



EMPLOYMENT TRIBUNALS

Claimant: Mr Stephen Curtis

Respondent British Association of Shooting and Conservation Ltd

Heard at: Chester **On:** 27 February – 3 March and
6 March – 9 March 2017

Before: Employment Judge P Davies

Representation:

Claimant: Mr J Heard (Counsel)

Respondent: Dr E Morgan (Counsel)

RESERVED JUDGMENT

The Judgment of the Tribunal is:

- (1) That the Claimant was not unfairly dismissed and the claim is dismissed.
- (2) The Claimant is to indicate within 14 days of the promulgation of this Judgment if he wishes to pursue the application for costs.

REASONS

1. By a claim received on 16 September 2016 the Claimant Mr Stephen Curtis complained of unfair dismissal from his employment as a Director of HR and Operations with the Respondents, the British Association of Shooting and Conservation Limited, which is a membership organisation

that serves members of the public in relation to shooting and conservation. The Claimant alleged that he resigned from his employment on 26 May 2016 and that this constituted constructive unfair dismissal because (a) his contract of employment was at all times subject to the implied term of mutual trust and confidence (b) the Respondents actions, as particularised in the claim form, were calculated and or likely to destroy that relationship of trust and confidence and as such they constituted a repudiatory breach of the Claimant's contract of employment and (c) by his resignation on 26 May 2016 the Claimant affirmed that breach. The Claimant sought by way of remedy a declaration of unfair dismissal and compensation together with an uplift of 25% in compensation due to the Respondents unreasonable failure to comply with the ACAS Code of Practice on disciplinary and grievance procedures.

2. The Response filed by the Respondents denies that the Claimant was constructively and or unfairly dismissed and it is averred that the Claimant's employment terminated by reason of his resignation on 26 May 2016. It is denied that there was any breach of the term or that the Respondents conducted themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between themselves and the Claimant. It is further said that if it is found the Claimant was dismissed then such dismissal was for some other substantial reason of a kind such as to justify the dismissal of the employee. It is denied that the Claimant is entitled to compensation as alleged or at all. There are further allegations that but for the Claimant's resignation there would have been a disciplinary procedure involving breach of fiduciary duties such that the viability of the employment relationship would inevitably have come to an end on the grounds of misconduct or some other substantial reason.
3. As a result of discussions during Case Management Hearings, it was agreed that the Final Hearing should deal only with liability and not remedy. Further it was clarified that allegations of contributory conduct and or Polkey adjustments would not be dealt with as part of the Final Hearing. The application for costs made on behalf of the Claimant with regards to a Preliminary Hearing to deal with issue of disclosure would be dealt with in the following way. If the claim is dismissed then the Claimant's representative was to indicate within 14 days of its intention to pursue the costs application. If the claim is not dismissed then the costs application would be dealt with as part of any remedy hearing.
4. The Tribunal heard from a number of witnesses. On behalf of the Claimant, apart from the Claimant himself, the Tribunal heard from Mr Richard Ali the former Chief Executive of the Respondents; Mr Alan Jarrett former Chairman of the Respondents; and Miss Caroline Prosser, Solicitor of Hill Dickinson LLP. The Respondents called the following

witnesses Mr John Thornley, Council Member; Miss Sally-Anne Cockerill, Council Member; Professor Ann Mortimer, Council Member; Mr Michael Hardy, Council Member; Mr John Dryden, Council Member; Mr Duncan Greaves, Council Member; Mr Christopher Graffius, Acting Chief Executive; and Mr Steve Bloomfield, Director of Operations.

Background Facts

The Respondents have a National Headquarters at Marford Mill, Rosset, North Wales. In addition there are four regional centres across England as well as national centres in Wales, Northern Ireland and Scotland. There are approximately 110 people employed by the Respondents. Membership of the organisation is around 145,000 persons. The strategic governance of the Respondents is carried out by a council of elected members and also ex-officio members were drawn from members of the executive. The ordinary day to day operational management of the Respondents is delegated to the Chief Executive. The Respondents are the largest shooting association in the United Kingdom.

5. The council meets several times a year. Its formal sessions are normally recorded. The evening before the council meeting, which is normally held in a hotel, is an occasion when members meet socially and have the opportunity of an informal dinner. The council members live in different parts of the country and for some there is a significant amount of travelling to get to the meeting.
6. The constitution of the Respondents is set out in the Bundle at pages 85 – 92. It can be seen under paragraph 5 that the elected members of the council should be no more than 19 and not less than 10 persons. The ex-officio members will be the President, the Chief Executive and such other officers and members of staff as the council may from time to time decide provided that any member of staff shall not be entitled to vote. Under paragraph 6 the council shall meet a minimum of twice a year and shall be presided over by the Chairman or Vice Chairman of the association. It is set out that a council member shall abide by standards of conduct set out in published rules and governance operation procedure decided from time to time by the council for the time being. Within the constitution are powers of the council to delegate authority to committees.
7. A document entitled “The Role Governance and Operation of BASC” was issued in March 2016 and is set out in the Bundle at pages 152 – 215. In the introduction it says that the document sets out the rules regulations and customs that govern BASC and relates them to the associations role governance and operation. Under paragraph 7 headed “Council” and sub paragraph “Powers and Membership” it is said that the affairs of the association are managed by the council acting collectively. The Council

presently consisted of 26 members with the composition representing a balance of appointed skills and elected representatives in the ex-officio and appointed members currently 6, the President and Chief Executive and such other officers members of staff and co-opted members as the council decide from time to time provided any member of staff shall not be entitled to vote. Other officers and staff currently appointed are the 4 country Directors for Scotland, Wales, Northern Ireland and English Regions and the Directors for Business Management, HR and Operations and Communications, with the elected members not more than 19. In sub paragraph (vii) individual members of the council exercise joint and summary responsibilities and have no individual authority other than that decided by the council, for example, it is then said that they should not involve themselves in matters of personnel and management. That is qualified as being not preventing individual members of the council having contact with staff but the important distinction to be observed is between having “appropriate contact” and “involving oneself in management and personnel issues”. In (viii) it is stated “in the event of a member of council perceiving a need to raise day to day management or personal issue he or she will do so by contacting the Chief Executive or appropriate Senior Director or alternatively the Chairman of the Council who will raise the matter with the Chief Executive”. In (ix) for practical purposes council delegates management and personal matters to the Chief Executive (and through the Chief Executive to the staff). And in (x) day to day authority delegated to the Chief Executive in these terms of reference are set out below. Relationships between the council and employed staff and vice versa are covered in a code of conduct (protocol on council and staff relations), which is included as appendix and this is Appendix XIII. In (xi) it is said the Chief Executive terms of reference state he is responsible to the Chairman and council then it sets out a number of matters clarified by a footnote which says “for the avoidance of doubt the Chief Executive is therefore liable to be called to account and answerable to the Chairman of the Council for matters set out in his terms of reference” which include “employing and leading staff and overseeing the welfare, development and performance in post as BASC’s most valued asset.” In (xii) it is said in this way the council delegates the day to day management of the Association to the Chief Executive and holds him accountable. He delegates to and holds accountable the relevant Director.

8. The document, the Role Governance and Operation of BASC, also contains at page 159 under the heading “Operation” the fact that the council determines matters of policy and strategy for the Association and in this function they receive advice from the ex-officio members. On the one hand there are matters of broad policy which are the principal concern of council acting collectively although there are matters of day to day operational policy which are the responsibilities of the management. Distinction can be a matter of degree. The same facts can be relevant

both strategic and tactical policy. The course of action is determined by discussion by the Chief Executive and the Chairman so that any issues are raised appropriately in council. It is said that the Chief Executive summons meetings of council in accordance with the rules. In practice decisions are taken on the basis of consensus where possible when this cannot be achieved questions are decided by a majority of votes with the Chairman having a second and casting vote. The proceedings of council are operated according to the Chatham House Rule which in a footnote says this “when a meeting, or parts thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speakers nor that of any participant may be revealed”.

9. Appendix IX headed “Disciplinary Appeals Committee” sets out the procedure for the handling of disciplinary action and appeals in respect of members and says that the disciplinary procedure gives the council the power to take such disciplinary action including expulsion as it considers appropriate. A series of sanctions from level 1 warning to level 2 suspension from membership for a period not exceeding 2 years to level 3 expulsion with a right to apply for reinstatement at a later date and level 4 life expulsion is set out in the Appendix. In Appendix X headed “Corporate Governance Code of Best Practice” it is stated that all members of the BASC council are equally responsible in law for the councils actions and decisions. Therefore it is for the council collectively to ensure that it is meeting its obligations. The council will meet regularly and retain full and effective control over the association and monitor the executive management. Amongst the matters set out is the fact that the council will adhere in detail to the objectives principles provisions and regulations provided in a statement on BASC role and operations and protocol on council staff relations.
10. In Appendix XI the responsibilities of members of BASC council on page 190 of the Bundle, under the heading of “Statutory Responsibilities” it is said that it includes “to observe relevant legal duties or principles when conducting the business or taking part in the decision making processes of the council” and the footnote says for example, under “Employment Health and Safety Licencing Tort and IPS Law”. Appendix XIV headed “Protocol on Council and Staff Relations” in its introduction states a positive relation between council and staff is characterised by mutual respect, open and honest communications and trust, and is essential to the success of BASC. The protocol is designed to encourage that relationship and provides information for council and staff on what can be done if things go wrong. Under a sub heading of “the Roles of Members of Council and Staff” the following appears (i) the roles of council members and staff are summarised as follows (1) council members contribute to the work of council which is directly accountable to the

membership, sets policy, and thereby gives direction. (2) staff provide representation and service to shooting, conservation and the members as outlined in the contract of employment and job description. They also advise council in the setting of policy. They are accountable to council through the Chief Executive.”

11. Within Appendix XIV there is a heading “Members of Council” and it is stated that members of council, acting collectively, have four main areas of responsibility (1) to exercise the responsibilities and powers of council specified in constitution and objects (2) to determine policy and thus give direction (3) to monitor and review overall performance (4) to serve and where appropriate represent the policies of BASC in their locality or field of expertise. It is also stated that council members are ultimately responsible for the governance of BASC and staff support council or council members in ensuring these responsibilities are properly fulfilled.
12. Also within Appendix XIV under the heading “Staff” it is stated that staff are responsible for (1) carrying out the duties outlined in the contracts of employment and job descriptions and any other duties agreed from time to time with management (2) implementing the policies determined by council and management. It is stated that staff are employed to fulfil their roles and carry out their specified duties, which include expressing and exercising professional judgment. Members of council shall not seek to use their position to unduly influence and inhibit them.
13. Under Appendix XIV under the sub heading “If things go wrong” the following appears (i) from time to time the relationship between individual members of council and members of staff may become strained or even break down. Every endeavour will be made to ensure that such situations are addressed sensitively, promptly and to the satisfaction of all concerned (ii) principal responsibility for dealing with such potentially difficult situations rests with the Chief Executive and the Chairman of Council (iii) to that end the Chief Executive is accountable to the Chairman and Counsel for employing and leading the staff, and pleading their welfare and development and fostering close links between the association officers, elected members of council and staff. The Chief Executive is also responsible for monitoring delivery by the delegated managers of all set tasks. (iv) The Chairman is responsible for setting and ensuring standards of conduct for members of council and taking any related issues up with elected and co-opted members as may be necessary.
14. Appendix XIV there is a sub heading “Procedure for members of council which states as follows (i) if a member of council is dissatisfied with or aggrieved by the conduct of a member of staff and has reasonable cause for complaint, he or she will raise the matter in confidence with the Chief

Executive and may inform the Chairman. The Chief Executive will immediately take the matter up and may seek to resolve it informally with the council member in conjunction with the appropriate Senior Director and Manager as appropriate. The Chief Executive will keep the Chairman informed as necessary (ii) the council member shall not undermine or appear to undermine a member of staff (iii) it is the Chief Executive's sole responsibility to apply policies and procedures applicable to employees, and he will do so in a way that takes full account of employment law and good practice (iv) if a council members complaint leads to action the council member will be informed, the council member will only be apprised of the outcome when the employees full rights have had their course and the matter is settled. The staff members right to be treated sensitively will be respected and upheld at all times (v) if the council member is dissatisfied with the Chief Executive's handling of the case he will raise it immediately and confidentially with the Chairman who will inform the Chief Executive.

