EMPLOYMENT TRIBUNALS

Claimant: Mr P Dimmock

Respondent: 1. Mark Chapman
2. Sarah Byron
3. National Institute for Health and Care Excellence

Heard at: Manchester (in person) **On:** 18-27 March 2026

Before: Employment Judge Slater (sitting alone)

Representation
Claimant: In person
Respondent: Mr B Williams, counsel

RESERVED JUDGMENT

1. The complaints of detrimental treatment contrary to s.47B(1) Employment Rights Act 1996 (ERA) and s.146(1)(b) Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) relating to the allegation that the third respondent failed to offer the claimant an interview for a Band 7 role for which the claimant says he met the minimum requirements are dismissed on withdrawal by the claimant.

2. The remaining complaints of detrimental treatment contrary to s.47B(1) ERA are not well founded.

3. The remaining complaints of detrimental treatment contrary to s.146(1(b) TULRA are not well founded.

4. The complaint of unfair dismissal contrary to s.103A ERA is not well founded.

5. The complaint of unfair dismissal contrary to s.152(1)(a) TULRCA is not well founded.

6. The complaint of “ordinary” unfair dismissal is well founded.

7. There will be a remedy hearing to decide on remedy for unfair dismissal on 9 July 2026.

REASONS

Claims and issues

1. The claimant claimed unfair dismissal contrary to s.103A ERA, unfair dismissal contrary to s.152(1)(a) TULRCA, "ordinary" unfair dismissal, detriment on the grounds that the claimant made a protected disclosure contrary to s.47B ERA and detriment on the trade union grounds set out in s.146(1)(b) TULRCA. The claimant had made an application by a letter dated 13 December 2024 to amend the claim to include "ordinary" unfair dismissal, which had been omitted from the claim form. This email, although apparently sent to the correct email address, does not appear on the Tribunal's electronic case file and appears not to have been referred to a judge prior to this final hearing. The respondent did not object to the claimant amending his claim in this way, on the basis of the understanding that the alleged unfairness related to the failure to offer him alternative employment. The respondent agreed that this was a relabelling of complaints within the claim form and there was no time limit issue in relation to the complaint of "ordinary" unfair dismissal. I allowed the claimant to amend his claim by adding this complaint.

2. During the course of the hearing, the claimant withdrew the complaints of protected disclosure and trade union detriment relating to the allegation that the third respondent failed to offer the claimant an interview for a band seven role for which the claimant says he met the minimum requirements (3.2.5 and 4.2.5 in the list of issues).

3. The list of agreed complaints and issues, as amended at this hearing, appears in the Annex to this document.

Panel composition

4. This hearing was originally listed to be heard by an employment judge sitting with two non-legal members. Shortly before the hearing, the Tribunal had been unable to find two non-legal members available to sit on the case. The Regional Employment Judge informed the parties in writing about the situation and asked if they would agree to a judge sitting with one non-legal member from the employee panel. The claimant agreed. The respondent's agreement was conditional on this being the only way in which the case could proceed without postponement. In the circumstances, the Regional Employment Judge directed that the hearing be before a judge sitting without non-legal members.

Evidence

5. There was an agreed bundle originally of 3058 pages. Further pages were added, by agreement, during the course of the hearing. Numbers in brackets in these reasons are references to page numbers in this bundle.

6. The documents in the bundle were not all in chronological order. This made it particularly difficult to check whether there were, for example, any notes relating to a particular meeting. I read documents which I was referred to in the witness

statements or during cross examination. Where I comment that I have not seen or been shown a document, I cannot discount the possibility that a relevant document is somewhere within the hearing bundle but I have no note of being referred to it.

7. I heard evidence from the claimant and, for the respondent, from: Mark Chapman (former Director of Medical Technology and Digital Evaluation); Sarah Byron, Programme Director; Anastasia Chalkidou, now Programme Director but Associate Director at relevant times; Paul Chrisp (former Director of NICE's Centre for Guidelines); Raghunath Vydyanath, Chief Information Officer; and Helen Williams (referred to in documents as Helen Brown), Chief People Officer. There were written witness statements for all the witnesses.

The Hearing

8. The first day of the hearing was a reading day for the Tribunal. I heard evidence on the second to sixth days of the hearing and closing submissions also on the sixth day. The seventh and eighth days were spent on deliberations in chambers other than a short video hearing with the parties on the morning of the eighth day for the purpose of listing a date for a remedy hearing, in case that was required. The Tribunal had notified the parties by email the previous day that I was not going to be able to give oral judgment on the eight and final day.

Facts

9. The claimant began working for the National Institute for Health and Care Excellence (NICE) in November 2013. He held various roles and his final role which he held at all relevant times for this case was that of a band 8b HTA adviser. This involved advising on health technology assessment of medical devices. He worked on MedTech Innovations Briefings (MIBS).

10. In 2016, the claimant became a UNISON representative. In 2019, he became branch secretary of UNISON's NICE branch.

11. It is accepted that there were no issues about the claimant's performance in his substantive role, other than some concern about his communication style and, in particular, a concern managers had about an intervention from him during a meeting on 15 December 2021.

12. The claimant was a committed trade union representative, acting as he felt best benefited UNISON's members. He spoke up where he considered this appropriate, sometimes putting forward concerns from members when they did not feel comfortable doing so themselves, fearing possible repercussions. This included raising concerns with the Chief Executive, Sam Roberts, about the behaviour of Mark Chapman. I make no finding about whether fears of repercussions were well founded.

13. In the period leading up to the redundancy process involving the claimant, there was friction between NICE and UNISON. Helen Williams described the relationship with UNISON at the time she joined NICE in January 2023 as "fractured". There was, in particular, conflict at times between Eileen Platt of HR and the claimant. Eileen Platt made a number of complaints about the claimant to UNISON, which were not upheld by the union. The difficulties in the working relationship between

UNISON and NICE is illustrated by a letter from Lizanne Devonport, the UNISON regional organiser, to Sam Roberts of 21 March 2023 (2777). This included a complaint about what was described as widespread anti-trade union comments and actions from HR and senior managers, including Eileen Platt and Mark Chapman. The complaints included that someone (not specifically identified in the letter) had said: “It is not the role or remit of UNISON to “advise” that the MoC be halted or withdrawn”.

14. There was an occasion in December 2020 when the claimant and three other UNISON members brought a grievance against the then head of CHTE and deputy CEO. Sarah Byron was one of the people present at the meeting where comments about UNISON which led to the grievance were made, but the grievance did not name her. The claimant has relied on this incident as suggesting anti-trade union bias on the part of Sarah Byron.

15. At a meeting of the Medical Technologies Advisory Committee on 10 December 2021, the claimant alleges he made a protected disclosure. The claimant was attending the meeting in his capacity of an HTA adviser, observing the meeting, rather than in his capacity as a trade union official. The first part of the meeting is an open public discussion, to which expert advisors contribute. The second part of the meeting is attended only by committee members and NICE employees. During the second part of the meeting, the Committee made a decision about guidance under consideration. During the second part of the meeting, the claimant said something about Una Adderley, Director of the National Wound Care Strategy Programme, attending and being allowed to contribute to the discussion during the first part of the meeting. The claimant relies on what he said as being the alleged protected disclosure.

16. The claimant does not set out in his witness statement what it is he said. The allegation in the list of issues is that the claimant said “I feel that we’re making the wrong decision because we’re being biased by allowing a special interest group to make a full presentation to the committee.” In cross examination, when it was put to him that he said, “are you sure”, he said he had said “are we sure”. No verbatim minutes are made of the pre meetings or committee meetings. There is no contemporaneous note of exactly what the claimant said. Sarah Byron recorded, after the meeting, that he “challenged committee research decision against positive decision made previously. Referred to Una and wound care group.” Without a contemporaneous note of what the claimant said, I consider the recollections of the claimant and others as to exactly what was said to be unlikely to be reliable. However, I find that the claimant had a concern about Una Adderley having a conflict of interest and his comment in some way related to this concern. This was a concern he had raised in a pre-meeting. It is common ground that Sarah Byron intervened to stop the claimant speaking further in the meeting.

17. I accept that the claimant felt he was raising a concern shared by other staff who felt they could suffer adverse repercussions if they spoke up. Although he was not at the meeting in his capacity as a trade union official, he felt some responsibility to raise these concerns because of his role and that he had some protection because of this role.

18. The claimant said in cross examination that he did not consider himself a whistleblower at that point. When asked by the judge what he considered to be the

relevant legal obligations for his whistleblowing claim, he referred to NICE being set up by an Act of Parliament and having to follow certain processes and methods. He said the processes, published on NICE's website include how experts should declare conflicts of interest. The evidence of Anastasia Chalkidou was that all procedures about declaring conflicts of interest had been followed. The claimant has not satisfied me that any particular process was not followed.

19. NICE has a whistleblowing policy. Paragraph 29 of this policy says "disclosures of information where you reasonably believe that there has been a breach of NICE's policy on Declaring and Managing Interests may not constitute qualifying disclosures under PIDA as they may not show a breach of the law. It would be unlikely this would come within the definition of a protected disclosure under the Act. However, NICE recognises that its unique role in the health care system requires it to be beyond approach regarding the declaration and management of interests." Paragraph 30 states "for that reason, NICE will provide a whistleblower who raises concerns about the declaration and management of interest the same level of protection from detrimental treatment as is provided to a whistleblower raises concerns about matters that are qualifying disclosures under PIDA". (3050).

20. Sarah Byron considered the claimant's intervention disrespectful and insubordination to her. She considered a meeting was necessary to make the claimant aware that his behaviour was inappropriate, disrespectful and was misconduct.

21. The claimant emailed Sarah Byron after the meeting, asking to have a discussion with her about what she had said to him in the meeting which he said was, in his opinion, quite unprofessional. Sarah Byron agreed to have a meeting but, before that took place, the claimant withdrew his accusation. The claimant was spoken to by Chris Chesters, his manager, and Anastasia Chalkidou about his behaviour in the meeting. Concerns were raised with the claimant about lack of awareness for following process and accepting decisions and lack of respect when responding to the programme director. No disciplinary action was taken but the claimant agreed to go on coaching/communication training. (500). In the discussion, the claimant said he had received feedback from his previous line manager about challenges related to his communication style in some cases. Anastasia Chalkidou discussed that one of the key skills for progressing in more senior roles was the ability to communicate and engage with other parties in often high stake/high conflict, and volatile situations. (506).

22. In May 2022, Mark Chapman began at NICE, working as interim director covering health tech where the claimant worked.

23. In his capacity as a trade union representative, the claimant raised with the Chief Executive, Sam Roberts, issues some staff were having with Mark Chapman's management style and things that he said. An example of raising concerns was an email on 15 November 2022 which referred to issues about language used and comments in meetings and responses to comments by Mark Chapman (560). The email also complained about behaviour and attitudes from HR staff to UNISON reps. There is no evidence that this email was passed onto Mark Chapman or that, if concerns were raised with him, the claimant was identified as having passed on these complaints.

24. In 2022, the respondent was informed that funding for MIBS was being withdrawn by NHS England. The claimant has accepted in evidence that, resulting from this funding cut, there was a genuine redundancy situation involving the loss of three roles: the claimant's, that of Chris Chesters, a senior technical advisor and the claimant's line manager, and that of a band 5 administrator, Mangala Murali.

