of the union but was something which he was carrying out on his own."

21. In considering Art.11 of the European Convention on Human Rights, the ECHR in Straume v Latvia [2022] IRLR 802 considered whether a union's general secretary protesting on behalf of the union in writing, as general secretary, was conducting the activities of her union. The ECHR held that "advocating for the interests of trade union members is the very function of trade union representatives and constitutes a fundamental element of trade union freedom. It should also be distinguished from situations in which employees express their own personal opinions...".

22. There is an instructive Employment Tribunal decision in Hannan v RSA 2200841/2023 (24 November 2023). The relevant union had actively facilitated and encouraged Ms Hannan to engage with the press, and this was part of the union's strategy. The ET recognised that a union representative can make a press statement as a protected activity. At paras 57-58 Employment Judge Codd observed,

57. It seems to me as a question of interpretation, that in a modern society, it is routine that an individual may in the proper course of union activity give a press interview, either to a newspaper, television, or via social media. I can easily understand why the ACAS guidance does not cover such issues as media, as once one starts to codify media relations in the context of 'activity', codification becomes fraught with endless complications, once modern forms of media are factored in.

58. However, we live in a modern world and it is in the DNA of unions to use all available voices to pressure and advocate for change on behalf of its membership. It seems to me that despite what may become a lack of editorial control, the concept of a newspaper, television or media interview, could fall comfortably in the definition of union activity.

23. The causation requirement is that the object (prevent, deter or penalise) must be the sole or main purpose of the act / failure to act. Purpose here "connotes an object which the employer desires or seeks to achieve": Gallacher v Department of Transport [1994] ICR 967, CA, per Neill LJ at 975D.

24. The requirement per s.146(1) TULR(C)A is that the "sole or main purpose" must be a prohibited purpose (prevent, deter or penalise). This "imposes a considerably higher threshold than one which merely involves an act which is connected or linked to the Claimant's trade union activities": North West Ambulance Service v Rice (unreported, 2019) UKEAT/0152/18 per Choudhury P at [30]. It is certainly different to, and imposes a higher threshold than, the no material influence test applicable to direct discrimination, whistleblowing and victimisation claims. As Choudhury P confirmed in Rice at [48]:

"The test remains one of sole or main purpose. That will of course involve a question of fact and degree, but that does not mean that it is sufficient that trade union activities form a reason for the employer's actions rather than amounting to the sole or main reason."

25. In Serco Ltd v Dahou [2017] IRLR 81, CA, the Court of Appeal confirmed that:

(1) It is for the employee to raise a prima facie case and, if the prima facie case is made out, then it is for the employer to show the purpose of his act and to prove what were the factors operating on the mind of the decision-maker ; and

(2) The purpose of an employer's act or omission consist of the factors

operating on the mind of the relevant decision-maker. In Rice, the EAT overturned an ET's decision on the basis that the ET had demonstrated insufficient focus on the factors operating on the decision-maker's mind.

26. Thus, under Section 148 TULR(C)A it is for the employer to show what was the sole or main purpose for which he acted or failed to act. In relation to the application of this provision, the case law supports the following propositions:

- (a) it is necessary for C to establish a prima facie case or, at least, show issues requiring explanation; see Dahou above at para 37;
- (b) if C does put the issue of unlawful trade union purpose before the Tribunal, it is for the employer to show that what was the sole or main purpose for which he acted or failed to act;
- (c) if R fail to discharge this burden, C's complaint does not automatically succeed although that result will often be the outcome; see Dahou at para 40.

27. Mr Toms submits – and we do not disagree - that in this sort of case, the ET should take a robust view of the evidence. Inflicting any form of detriment on a worker because he is a trade unionist may give rise to an inference that the employer acted for the relevant purpose: see Speciality Care plc v Pachela (1996) ICR 633 at 642G-H, 643A-E.

28. We have noted with interest the examples of trade union activities in the ACAS Code of Practice 3: Time Off for trade union duties and activities. Paragraph 12 provides –

Examples of Trade Union Duties

12. Subject to the recognition or other agreement, trade union representatives should be allowed to take reasonable time off for duties concerned with negotiations or, where their employer has agreed, for duties concerned with other functions related to or connected with the subjects of collective bargaining.

Paragraphs 37 and 38 provide -

What are examples of trade union activities?

37. The activities of a *trade union member* can be, for example:

- attending workplace meetings to discuss and vote on the outcome of negotiations with the employer. Where relevant, and with the employer's agreement, this can include attending such workplace meetings at the employer's neighbouring locations
- meeting full time officers to discuss issues relevant to the workplace

- voting in union elections
- having access to services provided by a Union Learning Representative.

38. Where the member is acting as a representative of a recognised union, activities can be, for example, taking part in:

- branch, area or regional meetings of the union where the business of the union is under discussion
- meetings of official policy making bodies such as the executive committee or annual conference
- meetings with full time officers to discuss issues relevant to the workplace.

These could be regarded as core or typical trade union activities. The Respondent did not seek to prevent any of those.

29. Whilst not directly relevant to this case, paragraph 47 of the Code shows that confidentiality, and disciplined behaviour in that regard, can be important:

47. When using facilities provided by the employer for the purposes of communication with their members or their trade union, union representatives must comply with agreed procedures both in respect of the use of such facilities and also in respect of access to and use of company information. The agreed procedures will be either those agreed between the union and the employer as part of an agreement on time off (see section 6) or comply with general rules applied to all employees in the organisation. In particular, union representatives must respect and maintain the confidentiality of information they are given access to where, the disclosure would seriously harm the functioning of, or would be prejudicial to, the employer's business interests. The disclosure of information for collective bargaining purposes is covered by the Acas Code of Practice on that topic. Union representatives should understand that unauthorised publication risks damaging the employer's business, straining relations with the representative body concerned, possible breaches of individual contracts of employment and, in extreme cases such as unauthorised publication of price-sensitive information, the commission of criminal offences.

30. A Guide to Time Off and Facilities for Trade Union Members (the "Facility Agreement") between the Respondent and the NUJ provides for certain NUJ activities to be conducted in working time (such as attending meetings). Communicating on behalf of the NUJ to the wider public, whether on social media or otherwise, was not expressly dealt with.

Discrimination and Harassment

Direct Discrimination

31. S.13 of the Equality Act 2010 ('EqA 2010') provides that:

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

32. There are two main components to direct discrimination:

(1) The treatment must be “less favourable” than a comparator. The comparison is required between the treatment of the employee and an actual or hypothetical comparator where there is “no material difference between the circumstances relating to each case”: s.23(1) EqA 2010 (although a non-identical comparator may be used evidentially to establish the likely treatment of a hypothetical comparator); and

(2) The reason for the less favourable treatment must be “because of” a protected characteristic.

33. Burden of proof is important in Equality Act cases. S.136 EqA 2010 provides a 2-stage test. The first stage is for the Claimant to raise a prima facie case that there was a difference in treatment because of a protected characteristic. Whether the burden has shifted will be a matter of factual assessment; a difference in treatment will not automatically reverse the burden of proof because, for example, there may be an obvious explanation for the difference: Madarassy v Nomura International plc [2007] ICR 867, CA. The second stage, which only applies when the first is satisfied, requires R to prove that the reason for the treatment was not related in any way to the protected characteristic: Igen Ltd v Wong [2005] IRLR 258 (CA). In the absence of an adequate explanation, the court or Tribunal must find discrimination proved.

Harassment

34. Harassment is unlawful pursuant to s.26 EQA 2010. That section provides:

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic,
and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account —

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics [include] ... sexual orientation.

35. The legislation focuses on three elements, which should be analysed in turn (see Richmond Pharmacology v Dhaliwal [2009] IRLR 336.

(1) Was the conduct unwanted;

(2) Did it have the purpose or effect (taking into account the Claimant's perception, the wider circumstances and the reasonableness of the alleged effect) of either:

(a) Violating the Claimant's dignity; or

(b) Creating an adverse environment for him; and

(3) Did the conduct relate to the Claimant's protected characteristic?

FINDINGS OF FACT ON THE ISSUES

The Editorial Standards

36. These play an important role in this case and, as has been made very clear to us, across the BBC generally. We set out relevant extracts in some detail here.

Introduction

The BBC's Royal Charter specifies the BBC's Mission, which is to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain. It also establishes our independence from government, guarantees our editorial and artistic freedom and safeguards the licence fee, the unique funding arrangement which enables the BBC to pursue a distinctive mission. The Charter sets out the BBC's Public Purposes:

1. To provide impartial news and information to help people understand and engage with the world around them.

2. To support learning for people of all ages.

3. To show the most creative, highest quality and distinctive output and services.

4. To reflect, represent and serve the diverse communities of all of the United Kingdom's nations and regions and, in doing so, support the creative economy across the United Kingdom.