15. Under Appendix XIV under the sub heading "Procedure for Members of Staff" the following appears (i) if a member of staff or employee is dissatisfied with or aggrieved by the conduct of a member of council and they have reasonable cause for complaint, he or she will first raise it with their line manager who if he or she considers it justified will raise it with the relevant Senior Director and Chief Executive. A Senior Director or Chief Executive will seek to resolve the complaint informally with the council member concerned. If the matter cannot be resolved informally and the Chief Executive considers it justified he will raise it formally with the Chairman who will take the matter up (ii) a staff member concerned shall respect confidentiality at all times and shall not undermine or appear to undermine a member of council (iii) it is the Chairman's responsibility to ensure that this protocol is properly applied (iv) if a complaint leads to action by the Chairman, the complainant will be informed an action is being taken, but will only be apprised of the outcome once the matter has been settled. (v) If the Chairman's personal intervention with the council member does not settle it, when a council members conduct remains unsatisfactory, the Chairman will give not less than two days notice to the council member and raise it in full council. Council has all the powers provided in the constitution to take whatever action it sees fit, including the removal, subject to appeal of that council members membership of the association and therefore their place on the council. Council may decide that non-elected members, excepting the Chief Executive, be asked to leave Council for any such business.
16. The third document referred to extensively during the course of the hearing was the Employee Handbook Version 2 Issued 28 May 2015. This was a document which was generated when the Claimant was employed, he said in evidence under his watch. The document is on

pages 93 to page 140 of the Bundle. Under the heading “Code of Conduct, gross misconduct” includes “any person representing BASC must remember that members and the general public will judge BASC by the appearance of the behaviour of its representatives. We should remember this at all times and conduct ourselves accordingly, and be of an appropriate business like and professional appearance at any time when we are representing the association.” In the section headed “Dignity At Work” it says that all employees are entitled to a working environment free from bullying and harassment. The association takes all allegations of such conduct extremely seriously and will not tolerate harassment or bullying behaviour. Complaints will be dealt with under the bullying and harassment policy. It is set out in section 6.3. Under the heading “Whistle Blowing” it states that the association encourages employees to raise any concerns they may have about any wrongdoing at any level within the business. It states under that heading that employees who raise a concern with this policy are entitled not to be subjected to any detriment as a result. Section 3 is headed “Code of Conduct” and contains definitions of what is misconduct and what is gross misconduct. Under the heading of “Gross Misconduct” it says that gross misconduct is behaviour which is fundamentally at odds with the employees duty to the association and their colleagues. In accordance with the disciplinary procedure, gross misconduct will usually result in dismissal without notice or payment in lieu even in cases of a first offence. There is then a non exhaustive list of examples of gross misconduct which include deliberate acts of discrimination or harassment, violent or intimidating behaviour, reckless behaviour posing a risk to health and safety, or bringing the organisation or sport into serious disrepute.” In paragraph 3.3 under the heading “allegations of misconduct and gross misconduct”, it states the association is committed to treating all employees fairly and allegations of misconduct and gross misconduct will be dealt with in accordance with the disciplinary procedure set out in section 6.4.

17. Section 6.4 is headed “Disciplinary Procedure” and it sets out the framework under which the allegations of misconduct will be investigated and considered. It has headings of informal action; investigation; suspension and states the purpose of a suspension is either to allow an investigation to take place or to protect the interests of the association and its employees; hearing; and the right to be accompanied during disciplinary hearing; evidence; and disciplinary action which says that after considering all of the evidence including any submissions made by you or on your behalf the manager conducting the hearing will decide on the outcome. If misconduct is found to have taken place then the usual outcome will be a written warning which will be placed on your personal file. A warning will stay active for a period of 6 months or one year after which it will not be taken into account in any future disciplinary action. A final written warning is also referred to as a possible sanction. Under the

heading "Dismissal" it says an employee will not normally be dismissed under this procedure for a single incident of misconduct unless a final written warning is already in place. However, when gross misconduct is found to have occurred then dismissal without notice of payment in lieu will be the usual outcome. There is then a provision for an appeal in relation to the outcome of a disciplinary hearing.

18. Section 6.5 of that Handbook is headed "Grievance Procedure" and deals with the raising of a grievance if the person feels the matter needs to be raised formally a grievance should be raised by making a written complaint stating that it has been made under this procedure. Grievance will normally be dealt with by the line manager and should be addressed to them directly. A grievance hearing will then be arranged so that the person can explain the issue and suggest how it can be resolved. Once investigations are concluded the meeting will then be reconvened and the person have the opportunity to consider and respond to the findings of the investigation. Only then will a decision on the outcome of the grievance be made. In relation to allegations of misconduct where an employee is making allegations of misconduct on the part of other employees then the association will need to carry out an investigation into the allegations and pursue the matters through the disciplinary procedure. Where this happens a grievance will be held over until the disciplinary process has been concluded. If a person is dissatisfied with the outcome of a grievance then they may appeal and the appeal should be directed to the person named in the grievance outcome letter.

19. **Employment of the Claimant**

Mr Richard Ali is the former Chief Executive of the Respondents and he occupied that role from 12 February 2013 until 22 December 2016. According to a letter dated 31 July 2013 sent by then HR Advisor Miss Debbie Owen to the Claimant offering him the position of Director of HR and Operations the Respondents, there had been an interview and discussions with Mr Ali about the position. The Claimant at the time of interview was a serving police officer with the rank of Chief Superintendent. He retired from that role on 31 August 2013. The precise date for commencement of employment was 24 October 2013.

20. In the summary of employment terms sent to the Claimant there was reference to the associations disciplinary and grievance rules and procedures as set out in the Employee Handbook. The Claimant reported to Mr Ali. The Claimant has no qualifications in HR but in his various roles as a senior police officer he would have responsibility for HR managed resources. However, this was his first HR role as such. The Claimant worked with the support of a professional HR Advisor already employed by the Respondents. The Claimant had the overarching responsibilities for

HR matters. The Claimant agreed that he should be a beacon for HR matters in the Respondent organisation.

21. The status of the Claimant in the organisation was that he was at the same level as Regional Directors who also reported to the Chief Executive. One of those Regional Directors was Mr Steve Bloomfield who was the Director of Operations for BASC England. Mr Alasdair Mitchell, Director of BASC Northern England reported to Mr Bloomfield. Mr Bloomfield was his line manager.
22. Both the Claimant and Mr Ali worked in the same office being the Headquarters and both were early attendees at work such that they would often meet for coffee. The Claimant described his relationship with Mr Ali as being good and that they worked closely. Mr Graffius, the Director of Communications, also worked some of the time in the same place as the Claimant but the Claimant said he had a different relationship with Mr Graffius and felt that he could not rely upon him in the same way that he could with others. Although the Claimant stressed there was no personal animosity between them although in May 2016 there was a matter that the Claimant had to investigate concerning Mr Graffius.
23. About a year after the Claimant commenced his employment an incident occurred which generated subsequently a great deal of comment.

Altercation between Claimant and Alasdair Mitchell – 23 October 2014

On the 23 October 2014 at the Grosvenor Pullford Hotel there was a dinner prior to the Executive Planning Meeting which was going to take place the following day 24 October 2014. One of the speakers during the dinner was Mr Alasdair Mitchell. There were about 20 people present at this dinner. The Respondents had not taken over the whole hotel for the dinner. The Claimant does not remember much about what occurred between himself and Mr Alasdair Mitchell that night. He says it is very likely that expletives were used by him but that he does not remember saying anything about causing people to be killed. What Alasdair Mitchell says happened is set out on pages 462(b) to 462(c) of the Bundle. In brief it is alleged that in the hotel lobby the Claimant launched into a tirade of abuse towards Mr Mitchell telling him “you are a complete cunt. If you ever fucking cross me again, I will kill you. I fucking mean it”. At another point of the evening Mr Mitchell alleges that the Claimant said “apart from your fucking attitude, you cunt. And don’t ever do it again. Because I’m serious. You will die. I am bigger than you, I am better than you and actually I’ve got fuck all to worry about. You will die with your deer. Is that clear enough?”. This was said in the presence of Mr Dan Reynolds. This note of the events is attached to an email sent from Mr Mitchell on 1 November

2014 to Mr Steve Bloomfield. The email says "Please find attached statement in support of my complaint, under the grievance procedure, of inappropriate behaviour by S Curtis."

24. The Claimant said that he had never seen this complaint, but he had been shown at some time a transcript of the conversation which is on pages 947(a) – (b) of the Bundle. It appears that Mr Mitchell had secretly tape recorded the conversation being the second part of the conversation and had later had it transcribed. The Claimant says that he was mortified when he later discovered what he had apparently said. He says that he fully accepts without reservation the recording and that the context in which it was said does not in any way excuse his behaviour. His actions on that evening were absolutely unacceptable and that he was deeply ashamed and embarrassed about the incident. The Claimant says that the context in which the words were said and the relationship, are important and to be taking into account. The Claimant says that the following day he approached Mr Mitchell to clear the air although he had not remembered about any alleged threat to kill but he told Mr Mitchell to let us forget about last night and to move on. Mr Mitchell shook his hand and made the Claimant believe that the incident was closed. He sent a supportive email later that day to Mr Mitchell.
25. Mr Bloomfield contacted Mr Ali after he received the email from Mr Mitchell with the complaint. Mr Bloomfield said that he had spoken to two others Mr Dan Reynolds the BASC South East Regional Director and Mr David Gervers the BASC South West Regional Director who had witnessed part of the incident. Mr Ali asked Mr Bloomfield to ask Mr Mitchell to contact him so that they could discuss the matter. According to Mr Ali Mr Mitchell was clear that he did not want his complaint to result in the termination of the Claimant's employment but that the Claimant should not behave like that and he wanted an apology. Mr Ali did not think that Mr Mitchell took the threats of the Claimant seriously.
26. On 4 November 2014 Mr Ali spoke to the Claimant. This was a regular meeting between the two of them and it was not a disciplinary meeting. Mr Ali told the Claimant that Alasdair Mitchell had raised a complaint about his behaviour and Mr Ali's aim was to find out what had happened and then go back to Mr Mitchell and then make a decision what to do. The Claimant said he could not remember what had been said on the evening of 23 October and admitted his wrongdoing. The Claimant did not challenge anything but Mr Ali did not go through the detail of the complaint sent to him by Mr Mitchell. The Claimant was admitting unacceptable behaviour and language. Mr Ali concluded that the Claimant did not pose a genuine threat to Mr Mitchell or anyone else and he issued the Claimant with an informal reprimand. Mr Ali said that he thought that the Claimant could not remember because of too much alcohol. Mr Ali decided not to go

- through disciplinary procedure although what was described could have been categorised as misconduct. Mr Ali gave an assurance to Mr Mitchell that the Claimant had received a reprimand and would expect a file note to that effect. Mr Ali informed Mr Jarrett what had happened but did not show him the correspondence.
27. The Claimant agreed to provide an apology and wrote copy letters to Mr Mitchell as well as Mr Reynolds and Mr Gervers. Mr Ali wrote to Mr Mitchell on 10 November 2014. Page 714 of the Bundle. Mr Ali said that “the admission (of the Claimant) together with your note and additional information received means that I have decided that no further investigation is required to corroborate your grievance”. The Claimant’s behaviour has now been dealt with and he has been reprimanded. Mr Ali accepted the Claimant’s word that his behaviour was out of character and that he wishes to put the episode behind him and work with Mr Mitchell on a professional basis. While this matter is now closed Mr Ali says that he wants to emphasise any recurrence of such behaviour towards fellow staff members will not be tolerated and will be swiftly dealt with.
28. The letter written by Mr Ali did not say that there could be an appeal against the grievance decision. The Respondents grievance procedure says that if a person is dissatisfied with the outcome of a grievance then that person may appeal. That appeal should be submitted within one week of being informed of the outcome of the grievance and the appeal should be directed to the person named in the grievance outcome letter. Mr Ali said that he was unaware that between October 2014 and October 2015 that Mr Mitchell was dissatisfied with the outcome. According to Mr Bloomfield Mr Mitchell expressed on many occasions disappointment about how Mr Ali had dealt with the Claimant. Mr Mitchell told Mr Bloomfield that he would be taking the matter further and Mr Bloomfield thought he would take it further knowing the character of Mr Mitchell. Mr Bloomfield described Mr Mitchell as a very challenging person and he had strong opinions for example about how change was being too slow in relation to the organisation. Reference was made to an email written by Mr Bloomfield to the Claimant on 7 October 2014 referring to the “Northern” situation and on Mr Mitchell’s “downbeat” attitude. This was in relation to management of a team and who actually does what in the context of administrative resources. The Claimant himself described how in July 2014 he went to speak to Mr Mitchell about the need to work together.
29. The evidence of the Claimant and Mr Bloomfield support the view that Mr Mitchell is a person who is not afraid to express his views. The Tribunal has not heard any evidence from Mr Mitchell so it is not known why Mr Mitchell did not pursue any appeal against the outcome of the grievance, but the fact remains there was no such appeal for whatever reason. However there is a letter from Mr Mitchell dated 14 November 2014 to Mr