25. Prior to the claimant being aware of the possibility of redundancy, he applied for a promotion as associate director for topic selection. The interview took place on 14 December 2022. The claimant was not successful at interview. The claimant says he understood from an entry in Mark Chapman's diary (the online diaries of staff being open as a matter of policy), that Mark Chapman was to be on the panel. Mark Chapman denied that this had ever been arranged and explained the diary entry as having been put in by someone else as a possibility but this was never followed up with the information he would be given if he was to be a panel member. The claimant has not satisfied me that Mark Chapman was ever confirmed as a panel member.

26. On 14 December, Mark Chapman sent the claimant an invitation to attend a one to one meeting with him the next day. The claimant was not told in advance that this was relating to a potential redundancy and was not invited to bring anyone with him. I find that this was an informal meeting, outside the formal redundancy consultation process, intended to give the claimant a "heads up" about the situation as early as possible. I accept that this was done with good intent, so the claimant had as much notice as possible to start thinking about possible options. However, Mark Chapman sowed suspicion by talking about the claimant's trade union role and whether working for the union full time might be something the claimant wanted to do. Mark Chapman explained the position on withdrawal of funding and the impact on the claimant's role. The news of the redundancy came as a shock to the claimant. The claimant's notes written after the meeting (563) confirmed that there was some discussion about the possibility of alternative employment with the respondent, although there was no discussion of any particular alternative roles. The claimant was left with the impression that he was being encouraged to leave NICE with a redundancy package, however this was described, for a job elsewhere.

27. There was consultation with UNISON about the Management of Change (MOC) process. At first, the claimant was not directly involved in the union discussions, but he became involved in this from February 2023. The respondent considered comments from UNISON on the management of change document but did not agree with their suggested changes. The claimant remained critical of the process.

28. The final management of change document as identified by Mark Chapman (although this version still appears to include comments from UNISON) begins at page 568. In reference to the MIBs posts, this stated that the 3 posts would have a significant job function change or cease to exist under the new proposed organisational structure and that the individuals in those posts would be identified as "at risk" and treated in accordance with the Organisation's Protocol for Organisational Change and Policy for Protection of Pay (575). Individuals at risk were able to express an interest in posts within their own pool (band 8B and 8C in relation to the claimant). The document stated (579) that, "When all expressions of interest have been received a tabletop exercise will be completed using the

selection criteria shown at the end of this document, together with an interview". The proposed timescale included, in w/c 6 March 2023, "selection and interviews take place in the form of a competency-based interview and presentation." The timescale provided for new roles subsequently to be advertised externally, if applicable. The assessment criteria (596) were those subsequently used for the scoring by Mark Chapman and Anastasia Chaldikou. The document stated that the selection would be conducted by a panel consisting of Mark Chapman, the Programme Director and HR representation and that individuals with the highest overall scores would be selected for the posts. The document made no reference to an 80% threshold.

29. Helen Williams (then Helen Brown) joined NICE in January 2023 as Chief People Officer. As previously noted, she described NICE's relationship with UNISON at that time as fractured. I accept that she and the Chief Executive, Sam Brown, have been keen to improve relationships with UNISON and, in more recent times, the relationship has improved.

30. In January 2023, NICE UNISON members took industrial action in connection with a national pay dispute. The claimant had been involved in the balloting process for industrial action.

31. On 18 January 2023, Mark Chapman invited the claimant to a one-to-one meeting on 23 January. The claimant asked if it was to do with the management of change process and said that, if so, it needed to be declared up front and he needed to have his trade union representative. Mark Chapman said that it was not a formal consultation meeting. Although he said there was no right to representation, he said, prior to the planned meeting, that he had no issue with the claimant bringing a trade union representative. The claimant decided not to attend the meeting. I accept that Mark Chapman also invited the other two employees at risk to similar meetings which they attended. I accept that Mark Chapman's intention was to speak to the three individuals at risk of redundancy prior to holding an all staff meeting.

32. Staff were informed by an email from Mark Chapman dated 6 February 2023 of the withdrawal in funding and the proposed three redundancies. The email said they proposed to create an additional four posts with a focus on increasing guidance production and associated activities. A consultation document was attached. Staff were invited to a group consultation meeting on 9 February 2023.

33. Following the all staff meeting, the claimant wrote to Helen Williams on 10 February 2023, asserting that the management of change was not compliant with the current organisational change policy and raising various other issues including that Mark Chapman had invited staff affected to meetings without offering trade union support and without having a colleague present. Helen Williams replied on 16 February, disagreeing that they had not complied with their organisation policy. In relation to the meetings with affected staff, she wrote there was no requirement at the informal stage to have trade union support but that Mark Chapman had made it clear he was happy to allow union representation at those meetings (647).

34. Mark Chapman was advised by HR, initially Eileen Platt, HR business partner, in relation to the management of change process. The respondent also took legal advice from their solicitors.

35. There was initially considerable confusion at this hearing about what the respondent's relevant policies were at the time of the redundancy process. Helen Williams corrected her witness statement which had referred to a policy which did not come into effect until September 2023 as being the relevant policy. The relevant Organisational Change Policy was, during the hearing, agreed to be one dated May 2018 (3059) with associated guidance of the same date (2748).

36. The guidance included a flowchart for the process to ensure that employees who are at risk of redundancy had priority for vacant posts for which they met the essential criteria. Automatic slotting in referred to slotting in staff whose roles in the new structure were similar enough to those in the old structure. Where there were more people whose roles were similar enough than new roles, staff would be interviewed for competitive slotting into roles. The guidance stated that employees who were slotted into roles did not need to apply or be assessed for the role and that, as it had been determined that the new role was very similar to their own, they would also not be entitled to a four weeks' trial. The guidance said they would hold preferential interviews for alternative roles for employees at risk who were not slotted into new roles. The next step was "advertise remaining vacancies and promotion opportunities (if you have not already done this concurrently to preferential interviews)." There is no mention in the policy or guidance of an 80% threshold for determining slotting in.

37. The claimant agreed in evidence that the new role for which he expressed interest and contended he should be slotted into (the 8b role) was so different that there would not be an 80% match between his redundant role and the new role. He explained that, in his old role, he produced information. In the new role, he would be producing guidance by which NICE was telling people within the NHS what they should do.

38. If the respondent had followed its own written guidance, the claimant would not have been slotted into the 8b role and would have been invited for a preferential interview.

39. I find that, in practice, the slotting in process was not always, if ever, carried out as anticipated in the guidance. The guidance requires the comparison of roles, rather than the assessment of personal qualifications, skills experience and other factors relevant to the individual against the essential requirements of the new role. This is not what was done in the claimant's case.

40. The claimant's evidence was to the effect that it appeared to him, based on his experience as a trade union representative, that the respondent, if they wanted to retain someone, would be flexible in how they achieved this. This included "slotting in" people to roles on occasion without preferential interview, although the roles were not substantially similar and, therefore, under the respondent's 2018 guidance, should have been a case for preferential interview rather than slotting in.

41. The claimant had experience, as a trade union representative, of cases where people were slotted in with an assessment and use of an 80% threshold. The 80% threshold had first been mentioned a few years before the process in 2023. The union had asked HR where this had come from. The claimant understood from the

response that it was an arbitrary threshold chosen by someone in HR, but he did not know who. There were disputes about whether or not someone should be slotted in. One area of discussion was about the use of attendance as a factor in deciding whether to slot in. This is a factor to do with the individual and not a comparison of roles. The grid given by Kevin O'Connor of HR to Mark Chapman and Anastasia Chalkidou to carry out the assessment for potential slotting in of the claimant (705 and 706) contained factors to do with the individual, rather than the redundant role. I find that a custom had developed, contrary to the respondent's own guidance, of deciding whether someone at risk should be slotted into a vacant role, by assessment of that individual against the requirements of the new role and also that individual's disciplinary record and regularity of attendance. I find, on the basis of evidence from Anastasia Chalkidou, that the reference to 20% of the assessment on the form being for interview, applied only where there was more than one person assessed as being suitable for being slotted into a vacant role.

42. The claimant also accepted that there were cases where people at risk were not slotted into vacant roles and had to undertake a preferential interview to decide whether they were to be offered alternative employment. The claimant described a variety of ways in which this process took place, varying from a "chat" with a manager, to a competitive interview. The claimant believed, based on his experience, that some managers manipulated the process to achieve their desired end of retaining an employee or not.

43. I did not hear evidence from any of the HR people who were involved closely in the process at the time and who might have been able to provide evidence about how, in practice, NICE carried out assessments for slotting in and preferential interviews. Although Mark Chapman told me that he received advice on the process from HR in writing, I have not been referred to any such written advice. Helen Williams was, as she said, "super new" when this process was going on and had a high level overview of what was going on, rather than detailed involvement. She was unable to give evidence about practices which diverged from the respondent's own policies. As previously noted, she had to correct her statement which had referred, originally, to the wrong policy as being in place at the time.

44. Kevin O'Connor, who took over from Eileen Platt, in providing advice to Mark Chapman and others on the redundancy and redeployment process, was interviewed in the course of the claimant's grievance and appeal against redundancy. When asked in the grievance interview whether there was a standard format or methodology for the job matching exercise, he said the way in which it was carried out was often by way of custom and practice. He did not seek to correct the investigator when she spoke of the consideration of whether the claimant should be slotted in as concluding that the claimant was insufficiently qualified to meet the criteria based on his experience. This description of the process by the investigator is at odds with the respondent's guidance which speaks of a comparison of job roles. If the investigator was provided with this guidance, she does not appear to have noted the inconsistency between the guidance and what was done in practice. Kevin O'Connor is recorded as saying that the methodology for job matching exercises has varied between managers and departments and that it was often a desktop exercise, during which a manager would review the job specification and decide if **the person concerned** [my emphasis] was an 80% match (1064). Kevin O'Connor confirmed (as did the claimant in evidence) that there were cases where at risk staff had been invited to a preferential interview.

45. In his interview as part of the appeal against redundancy investigation, Kevin O'Connor provided the following explanation for the way in which NICE considers staff for "direct slots" and "suitable alternative roles" (1364). He agreed that the claimant would first have been considered for a "direct slot" and an exercise would have been carried out to determine if he was an 80% match for the particular role. He said, when identifying "suitable alternative roles", the custom and practice was to examine the skills, knowledge and experience of the person concerned.

46. The evidence suggests that the respondent acted in varying ways when faced with possible redeployment.

47. I do not consider the oral evidence of Mark Chapman to be reliable in his recollection of how and when the slotting in assessment was done and the purpose of the scoring exercise he undertook (706). This was contrary to the evidence in his witness statement, to the evidence of other witnesses and to evidence given to the investigations. I find that there was no comparison of roles for slotting in before the assessment done by Mark Chapman based on personal attributes and record of the claimant and that the scoring by Mark Chapman could have resulted in the slotting in of the claimant to the new role without a preferential interview.

