

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4112629/2018**

**Held in Glasgow on 5, 6 and 7 February 2019**

**Employment Judge: David Hoey (sitting alone)**

**Mr G Doherty**

**Claimant  
Represented by:  
Mr M Briggs -  
Solicitor**

**South Lanarkshire Council**

**Respondent  
Represented by:  
Ms J Bonnar -  
Solicitor**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that The Claimant was fairly dismissed and the claim is dismissed.

**REASONS**

1. This case called for a final Hearing at which the claimant was represented by Mr Briggs, solicitor and the respondent by Ms Bonnar, Solicitor.
2. There had been a preliminary hearing in this case together with subsequent correspondence between the parties. The claim that was to be determined by this Tribunal was unfair dismissal only.
3. By way of preliminary issues Mr Briggs explained that due to another commitment it may be necessary for him to make an application to the Tribunal to have the claimant's evidence interposed on Wednesday. In fact it was necessary so to do and Ms Bonnar helpfully agreed to this.
4. Some additional productions were added to the bundle, by consent, and the parties had produced a joint bundle in excess of 371 pages.

**Issues to be determined**

5. A discussion took place between the parties. The only claim before the Tribunal was for unfair dismissal and it was agreed that the issues to be determined by the Tribunal were:
- a) Was the dismissal because the claimant had brought proceedings against the respondent in the Employment Tribunal to enforce a relevant statutory right, contrary to section 104(1)(a) of the Employment Rights Act 1996 (“the Act”);
  - b) Even if not, was the claimant dismissed because he used or disclosed information which was for the purposes of his Employment Tribunal claim, and if so, did that render the dismissal automatically unfair in terms of section 104(1)(a) of the Act;
  - c) Even if the dismissal is not automatically unfair, was the dismissal for a reason relating to the claimant’s conduct in terms of section 98 of the Act;
  - d) Did the respondent act fairly and reasonably in dismissing the claimant in all the circumstances, with particular regard to:
    - i. The fact the respondent proceeded to hear the disciplinary hearing in the absence of the claimant
    - ii. Whether or not the investigation was reasonable
    - iii. The reasons relied upon by the respondent;
  - e) If the dismissal was unfair, what compensation, if any, should be awarded (the claimant having confirmed he was not seeking reinstatement or reengagement).

6. The Tribunal heard from Ms McPake (investigator), Ms Robertson (regarding HR issues), Mr Purdie (dismissing officer), Ms Maxwell (appeal support officer) for the respondent and for the claimant, the claimant himself.

### **Findings in fact**

7. The Tribunal is able to make the following findings in fact from the evidence it heard and the productions to which reference has been made, all on the balance

of probabilities. Only the facts that are necessary to determine the issues have been set out.

8. The Respondent is a council. The claimant had been employed by the respondent since 19 July 1982 until his summary dismissal on 9 April 2018. He was aged 61 when he was dismissed. He was latterly employed as team leader which was a management role. The claimant was previously a qualified nurse and is a registered social worker with a diploma in case management.
9. The claimant was subject to a number of policies and procedures as an employee of the respondent and as a member of the social work team. This included:
  - a) Social Work Resources Code of Conduct which sets out the expectations the respondent has of its social work employees (such as the claimant) and states that it is “essential that the code is adhered to by all social work employees”. The Code states (at page 4) that a breach of its provisions may give rise to a disciplinary sanction. One of the standards contained within the Code is of Confidentiality (page 7). This requires confidentiality to be respected and states (at para 2.7) that “Any employee being approached by the media must direct them to the press office and inform their line manager immediately”. The Code states that things can go wrong where confidential information becomes public knowledge or information about service users is in an unsafe place. Reference is made in that Code to the respondent’s Code of Conduct on Confidentiality (section 6) and Disclosure of information (section 10).
  - b) A Code of Conduct which requires employees to seek permission before speaking to the press, or allowing anyone to speak to the press on their behalf, in relation to matters connected to their employment.
  - c) Privacy policy which deals with handling of personal information and emphasises that information will only be processed for legitimate purposes and where consent is given.

- d) Information Security Policy which deals with keeping information secure. It places a responsibility upon staff to ensure information is retained securely
  - e) IT Acceptable Use Policy which sets out the acceptable usage policy when using ICT. All staff are required to comply with the relevant policies when using relevant equipment, ensure such use is lawful and not have a negative impact upon the respondent. Page 13 requires employees not to send confidential or sensitive information outside the respondent network unless the employee is certain the recipient has a secure network (and the Information Security Manager is to be spoken to if there is any doubt).
  - f) There were regular briefings within the respondent's organisation on information security and data protection, including a briefing on disclosure of confidential information (sent in 2016), data protection responsibilities (sent in 2017).
  - g) The circular sent to all employees on 21 June 2016 covering dealing with confidential information and reminded employees of their obligations not to misuse information or disclose to anyone inside or outside the respondent without authorisation. The note refers to a guidance note on Disclosing Confidential Information and notes that the respondent takes information security very seriously and reminds employees it is their responsibility to ensure information is disclosed appropriately.
  - h) The log on screen when accessing the respondent's system reminds employees of the need to comply with the relevant data protection policies and states that accessing information for non-work purposes may be considered a disciplinary matter.
10. As a social worker the claimant was also subject to the SSSC Code of Conduct.
11. In April 2017 the claimant raised a grievance. As part of his grievance, the claimant had included extracts from the personal development review

submissions (PDRs) from three individual employees that previously reported to him. The respondent's employee who heard this grievance raised a concern that the claimant had breached the respondent's rules in connection with data protection by so doing. The claimant had extracted comments from the 3 individuals' PDRs which related to comments by the individuals about him.