5. To reflect the United Kingdom, its culture and values to the world.

The Royal Charter and the accompanying Framework Agreement establish that it is a duty of the BBC Board to set the standards for the BBC's editorial and creative output and services. The BBC must publish, review periodically and ensure the observance of guidelines designed to secure appropriate Editorial Standards for our UK Public Services and safeguard the editorial integrity and high quality of the World Service and maintain high standards of editorial integrity and quality for BBC Monitoring.

Producing and upholding these Editorial Guidelines fulfils those requirements; making our content to the standards in them is an obligation on all of us, led by the Director-General, as the BBC's editor-in-chief. All output made in accordance with these Editorial Guidelines will also thereby meet the requirements of our regulator, Ofcom.

Our Editorial Values

Our audiences trust us and they expect us to adhere to the highest Editorial Standards. We have a right to freedom of expression, included in the Charter and protected under the European Convention on Human Rights and the Human Rights Act 1998. This freedom is at the heart of the BBC's independence. Our audiences have a right to receive creative material, information and ideas without interference. But our audiences also expect us to balance our right to freedom of expression with our responsibilities to our audiences and to our contributors, subject to restrictions in law. We operate in the public interest - reporting stories of significance to our audiences and holding power to account. In our journalism in particular, we seek to establish the truth and use the highest reporting standards to provide coverage that is fair and accurate. Our specialist expertise provides professional judgement and clear analysis. We are impartial, seeking to reflect the views and experiences of our audiences - so that our output as a whole includes a breadth and diversity of opinion and no significant strand of thought is under-represented or omitted. We are independent of outside interests and arrangements that could compromise our editorial integrity. Our Editorial Standards do not require absolute neutrality on every issue or detachment from fundamental democratic principles. Free speech enables the exchange of information and ideas without state interference. It helps to inform public debate - encouraging us to be curious, engaged and critical. It allows, for example, dramatists, satirists and comedians to comment on the world around us. However, freedom of expression is not an absolute right - it carries duties and responsibilities and is also subject to legal restrictions and limits. In exercising freedom of expression, we must offer appropriate protection to vulnerable groups and avoid causing unjustifiable offence. We must also respect people's privacy - only putting private information into the public domain where the public interest outweighs an individual's legitimate expectation of privacy. We have a particular responsibility towards children and young people and must preserve their right to speak out and be heard. Where they contribute to or feature in our output, we must take due care to ensure that their dignity and their physical and emotional welfare are protected. See Section 9 Children and Young People as Contributors: 9.1 As members of our audiences, they have a right to access information and ideas; however, we must ensure that content that might be unsuitable for them is scheduled appropriately.

The Public Interest

The BBC's Mission 4 specifies that we must 'act in the public interest'. It is in the public interest to fulfil our mission to produce output to inform, educate and entertain. There is no single definition of public interest, but it includes freedom of expression; providing information that assists people to better comprehend or make decisions on matters of public importance; preventing people being misled by the statements or actions of individuals or organisations. The public interest is also served in exposing or detecting crime or significantly anti-social behaviour and by exposing corruption, injustice, significant incompetence or negligence.

Editorial Policy

2.2.9 The Editorial Policy team, led by Director Editorial Policy and Standards, gives advice on how to work within the Guidelines at every stage of the production process of every type of content. The earlier that potentially contentious content is referred the better. Advice is available 24 hours a day. In addition to the referrals specified in each section, Editorial Policy should normally be consulted on how to interpret or apply the Editorial Guidelines.

Editorial Compliance.

2.2.10 Responsibility for editorial content – and for ensuring that it complies with the Editorial Guidelines – lies with output teams. Our compliance obligations require that all content that is not live is reviewed before broadcast or publication, and the results of that review recorded and kept. Separate Guidance is available for live output. Most news output is normally treated as live. All live programmes that include pre-recorded inserts are treated as live. The Editorial Guidelines, referrals and advice from Editorial Policy can inform the judgements that are essential to the editorial compliance of BBC output. Legal advice may also be necessary. See Guidance online: Live Output Advice on the compliance process is available from the heads of Editorial Standards and/or compliance managers in each output division.

Editorial Justification

2.3.1 The concept of editorial justification recurs throughout the Editorial Guidelines and is central to the application of our values and standards. It is a judgement in the particular circumstances of each case whether the editorial purposes of our output or actions outweigh any potential negative impact on our audiences and people in our output (or, where relevant, those closest to them). It includes, but is not limited to: balancing the privacy of individuals against the public interest in revealing information about them; the use of potentially offensive output in appropriate contexts against the obligation to avoid unjustified offence; the BBC's right of freedom of expression; and the audience's right to receive information.

Sex

5.3.34 In all BBC output the portrayal of sex, or the exploration of sexual issues, should be editorially justified and treated with appropriate sensitivity. In post-watershed content, we must be able to justify the frank and realistic portrayal of sex and the exploration of themes and issues which some people might find offensive.

5.3.35 Sex involving under-16s is illegal. In our content, there must be editorial justification for depicting it, and it must be appropriately contextualised.

5.3.36 The discussion and portrayal of sexual behaviour must be editorially justified in programmes broadcast pre-watershed or when children are particularly likely to be in our radio audience, or using our online content. It must also be appropriate to the likely audience and inexplicit. Clear content information may be required. See Section 5 Harm and Offence: 5.3.2-5.3.3 We must not portray or represent sexual intercourse without a serious educational purpose in programmes broadcast before the watershed or on radio when children are particularly likely to be in our audience, or in online content likely to appeal to a significant proportion of children.

5.3.37 We should consider whether support material is required when we encourage audiences, especially children and young people, to discuss their sexual problems in any of our content.

Guidance on Individual Use of Social Media

37. In addition to the Editorial Standards, there is Social Media Guidance. Again, relevant extracts:

1. Introduction and principles

Social media provide an important tool for BBC output and are used widely by people who work for the BBC in their personal lives. This document provides guidance for those who use social media for professional purposes and for some aspects of personal use.

This Guidance is not intended to prevent the use of social media but to ensure that anyone working for the BBC uses it with appropriate regard for the BBC's values.

The Guidance will help to ensure that the BBC meets its commitment to impartiality. The reputation for impartiality is a huge benefit to the BBC, as well as an obligation, and should never be seen as a restriction, or as an inconvenience or anachronism. In a world of polarised debate and argument the value of impartiality as a core value is more pronounced than it has ever been. Impartiality, not taking sides and reflecting all viewpoints, properly applied can support those confronted with difficult editorial judgements in a world of disputation.

The over-riding principle of this Guidance is that anyone working for the BBC is a representative of the organisation, both offline and also when online, including on social media; the same standards apply to the behaviour and conduct of staff in both circumstances.

Those working for the BBC have an obligation to ensure that the BBC's editorial decisions are not perceived to be influenced by any personal interest or bias. We must retain the trust of the audiences we serve and maintain the BBC's reputation and impartiality.

Everything published by the BBC on social media is governed by the BBC's Editorial Guidelines and now also by this more detailed Guidance. The Guidance also applies, in certain respects, to the personal use of social media by anyone working for the BBC.

Application to everyone working for the BBC ...

Individuals working in news and current affairs (across all Divisions) and factual journalism production, along with all senior leaders have a particular responsibility to uphold the BBC's impartiality through their actions on social media and so must abide by specific rules set out in this Guidance.

Factual journalism includes returning strands which cover topical issues (such as *Countryfile*, *The One Show* and *Woman's Hour*). It does not include, for example, specialist, authored or limited documentary series.

There are also others who are not journalists or involved in factual programming who nevertheless have an additional responsibility to the BBC because of their profile on the BBC. We expect these individuals to avoid taking sides on party political issues or political controversies and to take care when addressing public policy matters.

Individuals working in other areas or who have specific contractual

arrangements with the BBC may also be required to adhere to this guidance.

Individuals who don't explicitly identify themselves on social media as working for the BBC but who would otherwise be covered by this Guidance, are required to adhere to these rules as identities can be easily traced.

2. Rules and expectations of social media use for all colleagues (employees, contractors and freelancers)

The following rules and expectations apply to all those working for the BBC, for professional (@BBC) and personal social media accounts.

1. Always behave professionally, treating others with respect and courtesy at all times: follow the BBC's Values.
2. Don't bring the BBC into disrepute.
3. If your work requires you to maintain your impartiality, don't express a personal opinion on matters of public policy, politics, or 'controversial subjects'.
4. Don't criticise your colleagues in public. Respect the privacy of the workplace and the confidentiality of internal announcements.

3. Use of social media: how the rules will be interpreted

The following list of dos and don'ts provide guidance on how the rules will be interpreted: they are not definitive.