48. On 3 March 2023, the claimant was invited to a consultation meeting with Mark Chapman and HR to be held on 9 March. The claimant objected to Eileen Platt being the HR person to be present and the respondent agreed to substitute Kevin O'Connor. The meeting took place on 9 March 2023 with the claimant, his trade union representative, Mark Chapman and Kevin O'Connor. The claimant expressed interest in alternative roles. At this stage, the claimant understood that there were two people, himself and Chris Chesters, essentially in contention for the 8b job. The claimant asked about the interview process if only one applied. He was told that they needed to clarify if there would be an interview and everything would be clearer in the week beginning 20 March (653 and 1027).

49. Expressions of interest had to be submitted by midday on 10 March 2023. The claimant submitted an expression of interest form for the 8b HTA adviser role on 10 March 2023. Chris Chesters decided not to pursue alternative roles with NICE and took redundancy. The claimant was, therefore, the only at risk employee expressing interest in the 8b role.

50. The job description for the 8b role is at page 2743.

51. On 13 March, Mark Chapman forwarded the claimant's expression of interest form to Sarah Byron.

52. On 21 March 2023, Mark Chapman forwarded the expression of interest form to Kevin O'Connor and Eileen Platt, copied to Sarah Byron (2730). He wrote: "please can you advise the next steps for PD, he has shown an expression of interest in the 8b role, Wc 20th was the date to advise, I want to get the next steps. There appears to be some skills gaps we need to identify. Would this be via interview of objective settings." I find, based on what was written by Mark Chapman, that, at this stage, no scoring of the claimant for possible slotting in had been undertaken.

53. Later on 21 March 2023, Mark Chapman emailed Sarah Byron and Anastasia Chalkidou (2732). He wrote: “please see the attached expression of interest for the 8B role within health tech focus IP programme. In my opinion comparing to the knowledge and skills, entitlement to a preferential interview would be appropriate. We have to provide due consideration should there be any gaps that in a period of time i.e. four weeks clear demonstration of ability or working towards would need to be established. I will speak to you directly but the next step would be to schedule the interview.”

54. Later that day, Shana Butterworth, HR business partner, replied to Mark Chapman in the absence of Kevin and Eileen (2745). She attached the 2018 guidance, referring him to page 6 onwards, which deals with redeployment, which the guidance states applies to those employees not slotted into similar roles. It appears from this that Shana Butterworth understood that they were already past the consideration of automatic slotting in. She wrote: “I have advised you it is the hiring manager’s responsibility to assess the application against essential requirements on the JD. You anticipate that Paul will meet the criteria for an interview so I have attached a template interview invite letter.” She wrote that there was no requirement to run the test. She suggested that the interview panel include an independent panel member. She wrote that the criteria to pass a preferential interview was that the candidate met most of the essential criteria and could be trained within a reasonable timescale.

55. I find that no assessment of the claimant for a direct slot had been carried out at this stage.

56. By letter dated 22 March 2023, the claimant was invited for an interview for the 8b role on 30 March 2023 (2765). This was before any scoring of the claimant had been done. The claimant was the only “at risk” candidate for the 8b job.

57. From the agreed chronology, I note that the claimant queried this invitation and requested a further meeting to clarify.

58. The claimant and Lizanne Devenport, UNISON regional organiser, met with Kevin O’Connor on 24 March 2023. From Kevin O’Connor’s email following this meeting (667), the claimant raised various queries, including why the new role was not considered a direct slot and whether a desk-based exercise could have been employed, rather than an interview. Kevin O’Connor wrote that he would be following up with Anastasia that day to ensure that the claimant’s concerns were fully addressed and that he would provide the claimant with an update on Monday afternoon.

59. Kevin O’Connor forwarded the claimant’s letter to Mark Chapman and Anastasia Chalkidou the same day. Mark Chapman provided responses to the claimant’s queries by annotations on the letter (673). In relation to the question about why the new role was not considered a direct slot, Mark Chapman wrote: “I was advised that a preferential interview was the correct procedure to follow, in light of concerns around skills gaps are clearly absent i.e. health economics and or skill that may have atrophied given the length of time since these have been demonstrated in the HTA environment.” In relation to a question about a desk-based exercise, Mark Chapman wrote: “Confidentially there was only one applicant however, as to the above point those experience in the subject are AD/PD feel

there are skills gaps that need assessing. This is not prejudging any outcome. For me personally it the opposite, trying to find a baseline as agreed by off [sic] which we can develop any successful candidate." I understand the reference to AD to be to the associate director, Anastasia Chalkidou and PD to be to Sarah Byron. I find, based on what he wrote, that Mark Chapman had been persuaded by Anastasia Chalkidou and Sarah Byron that the claimant had skills gaps which needed to be assessed by interview before any scoring took place to determine whether the claimant could be slotted into the role.

60. From the agreed chronology, I note that the claimant was off ill on 27 March 2023.

61. The claimant wrote to Kevin O'Connor on 27 March 2023 asking some further questions (675). He included an assertion that the previous MTEP/IP Associate Director, Jo Holden, was slotted directly into the Associate Director role despite having no experience in devices or procedures at all. The claimant wrote that, when he challenged this, he was told that as she had been an Associate Director already, it was appropriate to slot in and not do any interviews, preferential or otherwise, to avoid potential redundancies. None of the respondent's witnesses were able to give any evidence relating to this assertion. The claimant questioned the use of a full test and interview process for the 8b role. He wrote that custom and practice at NICE had been for simple "informal" preferential interviews to be undertaken and questioned why that was not the case here.

62. On 28 March 2023, Chris Rowe wrote to the claimant in the absence of Kevin O'Connor (2020). In relation to the claimant's question as to why the new role was not considered as a direct slot for him, he wrote: "whilst we appreciate that you believe your role meets the criteria for this, there is a concern that there be skills gaps for you in this role, for example, health economics experience and skill that may have atrophied giving the length of time since these have been demonstrated in the HTA environment. The interview will provide details for the senior management team to consider where it might be possible to pull together a development plan for you, to maximise your success in this role. It is not an unusual position to be in and we have used the interview process as part of the selection criteria in NICE before." In relation to the selection panel, he wrote that Sarah Byron was the programme director and it was, therefore, crucial she form part of the selection interview, being accountable for the programme delivery. He wrote that Anastasia Chalkidou would be the line manager of the post and was, therefore, also crucial to the panel.

63. The claimant replied to the letter on the same day (676). He disputed that the letter had answered his questions. He challenged the reference to health economics knowledge being an issue for the role. Other points included challenging why a programme director was on the interview panel. He asserted that the interview process had been decided on specifically for him as he questioned Mark Chapman at the consultation stage and Mark Chapman had said it was undecided whether interviews would take place. The claimant asserted that when the "wrong" people applied, the interview process was invoked. The claimant said there was no explanation as to why the simple one-to-one replacement to avoid redundancy required an interview panel, full written test and a panel with a program director on it. He asserted this was completely out of current and past practice for posts where staff are at risk.

64. According to Mark Chapman's timeline (1080), he first undertook a scoring review on 29 March 2023. His timeline suggests this was done with Anastasia Chalkidou and they agreed scores. However, his witness statement suggests he carried out this scoring (706) alone and that Anastasia Chalkidou later carried out same scoring exercise. In oral evidence, Mark Chapman said the scoring was his alone and he got information from other managers only in relation to attendance and disciplinary record. He confirmed that he did his scoring before Anastasia Chalkidou did her scoring. He said he scored the claimant on the basis of information in the expression of interest and what he had observed. He said he had no issues about how the claimant did his job based on his observation. He was not observing the claimant on a day-to-day basis. He gave claimant a total score of 52 out of a possible 80, which equates to 65%. For qualifications to do the job, he gave the claimant a rating of 3, giving a factor score of six. This represented that the claimant met the required qualification for the post and was continuing to study. For skills/knowledge, he gave the claimant a rating of three, giving a factor score of 18. This represented demonstrating satisfactory performance in the required skills/knowledge. In relation to experience, he gave the claimant a rating of three, giving a factor score of 12. This represented generally meeting job-related experience but falling short in some areas. In relation to disciplinary record, he gave a rating of three, equating to a factor score of six. This represented having a live written warning. In relation to regularity of attendance, he gave a rating of three, giving a factor score of six. This represented either up to 5 days absence in two incidents or 6 to 10 days absence in one incident.

65. Mark Chapman gave evidence that the score for the disciplinary record was because he mistakenly understood, on the basis of information from other managers, that the claimant had been subjected to disciplinary action in the past.

66. Although the form requires assessment notes to be attached to the form, there are no assessment notes completed by Mark Chapman with this form.

67. On 31 March 2023, the claimant was invited again to preferential interview for the 8b role to take place on 4 April 2023.

68. On 4 April 2023, instead of the interview taking place, the claimant attended a meeting with his trade union representative, Mark Chapman and Kevin O'Connor. During this meeting, Mark Chapman shared his screen to show the claimant the scores he had given him. These were sent to the claimant after the meeting. The claimant queried that he had been marked down on disciplinary record. I have not seen any contemporaneous notes of the meeting although I would have expected some to be taken by HR. Based on the claimant's subsequent grievance, I find that, during the meeting, Mark Chapman said that he wanted an interview for the role. I make no finding as to whether Mark Chapman added that he wanted this regardless of policies or scoring for the role because it is unclear from what the claimant has written whether this is asserted as something said by Mark Chapman or whether this is the claimant's comment. Kevin O'Connor said that the claimant would need to meet 80% to be slotted in. The claimant said that he would never hit the percentage to get the job.

69. Following the meeting, Kevin O'Connor asked Anastasia Chalkidou to redo the scoring. She sent him the scoring which appears at page 705. He then asked her

to provide further detail as to how she had come to this assessment and she provided the document which appears starting at page 696.

70. Anastasia Chalkidou gave the claimant the same scores as Mark Chapman had given for skills/knowledge, experience and regularity of attendance. She increased the disciplinary record score to 10, indicating no disciplinary record. She increased the score for qualifications to do the job to 8, based on a rating of four, which meant the claimant had been assessed as meeting the required qualifications for the post. Her total score was 56/80, which would equate to a percentage of 70.

71. In the document (696), Anastasia Chalkidou provided comments on the claimant's experience against the job description responsibilities. She did not rate him against the essential criteria of the person specification. Most comments referred to the claimant having limited experience working on guidance development topics at an adviser level. She identified as a development need, the claimant's ability to communicate and engage with other stakeholders in often high stakes/high conflict, and volatile situations. She referred to the claimant receiving professional coaching tailored to improve his communication style and managing conflict. She referred to this being agreed as an action following "his below expectations professional conduct on that matter during Part 2 of the Medical Technologies Advisory Committee (December 2021) and his approach when dealing with issues related to the Wound Care Strategy Programme an NHSE England stakeholder for wound-care related guidance."

72. Anastasia Chalkidou gave evidence that she understood that the paper assessment could result in the claimant being slotted in without an interview and she understood that the interview section was there in case there was more than one candidate for the job.

73. For the claimant to have a score of 80% of the assessment criteria, leaving aside the interview, he would have to score at least 64, which would require being scored as exceeding most of the requirements. The 2018 guidance (2748), stated that employees at risk of redundancy had priority for vacant posts for which they met the essential criteria. It did not require them to exceed them.