12. In or before April 2017 in preparation for an Employment Tribunal claim which the claimant intended to raise against the respondent the claimant sent information (via his solicitor) to the respondent for inclusion in the papers to be submitted as part of that claim. Some of that information contained unredacted information relating to the respondent and its service users (including details of social work service users who were named in emails and sensitive information about these individuals, including whether they were subject to any orders and their unique reference number). The solicitor dealing with this claim for the respondent was concerned this information was confidential and asked that the claimant's solicitor redact the confidential information (which was done). The claimant had obtained this information by sending it from his email account with the respondent to his personal email account (which was an ntlworld email account). The respondent's solicitor was concerned that the claimant had breached the respondent's policies by sending the information outwith the respondent, and by sending the information to his solicitor.
13. The claimant raised proceedings against the respondent alleging that he had been subjected to various detriments on the grounds of having made a protected disclosure in the Employment Tribunal. The decision being sent to the parties on 27 September 2017. The Tribunal decided that the claimant had made a number of protected disclosures but ultimately dismissed the claim.
14. On or around 3 May 2017 (and probably a few days before) the claimant and his solicitor made comments to the Herald newspaper which then published a story. The story was headed "Unsupervised sex offenders sent shopping by council, tribunal to hear" and contained the following:

"A whistleblower who accused one of Scotland's biggest councils of serious failings in its supervision of sex offenders has claimed he has been illegally removed from his post for raising the concerns..... Jillian Merchant, of

Thompsons Solicitors, which is acting for Mr Doherty, said: “Mr Doherty believes he has been victimised and illegally removed from his post. He blew the whistle as he was of the view that either a criminal offence was being committed, that the council were failing in their legal obligations and/or that health and safety of individuals were being endangered.”

### *Investigation*

15. Ms McPake, HR Business Partner within the respondent was tasked with investigating the above issues with a view to reporting to the respondent’s Head of Legal and Administration Services who would then decide whether or not there were matters which required to be remitted to a disciplinary hearing.
16. Ms McPake interviewed a number of individuals as part of the investigation. These comprised:
  - a) Mr Stewart, who met with Ms McPake on 3 July 2017
  - b) Ms Rhind, who met with Ms McPake on 11 July 2017
  - c) The claimant, who met Ms McPake on 3 August 2017
17. A written summary of the meeting was produced and sent to the relevant individuals to check for accuracy and any changes to the note were retained with the note.
18. A report was then prepared by Ms McPake setting out her findings and recommendations.
19. Mr Stewart, the respondent’s in-house solicitor, stated that personal information in connection with social work service users, names, reference numbers and the nature of the offence had been included in documentation submitted as part of the Tribunal claim (on behalf of the claimant). A few of these emails had been provided to Ms McPake. The claimant had also included documentation from employees’ PDRs which were personal to the employees. Mr Stewart had stated the claimant sent emails in connection with the claimant’s employment from his work email address to the claimant’s personal email address.

20. Ms Rhind stated that the claimant had used information from other people's PDRs to support his grievance. The claimant had told Ms Rhind that he believed he was entitled to use that information for this purpose without the explicit consent of the employees (whose data was being processed) but in any event said employees knew that he was likely to use the information he had obtained in a general sense. They knew he was unhappy and was going to raise this with the respondent.
21. The claimant was aware of the respondent's policies and procedures in this area, including IT, information security and data protection. He had stated that he would normally have redacted the information he had emailed but given everything else that was happening he did not do so. He said he was "not thinking rationally".
22. The claimant said he only shared comments from the 3 colleagues' PDRs (whom he had previously managed) that were about him.
23. The claimant admitted to sending confidential emails to his personal email address. He maintained this was safer than printing them and taking them home. He did not see it as a security risk at the time (but in retrospect saw that it could be).
24. The claimant declined to make any comment about the statement his solicitor made to the press relating to his Employment Tribunal claim. Ms McPake referred to the Code of Conduct and that employees were expected to promote a positive image of the respondent and not speak to the press without first clearing this with the respondent's press office.
25. Following the investigation the respondent met with the claimant on 15 September 2017 and advised the claimant that the matters would be referred to a disciplinary hearing (which was the decision the person to whom the investigation report had been sent made).
26. The fact finding report and its 9 appendices (which included the 3 statements, press article, policy documents and codes of conduct, SSSC Code of Practice and emails sent by the claimant) were sent to the claimant.

*Disciplinary hearing*

27. On 20 September 2017 the claimant was invited to a disciplinary hearing. The claimant requested that be rescheduled. On 9 October 2017 another date was fixed for the disciplinary hearing. The claimant again requested that this be postponed. The claimant was absent from work and as a result a medical assessment was requested of the claimant.
28. On 8 January 2018 another date was provided for the disciplinary hearing. That was postponed at the claimant's request and on 26 March 2018 a further hearing date was fixed, for 5 April 2018. The allegations to be considered at this hearing were:
- a) "The claimant's alleged breach of the Data Protection Arrangements, Code of Conduct, Information Security Policy, IT Acceptable Use Policy and Privacy Policy by inappropriately accessing and using personal and/or sensitive personal information of service users and employees for non-work purposes
  - b) The claimant's alleged breach of the Data Protection Arrangements, Code of Conduct, Information Security Policy, IT Acceptable Use Policy and Privacy Policy by emailing personal and/or sensitive personal information of service users and employees to the claimant's home address on an unsecure network.
  - c) The claimant's alleged breach of Data Protection Arrangements, Code of Conduct, Information Security Policy, IT Acceptable Use Policy and Privacy Policy by inappropriately sharing personal and/or sensitive information of service users and employees for non-work related purposes without the consent of the authority or individuals concerned.
  - d) The claimant's alleged breach of the respondent's code of conduct by instructing/allowing his solicitor to make a statement to the press."
29. The invite letter stated that if the claimant did not attend the meeting or failed to send a companion or lodge written submissions, the hearing would proceed in the claimant's absence.



### *Claimant's absence*

30. The claimant had been absent from work due to stress and anxiety from around October 2017. He met with occupational health specialists who advised that he was unfit to work. The claimant saw Dr Herbert on 15 March 2018 who advised that the claimant had the ability to state his case and listen to responses and questions.
31. In a letter to the claimant dated 21 March 2018 the respondent set out the background, including the number of attempts that had been made to hear the allegations. The letter notes that the fact finding began on 23 June 2017 when the claimant was suspended. The letter sets out the various attempts to fix a hearing and the occupational health appointments and outcomes. The letter notes that at a support meeting with his manager on 8 March 2018 the claimant was prepared to attend a further occupational health meeting. Following this meeting on 15 March the specialist opined that the claimant would be fit to state his case and listen to responses, albeit the claimant may experience anxiety upon facing confrontation. That letter concluded by stating that the respondent decided it was reasonable to proceed to the disciplinary hearing and the claimant could attend or instruct an agent to do so or make written representations in response to the fact finding report. A decision would be taken in his absence if he opted not to attend.

### *The disciplinary hearing*

32. The claimant did not attend the hearing or make any representations. The hearing proceeded in his absence. It was chaired by Mr Purdie who was Head of Children's Services and the respondent's Chief Social Worker.
33. Ms Pake presented her findings to the hearing. The hearing lasted for around 2 hours. She also called Ms Rhind as a witness who gave details as to the PDRs the claimant had used in support of his grievance.
34. Mr Purdie asked a large number of questions of Ms McPake in connection with the investigation and each of the 4 allegations. Mr Purdie also considered the information the claimant had provided during the fact finding process.