Things to do

For all colleagues:

- a) Do always treat others with respect, even in the face of abuse. People who work for the BBC should set an example for civilised public debate.
- b) Do assume anything you say or post will be viewed critically.
- c) Even if you are posting in what appears to be a 'private' group, or you have locked down your privacy settings on your accounts, do apply the same standards as if you were posting publicly.
- d) Do be aware that there is no difference between how a personal and an 'official' account is perceived on social media: disclaimers do not offer protection.
- e) If you know you've got something wrong, do correct it quickly and openly.
- f) Do remember that your personal brand on social media is always secondary to your responsibility to the BBC.
- g) Do respect the confidentiality of internal meetings and discussion.

For all colleagues working in news and current affairs (across all Divisions)

and factual journalism production and all senior leaders.

h) Do think about what your likes, shares, retweets, use of hashtags and who you follow say about you, your personal prejudices and opinions.

i) Do be open to, seek, and respect the widest range of opinion and reflect it.

j) If you are “live tweeting” a story, do clearly indicate it is developing and your posts are not a final or settled view.

k) Do think how to signal that a post is a professional judgement, not a personal opinion, with caveats or links to context.

l) Do use separate posts on public issues rather than join threads started by others.

m) Do be careful with rebuttals – they can feed conflict.

Things not to do

For all colleagues:

a) Do not be drawn into ill-tempered exchanges, or exchanges that will reflect badly on you, or the BBC.

b) Do not post when your judgement may be impaired.

c) Never use your BBC status to seek personal gain or pursue personal campaigns. For all colleagues working in news and current affairs (across all Divisions) and factual journalism production and all senior leaders:

d) Do not reveal how you vote or express support for any political party.

e) Do not express a view on any policy which is a matter of current political debate or on a matter of public policy, political or industrial controversy, or any other ‘controversial subject’.

f) Do not offer judgements beyond your specialism.

g) Do not support campaigns, (eg. by using hashtags) no matter how apparently worthy the cause or how much their message appears to be accepted or uncontroversial.

h) Do not post anything that couldn’t be said on-air or on BBC platforms.

i) Do not sacrifice accuracy for speed. Second and right is always better than first and wrong – an inaccurate post is a problem for you, your colleagues and the BBC.

j) Do not break news on a personal account; if you have a story to break, the BBC platforms are your priority, even if it takes slightly longer.

k) Do not link to anything you haven’t read fully.

l) Do not be seduced by the informality of tone and language on social media. Your posts about news events and issues require careful thought and editorial discipline.

m) Do not mistake social media networks as accurate reflections of public opinion; your audience is overwhelmingly elsewhere.

(...)

5. Enforcement

Breach of this Guidance may lead to disciplinary action for employees in line with standard disciplinary procedures; this could include possible termination of employment in serious circumstances. For contractors who are found to have breached the Guidance there may be consequences including non-renewal or termination of contract.

6. Who is covered by this Guidance

Everyone who works for the BBC should ensure their activity on social media platforms does not compromise the perception of or undermine the impartiality and reputation of the BBC, nor their own professional impartiality or reputation and/or otherwise undermine trust in the BBC.

The rules set out above (section 2) apply to all colleagues using social media for both work and personal purposes.

Additionally for some roles at the BBC, personal social media activity must also comply with the BBC Editorial Guidelines as though it were BBC output including:

- Individuals who work in news and current affairs (across all Divisions) or factual journalism production.
- All senior leaders in any area of the BBC Group.

Anyone who is using social media for official BBC purposes must follow this guidance as well as the Editorial Guidelines. The Editorial Guidelines apply to all BBC content, regardless of platform.

The extent to which a non-staff member, contributor or presenter is required to comply with the Editorial Guidelines will be set out in the BBC's contractual relationship with them.

It is generally expected that irregular or occasional contributors would not be required to apply the full requirements of the Editorial Guidelines to their social media use.

Actors, dramatists, comedians, musicians and pundits who work for the BBC are not subject to the requirements of impartiality on social media.

Independent production companies that produce social media content which is directly or indirectly associated with the BBC should ensure that this Guidance is followed. Companies should refer to their usual commissioning contact to discuss the application if required.

(last updated October 2020)

38. The Claimant worked in news and current affairs; predominantly local.

The Claimant's alleged breaches of the Editorial Standards and Social Media Guidelines.

39. The alleged breaches can be categorised under three headings: 1) tweets said to offend taste, decency and involve ill-tempered exchanges; 2) inappropriate tweets on the changes to local radio proposed in 'Local Value for All'; and 3) inappropriate on-air content in the 'Loosest Goose' segment of the Claimant's radio show. Where clear, I provide the date of the relevant tweets.

Tweets said to offend taste, decency and involving ill-tempered exchanges.

40. The following are relied upon by the Respondent.

1) A thread of tweets said to involve inappropriate sexualised language:

'My favourite piece of homophobic abuse on here this week was the account that accused me of 'getting all your achievements through bum sex''

Sir, you DRAMATICALLY overestimate the potency of my sexual activity.

'Look, I know you asked for a 500 word supporting statement and a 15 minute demo tape. But instead, I'm just going to do bum-sex, if that's alright with you?

My key to success?

It's ten percent luck,
Twenty percent skill,
Fifteen percent concentrated power of will,
Five percent pleasure,
Fifty percent pain, And a hundred percent bum-sex just to get in the game.

There is comedy in that. The Respondent says the language is nonetheless inappropriate.

2) [relating to a reporting visit to the Glastonbury Festival]

... But then we decided to see if my mate ... could find me a boyfriend by showing my photo to punters ... and asking, basically, if they'd f*ck me.

3) The following three tweets in a thread:

Rainbow flags being burnt, LGBTQ+ presenters like myself repeatedly being called 'groomers'.

Can't pretend it's been the Pride-iest of Pride Months, but you know what?

Screw'em.

Love will beat hate, every single time, and my gay ass isn't going anywhere.

- 4) And this isn't me 'shoving it down your throat'.

That's just me living authentically and openly, after decades where people like me were told over and over again that we were wrong - in a world where our existence is still, in many places, a crime.

- 5) So burn my flag.

Burn my picture.

Print and burn these tweets.

Burn whatever you want – but me and my awesome LGBTQ+ brethren will rise from the ashes of your hate, each and every time.

And once we start rising, there's no limits to the heights we'll hit [rainbow motif]

Tweets on the proposed changes to local radio in 'Local Value for All'

41. Insofar as the Claimant makes his views known in these tweets, and insofar as the tweets are not impartial, an important question is whether he was undertaking trade union activities in these tweets, bearing in mind he is a trade union member and was the Father of the Chapel (acting or actual) of BBC Radio Cornwall NUJ.

42. All the tweets are from the Claimant's personal Twitter account. We have seen an example of his Twitter Bio where he records he is a Presenter of the BBC's LGBT Sport Podcast | BBC Cornwall | Earning the Push Wrestling Podcast | Cornish. There is no reference to being a NUJ member or official. The Claimant suggested that at the relevant time there was such a reference. No one else saw it in the case. No example has been provided. We reject the Claimant's suggestion. There was no Bio reference to being a NUJ member or official.

43. There are many tweets and they include the following:

- 1) In honour of the BBC's hugely popular and not-at-all controversial Digital First strategy, my t-shirt today is modelled on the look of analogue TV static.

[The Claimant displays a photo of himself wearing a grey T-shirt]

- 2) A series of tweets on 6 June 2023:

We believe there is a simple solution.

- 1) Pause the process.
- 2) Do a proper consultation with the audience.
- 3) Work with BBC staff members to find a way to enhance our digital offering WITHOUT slashing show after show.

Now, really, That's not too much to ask, is it?

You own the BBC.

You deserve to know the reason why myself and hundreds of others are striking for the next two days, no matter how uncomfortable that truth might be for me to explain.

Of course, BBC managers have a different view, which you also deserve to know: there followed a quotation which accurately set out a quote from a BBC spokesperson.

Some balance is accepted by the Respondent in this tweet.

- 3) On 7 June 2023 the Claimant tweets pictures of himself and others on a picket line:

The support for BBC Local Radio has been so heartening, and the opposition so crystal clear.

I know I am meant to say 'the BBC says these plans will make things better', but I can't.

Barely anyone believes that, and today shows it.

- 4) On 8 June 2023:

There are few broadcasters more respected than Jane Garvey.

She sees what we all do, which is that these plans pose an existential threat to BBC Local Radio.

Of course, the small group of BBC managers behind them would say Jane is wrong, and it'll better serve audiences [reflective emoji].

This tweet retweets a tweet from Susana Mendonça citing Jane Garvey's opposition to the BBC's plans standing on the picket line at BBC HQ. That tweet cites a BBC plan to divert the money into digital and the NUJ's position that it would diminish Local Radio.

- 5) Further on 8 June 2023:

For 9 months, the small group of BBC managers behind these devastating plans have maintained 'they'll serve the audience better'.