74. On 6 April 2023, Kevin O'Connor wrote to the claimant, following up on the discussion on 4 April (695). In response to the question as to how the decision had been arrived at that the claimant's role needed to meet the criteria for direct slot, he attached information from Anastasia Chalkidou on how the decision had been reached. Concerning people the claimant had raised queries about, asking if they were direct slots, he wrote: "I can see from their files each person went through the same process we have had in place for a direct slot, where the recruiting manager has been asked to assess if the roles were direct slot. I can see that on one occasion he raised, the role was not a direct slot, and they were subject to an interview." He proposed a rearranged interview on 20 April 2023. He wrote that the vacancy needed to be filled and that if the claimant was unable to attend this interview, they may need to commence open recruitment and allow others to apply for the role before he had been given the opportunity to be appointed as a redeployment candidate.

75. On 19 April 2023, the claimant presented a grievance against Mark Chapman (976). He alleged that Mark Chapman had victimised him as a trade union official. The grievance included an allegation that, at a meeting with Kim Carter, a UNISON representative, during the management of change discussions, Mark Chapman stated "Paul Dimmock does too much work for UNISON". He alleged that requiring him to attend an interview for the 8b role was a setup to deliberately not slot him into a role he could easily fill because of Mark Chapman's bias against him due to his trade union activities. He referred to there being a clear previous history of managers insisting on interviews for at risk staff to avoid slotting in staff they did not like in a biased and potentially discriminatory way. He wrote that he suspected what was planned was an interview where he supposedly would not give satisfactory answers based on biased views from the panel selected/briefed by Mark Chapman, and he would, therefore, be deemed unsuitable for the role. He wrote that, based on Dr Chalkidou's current biased assessment, he could only score 72% if he had a perfect interview score so it still would not meet their arbitrary cut-off of 80% for a slot in. He questioned the point of an interview "other than to try and gerrymander a process to defend Mr Chapman's obvious bias against me for my trade union activities". In relation to Anastasia Chalkidou's narrative assessment (962), he wrote that almost all the entries were based on the fact that he had not worked on guidance for the past five years whilst working on NICE advice outputs. He wrote that he had worked extensively on guidance outputs before that and nowhere did it say that his experience needed to have been in the last five years. He wrote that he had worked alongside colleagues producing guidance and had regularly advised and commented on issues about ongoing guidance, many times to Anastasia Chalkidou herself. In relation to health economics, he required an explanation as to how this would prevent him from working in a role that currently required no health economics experience. The claimant alleged that Mr Chapman was unable to differentiate from him representing staff and him as a member of staff which had resulted in Mr Chapman now conducting an organised campaign against him due to his trade union activities.

76. The respondent agreed to maintain the status quo until the outcome of the grievance. The 8b HTA adviser post in health tech was, therefore, to remain ring fenced for the claimant so he could be either slotted into it or interviewed for it, depending on the outcome of the grievance.

77. In April and May 2023, the claimant attempted unsuccessfully to get some guidance experience. The claimant has not satisfied me that Anastasia Chalkidou deliberately prevented him getting this experience.

78. The respondent provided the claimant with details of various vacancies which the claimant considered unsuitable. The respondent does not assert that there were any suitable vacancies for which the claimant chose not to apply.

79. Between 27 April and 17 May 2023, the claimant and Helen Williams discussed informal resolution of the claimant's grievance but did not reach resolution.

80. The respondent appointed an external investigator, Yvonne Akinmodun, head of HR at HFEA, to conduct a grievance investigation. The terms of reference appear at page 1024. Yvonne Akinmodun held a series of grievance investigation

meetings including meetings with the claimant, Kevin O'Connor, Mark Chapman, Sarah Byron and Anastasia Chalkidou.

81. Following her interview, Sarah Byron provided her comments on the reasoning of Anastasia Chalkidou for the paper based assessment done for the 8b role and the comments the claimant had provided on these comments (964). In relation to what Anastasia Chalkidou had written about the claimant's conduct at the 15 December 2021 meeting, Sarah Byron wrote: "With respect to the conduct matter, there was a verbal warning and I can provide more context and details if needed". This statement was incorrect in that there had been no disciplinary sanction.

82. Yvonne Akinmodum also interviewed Kim Carter, a UNISON steward who worked in the same team as the claimant. The claimant had alleged that Mark Chapman had said in a meeting with Kim Carter, that "Paul Dimmock does too much work for UNISON". Kim Carter could not recall Mark Chapman's exact words but said that he had suggested the claimant undertook a great deal of work for the union. I find that Mark Chapman said words to this effect. The claimant was not present when the alleged remark was made. The claimant has not satisfied me that Mark Chapman said: "Paul Dimmock does too much work for UNISON".

83. On 12 July 2023, Yvonne Akinmodun completed her investigation report (1081). The investigator concluded that there was insufficient evidence to support the claimant's allegations. She recommended that a preferential interview take place.

84. The grievance hearing was held on 1 August 2023 with Boryana Stambolova. The claimant has criticisms of this hearing. Two hours were allowed for the hearing rather than the three which had been requested by the claimant. A portion of this was taken up by the claimant reading out his grievance as required by Boryana Stambolova. Boryana Stambolova asked no questions. The claimant has not satisfied me that Boryana Stambolova made comments in the hearing which could reasonably be understood as being anti-trade union. If she did say that she knew nothing about trade unions and said the claimant had a lot of things to say, the claimant has not satisfied me these were anti-trade union comments.

85. The grievance outcome was sent to the claimant on 11 August 2023 (1152). The grievance was not upheld. The grievance officer concluded that there was no evidence to support the claimant's assertion that the claimant was discriminated against because of his trade union activity. The grievance officer referred to the respondent's guidance on automatic slotting in. She correctly referred to that as requiring that, for slotting in, the role in the new structure must be similar enough to the role in the old structure. She wrote that the new role had a different scope, making it not "similar enough" to his current job to qualify for an automatic slotting in. She wrote that it was her conclusion, based on that guide, that the claimant was not eligible for automatic slotting but was eligible for a preferential interview for an alternative role. She accepted that the organisational change policy and supplementary materials were not sufficiently clear on key elements of the selection process but concluded that the same process had been applied consistently for all employees affected by the organisational change. She wrote that, on that basis, she was unable to uphold the claimant's allegation that he was not slotted into a role because of bias against him due to his trade union activities, but rather he could not been slotted in due to the disparate nature of the two roles.

This outcome did not identify that the scoring exercise which had been done was not comparing the two roles, as required by the guidance, but was scoring the claimant against the requirements of the new role. No reference was made to custom and practice diverging from what was required by the guidance, as had been described by Kevin O'Connor in his interview as part of the grievance investigation process.

86. The claimant appealed against the outcome of grievance on 18 August 2023 (1171 and 1179).

87. The respondent agreed to keep the 8b adviser role on hold for the claimant pending the outcome of the appeal.

88. The grievance appeal hearing took place on 20 September 2023 chaired by Paul Chrisp. The appeal was not conducted as a rehearing of the grievance.

89. Prior to the grievance appeal hearing, the claimant had applied for a Senior Analyst 8a Health Technologies post which had been brought to his attention by Chris Rowe. This was a more junior role than the 8b role but pay protection would have applied had the claimant been successful in securing the role. The claimant had an interview for this role on 3 October 2023. The panel was Amy Crossley, the hiring manager, Sarah Byron and Farhan Ismail. The claimant considered it unusual to have someone senior as the programme director (Sarah Byron) on the panel for this level of role. I accept the claimant's evidence that he had been told by an earlier programme director, Mirella Marlow, at an earlier time, that the most senior person on an interview panel was the decision maker on recruitment. Amy Crossley was more junior to Sarah Byron. The claimant would have needed to score at least 2s or 3s on questions testing the essential criteria to be appointed in the preferential interview. 3 represented meeting the required standard. 2 represented a development area, below the required standard, but such a score would not prevent recruitment if the panel considered, with training, the claimant was likely to reach the required standard within a reasonable time. A score of 1 means significantly below requirement/risk. None of the panel members scored the claimant higher than 2 for any questions. Sarah Byron gave him 4 2s and 6 1s, a total of 14/50. Farhan Ismail gave him 8 2s and 2 1s, a total of 18/50. Amy Crossley gave him 5 2s and 5 1s, a total of 15/50. His written test score as recorded on Amy Crossley's sheet was 15/31. According to the template, 25% of marks were for the test and 75% for the interview.

90. The claimant was informed in writing on 6 October 2023 that he had been unsuccessful at interview for the 8a role. He requested feedback. This was provided on 25 October 2023 (875).

91. The claimant was sent the outcome of the grievance appeal on 9 October 2023 (1290). Paul Chrisp upheld one element of the appeal, that the grievance outcome was not specific about ensuring that the redeployment procedure would operate fairly for the claimant in his search for suitable alternative employment. He did not uphold other elements of the appeal. However, he accepted there was a genuine lack of clarity and consistency in the application of the procedures related to redeployment. He made recommendations for certain measures to be included in the relaunched management of change policies and procedures which he noted were currently under review.

92. The claimant was invited to an interview for the 8b role on 6 November 2023. By this stage, there were four 8b roles to be filled. One permanent role was ring fenced for the claimant, if he was considered appointable by the interview panel. Sarah Byron told me that the other three roles were maternity cover appointments. However, Kevin O'Connor's interview in the grievance (1051) referred to the original post being increased to 2 at the request of Anastasia Chalkidou, making no mention of the second post not being a permanent role. Either one or two of the roles were permanent and two or three were maternity cover. The maternity cover roles had become available before the interview. The roles had been advertised internally. The claimant had not been required to apply again. Six other people were shortlisted for the roles but two dropped out before interview. None of the other candidates were redeployees. The claimant and three of the shortlisted candidates were interviewed on 6 November 2023. The claimant was interviewed first at 10 a.m. The next candidate was interviewed at 12 noon and two others that afternoon. One candidate was interviewed on 8 November 2023. I accept the evidence of Sarah Byron that the panel decided not to appoint the claimant before they interviewed the other candidates. However, the panel had read the applications for all candidates before the claimant was interviewed.

93. The panel for the claimant's interview consisted of Sarah Byron, programme director, Anastasia Chalkidou, associate director, Farhan Ismail, the independent panel member, and Kevin O'Connor from HR.

94. The claimant was on sick leave when interviewed. I accept his evidence that he did not feel well on the day of the interview. He did not ask for a postponement of the interview or tell the panel members that he was not feeling well. I find that Anastasia Chalkidou, as his manager, was aware he was on sick leave. However, I do not find that this is sufficient, by itself, to be able to find that the panel members were aware, or should have been aware, that he was not fit enough to be interviewed.

95. The claimant accepted in evidence that he performed poorly in the interview.

96. None of the panel scored the claimant higher than 2 on any questions. Sarah Byron scored the claimant 11.5/50 with only one score of 2. Anastasia Chalkidou scored the claimant 10/50 with scores of 1 for every question. Farhan Ismail scored the claimant 14/50 with a mixture of 2s and 1s. Kevin O'Connor scored the claimant 17/50 with mostly 2s and 3 1s. The claimant's test score (which was to be 25%) was 8/10 (936).