35. The claimant had not provided any further input into the disciplinary hearing, despite being advised that he could do so. The invite letter advised that dismissal was a potential outcome if the allegations are upheld.
36. On 9 April 2018 an outcome meeting was convened. The claimant had been advised of this meeting and again chose not to attend or be represented.
37. Mr Purdie went through each of the 4 allegations, set out the facts as he had found and then summarised the explanation/mitigation that he had gleaned from the investigation process and hearing.

#### *The four allegations*

38. In relation to the first allegation, which related to accessing and using personal/sensitive information of service users and employees for non-work related purposes, the claimant accepted he sent this information. The claimant thought he was permitted to do so since the comments in the PDRs had been about him. He was unhappy with the comments that were made and wanted to ensure his response was set out. He also accepted that he had used personal information relating to service users which he subsequently used at his Employment Tribunal (when it had been redacted).
39. In relation to the second allegation, about emailing personal information to his home email on an unsecure network, the claimant accepted he sent information relating to employees and service users from his work email address to his personal email address. Mr Purdie believed this was an unsecure network (being a home email address). The claimant believed it was safer to email the information than print them but he accepted there could be a security risk.
40. The third allegation related to sharing personal or sensitive information of service users or employees for non-work related purposes without consent. The claimant accepted he had done so (since he sent emails to his solicitor which contained details of service users) and that he would ordinarily have redacted the personal information but did not do so given the issues affecting his employment. The claimant believed the employees whose data he used from their PDRs knew that he was going to raise the issues. He admitted to sending

service user information with his solicitor, which included names, social work reference numbers and details of their offences.

41. The last allegation related to the claimant instructing a solicitor to make a statement to the press. The claimant did not make any comment in relation to this allegation. Mr Purdie noted that the information forming the basis of the article was not in the public domain and it was reasonable to assume the claimant had given instructions or authorisation to his solicitor to make the comment. Mr Purdie concluded that the fact that the claimant's solicitor had made a comment to the press about the case placed the respondent in a bad light (by alleging that the respondent was acting unlawfully).

### *Outcome*

42. Mr Purdie considered all the evidence and circumstances. He took into account the claimant's health and the environment in which he worked. Mr Purdie concluded that all 4 allegations were upheld.
43. Mr Purdie considered potential outcomes and decided that dismissal was an appropriate outcome. Mr Purdie was concerned there was no remorse shown by the claimant and there was a risk of repetition. The claimant was a registered social worker which required him to maintain trust and confidence of those within his care and to uphold public confidence in social services. Mr Purdie concluded there was a total breakdown in the working relationship.
44. Mr Purdie would have dismissed for allegation number 3 alone (the sending of confidential data externally). He would have issued a final written warning for allegation number 4 (comment to the press) and he would have issued a written warning for allegations 1 and 2 (the accessing of confidential information for non-work purposes and sending the information to his home account). Taking the effect of each of the allegations together, Mr Purdie decided to dismiss the claimant summarily.
45. The outcome letter was sent to the claimant on 9 April 2018. The letter included a copy of the notes of the hearing and outcome meeting. The claimant was summarily dismissed. He was given the right of appeal.

### *Appeal*

46. The claimant appealed against his dismissal by sending a 13 page submission within a fortnight of receiving the outcome letter. That submission contained a flow chart setting out the chronology from 2009 to 2018 and then a detailed typed statement from the claimant setting out a detailed note of the background (including issues ranging from 2013 to his dismissal).
47. On 19 July 2018 a report was prepared for the appeals panel. That set out the background in the case, the information relied upon by the respondent and the claimant's case (including his note of appeal).
48. The appeal hearing took place on 26 July 2018. A panel of 3 councillors was convened, councillors who had been trained in dealing with disciplinary appeal hearings. They were supported by, Ms Maxwell, an HR specialist. The claimant attended this hearing along with his union representative. A detailed note of the appeal was taken running to 14 pages.
49. The respondent believed that the purpose of the appeal hearing was not to rehear the case but to decide whether it was fair and reasonable for the respondent to have dismissed for the reasons it did. Ms Milne, HR Business Partner for the respondent presented the respondent's case before the appeal panel. Ms Robertson was questioned by the panel (in connection with the claimant's absence and attempts to fix a hearing) and by the claimant's union representative. Mr Purdie was also asked questions by the respondent's agent and the claimant's representative and panel.
50. The panel had read the 13 pages submitted by the claimant who also answered questions at the appeal hearing by his union representative and by the respondent's agent and the panel.
51. Both parties then summed up their positions.
52. The appeal panel reflected on all the information that had been presented. They had sympathy for the claimant but ultimately concluded that dismissal of the claimant was reasonable in all the circumstances. His appeal therefore failed.

### *Earnings and mitigation*

53. The claimant remained unfit to work. He was examined by a registered nurse on 3 July 2018 who concluded that he was unfit to work due to his ill health. The healthcare professional concluded that “work could be considered within 12 months”.
54. The claimant earned a net weekly salary of £483.33 with the respondent. His contract with the respondent entitled him to 6 months full pay and 6 months half pay by way of sick pay.
55. He was paid benefits (Employment Support Allowance) in the sum of £72.10 a week from 1 April 2018 until 12 September 2018.
56. The claimant had accessed his pension early to unlock some capital. He was unfit to look for work.

### **Observations on the evidence**

57. I found each of the witnesses credible and reliable. I took into account that on occasion it can be difficult to remember precise facts some months after the relevant event. There was no real factual disputes in terms of the evidence that were germane to the issues to be determined. The findings in fact arise as a result of the evidence that was presented to the Tribunal.

### **Law**

58. By section 94(1) of Employment Rights Act 1996, an employee has the right not to be unfairly dismissed by his employer.
59. By section 104(1) an employee will be regarded as having been unfairly dismissed “if the reason (or, if more than one, the principal reason) for the dismissal is that the employee (a) brought proceedings against the employer to enforce a right of which is a relevant statutory right”. There is no statutory definition as to what “brought proceedings” means but a common sense and natural interpretation requires to be placed upon this in light of the findings in fact to determine whether the reason was the bringing of the proceedings.