The last 48 hours show these plans fail to meet that test.

The audience doesn't want them.

No-one does.

#KeepBBCLocalRadioLocal

There is then a retweet from the official NUJ BBC Nations and Regions. The Claimant continues:

MPs don't want them.
Charities don't want them.
Councillors don't want them.
Unions don't want them.
It's not that 'change is hard' or we're not prepared to adapt'.
It's the plan itself. It just doesn't wash.

6) Further still on 8 June 2023:

We can maintain and grow what makes BBC Local Radio special AND adapt to a changing media landscape.

We need a plan that is bolder and more ambitious than slashing shows and moving cash.

To sick with these proposals now isn't 'bullish'.

It's deluded.

7) A series of tweets made on 10 June 2023:

You'd think if anyone saw the case for cutting BBC Local Radio, it'd be Liz Truss, right?

Right?

Nope, she thinks it's a terrible idea as well – along with dozens of MPs and the mayors of London and Greater Manchester.

#KeepBBCLocalRadioLocal

A BBC news image of 'Liz Truss among Norfolk MPs opposing BBC local radio cuts is retweeted.

The authors of this plan at the BBC say it'll lead to a better service for audiences.

But MPs, councillors, charities, unions, industry figures and hundreds of staff members all disagree – and say it's been formed without proper thought or consultation.

#KeepBBCLocalRadioLocal

8) But it's also the right of everyone else to wonder why we're not:

- Pausing the process
- Talking with staff
- Engaging with audiences to create a better plan

[C then retweets a tweet from BBC News Midlands dated 11 June 2023 citing support for the NUJ from a Conservative MP and a Labour politician wanting more consultation].

9) On 13 June 2023 the Claimant tweeted:

One of the great things about the BBC is that it subjects itself to scrutiny.

As a presenter who went through it, I can confirm that yes, we were asked to prepare a 60 second pitch about why we should keep/get a presenting job and that yes, it was timed on the day as well.

[Alongside this there is a retweet from PoliticsJOE –

‘You’d expect that at P&O Ferries, not out national broadcaster.’
‘This is workplace bullying, isn’t it?’

Tory Steve Brine corners BBC chief Tim Davie over the draconian tactics used in local radio restructuring.

10)Also on 13 June 2023:

No consultation, and widespread condemnation.

BBC bosses have a chance to see if these plans really do ‘serve audiences better’ by pausing and engaging with the public.

If they do, you’ll get positive feedback.

And if they don’t, you’ll prevent a catastrophic mistake.

[This is alongside a retweet from NUJ BBC Nations & Regions –
NEW- @NUJofficial causes for the BBC to ‘pause and engage’ on cuts to local services...]

11)Continuing on 13 June 2023:

Pausing and engaging with the public is a common sense solution to this dispute.

If the plans are as good as you say, you’ll win everybody round.

If they’re not, you stop a massive and wholly self-inflicted cock-up.

So why wouldn’t you [emoji]

12)On 15 June 2023:

When we bang on about BBC Local Radio being special, this is why:

We know our audience – and we know our ability.

We know you can do great digital content without slashing shows.

And if the bosses paused these ‘painful plans’, we could show them how.

13) Also on 15 June 2023:

The BBC DG now says proposed cuts to BBC Local Radio are 'very painful and unpopular'.

It is worth noting that, when they were first put forward in October, staff were told that 'bosses 'didn't anticipate any complaints'.

The Claimant retweeted a BBC image 'BBC Director General defends 'painful' local radio cuts. The Claimant continued:

The BBC insists that this is still the best way to serve audiences, despite now admitting this is very unpopular with audiences who've made clear they don't want to be served in this way.

MPs, councillors, charities, staff and unions all oppose the plans.

14) On 21 June 2023 the Claimant retweeted Andy Griffie who had quoted a former Director General, Tony Hall, saying that whilst the BBC were right to take matters forward digitally, he would not trim back on Local Radio which was 'so special' with the amount of programming done at local level. The Claimant added –

Add the former Director General to the list of people with significant concerns about the BBC's plans to slash huge numbers of Local Radio shows.

The BBC says it needs to reduce output to provide better digital coverage.

MPs, charities, councils, staff and unions disagree.

15) MPs will debate controversial plans to slash BBC Local Radio output on Thursday.

The BBC says the plans allow it to provide more online content.

But councillors (below – retweeting a tweet detailing the position of Plymouth's Deputy Council Leader), MPs, archbishops, charities, unions, audience members and staff all say going through with it is a mistake.

16) The moment MPs unanimously approve a motion expressing concerns about proposed BBC Local Radio cuts [attaches a photo of the Deputy Speaker].

The Government says it is 'disappointed' by planned cuts to the BBC's 'crown jewels'.

The BBC still insists the plans will let it provide a better digital service.

Yup, still.

17) The BBC insists that 'reallocating funding' by regionalising shows will serve the audience better.

The list of people who have criticised the plan includes:

MPs

Lords
Councillors
The ex-DG
Charities
Sports Clubs
The Archbishop of York
Ronnie Wood

18) Whatever your view on this, I think we can all agree on one thing.

That is one hell of a diverse list.

[There is also annexed an extract from a list of MPs expressing concerns]

19) The BBC says cutting shows will help it fund more digital content and serve the audience better.

The plans are opposed by MPs, councils, charities, industry figures, unions and staff.

There was no audience consultation on the plans – nor is one being proposed by the BBC.

Extracts from the 'Loosest Goose'

44. The 'Loosest Goose' was a segment of the Claimant's radio show first created by the Claimant, as we understand it, to mark a birthday of his co-host/producer, Amy Corbett. The idea is that farm characters and animals displaying human characterisations behave in comic ways. Satire was often intended. The Claimant describes it as a 'grown-up children's story' in one of his messages. Sexual innuendo was a feature, often unsubtle. The episodes first went out on a Sunday in the midday programme on Radio Cornwall. They were put on BBC Sounds, also.
45. The Respondent took issue with the following passages. JM is the Claimant. AC is Amy Corbett, his co-host/producer. The concerns were at least three-fold: lack of impartiality on the Local Value for All proposals; disrespect for colleagues; sexualised crudeness, bearing in mind this goes out midday on a Sunday on Radio Cornwall.

25/6/23 - Loosest Goose intro 12.20pm (referring to the proposed changes to Local Radio

JM ...and because The BBC is going through a period of change,

AC: We love change

JM: change is never easy, respectfully we hear what is being said about change, we don't agree, ha ha ha

AC: stop (it while laughing)

JM: so we need a lifeboat sometimes, so if there are any animators

AC: This is our lifeboat, this?

JM This is what we are relying on, I'll be signing on come Monday. So if there are any animators film directors, theatre producers, who want to buy us out and make us millionaires, I'll be more than happy to have those discussions

25/6/23 Loosest Goose live content TX 12.23 - example of poor taste and decency on live radio on Sunday afternoon

12.24 Barely a man in the village who hadn't received a late night call from Boob Tube asking them to pop round with their best 12 incher because she was in the mood for a long play - you know a long player if you want a long play you're best to have a 12 inch - records caller. You know who would know all about this - David White (Afternoon Presenter)

12:25 It wasn't the first time that Annie had been coated by a whopper in a service stationthe burger King Whopper.

12:29 Everyone loved Farmer Zac who was looking positively engorged in a pair of oversized sunglasses, long flowery shirt dress and some skin tight denim hot pants who for reasons unbeknown to him had a Shewee tucked in a pocket.

12.30 There are thousands of people queuing all wanting to come inside and watch me blow, he wailed, do you have any idea what that's like? Boob Tube Annie (a Listener) nodded in sympathy for she knew only too well what it was like to have thousands of people who wanted to come inside and watch her blow, it reminded her of the last keys in a bowl party she had hosted which had proved so popular that Devon and Cornwall police had had to shut off the surrounding roads and where Annie had replaced the bowl half way thorough.

18/6/23 The Loosest Goose does strictly

Boob tube was quite the mover herself in fact her intricate choreography and subtle showmanship had earned her the name of the fan dancer, not because she had a fan in her act but because once you turned her on she'd happily keep blowing all night....as fans tend to do...plug them in don't stick your fingers in too deep cos, you'll get a shock... lets not do that again...

Boob tube had fond memories of an evening she spent jiving there in the late 90's where after much consideration the three judges decided to slip her a 8 and two 7's although in this case the numbers referred to inches and not points which explained why ever since she'd been on the hunt for a man who can give her the elusive ten... you really have to work for that ..they are out there - Murley's thought...you will find them.

Made his own glitter balls and intricate process which involved a glue gun,

three sheets of gold leaf and a couple of hours squatting naked over a dental mirror....what an image - what an image, good afternoon Cornwall.... The director general just listening around, what's on hello Tim.