97. It appears from the summary sheets that were provided to Mr Vydyanath for the redundancy appeal, that the other four candidates were interviewed by Anastasia Chalkidou, Sarah Byron and Farhan Ismail, but Kevin O'Connor was not on the panel for their interviews.

98. The interview sheets contain a section for candidates' response. As well as recording the response, Anastasia Chalkidou's scoring for the claimant included comments on "gaps". Her comments on other candidates are, in general, much briefer and, even when they score 2 or lower (e.g. 1.5 to question 7 for one candidate p.2157) do not identify any "gaps". In some cases, there is no answer recorded, although the candidates are given scores of 2 or above (2157, 2183).

99. Whereas the independent panel member's scores for the claimant were higher than those of Sarah Byron and Anastasia Chalkidou, his scores for the other candidates were often lower and rarely higher than those of Sarah Byron and Anastasia Chalkidou (see summary sheets for each of the four candidates showing each of the interviewers' scores pp 2255-2354).

100. The claimant attended a formal redundancy meeting on 8 November 2023 with Anastasi Chalkidou and Kevin O'Connor (938). The claimant was accompanied by a trade union representative. The claimant was informed that he had not been appointed to the 8b role. He asked for written feedback and scores from the interview. He was informed of his right of appeal. He was given 12 weeks' notice to expire on 31 January 2024. It was confirmed that the claimant was still on the redeployment register.

101. The claimant was sent a letter confirming his notice of termination for redundancy on 9 November 2023 (942).

102. The claimant was provided with reasons for not appointing him to the 8b role on 14 November 2023 (948).

103. The claimant appealed against his redundancy by letter dated 21 November 2023 (1301). These grounds were:

> "1. That Paul has been the subject of victimisation on the basis of his Trade Union activity throughout the organisational change process which has placed him at risk of redundancy, as documented in a grievance submitted to NICE on 19th April 2023.
>
> "2. That recommendations from the outcome of that grievance, and identified shortcomings in the process, have not been addressed subsequently which has placed Paul at a disadvantage in the organisational change process.
>
> "3. That NICE have failed to slot Paul into the role of HTA Advisor, despite the clear similarities between this role and his own, disestablished role.
>
> "4. That NICE have subsequently failed to appoint Paul to the HTA advisor (8b) role as suitable alternative employment, or to provide him with the opportunity of a trial period in this role.
>
> "5. That NICE have subsequently failed to appoint Paul to the Senior Technical Analyst (8a) role as suitable alternative employment, or to provide him with the opportunity of a trial period in this role.
>
> "6. That NICE failed to provide Paul with the opportunity for either appointment to, an interview for, or a trial in, the role of Analyst, which Paul identified as potential suitable alternative employment."

104. The claimant's employment ended on 31 January 2024, before his appeal was heard.

105. Raghunath Vydyanath, Chief Information Officer with NICE since joining the organisation in October 2023, was appointed to hear the appeal. He decided, after getting advice from HR, to appoint an external investigator. Andrew Hodge, a former solicitor, was engaged to carry out the investigation. Terms of reference were provided to Andrew Hodge on 5 January 2024 (1319). Andrew Hodge carried out a number of interviews and wrote a very detailed investigation report (1321).

106. Mr Vydyanath considered, after receiving the report, there were areas in which he needed clarification or further information from Andrew Hodge. The appeal hearing, which was scheduled at that time for 15 March 2024, was postponed so these further enquiries could be made. Andrew Hodge provided answers to Mr Vydyanath's questions on 23 April 2024 (2069).

107. The investigation report noted the scope of the appeal; it was not for the appeal process to substitute its own views for those of the original decision maker. The appeal would consider whether there was new evidence which ought reasonably to change the previous decision or whether the previous decision was considered perverse. Andrew Hodge recorded that he was not invited to reconsider the grievance and grievance appeal decisions, which he noted was usual. The report noted that one of the roles the claimant alleged he should have been slotted into or offered after preferential interview, was the subject of the claimant's grievance and had been considered in that context, so Andrew Hodge did not reopen that (1333).

108. Andrew Hodge commented, in relation to interview scores (1336):

> "As a layman, in NICE terms, it is difficult for me to tell whether the answers given by PD justify such low scores. PD has worked at NICE at a reasonably senior level for around 10 years and, so far as I am aware, there have been no formal performance management interventions to suggest that he lacks competence. Yet a score of 1 (for example) indicates that the candidate for a role would represent a risk to the organisation if appointed to the relevant role. In PD's case, answers may well have been superficial, but did not strike me (again as a layman) as entirely adrift from model answers." Andrew Hodge did not have access to the answers and scores of other candidates. HR subsequently provided Mr Vydyanath with the scoring of other candidates as well as the claimant for the 8b role.

109. Andrew Hodge also wrote (1337):

> "As a layman and a NICE outsider, there is a limit to how far I can look behind either the interview documentation or witness evidence on this. However, as I have indicated, it is interesting that a well qualified and respected scientist/technician with a decade of service at NICE managed such low scores at interview. Some witnesses who know PD reasonably well (e.g. MC and SP) have wondered whether this reflects the nature of the role that PD is being made redundant from. As I understand it, this has been focused on compiling/producing useful summary information on innovations in the market that NICE has become aware of. It is then used to create a sort of library of potential new products and systems. As I understand it, the team involved was small and relatively freestanding. In this work there has been less need or scope for economic analysis, influencing committees or

> navigating governance issues than would be the case in mainstream guidance work. So, there may (in the view of these managers) be some question of PD's skills having somewhat atrophied over time."

110. Andrew Hodge wrote further (1338):

> "I am also aware that, in the context of reservations expressed about his health economics analytical skills in the redeployment process, PD expressed his willingness to go on a refresher course on health economics at, for example, the University of York… His point was that he had past experience of Health Economics and if skills atrophy, or simply being a little out of date in that area, was an objection to his appointment, it could easily be remedied by a refresher course. The redeployment process is required to consider the possibility of retraining and a trial period in order to fit candidates like PD for the roles that they are recruiting to."

111. Andrew Hodge wrote (1344) that it was undisputed that industrial relations at NICE had been through a difficult period and PD was believed by NICE management to have contributed to that. "On a balance of probabilities, I do not believe that NICE management are inherently biased against Unison and/or its officials (including PD). Nor do I think there is a desire to victimise PD as such. However, there has clearly been a certain wariness about PD's role which may have had some influence on decisions about him, including (possibly) redeployment."

112. In paragraph 12.10 he wrote that he detected that there was some danger of PD's approach to his trade union role being conflated with his approach to his professional role in assessors' minds. He wrote (1346): "my judgement is that there may well have been some reluctance to appoint PD, but I cannot be sure (even on the balance of probabilities), of the extent to which PD's trade union role played a part in this, if at all."

113. He wrote in paragraph 12.11 that he had not been able to entirely rule out the possibility that PD's persistently poor outcomes in the redeployment process reflected some bias against him.

114. Andrew Hodge set out in paragraph 12.12 (1346) why it might be reasonable to reject the appeal, essentially that the claimant had been unsuccessful in all of his attempts at securing redeployment because he had performed poorly at interview.

115. In paragraph 12.13, he wrote:

> "The case for upholding the appeal is that, while most of the argument in 12.12 above holds water, a pattern of PD attaining very low marks in the interviews and the consistent (but by no means exclusive) focus on communication, influencing and conflict management skills is notable. This may simply indicate that, as assessed at interviews, PD is not very good at these things. But it could also indicate that PD is expected or assumed to be bad at these things (even if only unconsciously) that this influences his scoring and therefore his access to redeployment. It is possible (I put it no higher than that) that if this is the case it reflects his performance as a NICE

> professional and, to some extent, perceptions of him as an assertive and sometimes obstructive trade unionist at a time of significant industrial relations difficulties at NICE. Of course, it would be possible to test PD's performance in these areas through a trial period but that did not happen. If the appeal manager believes that PD's reputation and approach as a trade unionist has affected judgements about his ability to make a contribution through the roles he was considered for, then that would point in the direction of allowing the appeal."

116. The redundancy appeal hearing took place on 3 May 2024 (2078).

117. The outcome of the appeal was provided to the claimant on 20 June 2024 (2360).

118. The appeal was not upheld. Mr Vydyanath concluded that the 8b role was not a direct slot for the claimant but available for him to apply for it and, based on the interview, it was not suitable for him. He was satisfied that he was provided with a fair opportunity to be considered for the 8a role but he did not reach the required standard at interview. Mr Vydyanath concluded that there was no bias against the claimant or desire to victimise him. He considered that there was no evidence that any of the panel members deliberately gave him low scores.

119. The claimant engaged in ACAS early conciliation between January 16 and 16 February 2024. He presented his claim to the Tribunal on 15 March 2024.

120. In March 2023, there was also organisational change affecting employees working on the MAAS project. Documentation in relation to this was disclosed late, without explanation, during the course of this hearing, although the claimant had been raising issues about comparative treatment of these employees for a considerable time. These documents were added to the hearing bundle starting at p.3073. These documents indicate that the situation is not quite as Mark Chapman recalled, when he gave evidence prior to the production of these documents. He had recalled that further funding was found and the employees were effectively reinstated. The documents, however, indicate that employees were slotted into new roles. The letters indicate that this was done on the basis of an expressed match of at least 80% between the post holder's substantive role and the proposed suitable alternative role. Some of the affected employees are recorded as expressing doubt as to whether they had the skills and knowledge to perform the new roles, casting some doubt on the 80% matching roles assessment.

121. Mangala Murali was slotted into an alternative administrative role that became available. I accept the respondent's evidence that these administrative roles are of a fairly generic nature.

122. Sometime in August/September 2023, the claimant alleges that a senior manager, Hilary Baker, said to a NICE UNISON member, that a lot of managers at NICE would be pleased when the claimant left NICE. This was not said directly to the claimant. The claimant raised this in a letter to Paul Chrisp dated 19 September 2023 (1272). I find that the claimant was told this and find that something along these lines was said by that senior manager.

Submissions

123. The claimant and Mr Williams provided written submissions. Mr Williams also made fairly brief oral submissions. The claimant was given an opportunity to make oral submissions but did not wish to add anything to what he had written.

Law

Protected disclosures ("whistleblowing")

124. What constitutes a protected disclosure is defined by sections 43A to 43H ERA. Section 43A provides: "In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

125. The potentially relevant parts of section 43B, as identified in the list of complaints and issues, are as follows:

> "(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –
>
> ……
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> ……."

126. It is agreed in this case that the alleged disclosure was made to the claimant's employer, so section 43C is relevant.

127. For there to be a disclosure of information, a statement must have "sufficient factual content and specificity" to be capable of showing a relevant failure: **Kilraine v London Borough of Wandsworth** [2018] EWCA Civ 1436.

128. In **Babula v Waltham Forest College** [2007] ICR 1026, the Court of Appeal held that an employee who informed the police and other enforcement agencies that he believed that an act of racial hatred had been committed could rely on the protection of the whistleblowing provisions to argue that his dismissal was automatically unfair, even though his belief was mistaken. The Court held that a belief may be reasonably held and yet be wrong.