60. By section 95(1)(a), for the purposes of the unfair dismissal provisions an employee is dismissed by his employer if the contract under which he is employed is terminated by the employer (with or without notice).
61. By section 98(1) and (2), it is for the employer to show the reason (or if more than one, the principal reason) for the dismissal, and in the context of this case that it related to the conduct of the employee. That is the reason relied upon by the respondent. In **Abernethy v Mott, Hay and Anderson** 1974 IRLR 213, CA, it was held that the reason for a dismissal is a set of facts known to the employer or believed by him that caused him to dismiss the employee.
62. By section 98(4), where the employer has shown the reason for dismissal, the determination of the question whether the dismissal is fair or unfair having regard to that reason:
  - a) Depends whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
  - b) Shall be determined in accordance with equity and the substantial merits of the case.
63. The law to be applied to the reasonable band of responses test is well known. The Tribunal's task is to assess whether the dismissal falls within the band of reasonable responses of an employer. If the dismissal falls within the band, then the dismissal is fair. If the dismissal falls outside the band, it is unfair. The Tribunal has considered the well-known case law in this area, namely: **Iceland Frozen Foods Limited v Jones** 1982 IRLR 439 EAT; and **Foley v Post Office; HSBC Bank plc v Madden** 2000 IRLR 827, CA.
64. The band of reasonable responses test applies equally to the procedural aspects of the dismissal, such as the investigation, as it does to the substantive decision to dismiss – see **Sainsbury's Supermarkets Limited v Hitt** 2003 IRLR 23, CA.
65. In so far as the investigation is concerned, and the formation of the reasonable belief of the employer about the behaviour, conduct or actions of the employee

concerned, there the Tribunal applies the well-known case of **British Home Stores Ltd v Burchell** 1978 ICR 303, EAT. Did the Respondent have a reasonable belief in the claimant's conduct, formed on reasonable grounds, after such investigation as was reasonable and appropriate in the circumstances?

66. The compensation provisions of the Employment Rights Act 1996 are from section 118 to section 124A. The claimant seeks compensation. In the event of a successful claim, compensation would include a basic award (section 119) which would be analogous to a statutory redundancy payment and a compensatory award (section 123) such amount as is just and equitable having regard to the losses sustained by the Claimant.
67. Section 122(2) provides that where the Tribunal considers that any conduct of the Claimant before the dismissal (or, whether dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce that amount accordingly.
68. Section 123(1) provides that the amount of the compensatory award shall be such amount as the Tribunal considers it just and equitable in the circumstances having regard to the losses sustained by the Claimant in consequence of the dismissal insofar as that loss is attributable to action taken by the Respondent.
69. Section 123(6) provides that where the Tribunal finds that the dismissal was to any extent caused or contributed by any action of the Claimant, it shall reduce the amount of the compensatory award by such proportion as it finds just and equitable having regard to that finding.
70. Section 124(1) limits the amount of the compensatory award or caps it at lower of the sum of 52 multiplied by a weeks' pay of the person concerned or the statutory cap (which exceeded the Claimant's annual salary).
71. In **Polkey v AE Dayton Services Limited** 1987 IRLR 503, HL, it was held that in considering whether an employee could still have been dismissed if a fair procedure had been followed, there is no need for an all or nothing decision. If the Tribunal thinks there is a doubt whether or not the employee would have

been dismissed this element can be reflected by reducing the normal amount of compensation by a percentage representing the chance that the employee would still have left his employment.

72. In **Nelson v BBC (No 2)** 1979 IRLR 346, CA, it was held that in determining whether to reduce an employee's unfair dismissal compensation on grounds of his fault, an Employment Tribunal must make three findings. First, there must be a finding that there was conduct on the part of the employee in connection with his unfair dismissal which was culpable or blameworthy. Second, there must be a finding that the matters to which the complaint relates were caused or contributed to, to some extent, by action that was culpable or blameworthy. Third, there must be a finding that it is just and equitable to reduce the assessment of the Claimant's loss to a specified extent.

### **Submissions for the Respondent**

73. Ms Bonnar noted that the claimant is arguing the dismissal was automatically unfair under section 104(1)(a). It was not disputed that the claimant raised proceedings to enforce a relevant statutory right and there is no suggestion he did so in bad faith.
74. Section 104(1)(a) is the provision in play. Section 104(2) states that there must be good faith regarding the proceedings. That is not in dispute. The issue of good faith is not relevant.
75. Ms Bonnar said it is for the claimant to produce evidence that the reason for the dismissal was the bringing of the proceedings. There was nothing in the claimant's evidence that he believed he was dismissed because he raised the proceedings. In the absence of any evidence from the claimant, the dismissal could not be automatically unfair. The respondent's witnesses were clear in their evidence as the reasons for the claimant's dismissal, which relate to conduct. The dismissal letter confirms this.
76. The secondary position advanced by the claimant is that the reason for the dismissal was because of the preparation for his claim, which is still, the claimant alleges, relating to the bringing of proceedings. If that position was correct, any tenuous link to proceedings would render dismissal automatically



unfair, such as seeking access to a file to see what someone's salary was then founding a claim for equal pay. If the employee was dismissed for so doing, that could not be automatically unfair just because it was connected to raising proceedings.

77. The question is where the line is drawn in conduct leading up to litigation. Ms Bonnar referred to **Brandeaux Advisers (UK) Limited v Chadwick** 2010 EWHC 3241. In that case the employee had sent a large number of confidential emails to a personal email account. Paragraph 18 of the judgment summarises the factual position, that it appears the reason for sending the information was in anticipation of some issue that could arise in the future. Paragraph 45 makes it clear that the employee's motive for so doing was important, such as if she was doing for another business (since that would have justified summary dismissal). A vast amount of information had been sent but there was no specific reason other than anticipating some future regulatory issue. There was therefore an important breach of trust such that her employer was entitled to dismiss her. Ms Bonnar argued this was relevant in the current case.
78. With regard to each allegation, the first related to accessing and using sensitive personal data, which amounted to the using of information from the PDR and sending service user data which was used in connection with his grievance and tribunal process. The claimant had accepted he had done so and so there was no dispute the information was confidential or that he sent it or used it.
79. The second allegation related to sending confidential data to his personal email account. There was no argument from him that sending it to his personal email was a secure network and it was reasonable for the respondent to consider that email address unsecure.
80. The third allegation was sending the information to his solicitor. Even if the information was for the purposes of seeking legal advice, it was wrong of him to breach the rules by sending the confidential and sensitive data.
81. The final allegation related to allowing or instructing his solicitor to make a statement to the press. The rules within the code of practice made it clear that

any statement should be with the respondent's consent - even if such a statement is simply telling facts.