How many hours I've spent at home dreaming of being tossed across the dancefloor by a pro like you

11/6/23 TX 12.20 Loosest Goose

JM: it was too late the screaming queen was in the room, looming large over them and growling incomprehensively

Rhodri, Rhodri, Rhodri, Rhodri...

AC: (laughter what are you doing?)

JM: The ghoul muttered

AC: oh no

JM:The ghoul muttered... over and over again, over and over...

AC: (laughter)) No! What was it muttering?

JM: Rhodri, Rhodri, Rhodri - just incomprehensible

Goose! Farmer Zac wailed - what is it saying?

AC: don't say it again

JM: What does it want?

To anyone else the words (interrupted by laughter) it's been nice working here

AC: Oh yes real nice

JM: To anyone else the words of the screaming queen would have sounded like nonsense, but the loosest goose had worked briefly as a PA to some senior level BBC executives ...

AC: Jack!

JM:....so knew all about interpreting baffling messages from beings who seem to live in another world

AC: (laughter) - What are you doing?

JM: It's saying you shouldn't have touched it's beautiful ball and now it's going to take us back to the afterlife ever.

AC: Oh Jack this is the worst ever!

46. 'Rhodri' is a reference to Rhodri Talfan Davies, the Director of Nations at the BBC.

47. The BBC managers made the point, amongst other points, that this coarse content was inappropriate to the audience of Radio Cornwall, midday on a Sunday. Mr Burke suggested the nature of the audience would be similar to that for the Antiques Roadshow. Emma Clements doubted that sexualised language was ever appropriate on local radio. It would need to be editorially justified, in any event.

Proposed changes to Local Radio ('Local Value for All').

48. The BBC was proposing to merge its local radio output in order to free up funds for an increase in digital services. Locally this meant the merger of much of the output (and therefore a reduction in the total output) provided by Radio Cornwall and Radio Devon. Presenters had to apply for the roles that remained. The Claimant was successful, as it happened, in securing a promotion at Radio Cornwall. Compulsory redundancies were avoided. There were 5 voluntary redundancies at Radio Devon, however. This did represent cuts. Colleagues left. The Claimant opposed the merged and therefore reduced output. He opposed it on his personal Twitter account.
49. Emma Clements explained to us, and we accept, that when BBC reporters report about the BBC the obligations of impartiality apply also, as they would, to any matter reported on. There was more than one side to report on the proposed changes to local radio, not just the opposition to it. She pointed out that while merging programmes for Radios Cornwall and Devon was far from great, it at least that preserved local radio. It was not an inevitable conclusion that there would always be local radio as against the developments to digital content, the internet and so on. Mr Horton explained that the balance between digital services and local radio had to be determined before the next review of the Licence Fee. Reports on LVFA, then, had to show due impartiality.

Management Action in response to the alleged breaches of Editorial Standards and Social Media Guidelines.

50. June 2023 was not the first time that the Claimant had been tackled about his social media usage. In November 2022, for example, the Claimant was challenged about campaigning on social media in respect of proposed changes to local radio. Stephanie Marshall raised the matter with Jason Horton. She told him that BBC management had repeatedly attempted to stop the Claimant from making tweets that fell foul of the Standards and Guidelines. On 8 November 2022 Mr Horton wrote 'I really rate him – but he has to stop'. Sara-Jane Mulholland, a Senior HR figure, who it seems has played a significant role in the background in relation to the Claimant, wrote 'Another example of how "being an NUJ rep" gets staff off the hook in terms of social media'. Mr Horton reminded the Claimant that it was not appropriate 'for any of us' to use social media to campaign on any issue; that they were colleagues, not adversaries. The Claimant accepted this in a return email. Emma Clements had a conversation with the Claimant that day and he agreed to stop tweeting on the proposed changes to local radio. So that was an earlier skirmish.

51. As was 28 February 2023, when the Claimant tweeted –

Someone messaged today, saying I only got to present shows due to 'political correctness'.

Not hard work or ability.

Nope.

If I weren't gay, I wouldn't have a job.

I can only assume this person has not bottomed – because honestly, there'd be less painful ways to find work.

There is often humour in the Claimant's tweets. I put to Stephanie Marshall, in effect, whether there might be a sense of humour failure across management to these tweets. She replied that the Claimant was a reporter not a comedian. He was persuaded to take down that tweet. Tim Burke encouraged an intervention.

52. On the weekend before 15 June 2023 the Claimant had been busy on Twitter in respect of the local radio proposals. Emma Clements referred the matter up to Stephanie Marshall. The agreed course of action was for Emma Clements to have an informal discussion with the Claimant to persuade him to take down his tweets. This had worked in the past. Emma Clements was the Claimant's second line manager. Daphne Stannard was the first line.

53. Emma Clements was also in touch with Tim Burke, Head of Compliance and Standards. She informed Mr Burke that she proposed to talk to the Claimant that day with view to inviting the Claimant to a further meeting on the next Thursday. Mr Burke agreed to make some notes on the content of the tweets which she could share with the Claimant. At this point Mr Burke's position was that this was a good time to talk to the Claimant about his tweets. 'Some of them are very wide of the mark – not just about the proposals, but about sexual issues too – some of which border on coarse.' His assumption then was that an informal chat was all that was necessary.

54. Mr Burke compiled a dossier on social issues concerning the Claimant on 29 June 2023. Mr Burke sent it to Emma Clements around midday. The tweets were cross referenced to extracts from the Editorial/Social Media Guidelines. The following bullet points were used as believed appropriate by Mr Burke:

- Always behave professionally, treating others with respect and courtesy at all times; follow the BBC's values.
- Don't bring the BBC into disrepute.
- If your work requires you to maintain your impartiality, don't express a personal opinion on matters of public policy, politics or 'controversial subjects'.

- Don't criticise your colleagues in public. Respect the privacy of the workplace and the confidentiality of internal announcements.
- Do not post anything that couldn't be said on-air or on BBC platforms.
- Do not support campaigns, (e.g. by using hashtags) no matter how apparently worthy the cause or how much their message appears to be accepted or uncontroversial.
- Do not be drawn into ill-tempered exchanges, or exchanges that will reflect badly on you, or the BBC.
- Use of emojis can - accidentally or deliberately – undercut an otherwise impartial post.

55. The conversation with the Claimant took place later on 29 June 2023. It was not a successful one. Emma Clements started the conversation saying that several of his tweets broke the Social Media Guidelines. She would send him screen grabs of the ones she would like him to delete. The Claimant reacted by saying Emma Clements only interacted with him negatively. He felt bullied and victimised by the fact that Emma Clements had gone through his tweets over the last month. The Claimant stated that Emma Clements had not supported him against homophobic abuse and death threats. After a 30-minute conversation along these lines, Emma Clements said she would have to share the conversation up the line with Stephanie Marshall. There would need to be a further meeting. Emma Clements made a written record of the meeting. She noted that the Claimant said he would not take the tweets down. He would not attend a further meeting. He was 'f***ing sick of it that he had had it over and over again'. He suggested that both Emma Clements and Stephanie Marshall should consider their behaviour because neither had anything good to say to him.

56. Emma Clements described this as the worst conversation she had held as a manager at the BBC. She was shaken by it.

57. Emma Clements phoned Stephanie Marshall to say that the meeting had not gone well with the Claimant. She also mentioned the episode of the Loosest Goose for 11 June 2023. Stephanie Marshall listened to it and other episodes. She forwarded the information to Tim Burke and Jason Horton. This included the references to 'Rhodri'.

58. Mr Burke described the 11 June episode as puerile. The Standards point was that 'the thinly veiled criticism of the BBC via the Ghost saying 'Rhodri Rhodri Rhodri' breached the editorial Guidelines and BBC Values. Mr Burke was of the view that the Claimant, together with his tweeting, was

crossing the line in a considerable and flagrant way. He then wrote - intemperately as he now acknowledges -

I would give him a formal warning – Nick Bull, Mark Grinnell have all, in the past, had conversations about his tweets and retweets.

[He attached the dossier he had prepared for Emma Clements]

Frankly I would sack him and soak up the Tribunal costs – or at least withdraw his job offer over his conduct. His arrogance and contempt is not just on social media but on air too.

59. Sara-Jane Mulholland of HR emailed Stephanie Marshall and Elena Williams (also of HR, as we know) the following:

1. Content not in the interests of the audience.
2. We've asked a number of times for this series [the Loosest Goose] to be brought to an end.
3. The trust is gone.
4. Suspended, pending a disciplinary.

60. In the event, the Claimant was taken off air rather than suspended. Stephanie Marshall told him on the phone on 30 June 2023 that she was taking him off air. She told him in broad terms why: a combination of the Loosest Goose content, his social media output and his refusal to take down tweets.