129. In **Chesterton Global Ltd (t/a Chestertons) v Nurmohamed** [2017] EWCA Civ 979, the Court of Appeal gave the following guidance in relation to the public interest test. The Tribunal must determine:

129.1. Whether the worker subjectively believed at the time that the disclosure was in the public interest; and

129.2. If so, whether that belief was objectively reasonable.

Detrimental treatment on the grounds of making a protected disclosure

130. Section 47B(1) ERA provides: “A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.”

131. The claimant must prove, on a balance of probabilities, the facts on which they rely. The claimant must, therefore, prove that they made a protected disclosure and that they suffered the alleged detrimental treatment.

132. If the claimant proves these facts, s.48(2) ERA provides that:

> “On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.”

133. The employer must show that the protected disclosure did not materially (in the sense of more than trivially) influence the employer’s treatment of the claimant: **Fecitt v NHS Manchester (Public Concern at Work Intervening)** 2012 ICR 372 CA.

134. If the respondent does not prove an admissible reason for the treatment, the Tribunal is entitled, but not obliged, to infer that the detriment was done on the grounds that the worker made a protected disclosure: **Ibekwe v Sussex Partnership NHS Foundation Trust UKEAT/0072/14.**

s.103A Unfair dismissal

135. Section 103A ERA provides:

> "An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

136. Sections 105(1) and (6A) ERA make a dismissal automatically unfair where an employee has been selected for redundancy because of making a protected disclosure.

Trade union detriment

137. Section 146(1) TULRCA provides:

> "(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 empoyer 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."

138. Subsection (2) defines "an appropriate time". There is no issue in this case as to whether the claimant, when he carried out his trade union activities, was doing so at an appropriate time, so there is no need to set out this definition.

139. Section 148(1) TULRCA provides:

> "On a complaint under section 146 it shall be for the employer to show what was the sole or main purpose for which he acted or failed to act."

140. In **Yewdall v Secretary of State for Work and Pensions UKEAT/0071/05,** the EAT clarified that the burden of proof operates as follows:

140.1. The initial burden is on the claimant to make a prima facie case of unlawful detriment on union activities or union services grounds.

140.2. If the claimant does so, then the burden passes to the respondent.

Trade union automatic unfair dismissal

141. Section 152(1) TULRCA provides:

> "For purposes of Part X of the Employment Rights Act 1996 (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee –

……

(b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time,…."

142. Subsection (2) defines "an appropriate time". As for the detriment complaints, since there is no issue as to whether the claimant, when he carried out his trade union activities, was doing so at an appropriate time, so there is no need to set out this definition.

"Ordinary" unfair dismissal

143. The law in relation to unfair dismissal is contained in ERA. Section 94(1) provides that an employee has the right not to be unfairly dismissed by his employer. The fairness or unfairness of the dismissal is determined by application of Section 98. Section 98(1) provides that, in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason for dismissal and, if more than one, the principal one, and that it is a reason falling within Section 98(2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. Redundancy is one of these potentially fair reasons for dismissal.

144. Section 98(4) provides that where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair, having regard to the reason shown by the employer, depends on whether, in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissal and this is to be determined in accordance with equity and the substantial merits of the case. In considering the reasonableness or unreasonableness of the dismissal the Tribunal must consider whether the procedure followed and the decision to dismiss were within the band of reasonable responses. The burden of proof is neutral in deciding on reasonableness.

145. **Williams v Compair Maxam Ltd [1982] IRLR 83 EAT** set out various factors to be considered in determining whether a dismissal for reason of redundancy was fair or unfair. These factors included what the employer had done to see whether, instead of dismissing the employee, he could offer him alternative employment.

Conclusions

Whether the claimant made a protected disclosure

146. I consider this first because, if the claimant did not make a protected disclosure, then his s.103A ERA unfair dismissal complaint and his complaints of detrimental treatment on the grounds of making a protective disclosure must fail.

147. The alleged disclosure is that, at a meeting on 10 December 2021, the claimant said: "I feel that we're making the wrong decision because we're being biased by allowing a special interest group to make a full presentation to the committee."

148. There was no contemporaneous note made by the claimant or anyone else as to what he said when intervening at the meeting. I have not been able to make a finding as to exactly what words were used but found that the claimant had a concern about Una Adderley having a conflict of interest and his comment in some way related to this concern and her having been allowed to address the committee in the first part of the meeting. The claimant did not consider himself to be whistleblowing at the time.

149. I conclude that the claimant was disclosing information that Una Adderley had a conflict of interest and that she should not have been allowed to address the committee.

150. I accept that the claimant believed that there was some breach of process in allowing Una Adderley to address the committee. However, the claimant has not satisfied me that he had a belief at the time that the information he was disclosing tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation to which they were subject. The claimant referred in closing submissions for the first time to the National Institute for Health and Care Excellence (Constitution and Functions) and the Health and Social Care Information Centre (Functions) Regulations 2013, without identifying any particular part of those regulations on which he relies. I have not considered it appropriate to do independent research on these regulations to try to establish whether any regulation might be relevant. If I did so, as a matter of fairness, I consider I would need to invite further submissions from the parties. I do not consider it a proportionate use of Tribunal resources and the time and cost to the parties to do so. Since the claimant has not mentioned these regulations before, I consider it unlikely that he had them in mind at the time.

151. The claimant was more likely to have been familiar with NICE's own whistleblowing policy, to which he referred a number of times during the hearing. Paragraph 29 of this policy says "disclosures of information where you reasonably believe that there has been a breach of NICE's policy on Declaring and Managing Interests may not constitute qualifying disclosures under PIDA as they may not show a breach of the law. It would be unlikely this would come within the definition of a protected disclosure under the Act." Although the policy goes on to say that NICE will treat an allegation of a breach of this policy as subject to the same protections as an allegation of a breach of a legal obligation, this cannot turn what is not a legal obligation into a legal obligation. This policy cannot have caused the claimant to understand that, if he was disclosing information about an alleged breach of NICE's policy on declaring interests, he was alleging a breach of a legal obligation.

152. The words in the allegation, or what I have found the claimant raised, in any event, does not with any specificity allege that the respondent or Una Adderley had breached procedures in relation to the declaration of conflicts of interest.

153. Since I conclude that the claimant did not disclose information which, in his reasonable belief, tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation to which they were subject, I conclude that he did not make a protected disclosure on 15 December 2021.

154. I would have concluded that the claimant had a reasonable belief that raising the matter was in the public interest, because he wanted the right decisions, in accordance with correct processes, to be made. This would be in the interests of public health.

Section 103A ERA unfair dismissal (whistleblowing)

155. Since I have concluded the claimant did not make a protected disclosure, this complaint must fail.

156. If I had concluded that the claimant had made a protected disclosure (which I have not), this complaint would still have failed. Such a complaint can only succeed if the sole or principal reason for dismissal was that the claimant had made a protected disclosure. The claimant accepts that this was a genuine redundancy situation and that his post was being removed as a result of this situation. I conclude that the sole or principal reason for his dismissal was redundancy. The sole or principal reason for dismissal was not because the claimant made a protected disclosure. This complaint would, therefore, have failed for this reason, even if the claimant had made a protected disclosure.

157. This is not a case where the claimant is arguing he was selected for redundancy because of making a protected disclosure. Sections 105(1) and (6A) ERA, which make a dismissal automatically unfair where an employee has been selected for redundancy because of making a protected disclosure, do not, therefore, apply.

Protected disclosure detriment complaints

158. The complaint about failing to offer the claimant an interview for a band 7 role has been withdrawn (3.3.5). This complaint is dismissed on withdrawal.

159. Since I have concluded the claimant did not make a protected disclosure, the remaining complaints of detrimental treatment must fail. These are the only complaints brought against the individual respondents, Mark Chapman and Sarah Byron, as well as against NICE.

160. I will deal with what I would have concluded as to whether detrimental treatment occurred, as alleged, in relation to the alleged detrimental treatment when I deal with complaints of trade union detriment, since the detrimental treatment relied on is the same.

161. For the reasons I give below, complaints 3.3.1 (requiring him to go through a competitive interview process), 3.3.4 (ignoring his objections to Sarah Byron and Anastasia Chalkidou being on the assessment panels) and 3.3.6 (engineering a redundancy situation to remove him from the organisation) would have failed on the basis that the claimant had not proved the facts relied upon.

162. I conclude, for reasons given below, that the claimant was subjected to detrimental treatment as alleged in: 3.3.2 (wrongly stating he had a disciplinary record during the redundancy process); and 3.3.3 (refusing to allow him a trial period in so far as this relates to the 8b role).

163. If I had concluded that the claimant had made a protected disclosure on 15 December 2021, I would have concluded that the burden passed to the respondents to satisfy me that the respondents' actions were in no sense whatsoever because of the protected disclosure. The references to that incident, wrongly described initially as something giving rise to disciplinary action, are enough to suggest that this may have impacted on the respondents' actions in relation to the redeployment exercise. The respondents would not have satisfied me that their actions were in no sense whatsoever because of the protected disclosure. I did not find the respondents' witnesses' evidence persuasive that the claimant was assessed purely on his merits as to whether he met the essential requirements of the new job, or could have done so within a reasonable period with support and training rather than influenced by what the claimant did on 15 December 2021. If there had been a protected disclosure by what the claimant said on 15 December 2021, I would have concluded that the complaints of detrimental treatment in relation to complaints 3.3.2 and 3.3.3 were well founded.

164. However, because I concluded that there was no protected disclosure, these complaints fail.

Trade union detriment complaints

165. It is common ground that the claimant was a trade union member and representative. He represented members in the achievement of a vote in late 2022 for industrial action which took place in January 2023. He participated, from February 2023, in discussions with management about the management of change process. He represented members in various ways. There is no live issue about whether, when he carried out his trade union activities, he was doing so at an appropriate time.

Unfair dismissal contrary to section 152(1)(a) TULRCA

166. I have concluded that the sole or principal reason for dismissal was redundancy. The sole or principal reason for dismissal is not prohibited trade union grounds. This complaint, therefore, fails.

Trade union detriment complaints

167. The complaint about failing to offer the claimant an interview for a band 7 role has been withdrawn (4.2.5). This complaint is dismissed on withdrawal. I will consider each of the remaining complaints in turn.

4.2.1 *That the claimant was required to go through a competitive interview process for alternative roles, including with applicants who were not at risk of redundancy*

168. The claimant was not required to go through a competitive interview process. As someone at risk of redundancy, he was offered preferential interviews. The claimant was interviewed and assessed and a decision taken to appoint, prior to any other candidate being interviewed. If he had been assessed as meeting the essential requirements of the job, he would have been offered the post which would no longer have been available to other candidates.

169. This complaint, therefore, fails on the basis of the facts not being as suggested in this allegation.

4.2.2 *The Third Respondent wrongly stated that he had a disciplinary record during the redundancy selection process*

170. Mark Chapman, in his scoring in March 2023 (706), wrongly marked the claimant as if he had received a written warning when the claimant had received no disciplinary sanction. This was based on information provided by Anastasia Chalkidou and/or Sarah Byron.