82. Ms Bonnar's position was that the respondent had set out each allegation clearly at the disciplinary hearing with a reasoned outcome letter. The investigation was as much as was reasonable in the circumstances. Given the claimant had admitted a large amount of wrongdoing, little required to be investigated. The fact finding report set out what the allegations were. Little was disputed by the claimant and no further investigation was sought by him. He did not bring other evidence or seek to challenge specifics of the main facts and so the investigation fell within the band of reasonable responses.
83. The dismissing officer applied his mind to each allegation, to the full facts before him and issued a reasoned decision. Enough time was given to the claimant to attend previous hearings and it was fair to proceed and determine the matter.
84. As to remedy, the parties had agreed the amount of the basic award but Ms Bonnar argued this should be reduced by 100%. As to a compensatory award her position was that the claimant would have been dismissed by reason of capability given his absence. There ought to be a high degree of contribution and Pokey reductions.

### **Claimant's submissions**

85. Mr Briggs maintained that Mr Purdie's evidence was lacking in reliability and credibility as to the 4 allegations and he asked the Tribunal to consider his evidence carefully.
86. As to onus of proof, Mr Briggs' view was that the Tribunal can look at the totality of the evidence to decide what the reason for the dismissal was. The only person who knew why the dismissal happened was the respondent. Even if the dismissal was by reason of conduct, Mr Briggs argued it was still open to the Tribunal to find the dismissal to be automatically unfair.
87. He argued the test to be automatically unfair is not as high as being essentially or necessarily linked" to raising proceedings but instead would cover a dismissal because of something that would normally happen because of litigation or

prospective litigation. It is a question of fact if the event happened too far away, in time, from the raising of proceedings.

88. Mr Briggs pointed out that section 104 covers allegations not just proceedings.
89. He noted that Mr Purdie's evidence was that only 1 of the 4 allegations would have justified dismissal on its own (allegation 3 – the sending of the documents to the solicitor). The externality of the recipient but the biggest concern.
90. Section 104 needs to be interpreted widely as otherwise an employer could seek to "dice up the process" and things in ordinary course of litigation would not be protected. He referred to **Bolton School v Evans** 2006 EWCA Civ 1653 which related to whistleblowing. He referred to paras 13 and 14 which note the normal meaning should be applied to the statutory words. There was a distinction to be drawn since in Bolton many of the words were defined elsewhere in statute which affected how they were to be interpreted. In this case there is no definition of "brought proceedings".
91. Mr Briggs also relied upon **Morris v Metrolink** 2018 IRLR 855 and in particular paras 15 to 21 and he suggested the broad interpretation to be given to "trade union activities" was similar to the wide approach to be given to interpreting "bringing proceedings".
92. Mr Briggs argued there was no breach of data protection laws by the claimant sending the information to his solicitor. If there was an obligation not to do so, litigation would grind to a halt. The claimant's processing of the data was not unlawful. There was no bad faith or improper motive.
93. In short the claimant was dismissed because he raised proceedings. In any event the dismissal was unfair. The investigation was poor and the dismissing officer was not clear as to precisely why the respondent had dismissed.
94. In relation to allegation 1, regarding the use of personal information in the PDR and providing service user information, there was nothing wrong with using personal information in connection with a grievance and the service user information was passed to the solicitor solely to deal with the employment tribunal claim. There was no investigation to determine what was actually

shared. Mr Briggs argued the dismissing officer was not aware as to exactly what the claimant had used in his grievance by way of personal information.

95. Allegation 2 related to sending the emails which the claimant accepted. This relates to the policy document which was only disclosed this week. Mr Briggs argued that there was no evidence that the email was not sent to a secure email – there was no evidence as to exactly what this meant and it was something that the disciplining officer ought to have investigated.
96. Allegation 4 related to the solicitor's comments to the press. This was a banal statement which was essentially already in the public domain.
97. Allegation 3 was different to the other allegations and legal input ought to have been sought by the disciplining officer. The allegations depended upon the processing being unlawful which was conceded under cross examination. The service user information was all covered under the exception within the Data Protection Act as to litigation and the PDR information was only disclosed internally and the comments were ambiguous. There were fundamental failings as the data was not clearly known nor whether there was in fact a breach.
98. Mr Briggs argued that it was possible to act lawfully but still be in breach of the policy but the purpose of the policy was to ensure the respondent complied with the Data Protection Act and he argued the situation was not clear where the information was being used to take action against the respondent.
99. There was insufficient investigation upon which the disciplining officer could reasonably conclude the allegations were to be upheld. The claimant's views could have been sought and the data subjects could have been asked.
100. Mr Briggs argues there was nothing in the way the disciplining officer conducted the hearing that shows he approached the matter with an open mind and would have entertained any conclusion should of instant dismissal. He even relied upon a policy which was not even in force at the time. It was alleged he did not even know what he had dismissed for in terms of the specifics of allegation 4.
101. The claimant was a longstanding employee who felt he had been victimised for a period of time. He was not in the right frame of mind and it was unfair to

dismiss. No reasonable employer could have dismissed. He was frantically trying to secure evidence for his Employment Tribunal case. He had taken time off due to health issues. No reasonable employer would look individually or in totality that dismissal was a fair outcome.

102. The claimant was contactable and more investigation ought to have taken place. While he did not raise much by way of substance within his appeal, that did not cure the defects in the process.
103. As to compensation, Mr Briggs argued a basic sward should be ordered together with a compensatory award. He argued that but for dismissal, he would have remained in employment. It was not guaranteed that the claimant would have returned to work had there not been a dismissal but there are no guarantees he would not have done so.
104. Mr Briggs candidly accepted there would be some chance that the claimant would not have continued in employment and some **Polkey** reduction would be appropriate but there was a chance the claimant would have returned to work and remained in employment.
105. The claimant had ben candid in his prospects for future work given his age and qualifications. It would take up to 18 months (at best) to secure alternative work.

### **Respondent's response**

106. Ms Bonnar argued that the provisions relied upon by Mr Briggs when he suggested there was no breach of the Data Protection Act by sending the information to his solicitor were not in play. Section 35 only applies where it is "necessary" to send the information. It was not necessary to process the information that was processed in this occasion or in the way the claimant did.
107. Ms Bonnar also pointed out that the breach relied upon was with regard to the respondent's policies, not the Data Protection Act.
108. She also sought to distinguish the Morris case given that related to different facts (and less serious conduct). Ultimately it is a factual question as to whether the claimant was dismissed for "bringing proceedings".