61. The Claimant was taken off air for Radio Cornwall rather than suspended altogether because that would allow him to continue with his LGBT sports podcast. He was taken off air by Stephanie Marshall because she could no longer be sure at that time that he would broadcast in compliance with standards and guidelines.

62. The issue of trust is worthy of tracking. It likely leads to a misapplication of the disciplinary policy in due course. Elena Williams told us that HR had decided to 'position' the matter as one of gross misconduct. It is unclear whether senior management outside HR was party to that. Technically, it is for the Hearing Manager to formulate the charges. That person, no doubt, will take advice from HR. HR had 'positioned' the matter as one of gross misconduct. This is significant, of course, because if reasonably found to be gross misconduct it might be reasonable to dismiss without first exhausting formal warnings. The Claimant had received multiple informal challenges but never a formal warning.

63. The relevant extract from the disciplinary policy on the definition of misconduct reads as follows:

Definition

The standards of behaviour expected of employees are those necessary for the proper operation of the workplace, and to maintain mutual trust and confidence between the employer and employee.

The BBC Values provide a framework for the standards of behaviour expected of employees.

Where standards of behaviour fall below what is expected, this could constitute misconduct. The BBC takes all allegations of misconduct seriously and where necessary the disciplinary policy will be followed.

Matters which may be viewed as amounting to disciplinary offences include, but are not limited to:-

- persistent bad timekeeping;
- unauthorised absence;
- poor attendance;
- failure to observe BBC policies and procedures;
- abusive behaviour (including bullying and harassment);
- unreasonable refusal to follow an instruction issued by a manager.

The Formal Procedure will always be followed for allegations of gross misconduct which are acts so serious as to justify summary dismissal without notice. Examples of gross misconduct may include, but are not limited to

- assault;
- theft or dishonesty;
- serious negligence;
- endangering life;
- gross dereliction of duty;
- discrimination or serious bullying and/or harassment,
- serious breach of confidence.

Elena Williams pointed to 'serious breach of confidence' as explaining the decision to position the matter as gross misconduct. She said Stephanie Marshall had lost trust in the Claimant. However, 'serious breach of confidence' does not mean the confidence a manager has in a subordinate. It means serious breach of confidentiality. That is something different. Stephanie Marshall also displayed that confusion in evidence. The Claimant has a strong argument that his alleged misconduct fits with 'failure to observe BBC policies and procedures' and falls outside the list of matters that may ordinarily be regarded as gross misconduct.

64. Emma Clements put together a fact find pack with view to disciplinary proceedings. This was completed on 4 July 2023. Gareth Hydes was originally assigned as the hearing manager. HR notes show that Gareth Hyde questioned why the matter was positioned as gross misconduct. He then was no longer available to sit on the hearing. As at 13 July 2023 the Claimant was asking for the formal allegations in writing.

65. Eleanor Garland agreed to act as hearing manager but then returned the case because she was going on holiday. Sarah Moors then declined the invitation to be the hearing manager. Colin Paterson agreed to be the disciplinary hearing manager but ended up being a grievance hearing manager. A grievance brought by the Claimant was considered before disciplinary proceedings resumed.
66. On 19 July 2023 the Claimant raised a formal grievance against Stephnie Marshall and Emma Clements. He suggested that the commencement of disciplinary proceedings was in breach of BBC Guidelines and disproportionate, unwarranted and punitive.
67. On 21 July 2023 he asked for the disciplinary process to be paused pending the hearing of the grievance. This was agreed, at least initially. That decision was communicated to him by his line manager Daphne Stannard. That same day the Claimant wrote an email thanking her for her support.
68. A point made by the Claimant in his grievance was that there was ample opportunity for Emma Clements and Stephanie Marshall to raise concerns about his work without having to go down a disciplinary route.
69. On 27 July 2023 the Claimant was told that it was the Respondent's intention to hold the grievance and disciplinary concurrently. They would need to find another hearing manager for the disciplinary. The Claimant objected to this. In the event, the grievance was heard first.

The Grievance

70. The grievance hearing with the Claimant took place before Mr Paterson on 9 August 2023. He interviewed Emma Clements the following day and Stephanie Marshall on 11 August 2023. The grievance outcome was dated 1 September 2023. Mr Paterson understood the grievance to raise the following points:
- 1) The process escalated to disciplinary without prior notification or formal feedback;
 - 2) There has been no written confirmation of the issues relating to the disciplinary;
 - 3) Lack of support from Stephanie Marshall and Emma Clements – on issues relating to online/social trolling and during this process;
 - 4) Concern that the approach, in the absence of the details of the disciplinary, could be discriminatory.
71. The grievance was not upheld. Mr Paterson found there was ample evidence that concerns about social media use had been raised with the Claimant, indeed going as far back as October 2022. It was right that the grounds for the disciplinary hearing had not been put in writing. This was

because a hearing manager was yet to be appointed. It was also right that conversations with managers had not been recorded on 'MyConversation', (a management intranet site); but Mr Paterson found that the Claimant knew what the issues were.

72. He found that Emma Clements and Stephanie Marshall had both offered an adequate level of support to the Claimant in his career within the constraints of what their roles allowed. The Claimant had always acknowledged the support of his line manager, Daphne Skinnard. It was possible for positive comments to co-exist with negative ones. Emma Clements was keen to point out that the Claimant was a creative and passionate presenter. The podcast was cited as an example. That did not negate the concerns about social media, however.

73. There was no evidence that the Claimant was being singled out because he is gay. The Claimant submitted no evidence to this effect, other than floating a speculation. There was no evidence about being treated differently from anyone else in a comparable situation.

74. Mr Paterson recommended that the disciplinary process progress. He had also asked Emma Clements and Stephanie Marshall to record their concerns on MyConversation in the future. The Claimant appealed the grievance outcome on 3 September 2023.

Disciplinary Charges

75. Tomos Livingstone agreed to act as hearing manager. On 15 September 2023 he formulated the charges as follows, and positioned the case as potential gross misconduct:

1. Breach of the Editorial guidelines.

Specifically, that you are in breach of the following;

o Section 1 - BBC Editorial Standards.

o Section 4 - Impartiality.

o Section 5 - Harm and Offence.

2. Breach of the Social Media Guidelines.

Specifically, that you are in breach of the following;

o Section 2 - Rules and expectations of Social Media use.

2.1 Always behave professionally, treating others with respect and courtesy at all times: follow the BBC's Values.

2.2 Don't bring the BBC into disrepute.

2.3 If your work requires you to maintain your impartiality, don't

express a personal opinion on matters of public policy, politics, or 'controversial subjects'.

2.4 Don't criticise your colleagues in public. Respect the privacy of the workplace and the confidentiality of internal announcements.

...

It is important that you understand that the BBC considers these allegations to be a serious breach of discipline amounting to gross misconduct and that if proven a sanction could be issued up to a dismissal.

The Grievance Appeal

76. David Pembrey conducted the grievance appeal. His outcome letter is dated 21 December 2023. In addition to an appeal meeting with the Claimant on 2 November 2023, he held supplemental meetings with Colin Paterson, Tim Burke and Emma Clements. He understood the grounds of appeal to be the following:

- 1) Evidence from the BBC Mental Health advisor was not sufficiently considered or recorded.
- 2) Evidence from BBC Radio Cornwall colleagues was not sufficiently considered or recorded.
- 3) The grievance failed to fully investigate claims that BBC Management had not followed due process - specifically that no explanation was given as to why a disciplinary case was being brought against you, and that notification of the disciplinary case was not put in writing.
- 4) The grievance failed to fully investigate claims that BBC Management had not acted consistently with how others are treated, and whether this was motivated by your sexual orientation and/or trade union position.

77. Mr Pembrey rejected the appeal. Colin Paterson was aware that Karen Peek, a Mental Health Advisor, had expressed concern about the way the Claimant's case was handled. However, he thought her observations were not relevant in that she was repeating solely what the Claimant told her and otherwise was not privy to the facts of the case. Therefore, she did not add anything as a witness. Mr Pembrey agreed.

78. The same applied to colleagues from Radio Cornwall. They were not privy to the case. The BBC had respected confidentiality of the process. The colleagues' evidence was not relevant. Mr Pembrey agreed with Mr Paterson.

79. As regards knowledge of the disciplinary issues: the Claimant had been spoken to about breaching Social Media Guidelines over a period of time. The escalation into alleged on-air breaching of the Editorial Guidelines [i.e. the Loosest Goose] was sufficient to trigger a disciplinary process. The steps taken by Emma Clements and Stephanie Marshall were in line with policy.
80. Because procedure had been followed in this case, Mr Pembrey agreed with Mr Paterson that there was no scope to investigate whether other staff had been treated in breach of procedure. Mr Pembrey could see no detrimental treatment on the grounds of trade union activities. He found that the Claimant had been treated consistently with others where posts had been permitted or asked to be taken down.
81. He could see no evidence of differential treatment because of sexual orientation. The BBC had zero-tolerance of discrimination, bullying or harassment. He had seen evidence of the Claimant's career being actively developed and the LGBT podcast championed by Emma Clements. It was not inconsistent to be praised for the podcast on the one hand, and challenged for social media posts on the other. It was evidence of balance.