171. Sarah Byron wrote, in a document prepared as part of the grievance investigation (967): "With respect to the conduct matter, there was a verbal warning and I can provide more context and details if needed". This statement was incorrect in that there had been no disciplinary sanction.

172. I conclude that the claimant was subjected to detrimental treatment by having it incorrectly suggested by Mark Chapman that he had received a disciplinary warning whilst he had a clean disciplinary record. The error in the scoring was corrected within a few days, but the claimant had already suffered detrimental treatment which could not be erased, the claimant having been informed of this scoring in the meeting with Mark Chapman.

173. I conclude that the claimant was again subjected to detrimental treatment by Sarah Byron incorrectly writing that he had received a verbal warning.

174. There is an initial burden on the claimant to make a prima facie case of unlawful detriment on union activities or union services grounds. The treatment is overtly linked to the claimant's actions at the meeting on 15 December 2021. The claimant was not attending that meeting in his trade union capacity. Whilst his trade union role may have given him the confidence and a feeling that he should speak up when he thought others too fearful to do so, this does not mean he was taking part in the activities of a trade union at the time. I conclude that the claimant has not established a prima facie case that the acts of Mark Chapman and Sarah Byron in wrongly stating he had a disciplinary record were committed for a purpose prescribed by s.146 TULRCA.

175. For these reasons, this complaint fails.

4.2.3 *The Third Respondent refused to allow the claimant a trial period in any of the alternative roles which he applied for*

176. The respondent did not offer the claimant any alternative employment. Had it done so, there would have been a trial period under the statutory scheme. The respondent and the claimant could have agreed a longer trial period than the default 4 week period for the purposes of training, if the respondent had considered the claimant did not currently meet the requirements for the role but could do so with training. The respondent's case is that they did not assess the claimant as suitable for any of the alternative roles even with training within a reasonable period.

177. I take the complaint as being, in effect, refusing to offer the claimant alternative employment with a trial period.

178. There is an initial burden on the claimant to make a prima facie case of unlawful detriment on union activities or union services grounds.

179. There was a difficult relationship at the time between UNISON and NICE. Helen Williams described this relationship as “fractured” when she joined the organisation in January 2023. There had been particular difficulties between Eileen Platt, in HR, and the claimant. Eileen Platt initially advised Mark Chapman on the management of change, redundancy and redeployment process. I do not consider these difficulties in themselves sufficient to satisfy the initial burden of proof.

180. I found that Mark Chapman was persuaded by Anastasia Chalkidou and Sarah Byron that the claimant had skills gaps which needed to be assessed by interview before any scoring took place to determine whether the claimant could be slotted into the role. I have concluded that Anastasia Chalkidou and Sarah Byron (who had much more day to day interaction with the claimant than Mark Chapman) were the driving force behind the claimant not being given the 8b role without interview. If he had been given the role, since the role was substantially different from his old one, this would have come with a trial period.

181. Sarah Byron was one of the panel members on the interview for the 8a role. Anastasia Chalkidou and Sarah Byron were on the panel for the interview for the 8b role.

182. I consider that the claimant, therefore, needs to satisfy the initial burden of proof in relation to the purpose of the actions of Anastasia Chalkidou and Sarah Byron. Only if the claimant does so, would the respondent be required to show what was the sole or main purpose of them failing to offer the claimant alternative employment, with a trial period attached.

183. I do not consider that the claimant has pointed to any material that could allow me to conclude that those individuals acted with the purpose of preventing or deterring the claimant from taking part in the activities of the trade union at an appropriate time or penalising him for doing so.

184. I have already dealt with the 15 December 2021 incident in relation to allegation 4.2.2. and my reasons for concluding that this did not satisfy the initial burden of proof.

185. The presence of Sarah Byron at a meeting around December 2020 where comments were made which led to UNISON bringing a grievance which did not name Sarah Byron does not provide anything from which I could draw an inference that the purpose of her later actions were to prevent or deter the claimant from taking part trade union activities or to penalize him for having done so. I am not aware of any other evidence from which the claimant suggests I could conclude that Sarah Byron had anti trade union sentiments or was ill disposed to the claimant carrying out his trade union duties.

186. I have no evidence relating to Anastasia Chalkidou which would satisfy the initial burden of proof in relation to the purpose being prohitibed trade union grounds.

187. Since I have concluded that Anastasia Chalkidou and Sarah Byron are the relevant actors in relation to this complaint, I do not consider that anything said by Mark Chapman will assist the claimant in satisfying the initial burden of proof. Even if his comments could be taken into account, I do not consider him saying something about the claimant doing a lot of work for the union would be something which could assist in satisfying that burden. I do not consider that the comment "it is not the role or remit of UNISON that the MoC be halted or withdrawn" as detailed by Lizanne Devonport (2777), even if it was said by Mark Chapman, is something which would assist the claimant in satisfying the initial burden of proof. Similarly, I do not consider the comment by Hilary Baker that a lot of managers would be pleased when the claimant left NICE would assist in satisfying this burden.

188. I conclude that the claimant has not satisfied the initial burden of proof relating to the purpose of the acts and this complaint, therefore, fails.

4.2.4 *The Third Respondent ignored the claimant's objections to Sarah Byron and Anastasia Chalkidou being on the assessment panel for the alternative roles that he wished to be considered for*

189. I conclude that the claimant has not proved the facts on which he relies for this complaint. The respondent considered the claimant's objections but decided that these were appropriate people to sit on the panel.

190. If the complaint had been simply about the panel composition, rather than being an allegation of ignoring the claimant's objections, I would still have concluded that the complaint failed, since I would have concluded that the claimant had not satisfied the initial burden of proof in relation to the purpose of that action.

4.2.6 *The Third Respondent engineered a redundancy situation to remove him from the organisation*

191. I am not clear what this allegation relates to, if it is still pursued. In cross examination, the claimant accepted that there was a genuine redundancy situation. He agreed that he meant crafting a situation so the claimant could not find another position at NICE.

192. I consider that this complaint may, in effect, be similar to that at 4.2.3 in relation to not offering the claimant an alternative role. For the reasons given in relation to that complaint, I conclude that the claimant has not satisfied the initial burden of proof on him in relation to the purpose of the respondent's actions being trade union related.

193. I conclude that this complaint is not well founded.

<u>"Ordinary" unfair dismissal</u>

194. The claimant was dismissed with effect from 31 January 2024. The respondent has shown (as is not disputed by the claimant) that the reason for dismissal was redundancy.

195. The real battleground, as Mr Williams, has described it, is the fairness of that dismissal, in accordance with s.98(4) ERA and, in particular, whether the respondent acted within the band of reasonable responses in terms of what it did in relation to alternative employment for the claimant once his role had been declared redundant.

196. I am well aware that I must not substitute my view on reasonableness for that of the respondent and that there is a range of actions that it may have been reasonable for the respondent to take in relation to deciding whether the claimant should be offered alternative employment.

197. The reasonable range of responses does not, however, give an employer carte blanche to act however they want when it comes to whether to offer an at risk employee alternative employment. They must, in accordance with s.98(4), act reasonably.

198. It is acknowledged that the respondent's written policy and associated guidance at the time did not reflect the reality of practice. I consider it also difficult to say that there was any particular practice which was established custom and practice since the evidence suggests that the respondent acted in varying ways when faced with possible redeployment.

199. The claimant was aware of other cases where people had been required to attend preferential interviews to decide whether they would be offered alternative employment and he suspected that in some cases marks were affected by whether or not the interviewers wanted that person or someone else, not wholly based on whether the candidates performed sufficiently well at interview to show they met the essential criteria for the job or were likely to be able to do so within a reasonable period.

200. The respondent's evidence and the documents do not refute the claimant's evidence which was to the effect that the respondent, if they wanted to retain someone, would be flexible in how they achieved this. This included "slotting in" people to roles on occasion without preferential interview, although the roles were not substantially similar and, therefore, under the respondent's 2018 guidance, should have been a case for preferential interview rather than slotting in. The respondent's witnesses (leaving aside the inconsistencies of Mark Chapman's oral evidence) was that slotting the claimant in on the basis of the paper based assessment ostensibly conducted by Mark Chapman (although, as I have found, with input not limited to disciplinary records and attendance from Anastasia Chalkidou) and then by Anastasia Chalkidou was capable of resulting in the claimant being offered the 8b role without interview, since the claimant was the only at risk candidate for the job.

201. There appeared to be a practice at times of using an 80% threshold to decide whether to slot someone into a role without interview (unless there was more than one person who could have been slotted into that role). I conclude that this threshold may reasonably have been used to decide whether, in the language used

in the 2018 guidance, two roles were substantially the same. It makes little sense, however, and I consider would be outside the band of reasonable responses, to apply an 80% threshold when carrying out a scoring process of the type done as a paper exercise for the claimant where the candidate personally is scored on various factors such as qualifications to do the job, skills and knowledge and experience as well as attendance and disciplinary record. This would not be assessing whether someone met the essential criteria for the job, but whether they exceeded them, at least in some respects.

202. I have considerable doubts about the process followed by the respondent in deciding not to offer the claimant the job and whether the managers involved made a genuine and fair assessment of whether the claimant met the essential requirements of the job. However, I consider the essential question in this case, is whether it was within the range of reasonable responses not to offer the claimant the 8b position.

203. The claimant was the only employee at risk of redundancy who had expressed an interest in the 8b role. There was no issue here, therefore, of selecting who should be offered the role from a number of at risk employees.

204. I consider that the respondent was trying to provide justification in its scoring by Mark Chapman and Anastasia Chalkidou in March/April 2023 for a decision which they had already taken that they were going to assess the claimant's suitability for the job by an interview.

205. Despite this, even on this assessment, which may have been tainted by that decision, the claimant was assessed by his own manager (second line manager until Chris Chesters left and then his direct line manager), Anastasia Chalkidou, on 4 April 2023 as meeting the required qualifications, of being competent in skills/knowledge and, on the factor of experience, of generally meeting the job related experience but falling short in some areas. The relevance of disciplinary record and attendance in such an assessment may be questionable (and, I understand from the claimant's evidence, had been challenged by UNISON in the past) but, on the corrected scoring, the claimant's disciplinary record was unblemished and he scored the second highest possible score on attendance. The respondent's witnesses (leaving aside the outlier of Mark Chapman's oral evidence) agreed that the claimant could potentially have been offered the job at that stage, without interview, if he was assessed as suitable.

206. Was it, therefore, outside the band of reasonable responses not to offer the claimant that alternative post at that stage, without interview? I conclude that it was.

207. Even if an at risk employee lacks prior experience, it may be reasonable to allow that employee an opportunity to demonstrate their suitability for that alternative role. The statutory scheme allows for that with the statutory trial period. This is not only a period during which the employee can test the role, to see if they consider it suitable, whilst retaining the right to a redundancy payment if they reasonably conclude it is not. It is also an opportunity for the employer to assess the employee in the new role. If they reasonably consider the employee not suitable during the trial, employment may be terminated and the employee paid the statutory redundancy payment. If the employer considers retraining is needed,

the employer and employee can agree to an extension of the default 4 weeks' trial period to allow for retraining in the new job.