- Ali in which he says while he is happy to accept Mr Ali's assurance that any recurrence of that sort of behaviour to which he was subjected to will not be tolerated, he was concerned by Mr Ali's acceptance of the Claimant's claim that his behaviour was out of character. Mr Mitchell says he wishes to place on record his own personal opinion that the Claimant should not be allowed unsupervised access to firearms of any sort. Moreover Mr Mitchell says he has reservations about the Claimant being allowed unaccompanied access to members of the Northern Region Team. He asks for a 20 minute private chat between the team meeting on the 25 November that is before the Claimant arrives.
30. On 25 November 2014 there was a meeting between Mr Ali and Mr Mitchell. Mr Ali says that at that meeting Mr Mitchell was unable to provide any reason why the behaviour of the Claimant was out of character. Mr Mitchell said he would be happy with an apology but this time face to face. As a result there was a meeting on the same day between Mr Ali Mr Mitchell and the Claimant. The Claimant issued a full apology for his behaviour and Mr Mitchell shook the Claimant's hand. Mr Ali's opinion was that that was an end to the matter.
31. Mr Thornley said that within weeks of the incident in October 2014 that he contacted Mr Ali because he had concerns about the Claimant's behaviour as a result of observing the Claimant in June 2014 before the AGM of the Respondents. The Claimant said that he did not agree with what Mr Thornley's recollection was about the evening. What the Claimant said is that he stopped Mr Thornley talking about an issue with a member of staff whilst they had been drinking. The Claimant said that he was not drunk and rejected Mr Thornley's account about aggression shown by him. The Claimant was not challenging Mr Thornley's belief about his conduct and what happened but that he was wrong.
32. I accept the evidence of Mr Thornley that there was something in June 2014 that concerned him in the attitude of the Claimant. The Claimant has accepted that he did behave in a disgraceful way in October 2014 and he clearly is someone who is not averse to expressing himself in forthright terms when he considers it appropriate to do so. But the way that he expresses himself is of concern to others at some times. I accept that this was an occasion where Mr Thornley was concerned and that as a result he did contact Mr Ali in 2014. Mr Ali is insistent there was no such contact. However it is unlikely that Mr Thornley did not take up this issue with Mr Ali at that time. Mr Thornley understood that the Claimant received a warning and believed it to be a disciplinary sanction as opposed to a quiet word with the Claimant.
33. Mr Thornley is a person who for over fifteen years had been involved with criminal and civil investigations including in respect of staff discipline in

Derbyshire for the police. After initially joining Derbyshire Police as an investigator he had risen to be the Head of Professional Standards at Derbyshire Police Force and was a Police Superintendent. Having been alerted to the fact there had been an unpleasant altercation between the Claimant and Mr Mitchell in October 2014 I accept that Mr Thornley did follow up the matter because he was concerned to establish what had happened in respect of the Claimant. It seems that Mr Mitchell had spoken to a Council Member Mr Martin Howatt and that it was Mr Howatt that mentioned this matter to Mr Thornley. Although Mr Thornley thought it was a bad decision by Mr Ali he was prepared to move on on the basis that he understood that the Claimant had been given a final warning.

34. Incident between Mr Alasdair Mitchell and Mr Gary Ashton – 31 July 2015

On 31 July 2015 there was a Game Fair held at Harewood House, Yorkshire, at which Mr Gary Ashton and Mr Alasdair Mitchell attended. An incident occurred between the two of them where it was alleged by Mr Mitchell that Mr Ashton had behaved abusively towards him. Mr Mitchell informed Mr Sherman and Mr Thornley about the incident. Mr Sherman informed Mr Ali who was at the event. Mr Ali said that Mr Mitchell believed that Mr Ashton's abusive behaviour towards himself was motivated by his friendship with the Claimant. Mr Ali suggested an informal meeting between Mr Ashton and Mr Mitchell, Mr Mitchell agreed to the informal meeting at the event. Mr Ashton was seen subsequently by Mr Ali at the Respondents Headquarters and he agreed to an informal meeting although he alleged that it was Mr Mitchell who had been abusive towards him.

35. Mr Ali then took leave and in his absence on 17 August 2015 Mr Ashton made a written complaint about the incident. This is on pages 468 – 470 of the Bundle. The Claimant was named in the complaint. So Mr Ali took over conduct of the complaint. After taking advice from external legal advisers, Peninsula UK, Mr Ali commissioned an independent investigation by a related HR consultancy firm of Peninsula UK, namely HR Face2Face. Mr Thornley was made aware of the written complaint by Mr Ashton he provided a statement for the investigation. At this time Mr Thornley suspected that the Claimant had influenced Mr Ashton to make a formal complaint. The Claimant denies that he did incite Mr Ashton to make the complaint. There is no evidence to support a conclusion that the Claimant had put Mr Ashton up to making this complaint. Nevertheless Mr Thornley harboured suspicions that the Claimant was involved because he believed it had been subject of an informal resolution procedure and it did not appear to be a serious matter. Mr Thornley also believed that it was inappropriate for the Claimant's assistant Miss Debbie Owen of the Respondents HR to collate evidence for the independent investigation. Mr Thornley made his views plain to Mr Ali about this matter.

36. The investigation report by HR Face2Face was dated 29 September 2015 and is on pages 479 – 481 of the Bundle. There is reference to Mr Duncan Greaves being a witness to the incident. Mr Greaves commented in an email of 20 September 2015 to Miss Owen about his recollection of events. Mr Greaves opinion was that what happened was not instigated by Mr Ashton, that Mr Mitchell's reaction to Mr Ashton's comments were a shock and he put that down to Mr Mitchell's belief that there was some kind of vendetta against him by the Claimant from a previous incident. Mr Greaves said that he thought the action of Mr Mitchell was a little out of character. Mr Greaves was approached by Mr Mitchell and thought that Mr Mitchell wanted to take matters to the nth degree. He thought that Mr Mitchell was trying to put the words into his mouth about the incident.

37. The investigation report concluded that based on Mr Greaves' evidence that there was sufficient evidence to warrant invoking disciplinary procedure. But that there was insufficient evidence about offensive behaviour. Mr Ali decided that there should informal assurances to be given to be the best way to gain a degree of comfort that Mr Mitchell would not repeat such behaviour in the future. But rather than start disciplinary process Mr Ali met with Mr Mitchell on 15 October 2015 and subsequently received an email from Mr Mitchell on 20 October 2015 giving an assurance in three areas namely interaction with other employees, not to disseminate details of threatening behaviour that the Claimant directed at himself and others in October 2014 nor the sanctions that were subsequently imposed on him, and not to discuss operational HR matters with members of the council. Mr Mitchell concludes by saying that in relation to the complaint that he had made against the Claimant that he considers he acted in a whistle blowing capacity and continues to rely on the assurance given to him that he would not suffer any detriment.

38. 22 September 2015 – complaint by Mr Simon Reinhold, Assistant Director of Respondents Central England.

This was a complaint about the Claimant asking Mr Reinhold to hand guns over to the police until Mr Reinhold had recovered from illness. Mr Ali commissioned an external investigation but found there was no case to answer.

24 September 2015 – complaints by Mr Thornley and Mr Grindy, Council Members about the Claimant.

After the Council meeting on 24 September 2015 Mr Thornley and Mr Grindy met Mr Jarrett and Mr Sherman the Vice Chairman to discuss concerns they had about the Claimant. Mr Thornley raised the issue about the Claimant allegedly making threats to Mr Tommy Mayne, Director of Northern Ireland, around July 2015. Mr Grindy also knew about this matter. Both the Council Members were concerned about the way that the

Claimant had behaved which they described it as being unacceptable. There is a difference in recollection between Mr Jarrett who believes that the incident between Mr Mitchell and the Claimant in 2014 was referred to and Mr Thornley does not believe it was referred to. However in the context that both were concerned about the behaviour of the Claimant, both knew about the incident in 2014, I find that there was a discussion however brief about the incident that occurred in 2014.

39. After listening to what they had to say Mr Jarrett considered that this was a matter that should be dealt with by Mr Ali as Chief Executive. Subsequently on the same day both Mr Thornley and Mr Grindy met with Mr Ali. Mr Thornley told Mr Ali about the matters concerning Mr Mayne and that he believed the Respondents were obliged to investigate them in a proper independent manner. Mr Ali made a note at the time that neither Council Members wished to raise any of the matters formally and he explained that he could not proceed with any investigations until he had the names of the victims of the Claimant's behaviour and that a trawling exercise was not possible. Mr Thornley's recollection is that Mr Ali would not do anything unless provided with a complaint in writing. Mr Thornley considered that was not necessary.
40. Mr Thornley was dissatisfied with how the matter was being handled and that it was a governance issue for the Council. He then wrote to Mr Sherman by email of 7 October 2015 (page 483 – 484 of the Bundle) it is headed "Allegations Concerning the Head of Human Resources at BASC." He says these are the basic facts as he sees them and his views of the situation concerning rumours and speculation of bullying and intimidation by the Claimant. In short Mr Thornley said that the Council has a clear duty of care overriding views of the CEO to act on matters drawn to their attention. He expected the appointment of a wholly independent investigator who would instigate written notice to the individual given the nature of the allegations followed by suspension from his current post pending the outcome of the investigation. Direction for initial enquiries with staff members being provided from the Council.
41. Mr Thornley received a reply from Mr Sherman to say that he should raise the matters with the Chief Executive. Mr Jarrett responded 12 October 2015 to Mr Thornley to say that as soon as there has been presented something tangible he would deal with it but that he would not start on a witch hunt based on rumour accusations via third parties etc. Those with evidence need to present it. Mr Jarrett did inform Mr Ali about what was occurring and asked for legal advice regarding the Councils duty of care. The Respondents solicitors Messrs Hill Dickinson on 19 October wrote a letter to Mr Ali on the subject of the duty of care. This letter was written by Mr Simon Parrington who refers to a number of matters in the governance and operational manual. Mr Parrington says it can be seen it is the Chief

Executive not Council Members either jointly or severally that is responsible for all aspects of personal management. And this letter was sent by Mr Jarrett to all Council Members.

42. On 22 October 2015 there was a Council Meeting at which Mr Parrington attended to present his advice. Mr Thornley did not consider this advice to be correct in that there was a line where an issue with a member of staff was so serious it became a governance issue. Mr Thornley was not alone in being doubtful about the advice given by Mr Parrington.
43. There was a closed meeting of Council Members on 22 October. Mr Jarrett asked Mr Ali to give a full briefing in anonymised terms of the incident between the Claimant and Mr Mitchell in October 2014 and how it had been handled. Mr Ali believed that the lack of reaction from members meant that the majority of them were aware of the altercation already. However it is clear that some members of Council were aware that the October 2014 incident related to the Claimant threatening Mr Mitchell. For example reference was made by Ms Cockerill, who was not present at the meeting, to a conversation that she had with another Council Member Sarah Turner who had attended the October 2015 meeting who informed her about this incident.
44. Shortly after the meeting Mr Oliver McCulloch, another Council Member, approached Mr Ali to say that he believed that Mr Mayne had been bullied. Mr Ali was told that it was Mr McCulloch's belief that Mr Ali had failed to investigate this until a formal grievance had been raised. Mr Ali had in fact gone to Northern Ireland to discuss with Mr Mayne allegations in which he believed on a couple of occasions the Claimant's behaviour had not been appropriate but there was a lack of detail and also a reluctance by Mr Mayne to pursue the matter formally. Mr Ali determined in the circumstances that it should be dealt with informally with a meeting with Mr Mayne, the Claimant, and himself.
45. Mr McCulloch sent an email to Mr Ali on 23 October referring to written procedures but suggesting that there could be delegation in relation to an appeal also that a whistle blowing policy would be helpful. Mr McCulloch also says "while yesterday was a painful process I think it does provide a basis for moving on while learning from the events". Mr Grindy also emails subsequent to that meeting to Mr Ali on 25 October referring to the fact that the experience that he had with the Claimant was deeply uncomfortable but that he didn't feel the need to complain or make issue of it at the time but that two other Council Members had similar exchanges with the Claimant. He says this may go some way towards explaining the level of challenge that took place in the meeting by Council Members. He agrees that everyone's intentions were honourable as was agreed by Mr Ali and Mr Jarrett and Mr Thornley.