Disclosure decision 9 January 2024

82. On 2 January 2024, before Mr Livingstone announced his disciplinary decision in March 2024, the Claimant asked for disclosure of a number of matters including screenshots of alleged complaints by members of the public about the *Loosest Goose* that allegedly came in via Facebook on 25 May 2023, as referred to in the notes of the conversation with Emma Clements, along with any notes from Emma Clements about how the alleged complaints were allegedly dealt with (along with metadata detailing the date that the notes were made).
83. Mr Livingstone did not disclose these, if they exist. He said he had not taken into account any public complaints. Indeed, there may have been none before Mr Livingstone at that time. Mr Livingstone maintains that he made his decisions based on his analysis of whether there had been breaches of the Editorial Standards and the Social Media Guidelines. He placed no reliance in the presence or absence of complaints.
84. We accept this from Mr Livingstone. This position on disclosure was in no way connected to the Claimant's trade union activities or his sexual orientation. It was a decision based on an understanding of relevance. There is no prima facie case for the Claimant here on the issues in Part 1 of the Employment Tribunal litigation. Conceivably, however, whether or not there have been public complaints might be relevant to the reasonableness of the decision to dismiss rather than issue a formal warning, in Part 2.

The NUJ's reporting guidance to its Reps during the LVFA dispute

85. On 1 November 2023 Mr Livingstone established from Paul Siegert of the NUJ that the NUJ official guidance on this was –

As a union rep, you are allowed to give media interviews. Our social media guidance is that if you tweet or post about the strike/dispute it's best to add a line for balance from the BBC. In other words, report it as you would any news story, with due impartiality.

Often the Claimant did not tweet with due impartiality, as we see above. That this was contrary to the NUJ's own guidance does not help him.

Alleged comparator: Greg James

86. Greg James is not employed as a BBC news journalist. He is a presenter of radio shows. The Claimant has relied on tweets made by Mr James in terms of inappropriate sexualised or offensive language. So in one, Mr James sarcastically describes as 'pure poetry' song lyrics to the effect: 'you can suck a dick, you can suck on a ballsack'. In another Mr James introduces a story about a long-necked duck near Derwent lake with the words 'Oh my fucking god'. In another he tweets 'Honestly the fucking gall of TikTok to mute whatever music you've chosen to listen to while you're moronically flicking through social media...'. He refers to a cricket test match as 'absolutely fucking hilarious' in a reference to stump mic words when Australia's wicketkeeper stumped Jonny Bairstow when out of his crease, believing the ball to be dead. He refers to 'Space X shaggers'. He invokes 'Christ' when his breakfast show is nominated for an award.

87. Whilst being free with language that would offend some, Mr James is not a relevant statutory comparator for the purposes of this case because he is not a news journalist under a management line containing any of Emma Clements, Stephanie Marshall, Mr Horton and Mr Burke. Mr Burke told us he understood that words have been had with Mr James about his language on social media, but he does not fall under Mr Burke's jurisdiction. He is not subject to the same HR Business Partners.

Alleged comparators: Julie Skentelbery and Dick Straughan.

88. Following the outbreak of the war in Ukraine, one of Radio Cornwall's freelancers would be asked to comment on the situation in the immediate aftermath of the invasion. That person is a British-Ukrainian national. One of her friends was raising money for Ukraine. Radio Cornwall presenter Julie Skentelbery and producer Dick Straughan thought it would be a good idea to give that person air time. It seemed, therefore, that the BBC was endorsing a fundraiser for Ukraine. However, it is BBC policy not to endorse fundraising other than Children in Need. Emma Clements tackled Julie Skentelbery and Dick Straughan for this breach of Editorial Guidelines. Disciplinary proceedings were not commenced; instead Emma

Clements arranged for the pair to be sent on a one-day online refresher course on the Editorial Guidelines.

89. The Tribunal does not find that this was a comparable situation. It was a one-off error of judgment by the pair. The Claimant's breaches of the standards and the guidelines as alleged are multiple and repeated. The episode does not assist the Claimant in establishing detrimental or less favourable treatment.

Homophobic Abuse

90. The Claimant has suggested that he has not been supported by the Respondent in terms of dealing with homophobic abuse. He suggested this included death threats. We asked for examples of the latter. There is no documentary evidence of them.

91. The Claimant did produce tweets sent to him which are homophobic abuse. They are plainly very frequent. Some examples from June 2023:

- 1) Yours is a community of selfish entitled narcissists. The world owes you nothing except God's final judgement.
- 2) If being gay is your whole identity you're a pathetic nothing.
- 3) Did they achieve this through bum sex?
- 4) Ah yes, we should all 'owe' all gay people something because of the actions of a few gay people...?? Being gay does not mean you're a celebrity, but then you do have pronouns in your bio and you've probably danced half naked at pride parades so ... You're an embarrassment.
- 5) Weirdo. Shut up about your arse.
- 6) You promote cheating you utter horrible narcissist. You don't give a f*ck about fair sport or women. Take your virtue signalling gay ass back to the 1950s. That's where your views belong.
- 7) It's a fetish show and we don't want it crammed down our throats every day of the whole month of June. Put it away, I don't give a fig who you fck.
- 8) Sexual orientation is clearly a personal choice and private decision and so should it be handled...in private behind closed doors that is ... dragging it straight into the public eye or even worse, calling it new normality and bringing it to the attention of children is NOT acceptable.
- 9) People are sick of the holy month of Pride and its association with child drag shows, sex changes for children, weird fetishist and numerous insane identities having nothing to do with homosexuals.
- 10) Maybe it's because you're supporting literature showing kids how to have anal sex or telling young boys they're not supposed to have a penis because they like the colour pink. May be that's why we think the TQ+ are groomers.

- 11) Stop going after children, you're making us dislike you.
- 12) Jack no one cares, just get on with life ... enjoy [picture of ?teen schoolgirl described as 'Me trying to live my life' smothered by tuba called 'LGBT propaganda'].
- 13) This is actually pretty simple. If you remove kids from your activism, you would probably not be called groomer anymore. Try it.
- 14) You want to groom kids, we get it...
- 15) If you don't want to be called a groomer, then the TQ+ shouldn't try to sexualise children!!! Also the constant victim hood is getting boring.
- 16) Weird how it was golden for ages. Equal rights, marriage laws, out and proud throughout society.

Oh but then people like you sided with the spicy straights and thought mutilating straights was so progressive.

Guess people weirdly didn't like that.
- 17) There is no love in an LGBT-Alphabet Soup movement that's hell bent on wrecking women's sports, damaging women's rights and pushing child sterilisations and mutilations. The LGBT-Alphabet Soup movement won't win anything because they are losers!
- 18) Take your f**king pronouns and f**ck off. You say love, but you're all a bunch of intolerant sh*tbags that chuck your toys out of the pram the moment the wind changes. You only ever represent the interests of TQ+. So you know what? F**k Right Off!! And then, F**k off some more.

92. There are examples of Emma Clements offering the Claimant support in the face of homophobic abuse. There is a text message on 22 November 2022. Likewise 17 April 2023-

... I'm sorry once again that you are the target for this horrid behaviour. I'm here if you need anything. Please let me know you are ok.

These messages were well received by the Claimant. Ms Clements herself was targeted online in late 2014. She did discuss with him ways to mute the homophobic abuse. The Claimant would sometimes respond inappropriately to homophobic trolling by retweeting it or repeating the abusive language. She estimates that she would ask him to take down posts 5-6 times a year from 2021 to 2023. It is in the standards and guidelines 'not to be drawn into ill-tempered exchanges, or exchanges that will reflect badly on you, or the BBC'.

The July 2024 Whistleblowing Investigation Report from the BBC Corporate Investigations Team

93. On 17 July 2024 the BBC Corporate Investigations Team produced a report into whistleblowing allegations of homophobic discrimination against the Claimant. The Disclosures were made on 18 January 2024. The Respondent has resisted the admission of the report into these proceedings

on the grounds of relevance. That position was not accepted at an earlier Preliminary Hearing and we have read the report.

94. The investigation was into 12 specific allegations. The question investigated was whether a case to answer was suggested in respect of each allegation. The dates and nature of each allegation, and whether or not a case to answer was indicated are summarised below.