208. Although the respondent's Redeployment Policy and Procedure effective from 17 September 2023 was not applied to the redeployment exercise involving the claimant, being in development at the time, this includes a statement of what the respondent understands to be the legal considerations underpinning the redeployment process. This includes a definition of "suitable alternative employment" for the purposes of that policy (314) which is stated to be:

> "where an employee:
>
> - meets the essential criteria for appointment to a role, OR
>
> - could meet the criteria for appointment with some support, training programme (of up to 3 months) or a trial period (of normally no more than 3 months)."

209. On Anastasia Chalkidou's assessment of the claimant on 4 April 2023, the claimant did not fall short on qualifications or skills/knowledge. She did not rate him as having no relevant experience; the mark she gave him was that he generally met job-related experience but fell short in some areas. She subsequently elaborated on this in the document at p.696. This referred repeatedly to the claimant having limited experience working on guidance development topics at an adviser level. I note that the essential criteria in the job description required experience in the development of guidelines and heath technology assessment. It did not require experience at an adviser level. The document at p.696 did not assess the claimant against the essential criteria for the role; rather, it commented on the responsibilities set out in the job description.

210. I conclude that, given this assessment of the claimant's suitability for the role, it was outside the band of reasonable responses not to offer him the 8b post at that stage but to require him to undergo a further assessment by preferential interview. If there was genuine concern about some aspects of the claimant's suitability for the new role, this could have been assessed in a trial period. I conclude that, if the respondent had acted within the band of reasonable responses, the claimant would have been offered the 8b post around end March/early April 2023 and this would have avoided his dismissal. I do not consider that the process which followed this failure to offer the 8b job at this stage corrects the unreasonableness of the respondent's actions.

211. I consider that the process which followed was either not undertaken in good faith (i.e. it was done with the intention of scoring the claimant in such a way at interview that he would not be considered appointable), or was undertaken by those involved without a proper understanding of the legal considerations involved in considering redeployment of an at risk employee and perhaps with their assessment of the claimant subconsciously influenced by factors other than whether the claimant met the essential criteria for the job or could do, within a reasonable period, with support.

212. I share the views expressed by Andrew Hodge, the investigator in the redundancy appeal process, that there is the possibility that there was a conflation

of the claimant's conduct in his trade union role and the assessment of his communication skills in his substantive role. He wrote: "My judgement is that there may well have been some reluctance to appoint PD, but I cannot be sure (even on the balance of probabilities), of the extent to which PD's trade union role play a part in this, if at all." I conclude the evidence is not sufficient to conclude, on a balance of probabilities, that Anastasia Chalkidou and Sarah Byron, who were the main actors in deciding not to offer the claimant the 8b role, were improperly influenced by the claimant's trade union role.

213. Anastasia Chalkidou and Sarah Byron both retained concerns about the claimant's conduct at the 15 December 2021 meeting, where the claimant was not acting in his capacity as a trade union representative, illustrated by their having told Mark Chapman about this in such a way that he wrongly concluded the claimant had a disciplinary record and by their references to this in the assessment at p.698 and Sarah's Byron's later comment on that part, in which she wrongly stated the claimant had been given a verbal warning. Although I have not concluded this was trade union activity, I conclude that their view of the inappropriateness of the claimant's conduct on this occasion influenced their desire not to appoint him to the 8b role.

214. It may be that the managers expected there to be, or certainly by the time of the interview in November 2023, knew there to be candidates for the role, if the claimant was not given it, that they would consider more suitable and would prefer to appoint to the role than the claimant. Consciously or unconsciously, this may have affected their assessment of the claimant.

215. The claimant admits himself that he performed badly at the 8b interview in November 2023, perhaps at least in part because he was not feeling well. However, even given this, the scoring of the claimant at the interview was surprisingly low, given his skills and experience. Anastasia Chalkidou scored the claimant with all 1s, indicating on every question that the claimant was significantly below the requirement, indicating he would be a risk to the organisation. Since I am a lay person in NICE terms (as Andrew Hodge described himself) and did not observe the claimant at interview myself, I cannot assess what would have been the correct and fair scores for the claimant. However, there are indications that the scoring of Anastasia Chalkidou and Sarah Byron may have been affected by bias against the claimant. The independent member of the panel marked the claimant higher (although not by much) than Anastasia Chalkidou and Sarah Byron. However, when it came to the interviews of the other four candidates, the independent member marked lower than them on many questions and very rarely higher. This could suggest that the independent member was using consistent bench marks, starting from a very low base with the claimant's interview, whereas the scores of Anastasia Chalkidou and Sarah Byron were influenced by matters other than the answers given on the day. Anastasia Chalkidou's marking of all 1s contrasts with her previous paper scoring of the claimant which judged him as reaching the required level other than, in relation to experience, generally meeting job-related experience but falling short in some areas. The claimant's test score of 8/10, which may have been less susceptible to subjective marking than his answers to questions in interview, suggests a considerably higher level of competence than his scores at interview.

216. Regardless of whether the scoring of the claimant for the 8b role on 6 November 2023 was a genuine and fair assessment of his performance at interview on that day, this does not affect my conclusion that the decision not to offer the claimant the 8b post in late March/early April 2023 was outside the band of reasonable responses.

217. The claimant scored poorly at the interview for the 8a role on 3 October 2023. Again, as a lay person in NICE terms, and someone who was not able to observe the claimant at interview, I cannot say whether the claimant was scored fairly at that interview. The scores do appear to be surprisingly low given the claimant's skills and experience. I have not seen the scores for the other candidates for the 8a role so cannot draw any conclusions from the comparative marking. I do not base my conclusions on the reasonableness of the respondent's actions in relation to alternative employment in any way on the rejection of the candidate for the 8a role.

218. For these reasons, I conclude that the complaint of "ordinary" unfair dismissal is well founded.

Approved by:

Employment Judge Slater

Date: 5 April 2026

JUDGMENT SENT TO THE PARTIES ON

Date: 13 May 2026

.....
FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

List of complaints and issues

1. **Unfair dismissal contrary to section 103A of the Employment Rights Act**

1996 (“the ERA”):

1.1 Was the Claimant dismissed? The Respondent admits that he was and contends that the reason for his dismissal was redundancy.

1.2 Did the Claimant make a protected disclosure as follows:

1.2.1 At a meeting on 10 December 2021 he said, “I feel that we’re making the wrong decision because we’re being biased by allowing a special interest group to make a full presentation to the committee”.

1.3 In determining this issue the Tribunal will consider:

1.3.1 Did the Claimant make a disclosure of information?

1.3.2 If so, did the disclosure relate to one or more of the matters referred to in section 43B(1) of the ERA (the “relevant failures”)? The Claimant relies on section 43B(1)(b) ERA.

1.3.3 Did the Claimant have a reasonable belief that the information tended to show one of the relevant failures had taken place, was taking place or was likely to take place?

1.3.4 The Claimant submits that in his reasonable belief the information tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he is subject (section 43B(1)(b) of the ERA).

1.3.5 Did the Claimant have a reasonable belief that the disclosure was in the public interest?

1.3.6 Was the disclosure a protected disclosure within the meaning of section 43A of the ERA?

1.4 If the Tribunal concludes that the Claimant made a protected disclosure, was

the reason or the principal reason for the Claimant's dismissal that he made the protected disclosure?

2. **Unfair dismissal contrary to section 152(1)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA):**

2.1 Was the Claimant dismissed? The Respondent admits that he was and contends that the reason for his dismissal was redundancy.

2.2 Was the reason or the principal reason for the Claimant's dismissal that the Claimant had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time (section 152(1)(a) of TULRCA)? The Claimant was a member and representative of UNISON and the activities that he relies upon in support of this claim are his representation of members of UNISON and the achievement of a vote for industrial action in late 2022 (“the strike vote”).

3**. Detriment on the grounds that the Claimant has made a protected disclosure contrary s47B(1) ERA**

3.1 Was the claim presented before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them? The Claimant alleges that he was subjected to ongoing detriment through a series of acts of the Respondent up to the date of his dismissal on 31 January 2024.

3.2 Did the Claimant make a protected disclosure as follows:

3.2.1 At a meeting on 10 December 2021 he said, "I feel that we're making the wrong decision because we're being biased by allowing a special interest group to make a full presentation to the committee". In determining this issue the Tribunal will consider the issues set out in paragraph 1.3 above.

3.3 Has the Claimant been subjected to any detriment by any act, or any deliberate failure to act, by the Respondent done on the ground that the Claimant has made a protected disclosure? The Claimant alleges that he was subjected to the following detriments:

3.3.1 He was required to go through a competitive interview process for alternative roles, including with applicants who were not at risk of redundancy.

3.3.2 The Third Respondent wrongly stated that he had a disciplinary record during the redundancy selection process.

3.3.3 The Third Respondent refused to allow him in trial period in any of the alternative roles which he applied for.

3.3.4 The Third Respondent ignored the Claimant's objections to Sarah Byron and Anastasia Chalkidou being on the assessment panel for the alternative roles that he wished to be considered for.

3.3.5 The Third Respondent failed to offer the Claimant an interview for a Band 7 role for which the Claimant says he met the minimum requirements.

3.3.6 The Third Respondent engineered a redundancy situation to remove him from the organisation.

4. **Detriment on the grounds that the Claimant has contrary to section 146(1)(b) TULRCA**

4.1 Was the claim presented before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them? The Claimant alleges that he was subjected to ongoing detriment through a series of acts of the Respondent up to the date of his dismissal on 31 January 2024.

4.2 Did the Respondent subject the Claimant to a detriment for the sole or main purpose of preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so (section 146(1)(b) of TULRCA)? The Claimant alleges that he was subjected to the following detriments:

4.2.1 He was required to go through a competitive interview process for alternative roles, including with applicants who were not at risk of redundancy.

4.2.2 The Third Respondent wrongly stated that he had a disciplinary record during the redundancy selection process.

4.2.3 The Third Respondent refused to allow him in trial period in any of the alternative roles which he applied for.

4.2.4 The Third Respondent ignored the Claimant's objections to Sarah Byron and Anastasia Chalkidou being on the assessment panel for the alternative roles that he wished to be considered for.

[4.2.5 Dismissed on withdrawal]

4.2.6 The Third Respondent engineered a redundancy situation to remove him from the organisation.

4.3 The Claimant alleges that he suffered these detriments for the sole or main purpose of preventing or deterring him from representing members of UNISON and for penalising him for his representation of members of UNISON and the achievement of “the strike vote”.

5. **Ordinary Unfair Dismissal (added by amendment at the hearing)**

5.1 The Respondent admits that the Claimant was dismissed on 31 January 2024.

5.2 What was the reason for dismissal? The Respondent contends that the reason for his dismissal was a fair reason, namely redundancy, in accordance with section 98(2)(c) ERA.

5.3 Was the dismissal a fair dismissal? In determining this, the Tribunal will consider:

5.3.1 Did the Respondent act reasonably in all the circumstances in treating the reason as a sufficient reason to dismiss the Claimant?

5.3.2 Did the Respondent follow a fair process/procedure?

5.3.3 Was dismissal was within the range of reasonable responses?]

6. **Remedy/Quantum**

6.1 If the Claimant’s claim(s) is/are successful, what remedy/remedies should be awarded?