109. Ms Bonnar also submitted that the claimant's evidence was in part lacking in credibility. For example he said he was unfit to attend the disciplinary hearing and yet within a week was able to pull together a powerful 13 page submission with a flowchart and analysis.
110. As to medical evidence, Ms Bonnar argued the report from the DWP and the evidence supports the conclusion in all the circumstances that the claimant's absence from work would be long term. Any compensation should be reduced to nil.

### **Decision and discussion**

#### *Was the dismissal automatically unfair?*

111. The first issue which requires to be determined is whether the reason for the claimant's dismissal was because he brought proceedings against the respondent to enforce a relevant statutory right. It was not disputed that the claimant brought proceedings to enforce a relevant statutory right. I have carefully considered the submissions of both parties and the authorities to which reference was made. I have also carefully considered the evidence that was presented. I have taken a considerable period of time to reflect upon the issues that were raised and in considering the statutory questions.
112. I am satisfied that the bringing of the proceedings was not the reason for the claimant's dismissal. The evidence of the dismissing officer in relation to the reason for the dismissal was clear and I accept it. In his mind, he chose to dismiss the claimant because he had concluded the 4 allegations were each made out and that the claimant's conduct in breaching the relevant policies was gross misconduct (taken cumulatively). The fact that the claimant brought relevant proceedings against the respondent was not the reason for the claimant's dismissal.
113. The next question is whether the reasons for the dismissal, which clearly related to the claimant's misconduct, could still be regarded as sufficiently proximate to the raising of proceedings so as to result in a finding that the dismissal was

automatically unfair. This was the claimant's "secondary" argument in relation to the automatic unfair dismissal claim. I accept that a common sense natural meaning is to be afforded to the phrase "brought proceedings". Clearly that could not be limited solely to pressing the send button to lodge the claim. It is of course possible that the reason related to misconduct and this could still be automatically unfair if the facts fall within the statutory wording.

114. I do not find that the misconduct that is relied upon, the 4 allegations, are sufficiently close to the proceedings to be fairly regarded as part of "brought proceedings" as a question of fact. I accept the claimant's solicitors' submission that it is possible for the reason to be misconduct but still to be covered under section 104(1) but in the circumstances I conclude that the facts do not support this.
115. In this case the dismissal was for a number of reasons (taken together).
116. Firstly it related to the claimant having accessed and used PDRs of his colleagues without their explicit consent. He was unhappy that comments were made about him which he considered unfair and untrue. That had no connection with the Tribunal proceedings.
117. Secondly the reason relied upon was the sending of the confidential information to the claimant's personal email account. The information that was sent comprised emails about the respondent's practices about which the claimant was concerned. These emails were sent in anticipation of potential proceedings being raised whether by or against the claimant but not in relation to actual proceedings. The timing of the relevant act (the sending of the emails) was important as it was done a lengthy period of time before the proceedings were raised (and potentially before they were even contemplated). That was significant. There was no evidence from the claimant that the sending of the emails was, for example, due to imminent proceedings and he had sent them to ensure he could raise or defend proceedings. Instead the claimant sent the emails essentially as a precautionary matter.
118. The third reason was that the claimant sent confidential emails to his solicitor. This was clearly connected with the proceedings. However, the issue was not

the sending of information by itself but instead the sending of confidential information within the emails. The confidential aspects of the communications were not essential to the claimant's litigation. The information was clearly confidential and the claimant's solicitor subsequently redacted the information. The issue here was the sending of confidential information to his solicitor. The claimant could have sent the information to his solicitor by redacting it himself (which the claimant accepted he ought to have done).

119. If I am wrong on this issue, I considered whether this would change the outcome and I decided that it would not. This third allegation was not the only reason the respondent chose to dismiss. The set of facts or beliefs held in the respondent's mind that caused the respondent to dismiss was the totality of each of the issues. Even if this allegation was connected to the bringing of the proceedings taken as a whole the principal or sole reason for the claimant's dismissal was not the bringing of the proceedings.
120. The final reason relates to the comments the claimant allowed (directly or indirectly) to be published in the local newspaper about the claim that was being raised. The making of comments to the media are not essential or necessary in order to bring proceedings nor are they linked to the bringing of proceedings in some way. The conduct here was the breach of the Code which prohibited the making of comments (directly or indirectly) which placed the respondent in a bad light (even if the comments were accurate and reflected the claim that had been lodged). Again, as with allegation 3, even if this is incorrect, looking at the totality of the reasoning that led to the respondent dismissing the claimant, (the reason was not the bringing of proceedings, fairly understood in light of the facts even if both allegations 3 and 4 were related to the bringing of proceedings).
121. The claimant's principal and secondary argument supporting the assertion that the dismissal was automatically unfair does not succeed. From the facts I find that the principal reason for the claimant's dismissal was not the bringing of the proceedings. The issues that caused the respondent to dismiss are not sufficiently proximate as a matter of fact to the bringing of proceedings to be such that the claimant was dismissed for bringing proceedings. The conduct relied upon had limited connection in my view to the proceedings such that they



were necessarily linked in a fair way to the proceedings to engage this section. The claimant's argument that his dismissal is automatically unfair in terms of section 104 of the Employment Rights Act 1996 must fail.

*Reason relates to conduct – a potentially fair reason*

122. The reason for the claimant's dismissal clearly related to his conduct, a potentially fair reason. The 4 allegations all relate to things the claimant did or did not do (whether in sending emails, using PDR data of colleagues or instructing his solicitor or allowing his solicitor to make comments to the press).

*Was the dismissal fair in all the circumstances?*

123. The question required of the legislation is whether the respondent acted fairly and reasonably in all the circumstances in dismissing for that reason. I have to say that I have not found this an easy question to answer and it has taken me some time to reflect upon the facts of this case. I am mindful of the legal test in this area of the requirement to determine whether or not the dismissal falls within the range of reasonable responses. Could a reasonable employer have dismissed given the facts? In this regard I have considered the sufficiency of the evidence given rise to the reason for dismissal and the procedure that was followed together with the outcome itself.

124. The claimant has raised a number of legitimate concerns about the procedure that led to the claimant's dismissal and as to the decision to dismiss. I have considered the claimant's lengthy and detailed submissions in full and in detail.