1. 2018-2019 Alleged that offensive remark was made by presenter in BBC Radio Cornwall newsroom. Case to answer.
2. Late spring 2019 Alleged that Senior Manager Robert Wallace failed to adequately support Jack Murley (JM) in regard to homophobic abuse he was receiving. Case to answer.
3. Summer 2019 Alleged that senior manager Robert Wallace told BBC employee W1 that it was not BBC's job to deal with homophobia. No case to answer.
4. Summer 2019 Alleged that Robert Wallace told Dick Straughan that it was not the BBC's role to combat homophobia. No case to answer.
5. c. 2019 Alleged that Rosie Dunkley and David White made negative remark about JM's sexuality in the BBC Radio Cornwall office. No case to answer.
6. 2019/ 2020 Alleged that a BBC Radio Cornwall cleaner named made homophobic comments to JM. Incident 1 – comment about moving car. Case to answer.
7. 2019/ 2020 Alleged that a BBC Radio Cornwall cleaner named made homophobic comments to JM. Incident 2 – use of abusive term. Case to answer.
8. 2019/ 2020 Alleged that presenter made homophobic 'joke' to JM in BBC Radio Cornwall office. Case to answer.
9. 2022 autumn Alleged that BBC Cornwall Spotlight camera operator made homophobic remarks to JM. Incident 1 – comments about LGBT podcast. Case to answer.
10. 2022 autumn Alleged that BBC Cornwall Spotlight camera operator made homophobic remarks to JM. Incident 2 – comments about blood donation. Case to answer.
11. 2022 autumn Alleged that two BBC employees told manager Daphne Skinnard about homophobic messages sent to JM and she intervened only 'reluctantly'. No case to answer.
12. 2023 October Alleged that that an article critiquing the LGBTQ+ movement was displayed in the communal BBC Radio Cornwall kitchen (by camera operator). Case to answer.

95. Whilst the Investigation Report is of background interest, none of these allegations or findings impact relevantly on the present case. The last allegation relates to an article in the Spectator which was anti-wokeism. It was taken down once management (Daphne Skinnard and Emma Clements) became aware of it. Upon seeing it, after it had been taken down by Daphne Skinnard, Emma Clements thought it likely homophobic.

CONCLUSIONS

Detriments done by the Respondent for the sole or main purpose of preventing or deterring the Claimant from taking part in trade union activities?

96. The Respondent has taken disciplinary action against the Claimant for his social media activities. The delay in putting the precise charges into writing is because a Hearing Manager needs to be appointed before these are formulated. The delay in having a Hearing Manager appointed was down to 2 matters: first, the Claimant wanted the grievance process exhausted beforehand; secondly, HR struggled to find a Hearing Manager. When one was found who was willing and able to conduct a disciplinary (Colin Paterson), it was decided that he would hear the grievance instead, because the Respondent agreed the grievance would be heard before the disciplinary in accordance with the Claimant's preference.

97. Taking the disciplinary action for social media activity was detrimental to the Claimant. We must then determine whether the following are trade union activities (taking from the Issues):

3.4.1 being the seen as the trade union representative ("Father of the Chapel") leading the campaign against the BBC's proposals for Local radio.

3.4.2 making social media posts such as those made between 24 April 2023 and 30 June 2023 about why the NUJ was opposing the BBC's proposals for Local Radio, namely

3.4.2.1 the Claimant 'quote-tweets' official NUJ accounts;

3.4.2.2 the Claimant 'quote-tweets' official BBC news stories about the proposed changes to BBC Local;

3.4.2.3 the Claimant 'quote-tweets' other NUJ representatives who are on the picket line;

98. Being a Father of the Chapel (shop steward) may of course involve the Claimant engaging in trade union activities. Trade unions, furthermore, and their members and officials, may issue communications on behalf of the union relating to trade union activities. A representative can give media interviews.

99. We find, however – and this is pivotal - that posting on a personal Twitter account is not engaging in trade union activities or communicating on behalf of the union in respect of them. It would be different if the Claimant were writing the tweets on a NUJ Twitter account. He was not.

100. The purpose behind the Respondent's challenges was to uphold the Editorial Standards and Social Media Guidelines in respect of the Claimant's personal Twitter account. He was taken to be broadcasting when using his personal social media and was subject to the rules of impartiality when he does so. He may not campaign on any issue. That is part of the discipline of being a BBC journalist. It derives from the principles of the BBC Charter.

101. The Claimant is acknowledged to be a creative broadcaster. He has a sense for comedy. In BBC Standards terms, however, he was undisciplined.

102. The BBC Standards the Respondent sought to enforce may be summarised as -

1) Always behave professionally, treating others with respect and courtesy at all times: follow the BBC's Values.

2) Don't bring the BBC into disrepute.

3) If your work requires you to maintain your impartiality, don't express a personal opinion on matters of public policy, politics, or 'controversial subjects'.

4) Don't criticise your colleagues in public. Respect the privacy of the workplace and the confidentiality of internal announcements.

103. The Respondent did not seek to prevent the Claimant from participating in trade union activities, properly-so-called. They did try to prevent him from abusing his personal social media. The NUJ official guidance recognised the need to respect impartiality. The Claimant did not.

104. The Tribunal is a little perplexed by the trouble in which the Claimant found himself. A BBC journalist can exercise freedom of speech. Any topic can be broadcast about where editorially justified. Where there is need for due impartiality (i.e. there is more than one arguable side to the debate), all sides need to be fairly referenced and the journalist has not to reveal their personal opinion. Through exercising discretion, it seems to us however, a Journalist can get across whatever message they want.

105. The Claimant was campaigning from his personal Twitter account against the BBC's proposals for restructuring local radio. Save in respect of a few tweets, he was not acting impartially. This did break the rules.

Direct sexual orientation discrimination/ Harassment related to sexual orientation?

106. The Claimant is a gay man. As a broadcaster he promotes gay rights. At the BBC he presented a well-respected podcast on LGBT people in sport. It is clear that he was subjected to frequent homophobic abuse.
107. The Claimant on 30 June 2023 was removed from his on-air duties at Radio Cornwall. Stephanie Marshall explained to him why. It was a combination of his social media activity on his personal Twitter account said to breach the BBC's Editorial Standards and Social Media Guidelines, his refusal to take down the tweets and at least one episode of the Loosest Goose segment of his Sunday midday radio programme in which he had mocked a senior colleague. There is no prima facie case that this had anything to do with his sexual orientation. None of the alleged discriminatory conduct related to his sexuality.
108. It is right that the Claimant did not receive the disciplinary charges in writing until 15 September 2023. This was down to the combination of facts that the Claimant wanted his grievance exhausted first and HR struggled to find a Hearing Manager willing or available to conduct the disciplinary hearing. None of this was down to his sexual orientation. The Claimant knew he would be subject to a disciplinary process from when he was taken off air. He also knew why.
109. The Respondent did investigate his grievance lodged on 19 July 2023. The ultimate conclusion of his grievance was the outcome of the grievance appeal on 21 December 2023. The grievance process rejected the Claimant's suggestion, at first only floated, that his sexuality had anything to do with being taken off air and the disciplinary process. Rightly so: his sexuality played no role whatsoever.
110. Positioning the Claimant's conduct as gross misconduct and charging him with gross misconduct was controversial. There is an argument that the nature of the misconduct in question should have been charged under the policy as misconduct short of gross misconduct. Breach of BBC policy is given as an example of misconduct short of gross misconduct. Some managers displayed a misunderstanding of the gross misconduct term of 'serious breach of confidence' (which means breach of confidentiality) as meaning managerial loss of confidence in an employee. It does not mean that. Charging as gross misconduct may seem to make it easier to circumvent a formal warning process. Whilst the Claimant had informal warnings for breaching Editorial Standards and Social Media Guidelines, he never had a formal warning. These issues, along with contributory fault, will certainly form the subject of the unfair dismissal claim in Part 2 of this litigation. For present purposes, however, the Respondent shows that the reason for charging gross misconduct was a belief in the severity of breaches of the Editorial Standards and Social Media Guidelines.

It had nothing to do with the Claimant's sexuality.

111. Emma Clements went into the meeting of 29 June 2023 thinking she would have an essentially informal discussion designed to persuade the Claimant to accept that his tweets on social media breached Editorial Standards and Social Media Guidelines and to agree to take them down. The Claimant reacted very badly to the discussion and the meeting was a failure. Emma Clements was shaken by the hostility from the Claimant.
112. Emma Clements is a dedicated manager of BBC Local Radio. She is keen to preserve Editorial Standards. She has supported the Claimant against homophobic abuse on multiple occasions in the past. She did not fail to support him on 29 June 2023. Unfortunately, the Claimant's hostility towards being challenged about his social media usage on that occasion led to the matter escalating to him being taken off air and being subject to a disciplinary process. Emma Clements did not discriminate against the Claimant.
113. None of the steps taken by the Respondent were reasonably to be regarded as having the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. The steps were not related to his sexuality.

Employment Judge Smail

South West Region

29 January 2025

Judgment sent to the parties on:

30 January 2025

For the Tribunal Office