46. What this shows is that there was genuine concern on the part of Council Members about what had occurred in the past concerning the Claimant and the way that the matters had been dealt with by the Respondents. Furthermore there is reference to the personal experiences of Council Members and interaction with the Claimant which suggests that it was not something about the behaviour of the Claimant that they had heard from third parties but rather on their own experiences concerning the Claimant. For whatever reason it appears that a number of Council Members including Mr Thornley and Mr Grindy had a less than favourable view about the behaviour of the Claimant on occasions.

47. 27 October 2015 – Grievance of Mr Alasdair Mitchell and his later resignation.

On the 27 October 2015 Mr Mitchell wrote to Mr Ali to ask for a meeting with the Chairman to discuss the original complaint he made about the Claimant and related matters. Because of the allegations regarding the handling of the case by Mr Ali, Mr Jarrett took over dealing with this matter as a grievance against Mr Ali.

48. Mr Jarrett met with Mr Mitchell on 19 November 2015. Mr Mitchell presented a written document being a version of events. Mr Jarrett spoke to Mr Ali after the meeting and subsequently wrote a letter to Mr Mitchell on 21 December 2015 in which he held that the complaints about the Claimant was dealt with fairly and properly and that other matters were not upheld. In short there were not sufficient grounds to substantiate Mr Mitchell's grievance. Mr Mitchell was told that he could appeal to the President of the Respondents on this decision.

49. On the same day that Mr Jarrett wrote the letter concerning the grievance, Mr Mitchell resigned by way of email (at page 651 of the Bundle). This letter of resignation was sent to all the Council Members. Mr Mitchell made criticisms about the way the organisation was being run and that the Respondents needed to regain their moral compass. Mr Mitchell referred to the fact that just over a year ago when he blew the whistle on "horrendous bullying" that an ongoing aftermath caused him to reassess whether he can work for the organisation.

50. On the 22 December 2015 Miss Tracey Fredriksen of the Chief Executives Office sent an email to the Council Members being a message from Mr Jarrett saying that Mr Jarrett did not intend to comment on the resignation at this juncture and it is important that that position is adopted by Council Members.

51. The reaction by some Council Members to Mr Jarrett's instructions was that they were very unhappy about being told not to discuss the matter

even amongst themselves. For example, Professor Ann Mortimer thought that Council needed to be able to discuss the wider ramifications of this serious issue. There was email correspondence between some Council Members such as Mr Peter Glenser, Miss Cockerill, Miss Turner as well as Professor Mortimer about the situation. It is clear that at this time a number of Council Members were getting very concerned by the way that the original issue between the Claimant and Mr Mitchell had been handled.

52. Mr Mitchell wrote to Members of the Council on 22 January 2016 regarding his resignation (page 707 of the Bundle). He hopes that Council Members will exercise its duty of supervision and scrutiny particularly because of the handling of the complaint that he made about the Claimant. Mr Mitchell made a number of allegations generally of bullying.

53. Council Meeting of 28 January 2016

Prior to the meeting of 28 January 2016, it was Mr Ali's view that any concern felt by Members of Council had in fact been whipped up by Mr Mitchell. It was Mr Ali's belief that some Councillors did have genuine concerns even though such concerns were in fact baseless while others were acting cynically in an attempt to push for the Claimant's dismissal.

54. As is usual there was an evening dinner on 27 January at which a number but not all of Council Members attended. Miss Cockerill was one who attended. She said that Mr Greaves told her that the Claimant had referred to wanting to put a bullet through his head (Mr Mitchell's). This was a reference to a conversation referred to earlier where the Claimant was referring to Mr Mitchell. As Mr Greaves indicated it was not a normal thing to say but he did not believe it was a threat that would be carried out. Miss Cockerill thought this was a serious matter. I accept the evidence of Miss Cockerill that what she was told added to her concerns about what was happening within the structure of the Respondents.

55. Professor Mortimer said that prior to the Council meeting on the 28 January there had been discussion among Councillors about the need for independent legal advice at the meeting. Professor Mortimer was concerned at the way the original issue between the Claimant and Mr Mitchell had been handled. At the dinner Professor Mortimer was told about threats from the Claimant to kill Mr Mitchell. Information was passed by Mr McCullough and Mr Thornley. Professor Mortimer as told of other unspecified occasions of bullying and said that there appeared to be a culture of intimidation and fear at the Respondents.

56. Mr Jarrett says that the evening before the Council meeting that is on the evening of 27 January 2016 a couple of deputations of Councillors came to tell him that they had no confidence in the Claimant and wanted him to

leave the organisation. Mr Jarrett was not prepared to take any immediate action in relation to the single allegation that he perceived to be made which is what was said to Mr Greaves by the Claimant. Mr Jarrett's opinion was while they may not like the Claimant and that while he may have used inappropriate language in the past the matter had been appropriately handled and closed. Mr Jarrett said that he would speak the following day to Mr Ali about whether the Claimant should be dismissed.

57. Mr Jarrett described the meetings that took place on 28 January. There was an open and closed meeting. Mr Jarrett informed the Council what Mr Ali had said regarding resignation if he was forced to dismiss the Claimant. Mr Parrington was present at the meeting and emphasised that Council did not have jurisdiction over staff matters. Mr Jarrett called for evidence about matters before matters could be taken forward. These concerns should be made to Mr Ali.
58. Mr Thornley spoke at the meeting and did not agree with Mr Parrington's advice that this was something Council could not involve themselves in since this was a governance issue. Mr Thornley was not impressed with Mr Parrington, particularly Mr Parrington's view that the words spoken to Mr Greaves were only banter. Mr Thornley believed that the Claimant should be suspended whilst there was an independent investigation. Miss Cockerill said that in the closed meeting of 28 January, Mr Glenser spoke of the Claimant's dismissal but there was a discussion of different options regarding the Claimant. Miss Cockerill was shocked and disturbed to hear Mr Parrington dismiss what the Claimant had said as being building site banter. There was concern about potential damage to the Respondents reputation as well as concern for staff. Miss Cockerill considered that there didn't seem to be anything being done about the allegations by Mr Jarrett and Mr Ali. Miss Cockerill said that she had not formed any view that the Claimant had to go and there was no conspiracy. What Miss Cockerill said the Council wanted was an investigation of the serious allegations so they could find out what was going on with action taken if necessary. Professor Mortimer said that other Councillors and herself considered they had a duty of care to staff in spite of what Mr Parrington was advising the Council. The Council asked Mr Jarrett to speak to Mr Ali to see what he was going to do to address their concerns about the Claimant. Mr Jarrett went then to see Mr Ali and when he returned to say that if Council tried to remove Mr Curtis from his position he would resign as Chief Executive. Professor Mortimer said they had not asked Mr Ali to remove Mr Curtis but how he was going to deal with the concerns. Professor Mortimer recalled Mr Glenser saying that he had been approached by members of staff who had concerns about treatment to which the Claimant had subjected them. Professor Mortimer was not happy with the way that Mr Jarrett and Mr Ali were handling this issue.

59. Mr Michael Hardy said that as a result of the discussion he accepted what Mr Parrington had advised namely that legally Mr Ali and Mr Jarrett were right in saying what they had to say about responsibilities for the situation. He accepted that position. Mr Hardy thought that he really didn't know exactly what was going on at this time.
60. Mr John Dryden's recollection of the meeting on 28 January 2016 is that the Claimant's alleged conduct need not have been investigated. He thought it was very unsatisfactory when Mr Jarrett came back to say what Mr Ali had said Mr Dryden wanted to know how the matter was going to be dealt with.
61. Subsequent to this meeting Mr Grindy emailed Mr Jarrett about "the sorry state of affairs" which Mr Jarrett said that if he had something new to say it would be welcome. Mr McCullough also emailed Mr Jarrett with concerns that Mr Mayne had been bullied by the Claimant. Mr McCullough thought there was a considerable body of factual evidence relating to inappropriate behaviour by the Claimant.
62. **Grievances from the Claimant, Mr Gary Ashton and Mr Tommy Mayne – February 2016**
In the first five days of February 2016 the Respondents received four grievances.
63. (1) On 2 February 2016 Mr Jarrett received a grievance from the Claimant. It was copied to Mr Ali and is on page 737 – 742 of the Bundle. The complaint is against some Council Members who are said to have been acting outside their roles and authority. The Claimant says certain Members of Council have been acting in what amounts to a concerted attempt to besmirch his character and reputation and he believes significant damage has already been done to him. The Claimant emphasises that these matters have been brought to his attention by others and have not been the result of him taking any actions or seeking information. His role has been totally passive receptive and professional. One of the Respondents senior managers Sandra Loton-Jones had had conversations with a Member of Council, Mr Jono Garton. In short Mr Garton was concerned about some Members of Council considering them experts in HR personal matters and were interfering. With reference to approaching a very junior and vulnerable member of staff involving her in the situation. The Claimant says according to Mr Jono Garton at least two other Members of Council involved in this matter.
64. (2) On 4 February 2016 Mr Gary Ashton sent an email to Mr Ali saying that it was with deep regret that he attaches a formal complaint in relation to a number of Members of Council. There is attached a reference to Mr Sherman's behaviour in which he is accused of creating an intimidating

work environment and complaints about Mr Grindy and Mr McCullough for repeating inaccuracies of Mr Sherman.

65. On 3 February 2016 Mr Glenser circulated to all Council Members an anonymous letter which he said was waiting for him in chambers. Mr Glenser asks in the email has anyone else had one. The letter is dated 14 January 2016. The letter is addressed to whom it may concern and is about a shot gun certificate held by the Claimant and whether the Claimant should not have unsupervised access to firearms in view of his loss of control while he is heavily under the influence of alcohol.
66. (3) This circulation prompted the Claimant to send a second grievance dated 5 February 2016 (page 758). In that complaint the Claimant says he is now at the stage where he is finding himself under a constant assault from some Members of Council and this is becoming physically and mentally damaging for him. He asked Mr Jarrett what he intends to do to stop this. On page 760 – 761 is a more detailed complaint against Mr Glenser who is accused of being engaged in a course of conduct of harassment against not only the Claimant but also Mr Ali and is likely to be harassing Mr Ashton and Miss Debbie Owen and possibly other Members of Council by his conduct.
67. (4) On 5 February 2016 Mr Ali received a formal complaint from Mr Mayne (pages 769 – 773). This complaint is that on 6 July 2015 and subsequent comments amount to bullying and harassment on the part of the Claimant. Mr Mayne talks about taking some sick leave and then discussing concerns about the Claimant's behaviour with Mr Ali on 28 October and exploring the possibility of resolving the matter informally. However as a result of Mr Ali's refusal to allow him to be accompanied to an 27 January informal meeting coupled with the fact that the Claimant has declined an offer of a second informal meeting, he would now like to make a full formal independent investigation to take place.
68. Mr Jarrett says that he had never seen a situation such as the one they faced in early February 2016 and he did not feel that he could resolve the issues internally and that the only way to deal with the escalating situation would be to instruct a neutral third party to conduct an independent investigation. He asked Mr Ali to speak to Mr Parrington about a suitable investigator. Mr Ali reported that Mr Parrington had suggested that they use Hill Dickinson and identified his colleague Caroline Prosser as a suitable candidate. The role was to gather facts in relation to the grievances and reach factual conclusions. Mr Jarrett says that he did query if there would be any conflict but was assured that Hill Dickinson could maintain sufficient information barriers to avoid any conflict. Mr Jarrett did not seek any approval from the Council prior to instructing Hill Dickinson and did not seek authorisation from Council because according

- to Mr Jarrett he was confident it would not be given. This is because Mr Jarrett said that the atmosphere was such that he felt that Council was not capable of making an impartial rational decision on the issue because of the feelings regarding the Claimant.
69. Mr Jarrett informed Council on 5 February 2016 of his intention to appoint an independent legal adviser to carry out an investigation. Mr Jarrett did not say that it was Hill Dickinson who would be carrying out the investigation. Mr Jarrett says that he will confirm to the five Council Members involved under separate cover that they are to be investigated for allegations which constitute breaches of employment law.
70. The decision by Mr Jarrett not to inform Council Members of the identity of the person to carry out the independent investigation is surprising. Surprising because as a result of the meeting in January 2016 he knew opinions had been expressed about Mr Parrington and it was clear that there had been a degree of reluctance to accept Mr Parrington of Hill Dickinson being well informed on the issue. Mr Thornley had informed Mr Jarrett about the question of Hill Dickinson's independence and sought independent legal advice to Council. Mr Thornley's view had been shared by others.
71. **Appointment of Caroline Prosser of Hill Dickinson as investigator – 10 February 2016**
On 10 February 2016 Miss Tracey Fredriksen sent an email from Mr Jarrett to Council Members to say that the investigations which concerned Council Members would be conducted independently of the Association and that Caroline Prosser of Hill Dickinson who is a Specialist Employment Lawyer has been appointed to undertake the investigations. The purpose of the investigations was said to establish the facts relating to the complaints each of which will be investigated separately. Once the facts have been established in each case a determination will be made as to whether any party has breached the Association's rules. Thereafter those Council Members affected will be advised of the outcome. This email is clearly in relation to complaints about the Council Members and not employees.
72. There has not been produced a copy of instructions given to Miss Prosser. An email prior to 10 February 2016 on 9 February 2016 from Mr Jarrett to the Council Members said that an independent solicitor has now been appointed and those invited to participate in those investigations will be contacted on an individual basis. Mr Jarrett says "you should not discuss these investigations with anyone including amongst yourselves. That includes the fact that these investigations are taking place and the circumstances around these investigations. Such discussions may prejudice the investigation and/or may place you in breach of your

fiduciary duties. In such circumstances legal action may be taken by the Association against any Council Member who deliberately places him or herself in that position”.