125. The first concern that was raised was in relation to the respondent proceeding to convene the hearing when the claimant was unfit to attend. The claimant's solicitor frankly accepted that this was not a particularly strong challenge. The respondent had tried on numerous occasions to secure the attendance of the claimant to the hearing. A number of months had passed. The claimant had been in receipt of occupational sick pay. The medical advice that had been obtained suggested the claimant would be fit, with some adjustments to attend the hearing. It was reasonable for the respondent to have proceeded to determine the matter when it did. A reasonable employer would undoubtedly have done so.

126. Broadly speaking the respondent carried out a reasonable investigation. Once the issue was brought to their attention, someone was tasked with investigating the issues. The relevant witnesses were spoken to and statements obtained with comments noted. A report was then compiled that set out the issues together with the documents that were relied upon in support of the allegations. A disciplinary hearing was then convened with a senior officer as the chair. There was no suggestion by the claimant that the respondent had failed to comply with the ACAS Code (or, for that matter, the respondent's internal disciplinary procedures, albeit these were not lodged with the Tribunal).

*Taking each allegation in turn*

127. The claimant argues that the investigation was unreasonable and perfunctory and it was unreasonable to uphold each allegation. It would be useful to take each allegation in turn and assess the issues within each allegation and investigation that was undertaken and the decision that was taken.
128. The first allegation relates to the use of the PDR extracts and service user details.
129. Mr Briggs argued that it is acceptable for the claimant to use extracts from others' PDRs in the claimant's grievance. The respondent's position is that employees give their response in the PDR process in confidence and if they knew information they disclosed could form the basis of a grievance that would limit what was disclosed. I prefer the respondent's position on this point. If everything that formed the basis of the PDR was capable of being extracted for personal use by managers, the scope of the PDR process would change. That said, there would be items which, if disclosed, would require to be taken forward (such as illegality etc). Had the claimant spoken to the individuals involved and secured their explicit consent, the issue would not have arisen.
130. The difficulty with this issue is that once the claimant learns of the comments, clearly he cannot "unlearn" them. Nevertheless even if the employees refused to consent to the claimant using the material, he could have legitimately obtained the information if the specific information was needed (whether by formal request of the respondent or otherwise). Using use extracts of

employees' PDR records without their consent for his own personal grievance was not acceptable given the respondent's policies about confidential information.

131. One concern the respondent had was that the individual whose data was used could potentially take action in relation to the use of that unauthorised use of the data. More fundamentally the use of the PDR information for other purposes would change the process and limit the disclosure of important information about the day to day working environment. It was not unreasonable for the respondent to take action in relation to the claimant's unauthorised use of this information.
132. One difficulty that arises is that the precise data that was used by the claimant (that gave rise to this allegation) was not disclosed during the disciplinary process. While the claimant obviously knows what he used and what he relied upon, the disciplining officer was not given that information. The fact finding report discloses that the claimant used "extracts" from 3 colleagues' PDR. Those individuals were not asked for their specific consent. The claimant accepted he used the extracts.
133. The individuals were not asked for their specific consent and the claimant accepted he had used their information he found when viewing their PDRs.
134. The respondent's issue was not that there were specific comments he used (in which case the precise detail the claimant disclosed would be important) but instead that the claimant chose to use extracts of comments from the PDRs whose authors had not consented to the information being used by the claimant in this way. The comments were confidential and were not used by the claimant for an authorised purpose. The investigation in relation to that issue was not unreasonable.
135. The claimant also accepted that he sent emails with confidential service user information to his solicitor. That information included names of service users, social work reference numbers and offences and other details.
136. Again the specific information was not provided to the disciplining officer. Some "examples" were given. At the appeal hearing the claimant candidly accepted

there were a large number of emails he had sent (running to some hundreds of pieces of data).

137. Again the issue here was not the precise nature or even volume of emails that the claimant sent but the fact the claimant had used confidential emails and information for a purpose for which no consent had been sought. There was no reason to process the confidential details within the emails in the way the claimant did.
138. It was not unreasonable in the circumstances for the respondent to accept the claimant's position - that he had sent emails with confidential service user data. It was not necessary to look beyond that. The investigator and disciplining officer had a sufficient flavor of the nature of the data.
139. The respondent was entitled to find that this allegation had been established. The claimant admitted to carrying out the relevant acts.
140. The second allegation relates to the sending of the emails to the claimant's personal email address. The claimant's solicitor noted the claimant again accepted that he had sent the relevant emails but argued that the claimant had only found out about the relevant policy relatively recently and there was a lack of clarity as to what a secure email system was.
141. Not only did the claimant accept that he had sent the emails to his personal email account, he did accept that there was a security risk in so doing (in retrospect). While some employers may well have sought advice as to the precise IT basis for a secure email facility, I do not consider that it was unreasonable of Mr Purdie to assume, as he did, that sending the confidential emails to the claimant's email address (an ntlworld account) was not sending the emails to a secure email network. The policy as set out above suggests that if an employee is unsure whether the email system is secure or not, the employee can (and should) seek advice. The claimant did not do so. In all the circumstances the respondent did not act unreasonably in investigating this allegation.
142. Given the claimant accepted he had sent the relevant material, it was no unreasonable for the respondent to uphold this allegation.

143. The third allegation relates to the sharing of the confidential emails with his solicitor and the sharing of the PDR extracts in his grievance. The claimant's solicitor argues that given the failure to comply with data protection law was said to be a factor, it was incumbent on the respondent to take legal advice as to the precise legal basis for such an assertion. Mr Briggs argued the matter was covered by section 35 of the Data Protection Act 1998 which exempts personal data from the nondisclosure provisions where the disclosure is necessary to obtain legal advice.
144. Ms Bonnar argued that the disclosure in this situation was not "necessary" to obtain legal advice since the claimant could have redacted the material (something that he conceded he would ordinarily have done).
145. I was not referred to any authorities on this point. Nevertheless it seems to me that the question is whether the disclosure was necessary to secure legal advice. The disclosure here was of emails which contained confidential information. The confidential information did not need to be disclosed for the seeking of legal advice - the issue was the content of the email and the things that had happened within the team (rather than the specific individuals involved). I do not consider that disclosure of that information was necessary for the taking of legal advice. This was not suggested by the claimant at any stage in the proceedings (or before the Tribunal). If the confidential information itself was the subject of legal advice, clearly disclosure of that information would have been necessary but that is not the position in this case.
146. In any event the issue under investigation in this matter was not a failure to comply with the law, as such, but rather a failure to comply with the respondent's policies. The policies clearly require the claimant to keep confidential such information and not to disclose the information to third parties. While the respondent had lodged the up to date policy in this area, which post-dated the conduct in question, I accepted the evidence of Mr Purdie that the policy that was in place at the relevant time was not materially different in this regard. There may well have been an implied term in the claimant's contract of employment, given the surrounding factual matrix, that he keep the relevant material confidential and secure.