73. Miss Prosser met with Mr Ali to receive the Respondents instructions although Mr Jarrett says he was responsible for those instructions which were to carry out a fact finding investigation into the complaints that he had received. In short to investigate the full grievances.
74. Mr Jarrett did not know Miss Prosser before instructing her to conduct the investigation and does not recall having any contact with her until he was sent her report in May 2016. Mr Jarrett was not interviewed as part of the investigation.
75. Miss Prosser’s investigation was carried out over a period of three months and she interviewed the Claimant, Mr Mayne, Mr Jono Garton, Mr Ali, Miss Debbie Owen, Ms Flora Morrison Assistant to Tommy Mayne, Ms Sandra Loton-Jones Head of Commercial Services, Ms Chantelle Taylor a junior member of staff at Head Office, and had contact with Mr Greaves Council Member and Mr Gary McCartney from the Northern Ireland Office.
76. In addition Miss Prosser had extensive contact with Mr Lachlan Nisbet a solicitor at Brabners LLP who were appointed to act for Councillors Mr Jono Garton, Mr Peter Glenser, Mr Michael Sherman, Mr Ian Grindy and Mr Oliver McCullough. These were named as Respondents to the grievances of the Claimant.. However none of these directly engaged with Miss Prosser save Mr Jono Garton who had one interview with her. The named Councillors sought approval to use Council funds to pay for instruction of the solicitor Lachlan Nisbet. Council agreed to pay legal fees but there was still a non participation in Miss Prosser’s investigation.
77. During April 2016 Mr Jarrett had conversations with Mr Ali about his concerns that some members of Council would not be accepting of the investigation report and part of the reason for this was that Mr Jono Garton had apparently informed Mr Jarrett that they would then ask Mr Thornley to carry out an unbiased investigation. And that Mr Jarrett also thought that he would be asked to resign together with Mr Ali.
78. **Hill Dickinson Grievance Investigation Report – May 2016**
After receiving instructions from Mr Jarrett, with Mr Ali as the primary point of contact, Miss Prosser had a free reign about how to conduct the investigation and discover the when who what and why in respect of the allegations. However Miss Prosser was clear that in respect of the investigation report that it was to be laid before the Council and that it was for the Council to make the decision. The outcomes of the grievance allegations were always going to be decided by the Council.

79. As part of the investigation Miss Prosser interviewed the Claimant and Mr Tommy Mayne about their grievances; interviewed a number of individuals as referred to above; reviewed documentation; having liaised extensively with Mr Lachlan Nisbet a solicitor at Brabners LLP who was appointed to act for Councillors Jono Garton, Peter Glenser, Michael Sherman, Ian Grindy and Oliver McCullough.
80. In respect of the Claimant's grievance that certain members of council were trying to procure the termination of his employment without any good reason for doing so, Miss Prosser found that there was insufficient evidence to substantiate any of the complaints against the Claimant and that in the absence of evidence as to what exactly happened between Alasdair Mitchell and the Claimant in October 2014 and considering it was some 15 months later it was wholly unreasonable of Council Members to request that Mr Ali dismiss the Claimant. In respect of the October 2014 incident Miss Prosser spoke to Mr Ali and the Claimant, but did not interview Mr Mitchell as he was bringing a claim against the Respondents for unfair dismissal. Miss Prosser thought that there was never clarity about what was said only Mr Mitchell was clear about that. It was Miss Prosser's view that there was never a threat to kill in the sense that he did not mean it. However at paragraph 41 of her report the following appears "CP asked Steven Curtis whether he had ever threatened to kill Alasdair Mitchell either that night or any other, Steven said no. When asked if Steven had ever threatened to kill anyone in BASC the answer was no." No-one told Miss Prosser the Claimant had admitted everything and it was an unchallenged complaint of Mr Mitchell. Mr Ali did not say that he read out the totality of the complaint to the Claimant. Miss Prosser considered that the Claimant understood that he accepted inappropriate behaviour. It was unfortunate that Miss Prosser phrased part of the report as she did because clearly there was incontrovertible evidence that the Claimant had made words which amounted to a threat to kill, whether he meant it being a different matter, and that should have been made clear in Miss Prosser's report. It is perhaps not surprising that those that knew the facts would have been disturbed by this lack of clarity or understanding in the report of Miss Prosser.
81. Miss Prosser came to the conclusion that at the Council meeting on 8 January 2016 there had been an instruction to remove the Claimant. Miss Prosser believes that an instruction to dismiss 15 months later in the absence of proper evidence would result in a successful and fair dismissal claim and that would be on the basis that either the Claimant was dismissed or whether he resigned and claimed constructive dismissal – see paragraph 68 of the report. Miss Prosser was clear that the Council decided to remove the Claimant at any cost and when Miss Prosser asked the Claimant how he got to that information he declined to tell her who it

was that had given the information. However between January and May 2016 there had been no resolution by the Council to terminate the Claimant's employment.

82. In respect of the email circulated by Mr Glenser on 3 February 2016 Miss Prosser found this was either done on purpose with the aim of discrediting or damaging the Claimant or was reckless as to what the result might be. Miss Prosser believed that it had gone to the police since it was addressed to the police but she did not know this fact. Miss Prosser believed that Mr Glenser could have done it differently and he should have contacted only one person being Mr Jarrett or possibly Mr Ali.
83. As to Mr Tommy Mayne's grievance, Miss Prosser concluded it was without merit. Miss Prosser concluded that Tommy Mayne was being influenced or pressurised by third parties from at least October 2015 onwards. These third parties were Alasdair Mitchell and Councillor Oliver McCullough and that there were also major concerns regarding the honesty of Tommy Mayne during the process of the grievance. Miss Prosser said that it was no surprise since Mr Mayne was a vulnerable person who had had domestic and personal problems. According to Mr Ali, Mr Mayne was seriously reluctant to raise a grievance. Miss Prosser did not believe that if Mr Mayne was correct in what he said that it would be quite intimidating. Miss Prosser did not think that there would be reprisals if Mr Mayne was to pursue his complaint. In relation to what was said by the Claimant, Miss Prosser said that it depends to whom it was said but she would not expect the language from the Director of HR. It is the context of the Claimant saying the words, "regret it" to Mr Mayne that need to be looked at in relation to the words used.
84. Although Miss Prosser knew of the allegation against the Claimant in October 2014, Miss Prosser considered that each grievance has to be decided on its own facts. In relation to the third matter about the Claimant saying to Mr Greaves about wanting Mr Mitchell to have a bullet to the head, Miss Prosser said that she did look at it but did not have the information regarding the Mitchell matter. Therefore Miss Prosser did not consider that any of these complaints in themselves helped to decide on the balance of probability what had happened in relation to the incidents and or the feelings of individuals regarding comments made by the Claimant.
85. Miss Prosser considered that the Councillors had acted outside their area of responsibility and being in breach of their fiduciary duties they had subjected the Claimant to a campaign of bullying. Miss Prosser did expect the Council to accept her conclusions. However Miss Prosser said it would be a matter for the Council to decide. Miss Prosser said that she did specifically refer to possible claims and potential liabilities because it was

part of her service to the Council. Miss Prosser had not seen the Agenda which had been sent to the Council Members which is on page 855 of the Bundle.

86. Miss Prosser had submitted to Mr Jarrett her draft report for any comments so Mr Jarrett made some comments, but I accept they did not alter the gist of the recommendations made by Miss Prosser and there was nothing sinister in Mr Jarrett having sight of the report before it went to the Council. There has been disclosed the amendments made to the report in a transparent way by Miss Prosser.
87. Miss Prosser was not surprised that she was not invited to the Council meeting. While she accepts some parts of her report were not clear and that it would have been reasonable for Council members to ask questions of her before coming to a view, her first thought about the Brabners report was that it was for the defence of the Councillors and that rather than accepting this report the Council should have been in a position to make a determination of the outcome because her report had been with them for a week or so.
88. On the day of the Council meeting Miss Prosser did attend to speak to Mr Jarrett because she had extra copies of her report. Mr Jarrett did not ask Miss Prosser to remain and attend the Council meeting in order to present her report and to answer any questions that may be asked. Miss Prosser could not remember if she told Mr Jarrett she could attend if necessary. Bearing in mind the very detailed comments made on her report by Messrs Brabners it is perhaps surprising that Mr Jarrett did not invite Miss Prosser to attend the meeting to present her report and to answer any queries or questions and give explanations on parts of the reports which are either factually unclear or incorrect on a literal interpretation for example whether a threat to kill had been made in October 2014 by the Claimant.

89. **The Brabners Report**

The Brabners Report is set out from pages 361 of the bundle and is some 24 pages long together with attachments. It is headed "Explanatory Note to the BASC Council for the Special Meeting of 26 May 2016." The purpose of the document was to provide an understanding to Councillors of the position adopted by Councillors Grindy, McCullough, Sherman and Glenser. Messrs Brabners invite the Council to consider the degree of independence and objectivity apparent within the report and they say there appears to be an acceptance that Mr Curtis and Mr Ashton have not colluded and that Mr Curtis is to be regarded as truthful even in the case of the Tommy Mayne allegation where the evidence against him was independently witnessed. Messrs Brabners say this is also evident from the way in which conclusions are reached with are critical of the accused

or their solicitor but where either no evidence exists supporting the conclusion or where a more logical explanation is apparent. There is criticism of Miss Prosser making findings of fact rather than investigating. Council is reminded they are free to accept in full, accept partially or reject the findings or equally free to reject the report in its entirety. In paragraph 5.1 it is said that Council's conclusion was that Mr Curtis's ongoing employment posed a risk to BASC's integrity and that steps should be taken to negotiate his departure. Messrs Brabners say that days later our clients face complaints brought against them individually by Mr Curtis and his colleagues ostensibly as employment grievance according to the report. A natural view would be to view the complaints as a strategic measure to hold up and derail Council's legitimate decision that Mr Curtis be removed from his employment.

90. There is reference to instructions on 28 January 2016 regarding the Claimant and it is said Council envisaged a negotiated exit and so within reason it authorised payment of a severance package to the Claimant to secure waver of claims. It is said there is no hidden agenda to remove the Claimant but there is of course a legitimate Council instruction. It is pointed out that the Councillors the subject of the complaint have asked but not been told what the potential outcome of the process could be for them individually. Miss Prosser said it is for the Council to decide. The point is made that nobody should be required to attend an interview to answer questions about their conduct without knowing what the implications of their evidence might be. Then there are criticisms about Miss Prosser's way of conducting the investigation, particularly not permitting individuals to see original complaints or evidence. The point is made that only one side has been heard and that Council is now asked for its conclusions with regard to each of the complaints raised. It is not considered that reliable findings can be made in respect of specific complaints based on the statements of the Claimant and Mr Ashton alone. The point is made that constitutionally the Council of BASC clearly retains overall governance responsibility and control over the association's affairs. Council is therefore effectively the employer of those who brought the grievances in this case. And there is reference to enquiries being made of Hill Dickinson about fiduciary duties, but enquiries have been unanswered.
91. The conclusion set out in paragraph 8 of the Brabners Report is that Council should be under no illusion that the implications of endorsing the investigation which is that if Council believes there was an agreed instruction to remove the Claimant on 28 January 2016 was clear and properly reached then to allow his complaints in Miss Prosser's investigation to undermine that instruction and resulted in action being taken against individual Council Members will remove all authority and control and influence from the board. The Claimant and his supporters would become untouchable and unable to define BASC's culture moving

- forward. Council would be toothless and all power passed to select senior employees.
92. Paragraph 9 of the Brabners report is a commentary upon Miss Prosser's report which is very detailed.
93. **Presentation of Reports to Council Members.**
Notice of meeting dated 11 May 2016 was circulated by Mr Ali. There was to be a special council meeting on 26 May 2016 to deal with the following (a) to consider the report of Miss Caroline Prosser following her investigation into complaints by several members of staff against certain Council Members (b) reach a conclusion with regard to each complaint and (c) determine whether any action should be taken and if so what as a consequence of such conclusions. It is said that the Agenda and supporting papers would be issued on Thursday 19 May 2016.
94. However on the 16 May 2016 Mr Ali wrote to Mr Gary Ashton, the Claimant, and Mr E T Mayne to inform them that the investigation has been completed. In the case of Mr Ashton, the evidence demonstrates that in the main his complaints are substantiated and grievances upheld. In respect of the Claimant Mr Ali says that the investigation has concluded that the evidence demonstrates that in the main his complaints are substantiated and grievances upheld. Further in respect of Mr Mayne the conclusion is the complaint had not be substantiated and that the grievance has therefore not been upheld and no action involving the Claimant will be taken. The investigation concluded that Mr Mayne's raising a grievance was not malicious and that there was a genuine however mistaken belief that he had been wronged. However the investigation concluded there were concerns regarding his honesty during the grievance process and this will need to be investigated. The investigation concluded that he was being influenced or pressurised by third parties from at least October 2015 onwards.
95. On 18 May 2016 Mr Ali provided the Claimant with an extract of the Hill Dickinson Report that related to his grievances.
96. As set out in the minutes of meeting around 19 May 2016 Council Members received a copy of the Hill Dickinson Report. On 25 May Mr Nisbet circulated copies of the Brabners Report for the Council Members. Therefore there was not a long time for Council Members to read Brabners Report.
97. A number of Council Members were called to give evidence and their evidence touched upon their reaction to reading the Hill Dickinson Report or the Brabners Report.

- (a) Mr Thornley said that he was keen to see what the Hill Dickinson Report had said and he had no preconceived ideas. He denied that he was part of any collusion. He considered that the Report was very unprofessional and poorly written. He thought that many of the findings were perverse by which he means they are the opposite of what you would expect based on the evidence. For example Miss Prosser's finding that Alasdair Mitchell wrote the anonymous letter to Mr Glenser and there was no basis to make that finding. There were findings in the Report that Mr Thornley believed or knew were wrong such as the Claimant's denial that he had threatened to kill Alasdair Mitchell. It seemed to Mr Thornley that either the Claimant or Mr Ali were being dishonest with Caroline Prosser. Similarly in relation to the Tommy Mayne conversation conclusions made by Miss Prosser were questionable. In short Mr Thornley did not consider it a well balanced Report and that there were conflicts in that Hill Dickinson were representing the complainants rather than being independent. There were a number of other issues that influenced Mr Thornley's views on this matter. I accept the evidence of Mr Thornley that he genuinely had those views based upon firstly his past experiences of factual matters, his knowledge about them and his assessments of the Claimant and what he believed to be the Claimant's deficiencies. I accept that Mr Thornley brought to bear his own experience of fact finding and independent investigations in disciplinary and other related matters coming to the conclusions that he did.
- (b) Miss Sally Anne Cockerill said that she sat down to read the Hill Dickinson Report at home at the weekend. She made a number of handwritten notes which she produced to the Tribunal. She considered the Report deeply unsatisfactory such as the Claimant denying threatening to kill Alasdair Mitchell which Miss Prosser accepted despite all the evidence to the contrary. Miss Cockerill considered that there were veiled threats and implications in Miss Prosser's Report about personal liabilities of Council Members. Miss Cockerill thought there were broader issues than the initial issue of the Claimant and his behaviour but rather what on earth was going on in the organisation and why has no-one dealt with it? Her concerns were for staff wellbeing and the reputation of the organisation. In relation to the Tommy Mayne part of the Report Miss Cockerill said that Mr Mayne had told her that he had phone records to prove conversations with the Claimant. Her view was that there was at least an element of truth in what Mr Mayne was saying and she disagreed with Miss Prosser's finding that Tommy was not honest and that made her call into doubt what other aspects of the Report. Miss Prosser failed to properly investigate before jumping to her own conclusions. Miss Cockerill's thoughts were that the Report did not provide a sufficient basis on which to

find the accused members guilty of the alleged misconduct. Further investigation was required.

Miss Cockerill had limited time to look at the Brabners Report, and she seems to have seen most of it on the iPad of Mr Glenser. But Brabners Report appeared to raise a number of further questions that Miss Cockerill felt ought to be addressed in order to be fair to all parties. Miss Cockerill said that she did not pre-judge the outcome of any investigation and was neutral as far as the Claimant was concerned. She had no personal prejudice regarding the Claimant. Miss Cockerill said that herself and Mr Glenser would contact each other but not on a regular basis. Miss Cockerill had discussions about the perception of bullying at BASC but Miss Cockerill did not know what all the allegations necessary were and that Mr Glenser was not trying to persuade her of anything. There were alarm bells because she was instructed by Mr Jarrett not to talk about matters. In short the Reports from Hill Dickinson and Brabners raised a lot of questions. Miss Cockerill thought there was some conflict with Mr Parrington having been a BASC lawyer that there seemed to be an independent firm investigating matters. In respect of her notes which included that Miss Cockerill did not believe that the allegations were said to the accused Councillors in sufficient detail. Miss Cockerill believed there should have been full disclosure, full particulars of the allegations which were only in broad terms. For example Miss Cockerill's understanding was that Mr Glenser was at a loss about what the grievance was against him because she thinks Mr Jarrett said it had nothing to do with 27 or 28 events so Mr Glenser was at a loss about what they could be about. There was a huge variety of things which influenced her decision on the day and there was not enough evidence to accept the Report in its entirety. Miss Cockerill did not believe all the evidence been put forward for example Mr Mayne was not asked for his telephone records.

In short Miss Cockerill had no confidence in the Report as presented by Miss Prosser. Miss Cockerill also wondered why Mr Jarrett was making changes to the Report. Miss Cockerill had legitimate queries about the validity of the Report and I accept that evidence of Miss Cockerill.

- (c) Professor Ann Mortimer became a Council Member in June 2015. Professor Mortimer became aware that there was friction between the Claimant and Mr Mitchell in about October 2015 when she had a conversation with another member of the Respondents while she was managing a stand at an event in October 2015. Professor Mortimer said that conversation was more about the difficulties in the organisation between the Claimant and the staff. At a Council meeting in October 2015 Professor Mortimer said an issue was raised by Mr Glenser and Mr Thornley about whether BASC Councillors had a duty of care to any employee of the organisation. Mr Parrington was present at the meeting and had given advice

that these were operational matters. This advice was not accepted by some Councillors. It was at this meeting that Mr Ali referred to the previous incident in October 2014. Mr Ali asked for any information regarding staff bullying.

When Mr Mitchell resigned in December 2015 and sent an email to Councillors Professor Mortimer was concerned but did not necessarily accept what Mr Mitchell said was true. Professor Mortimer was concerned about the effect it would have on the reputation of the Respondents. Professor Mortimer was in email contact with other Councillors including Miss Cockerill.

On 19 January 2016 Professor Mortimer emailed Miss Cockerill and Miss Turner about the Council Meeting in a week's time. In that email Professor Mortimer said that the thrust of what has happened relates to the behaviour and actions of Mr Curtis the Head of HR. "A number of fellow Council Members including myself have become very concerned regarding the way in which the original issue between the former Director and Mr C was handled" – the history of the matter was brought to the attention of Council Members at the October meeting last year. Professor Mortimer said that she did not form the view that the Claimant had to go because her concern was with the reputation of the Respondents. The matter had to be dealt with properly. Professor Mortimer denied being in cahoots with Mr McCullough with whom she had discussions and stressed that she did not believe the allegations that Mr Mitchell said were true but simply that they required exploration at Council meetings. Indeed there is nothing in the emails which suggests otherwise.

At the pre Council dinner on 27 January which Professor Mortimer attended the thrust of the discussions was the matter had to be dealt with effectively. Some Council Members were not satisfied the way the matter had been dealt with. Professor Mortimer said that the Claimant's fate was definitely not sealed at that meeting. By the March meeting Professor Mortimer was aware of the Hill Dickinson investigation but not told who was claiming against who. It was not until March that she knew who the Council Members being the subject of the investigation. Professor Mortimer denied that she was part of a plan against the Claimant for secret meetings. Professor Mortimer said that she was worried about the Hill Dickinson Report not because of the instruction of solicitors to conduct the investigation but because Mr Parrington had previously advised Councillors that there was no duty of care for employees, which she did not consider to be credible advice.

Professor Mortimer did not agree with Hill Dickinson's Report conclusions and had serious reservations about assumptions in the Report, for example, when there was a reference to her contact with Mr Mitchell, Professor Mortimer had not been approached by Miss Prosser as part of the investigation and the implicit assumption was that Professor Mortimer was in some sort of collusion with Mr Mitchell. Professor Mortimer said this was entirely incorrect. In

addition the audio tape that had been secretly recorded by Mr Mitchell in October 2014 had been heard by Professor Mortimer in March 2016 therefore Professor Mortimer was fully aware the Claimant's denial of his action was not true. Also when Mr Parrington referred to what the Claimant said to Mr Greaves regarding the bullet to the head as building site banter, Professor Mortimer found this shocking.

Professor Mortimer considered that the Councillors against whom accusations were made had been ambushed in that they were not treated fairly in respect of the Report. All the evidence pointed in one direction in the opinion of Professor Mortimer and this apparent acceptance of the Claimant's account seemed one sided to Professor Mortimer. If Miss Prosser could be so wrong about suggestion that she, Professor Mortimer, was in cahoots with Mr Mitchell there is a distinct possibility other findings were made on similar misapprehensions. There was no plan or plot and Professor Mortimer had no idea what was going to happen at the Council meeting.

The reservations held by Professor Mortimer about the reliability of the Report of Miss Prosser was based upon her own knowledge of the inaccuracy of Miss Prosser's express or implicit conclusions about her contact with Mr Mitchell. Together with all the other matters, I accept Professor Mortimer objectively looked at and came to the conclusions that she did. Therefore Professor Mortimer had good reasons to doubt the accuracy of at least a large part of Miss Prosser's conclusions.

- (d) Mr John Dryden had been employed by the Respondents from 1996 until 2005 as the Regional Director for England. He is now in his second five year term as an elected BASC Councillor. At the Council meeting on 22 October 2015 Mr Dryden heard about the difficulties between the Claimant and Mr Mitchell. Mr Dryden's opinion at that time was that he did not think it was good enough the way that it had been dealt with by Mr Ali. When Mr Mitchell resigned and sent an email, Mr Dryden accepted what Mr Mitchell was saying was the truth. He was also aware later of an article written by Mr Mitchell in the "Shooting Times" which could be read as being very critical of the organisation. At the January 2016 meeting Mr Dryden said that the Council route was through the Chair to the Chief Executive and that the Chair had been instructed to speak to Mr Ali about the situation regarding the Claimant. The Chair had said that he had seen Mr Ali and that if the Claimant has to resign Mr Ali would resign. It was all about the fact that the sanction did not appear to be strong enough in relation to the Claimant and the Council had expected Mr Ali to come back with explanations. Mr Dryden said he did not recall any conversation that they had to get rid of the Claimant at any cost and he didn't

want the Claimant to leave. The fact is they did not consider that Mr Ali had handled the situation properly.