147. It was accepted that the claimant had disclosed the confidential information within the PDAs and that the authors had not given their explicit consent.
148. The investigation in relation to this allegation was therefore reasonable.
149. Again the claimant accepted that he had sent the relevant information. It was reasonable for the respondent to conclude that this allegation was meritorious.
150. Finally the fourth allegation was that the claimant had allowed a comment to be made to the press which brought the respondent into disrepute. Mr Briggs noted that the statement that was made was banal and accurate. He argued that the respondent's policy in this regard was unclear.
151. There was little more investigation the respondent could do to determine the factual basis of this matter. The claimant refused to provide any information as to how his solicitor who was dealing with his claim against the respondent had made a comment to the local press about the precise basis of his claim. Mr Purdie concluded that the solicitor, as agent for the claimant, could only have made the comment with the claimant's express or implied authority. This was not denied by the claimant. This is a difficult area given the privileged status of legal advice, but the issue was whether the respondent's policy about comment to the press had been breached and the respondent did not act unreasonably in concluding that the statement had been made with the claimant's consent, directly or indirectly.
152. While I was not provided with the respondent's Code of Conduct, evidence was given that this Code prohibits the going to the press to make any comment about the respondent or one's employment about the council. This was not challenged as the respondent's policy. I was shown the policy in relation to social work staff being prohibited from making press comment.
153. In all the circumstances the respondent did not act unreasonably in their investigation of this allegation.
154. The respondent acted reasonably in upholding the allegation. The claimant's solicitor was the claimant's agent and had made a comment about the precise nature of the claimant's claim, which was a factual statement. While the fact

finder suggested such a statement was “defamatory” (which it was not) it was clear that what the respondent was concerned about was making any comment to the press which could “paint the respondent in a bad light”. The very fact a claim is raised has this potential. It was not unreasonable for the respondent to conclude that this allegation was made out.

155. I do not therefore accept Mr Brigg’s submission that there was insufficient investigation upon which the respondent could found a genuine belief in the claimant’s guilt of each of the allegations. I accept that the investigation was not perfect and there are shortcomings. Some employers would undoubtedly have provided more detail as to the specific disclosures that were made and some employers would have obtained legal advice as to the precise nature of data protection law. Equally however I cannot say that no reasonable employer would do what the respondent did given the prevailing circumstances.
156. Given the facts, it was not unreasonable for the respondent to conclude that the claimant was guilty of each of the allegations. The facts by and large were admitted by the claimant. He accepted he had sent the relevant confidential material as alleged. While there was no detail as to the specifics, the dismissing officer was aware of the broad nature and flavor of the material that had been disclosed. That material was undoubtedly confidential and the respondent took these issues very seriously. The comment had been made to the press.
157. Mr Purdie took into account the full background and the claimant’s position. He took into account the claimant’s ill health and the concerns the claimant had. He considered fully the points made by the claimant at the fact finding meeting. He was careful to ensure he considered all of the issues that were before him. That included the claimant’s lengthy service, his clean disciplinary record and each point raised in mitigation.
158. The decision to uphold each of the allegations fell within the range of responses that would have been open to a reasonable employer given the foregoing facts. It was not perfect but it fell within the range of responses open to a reasonable employer.

*Dismissal as a fair outcome*

159. The disciplinary invite letter sent to the claimant had noted that a disciplinary sanction (an outcome) could be dismissal. While I was not taken to the respondent's disciplinary procedure, it was clear that summary dismissal was an option that was available to the respondent if the allegations were upheld. Given the severity of the allegations and given all the circumstances, including equity and the substantial merits of the case, a reasonable employer could have dismissed the claimant as the respondent did.
160. The respondent clearly treated confidentiality of its data and data security extremely seriously. The nature of the claimant's role and the information that he was processing and to which he had access underline the importance of keeping confidential the relevant data. While the precise nature of the relevant actions were not known, nor were the consequences, the fact that the claimant had carried out the relevant acts and the fact that he showed no remorse were all factors that supported the decision to dismiss, which was a reasonable decision in all the circumstances. It was not unreasonable for Mr Purdie to conclude that trust and confidence had been destroyed in light of what the claimant had done.
161. The appeal heard by 3 councillors also considered the matter carefully. While no detailed appeal outcome letter was issued or specific reasoning provided dealing with each of the points that had been raised, it was clear that the appeal panel carefully considered the process and reasoning that led to the claimant's dismissal. That panel supported Mr Purdie's reasoning and outcome.
162. This Tribunal must avoid deciding whether it would have dismissed (and substitute its view for that of the employer) and instead focus on the statutory question set out above.
163. In all the circumstances, the respondent dismissed the claimant for a reason relating to the conduct of the claimant. The respondent acted fairly and reasonably in all the circumstances in treating that as sufficient to dismiss in



accordance with equity, the substantial merits of the case and taking account the size and administrative resources of the respondent's undertaking.

### **Observations**

164. As I indicated above, this was not an easy case to determine. The Tribunal has to apply to legal test set out above. There were a number of matters that should be taken into account by the respondent as a result of this case. It may assist to set these out.
165. The first issue is to consider the way in which disciplinary hearing invite letters are drafted. While I was satisfied the precise information was given to the claimant not just in the letter but in the accompanying fact finding report (and detailed appendices), it would have assisted the parties greatly if the disciplinary invite letter had precisely set out each allegation. Further, the precise section of the relevant policy and procedure documents relied upon in support of each allegation ought to be clearly stated. Precision and specification as to the particular allegations and why they are alleged to be disciplinary breaches should be clearly and fully specified.
166. Secondly a further difficulty in this case was the absence (before the Tribunal) of the Code of Conduct and Disciplinary and Grievance Policy which are clearly highly relevant in these cases. Care should be taken to ensure all relevant documents are provided to employees during the disciplinary procedure and in the event of a Tribunal claim.
167. Finally in considering appeals it would assist the parties if some form of reasoned outcome is provided, thereby showing each of the points made in support of the appeal have been considered and the reasons for accepting or rejecting these points are set out.

168. In all the circumstances the dismissal is fair and the claim is dismissed.

**Employment Judge**

**David Hoey**

**Date of Judgment**

**21 February 2019**

**Entered in register  
and copied to parties**

**25 February 2019**