Mr Dryden sent an email to Mr Jarrett 12 February 2016 in which he said that "I have learned that pleasing everyone is impossible but pissing everyone off is a piece of cake." Mr Dryden refers to a clear course of action having been decided but has not been activated and they are confronted by what appears to be a counter attack or challenge to the capacity of the Council itself. Mr Dryden says that he thinks there should be an emergency meeting of Council. The response to the email by Mr Jarrett is that there is no point in an additional meeting as there is an investigation under way. Mr Jarrett says that it is common sense for Council Members to watch what they say. Mr Jarrett says what has happened is that by the seemingly ill advised action some of the colleagues had managed to turn the fire from the preferred direction onto themselves. Mr Dryden responds saying Mr Jarrett has his support and some calming words to those not implicated may be helpful.

Mr Dryden felt strongly that the grievances put in by the Claimant were a smoke screen. Mr Dryden thought that Miss Prosser's Report was not professional and that the problem was with the Chief Executive and that the grievances had come about as a result of the January meeting. Mr Dryden said that he had worked 30 years for the company but never seen anything like that. The Prosser Report was full of holes. He did not believe that there was any agreement that the Claimant was going to be dismissed in January and that the Bradners Report has got that bit wrong.

It is clear from the email exchange at the February 2016 that Mr Dryden had real concerns about what was happening in the Respondents and was supportive of Mr Jarrett in trying to reach a resolution. However I accept that Mr Dryden did not think that the main problem which had been identified at the January Council meeting namely the conduct of the Chief Executive had properly been managed or that the Prosser investigation was an independent and adequate investigation. That was Mr Dryden's genuine view after he read both the Prosser and the Bradners Report.

- (e) Mr Michael Hardy started to have concerns about how things were being managed with the Respondents in December 2015 when Mr Mitchell resigned. At the January 2016 Council meeting Mr Hardy was surprised that both Mr Jarrett and Mr Ali were saying they would that the Council should not get involved with the staff issue. However he accepted the advice given by Mr Parrington. Mr Hardy also accepted the advice not to discuss matters after the grievances had been the subject of the investigation. Mr Hardy saw the Hill Dickinson Report the night before the meeting. He arrived late because he had had a long journey. He would have liked to have had more time to have considered the Report. However Mr

Hardy did not think it was a fair Report at all and the primary reason was due to the fact there had been conflict of the firm that had carried out the Report Hill Dickinson. He considered the matter needed to be looked at more thoroughly independently. He had not spoken to the other Councillors about the Claimant. In short they needed more investigation.

I accept that that was the genuine view of Mr Hardy after he read the report.

- (f) Mr Duncan Greaves had brought in June 2015 the subject of Mr Mitchell's altercation with the Claimant to the attention of Mr Jarrett. Mr Greaves had read the Hill Dickinson Report on 25 May 2016 at a Travelodge near Stansted Airport. Mr Greaves thought that the Hill Dickinson Report made sense and agreed with the findings at the time. This is because the Report had come from a law firm. Mr Greaves had not seen the Bradners document at this point. Mr Greaves said he would not be influenced by anybody else. Mr Greaves believed that the comment about the bullet through his head by the Claimant was that namely a comment not a threat. He certainly did not believe the Claimant intended to do it. He may have said it emotionally. It was not a normal thing to say however. What had led to that comment being said by the Claimant was Mr Greaves saying what had happened that the show was typical of Mr Mitchell.

There is no reason to consider that Mr Greaves in any way was part of a plot against the Claimant and indeed his actions subsequent to the meeting indicate that his views about the Hill Dickinson Report and his acceptance of it at the time was born out by subsequent events.

98. Mr Christopher Graffius is Director of Communication for the Respondents. He became Acting Chief Executive of the Respondents on 26 May 2016 and is still acting in that capacity. Mr Graffius says the language used by Mr Ali and the Claimant and talking about staff and others whom he felt was ineffective or critical was violent and peppered with expletives. Examples were given by Mr Graffius which were confirmed by the tape recording and by the Claimant's own evidence about using certain expletives. These rants as described by Mr Graffius were directed towards some of the Council Members.

Council Meeting of 26 May 2016

99. A special Council meeting was scheduled for 26 May 2016 to consider the contents of the Hill Dickinson Report. The five Councillors names as Respondents in the Report were not invited to the meeting because of their conflict. Nine other Councillors were present two of whom Mr Duncan Greaves and Alan Balfour attended by phone. A transcript was

made of that meeting. The Chief Executive Mr Ali and Mr Parrington were also present at the meeting. Mr Thornley considered it inappropriate for Mr Parrington to be there, but other members wished him to remain initially and therefore Mr Parrington remained to give advice. Mr Parrington spoke of potential claims and about the Council and Council Members in respect of their fiduciary duties. Mr Parrington said that a decision had to be made that day. Reference was made to derivative actions and to employees having claims against Council Members personally and Council Members not being covered by the Respondents policy of insurance. There were a number of comments/discussions about the Report and unhappiness expressed about parts of it. Mr Thornley for example considered that the Report was unprofessional offered to go through examples but that going through paragraph by paragraph would take too long. After discussion and with Mr Thornley's assistance a motion was put to a vote namely "the Report is not accepted in its entirety but nonetheless raises issues which require further enquiry to enable Council to make decisions. This enquiry, which will be controlled by Council, should take account of any response by Council Members subject to complaints and take account of the legal advice submitted to Council by Hill Dickinson and Brabners". That motion was passed by 5 votes to 3 against.

Following this meeting Mr Jarrett resigned as Chairman. There were then two further Council meetings which all Council Members were present including the 5 accused Council Members. Mr Glenser was unanimously elected Acting Chairman. This was because the Vice Chairman did not wish to stand.

100. In respect of the earlier meeting at which the vote on the motion was taken there is reference in the evidence of the Claimant and others called on behalf of the Claimant to the fact that the Hill Dickinson Report was rejected. In fact this is not the word used by either the Claimant or in the motion itself. Nor as suggested was the Report in its entirety rejected. The wording of the motion was the subject of considerable thought at the meeting as can be seen by looking at the transcript. It is careful in keeping open and recognising the issues which had been covered by both Reports.

101. **Resignation of the Claimant 26 May 2016**

The Claimant's position was after receiving the letter from Mr Ali informing him that Miss Prosser's concluded her independent investigation was to email Mr Jarrett on 19 May 2016 with his views. In this email (page 893 of the Bundle) the Claimant says the "egregious conspiracy against me has caused me considerable personal stress and upset over an extended period. This was made worse by the fact that Members of Council considerably lengthened the process through their resorting to law and failing to give any account of their behaviour. I have enough experience over many years to know that the truth is no guarantee of safety. I am

particularly grateful to you for your professional response to what has been a shocking abuse of position and conspiracy of appalling behaviours from a significant section for the strategic leadership of the association towards me personally. I have no doubt that your commitment to proper investigation and adherence to delivering proper and diligent processes which you said you would deliver at the outset of this investigation may have caused you personal problems with certain Members of Council but from my viewpoint you have exhibited moral courage which is all too often absent I thank you for that.... I would ask that we might have a personal one to one meeting following the Council meeting next week". Mr Jarrett said that he is happy to have a meeting.

102. Mr Jarrett also had written a letter to the Council Members the subject of the investigation to say it remains for the Council to consider the outcome of the investigation to decide what if any action should be taken in respect of that. There is then reference to information given to auditors and potential stringent liabilities to in excess of £215,000. The AGM would also be reported regarding the investigation. Mr Jarrett ends by saying "I am letting you know the latest situation out of courtesy in order to give you the opportunity to consider your position as a Member of BASC Council".
103. The Claimant was expecting to attend a second meeting with the Council which had been scheduled for the afternoon of 26 May 2016 in order for discussion of normal BASC business. Later on 26 May the Claimant was called to Mr Ali's office where he found Mr Parrington, Mr Ali, Miss Debbie Owen and Mr Ashton all waiting for him. Mr Ali said the Council had reached a decision on the Report and read out the motion which had been passed. The Claimant was shocked by this because he had been hoping that following the meeting that those who had been working against him, as he perceived them, would finally be disciplined for their behaviour and that would be the end of the whole affair. The Claimant could see no reason why the Report should have been rejected, and apart from the Alasdair Mitchell incident in October 2014, there was nothing else in which he had behaved inappropriately. The Claimant's view was that the Report was "rejected" as a result of collusion between Councillors to have him sacked and when there was to be another enquiry which they would control it was the end. Mr Glenser was now in control as he saw it and at the outcome of the investigation he believed was a forgone conclusion from the moment it was commissioned.
104. The Claimant went back to his office but then thought the Council could simply not be trusted to act fairly towards him and typed a resignation letter which is at page 916 of the Bundle. That letter was written to Mr Ali and says "following non acceptance of the investigatory findings from association solicitors; the decision that BASC Council will

now as I understand it be “controlling” future further investigation unto themselves; the consequent resignation of the Chairman who expressed no confidence in Council in respect of these matters and the appointment of Peter Glenser as Chair with others on Council, a person found guilty in the 4 month external investigation of

- a. Bullying me
- b. Undertaking breaches of protocol concerning me in respect of the associations protocol on staff and staff on Council and staff relations and specifically using their position to unduly influence or inhibit staff and
- c. Undertaking breaches of protocol concerning me in respect of not involving themselves in matters of personnel and management and specifically in regard to the subject matter of grievances

leads me to the inevitable conclusion that I believe there is now a complete breakdown of trust and confidence. In addition I have been informed that the investigations into the actions of certain Members of Council which have been presented to Council found evidence of a conspiracy against me. This makes matters even worse and I am now at serious risk and wish to register that fact with you..... I therefore have no alternative but to resign from my position as Director of HR and Operations with immediate effect from now 2pm 26 May 2016”.

105. The Claimant said that he resigned for 3 reasons namely the Council rejected the Prosser Report, they set up their own enquiry, and Mr Glenser was elected Chair of the Council. The Claimant does not accept the Members accepted part of the Hill Dickinson Report because in his opinion rejecting the Report in its entirety is the same as not accepting it in its entirety. Although the Claimant agrees it is for the Council to decide what to do the Claimant believes that there was no legitimate reason for them to reject the Report of Hill Dickinson. The Claimant agreed that the Brabners Report was a factor in why the Report was rejected but that does not give a legitimate reason to reject the whole report of Hill Dickinson. The Claimant said that he went to his office for the discussions with Mr Ali to consider his own thoughts. After drafting the letter at about 2 o'clock the Claimant wanted to see Mr Ali to give him the letter, but before seeing Mr Ali the Claimant was seen by Mr Graffius. Mr Graffius told the Claimant that Mr Ali had been suspended and that he had been appointed as the Acting Chief Executive and that he was suspending the Claimant. The Claimant told Mr Graffius it was too late to suspend him as he tendered his resignation namely that he had written his resignation and intended to give it as soon as possible to Mr Ali. When the Claimant spoke to Mr Ali, Mr Ali said he was still the Chief Executive and told the Claimant to stay where he was. There was an announcement on the tannoy at about 4.25 for the staff to go home, but together with Mr Ali, Miss Owen and Mr Ashton the Claimant went to the conference room. The Claimant says he was not asked to leave and

that by 5 o'clock Mr Ali said that they would vacate. The Claimant did not speak to any police officers about leaving. The letter of resignation was given by the Claimant to Mr Ali sometime after 3 o'clock and before 5 o'clock. The precise time the Claimant could not remember when he gave Mr Ali the letter. His head was all over the place.

106. The Claimant considered that Mr Graffius bore ill will towards him as a result of previous dealings such as altering the arrangement regarding the production of a magazine and the saving of costs. Mr Graffius said that he was asked to be the Acting Chief Executive during the investigation and it was his decision to suspend the Claimant. This was to ensure an investigation of the HR affairs and the staffing that would not be possible with the Claimant and the HR person Miss Owen still working. Mr Graffius says that the Claimant did not leave the premises and what Mr Graffius was concerned about was that he was not to take the Respondents property when he did leave. The Claimant remained in the offices 3 hours after his suspension so to that extent he was refusing to leave. Mr Graffius cannot remember what he said in response to the Claimant saying that he had resigned and that Mr Graffius' reaction was to say "that's good, that's it then." It is likely that Mr Graffius said something along that line because that absolved Mr Graffius having to take various next steps.

107. **Submissions**

There were written submissions handed in on behalf of the Respondent and the Claimant. There were also oral submissions to supplement those written submissions at the conclusion of the case. It is unnecessary to repeat fully all the submissions.

108. On behalf of the Respondent it was submitted that it was a fundamental part of the Claimant's case that the Report of Caroline Prosser should have been accepted. However it is difficult to see how this could be a breach of contract not to accept the Report in the light of the various deliberations as recorded by the Council Members. It was a decision for the Council whether to accept or reject or otherwise deal with the Report of Caroline Prosser.

109. The accused Council Members had a legitimate interest in knowing the information that founded the allegations. They were denied that information and the first time they find out about the particulars is in the Report itself. There is a lack of evidence in the Report and as far as Mr Parrington and Mr Jarrett were concerned it was a fait accompli and that the Report should be accepted without any more depth.

110. It is not the case for the Claimant that what Mr Glenser may have done in January regarding getting rid of him is part of the reason for his

resignation. But nothing was done to get rid of the Claimant after January. The Respondents knew about 3 incidents with the Claimant and that rather than there be no legitimate reason not to accept the Hill Dickinson Report there were manifest legitimate causes for the Council to feel unable to accept it in its entirety. Mr Jarrett's conduct in commissioning Hill Dickinson without reference to the cost or to the identity deprived Council Members of the assurance of independence of reporting. The reality is that Mr Jarrett acted ultra vires and what happened at the main meeting was the Council claiming back the authority to hold the Chief Executive to account and that was objectively and properly reasonable. There were genuine strategic concerns about the organisation and its functioning particularly as it affected the reputation of the Respondents amongst the membership as well as the wider public.

111. The real reason for the Claimant to resign was because his close relationship with Mr Ali had been affected. There was no breach of contract, still less a fundamental breach of contract, that means this is not a dismissal within the meaning of Section 51(c) Employment Rights Act 1996.

112. On behalf of the Claimant it was submitted that the Chief Executive was responsible for staffing and it was unreasonable for Council Members in the January 2016 meeting to seek to resurrect the 2014 incident with the Claimant. The use of the phrase non-acceptance in the Claimant's resignation letter is the same thing as rejection of the Hill Dickinson Report. The Council controlled the new investigation in a sensitive situation and one of the main alleged participants in the conspiracy against the Claimant was elected Chair. Objectively that breached the implied term of trust and confidence and this was not a reasonable and proper course by an employer. The actions of the Council were perverse and the 5 Councillors who voted in favour of the motion were tainted and that it is clear as to what Mr Glenser and the 5 others were thinking and one can draw inferences about their views and the fact that their views would not change in the future.

113. It was perverse not to conclude that the Hill Dickinson Report was independent and the reasons given for doubting its independence such as Mr Parrington's involvement would not stand up. It is necessary to look at the whole picture and it is clear that Caroline Prosser sets out findings and that it was unreasonable for Council Members not to engage with her investigation. Caroline Prosser had the information she required to look into the allegations and she came to a conclusion that was entirely appropriate.

114. **The Law**

In the Employment Rights Act 1996 under the chapter heading “Right not to be unfairly dismissed”, Section 95 sets out the circumstances in which an employee is dismissed. Sub Section (1) says that for the purposes of this part an employee is dismissed by his employer if (and, subject to Sub Section (2).... Only if) -(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employers conduct.”

115. There are a number of reported cases in respect of the principles underlying constructive dismissal. Reference is made in the written submissions to some of these cases. In the recent case of **Mrs C Nicholson (Nee Woodhouse) –v- Hazelhouse Nursing Home Limited** UK EAT/0241/15/LA a decision of Mrs Justice Laing sitting in the Employment Appeal Tribunal, the learned Judge refers to a number of the relevant cases concerning constructive dismissal. In the case of **Omilaju –v- London Borough of Waltham Forest** [2004] EWCA Civ 1493 the relevant principles were summarised by Dyson LJ as follows “(1) The test for constructive dismissal is whether the employers actions or conduct amounted to a repudiatory breach of the contract of employment: **Western Excavating (ECC) Limited –v- Sharp** [1979] ICR 221 (2) It is an implied term of any contract of employment an employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee, see for example **Mahmud –v- Bank of Credit and Commerce International SA** [1997] ICR 606 I shall refer to this as the implied term of trust and confidence (3) Any breach of the implied terms of trust and confidence will amount to a repudiation of the contract see for example per Browne-Wilkinson J in **Woods –v- W M Car Services (Peterborough) Limited** [1981] ICR 666. The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship (4) The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nichol said in **Mahmud** at page 610(h) “the conduct relied on as constituting the breach must – impinge on the relationship in the sense that looked at objectively, is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer” (5) A relatively minor act may be sufficient to entitle the employee to resign and leave the employment it is the last straw in a series of incidents. It is well put in Harvey and Industrial Relations and Employment Law paragraph D(1)(480) – many of the constructive dismissal cases which arise on the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself have been sufficient to justify his taking an action, but when viewed against a background of such

incidents it may be considered sufficient by the courts to warrant their treating the resignation as constructive dismissal. It may be that the last straw which causes the employee to terminate a deteriorating relationship”.

116. Mrs Justice Laing goes on to quote what was further said by Dyson LJ “although the final straw may be relatively insignificant it must not be utterly trivial: The principle of the law is not concerned with very small things is of general application.”

117. In the case of *Lenlyn UK Limited –v- Mr H Kular* UK EAT/0108/16/DN Mrs Justice Laing also had to consider the law of constructive dismissal. Paragraph 61 Mrs Justice Laing refers to Warren J helpfully summarising the effect of the Malik test in this way “the question is therefore whether objectively there has been a breach of the implied term. In my view that objective assessment must be carried out in relation to the implied term read as a whole that is encompassing both elements of that term. Accordingly, the conduct must be such as objectively calculated or likely to undermine the duty of trust and confidence and must be conduct for which there is objectively no reasonable and proper cause. Reasonableness, objectively judged, necessarily comes into establishing whether or not there has been a breach of the implied term. This is not to apply, by the back door as it were, the range of reasonable responses test. It is not a question of establishing whether a particular course of action is within the range of reasonable responses or particular state of affairs and the situation in which the employer finds itself; rather the question is whether the particular course of action is a reasonable and proper response to that state of affairs and situation the conduct of the implied term so as to prevent what would otherwise be a breach of duty from being one”.

118. **Conclusions**

The Claimant says there was collusion between Council Members to ensure that the Prosser Report was rejected. I reject that submission. Whilst there was undoubtedly discussion by email and otherwise both before Council meetings, at dinners and at Council meetings each Council Member exercised their own judgment regarding matters which were on an Agenda and put before them. As pointed out on behalf of the Claimant, the Tribunal has not heard direct evidence from Mr Glenser and the other accused Councillors who were the subject of the Claimant’s grievance. These individuals did not participate in the May meeting at which a majority vote passed the motion set out above. I accept the evidence of each of those witnesses called on behalf of the Respondent that they were not motivated or tainted by the opinions expressed by others namely the other Councillors but rather fulfilled their own duty as independent Members of the Council in weighing up various matters which had been

contained in both Reports that had been presented to them before the May meeting.

119. I further accept their evidence that there was no predetermination of the Claimant's grievance that it would be rejected in any event, but that it was a desire of the Council that there should be a demonstrably arms length independent investigation involving all parties to the grievances to establish facts and then for the Council to determine appropriate courses. Objectively there was evidence of mistaken assumptions or speculation in the Report of Miss Prosser which prompted genuine concern by the Council Members that they could not take appropriate action. This is not a case in which there did not exist any legitimate criticisms that could be made of Miss Prosser's Report, albeit Miss Prosser may have herself considered her Report to be independent. Nevertheless viewed objectively there were matters known to the Council Members individually or shared in the discussions which would have cast doubt on some of the fundamental assumptions such as the credibility of the Claimant in Miss Prosser's Report. There were reasonable grounds for the Prosser Report to be subject to further independent scrutiny.
120. I reject the Claimant's submission that what had happened was rejection of his grievance. The motion was carefully drafted which did not say that his grievance had been rejected but that matters would be further investigated. The Claimant may have subjectively considered that a further investigation would not be as favourable to him as the investigation of Miss Prosser. However viewed objectively the actions of the Council were the very opposite of trying to destroy trust and confidence but rather to allow all parties including the Claimant to participate in a more comprehensive review of what had happened in the past and what was to happen in the future.
121. There was reasonable and probable cause for the Respondent through the Council to act as they did passing the resolution on 26 May 2016. This was the conduct which the Claimant alleges to be breach of the implied term of trust and confidence. The Council was dealing with a difficult situation which had arisen was of complaint and counter complaint by employees and by some Council Members having witnessed the behaviour of the Claimant. The overarching duty of the Council to ensure that the Chief Executive amongst others accounts for his actions was a legitimate matter. The closing down of possible debate about matters was something that concerned Council Members such as Professor Mortimer. Whilst it is the case that there are as per the constitutional documents clear responsibilities given to the employees of the Respondents and the Council Members, the fact that the then Chair considered the situation to be such that there ought to be an outside investigation of matters demonstrates that these issues should probably

be brought for discussion at the Council and for decisions to be made as to appropriate action. Indeed it is difficult to see how the Council could properly exercise its responsibilities faced with the inadequacies of parts of Miss Prosser's Report and also criticisms made by the Brabner Report. There were serious matters alleged against the Council Members which could have led to their suspension or expulsion. Therefore this was not an interference by the Council in the day to day management of employees but rather genuine concern about a wider attack on the integrity of Members of the Council itself. It would be surprising if the Council did not require sound bases of fact in order to draw proper and legitimate conclusions about the allegations.

122. In short the Council had a reasonable and proper cause to commission a further investigation and report of the circumstances of the allegations and for it to be accountable of its control.
123. As to the election of Mr Glenser as Chair, it is clear from findings that each of the Councillors exercised their own independent analysis and view of the circumstances and were not beholden to Mr Glenser as far as forming their own view or facts were concerned. Moreover an independent investigation would not be under the control directly of the Chair as opposed to the Council as a whole. At the time of the Claimant's resignation he was unaware as to why Mr Glenser had been appointed Chair and did not know it was because the Vice Chair had declined to take the Chair and Mr Glenser had offered himself. The fact that an allegation is made against the Chair does not prevent the investigation being independent as called for by the resolution. It is clear that there was a determination by those who voted in favour of the resolution that there should be an arms length independent investigation of the whole of the circumstances taking into account what was said in the Prosser and the Brabners Reports. In addition there would be further interviewing of all witnesses and others who had been part of the sequence of events. It was intended to be a much wider reaching investigation.
124. Applying the objective test as required I find that the Respondents had a reasonable and probable cause for taking the action they did on 26 May 2016 and this did not entitle the Claimant to resign. The Claimant could have participated in the further investigation and clarified for example his answers in relation to the October 2014 incident as well as the other matters which had been raised. The Claimant would have had the opportunity to fully address all the views or criticisms about his behaviour. It was not reasonable for the Claimant to conclude that he would not have a fair hearing or that the result would be his dismissal. It was not reasonable for the Claimant to conclude that there was a conspiracy or collusion of the 5 Members and others to ensure his dismissal. Whilst it may be that one time in a closed meeting some

months before May 2016 a view or views had been expressed about the Claimant, it is clear that the sequence of events which unfolded showed a determination on the part of the employer acting through the Council by way of voting resolutions to not act on anything until there had been a full and thorough investigation of what had been going on between employees and or Council Members and to establish a clear bases for forward progression of the Respondents.

125. Therefore there has been no breach of contract on the part of the Respondents in taking the actions that they did and what is alleged by the Claimant to be the breach of contract is rejected. There has been no dismissal within the meaning of Section 95(1)(c) of the Employment Rights Act 1996 and it follows that this claim must be dismissed.

126. The matter of the Claimant's application for costs is the subject of direction as agreed at the hearing.

Employment Judge P Davies
Dated: 5 May 2017

JUDGMENT SENT TO THE PARTIES ON

8 May 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS
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NOTE:

This is a written record of the Tribunal's decision. Reasons for this decision were given orally at the hearing. Written reasons are not provided unless (a) a party asks for them at the hearing itself or (b) a party makes a written request for them within 14 days of the date on which this written record is sent to the parties. This information is provided in compliance with Rule 62(3) of the Tribunal's Rules of Procedure 2013.