



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Dewrow

Respondent: ISS Mediclean Limited

Heard at: Leeds by CVP

On: 14-18 September and (deliberations only) 27 November 2020

Before: Employment Judge Maidment

Members: Ms L Fawcett

Mr DW Fields

Representation

Claimant: Mr J McHugh, Counsel

Respondent: Mr J Arnold, Counsel

RESERVED JUDGMENT

1. The Claimant was subjected to a detriment pursuant to Section 146 of the Trade Union & Labour Relations (Consolidation) Act 1992 in the Respondent failing or refusing to allow her secondment as trade union convenor to continue. The Claimant's remaining trade union detriment complaints fail and are dismissed.
2. The Claimant's complaint of automatic unfair dismissal pursuant to Section 152 of the 1992 Act is well founded and succeeds.
3. The matter shall be listed to determine remedy at a hearing to be conducted by CVP videoconferencing and with a time estimate of 3 hours.

REASONS

Issues

1. The Claimant brings claims of trade union detriment pursuant to Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992. She asserts that she was recognised by the Respondent as its convenor representing its Unison members employed in providing school catering services to Wakefield

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Council pursuant to a subcontract the Respondent held with the main contractor, Engie. The Claimant has firstly identified the acts (or failures to act) which are said by her to have had the sole or main purpose of preventing or deterring her from undertaking trade union activities. These are as follows:

- 1.1. (1) 26 March 2018 13:40 – email from Jozefine Cox to Rianne Hooley that the Claimant does not act as the trade union convenor for ISS members
- 1.2. (2) 22 May 2018 13:53 email from Alison Martin to the Claimant which stated that the Claimant is not the trade union convenor
- 1.3. (3) 10 October 2018 17:14 email from Jozefine Cox to the Claimant that Unison are not recognised therefore she is not allowed to attend the restructure meetings as union representative
- 1.4. (4) 9 November 2018 17:20 email from Jozefine Cox to the Claimant that she was not the trade union convenor and she was only acting as a branch steward
- 1.5. (5) 29 March 2019 letter to Rianne Hooley from Paul Cronin that the Claimant had run for election as trade union convenor without their permission and the Claimant would have to return to her previous role
- 1.6. (7) 28 June 2019 08:01 email to the Claimant from Lilian Gorman that the Claimant refrain from involving herself with decisions regarding health and safety of their employees
- 1.7. (8) 2 July 2019 16:50, 13:53 and 20:04 emails to Rianne Hooley from Anne Kavanagh reported that the Claimant had contacted the media about the restructuring contrary to their media policy and that they were investigating a complaint made while acting as a trade union convenor
- 1.8. (9) 4 July 2019 letter to the Claimant from Lisa Burr invited the Claimant to an investigatory meeting while conducting trade union activities
- 1.9. (10) 18 July 2019 investigation meeting went ahead despite the concerns raised that the Claimant was conducting trade union activities at the time
- 1.10. (11) 26 July 2019 letter from Lisa Burr inviting the Claimant to a second investigatory meeting
- 1.11. (12) 2 August 2019 letter to the Claimant from Jackie Cooper, which stated that she would not be able to continue in role as trade union convenor if Engie could not find a role

- 1.12. (13) 30 August 2019 09:37 email to Rianne Hooley from Jackie Cooper that the Claimant's trade union convenor role would expire on 2 October 2019 and there would be no further extensions
- 1.13. (14) 16 September 2019 meeting with the Claimant that Engie could not offer her any other roles and therefore she would have no option but to return to her previous role and no longer be a trade union convenor.
2. [Allegation (6) was withdrawn before the Tribunal commenced hearing evidence – it being recognised (most fairly) by the Claimant and Mr McHugh, on her behalf, that the Respondent was prejudiced in not being able to answer this in circumstances where Mr Cronin had sadly died since the commencement of proceedings due to Covid-19. Mr McHugh also confirmed that paragraph 7 of the Claimant's witness statement (suggesting that the Respondent had from an earlier stage sought to prevent her carrying out trade union activities) was included by way of background only.]
3. If the alleged acts were made out, was the Claimant then subjected to the following detriments by any proven acts or deliberate failures to act?:
 - 3.1. rescinding the extension to the secondment of trade union convenor or otherwise failing or refusing to allow secondment to continue
 - 3.2. failing to allow the Claimant to act in her role as trade union convenor and represent the members of the union, particularly with regards to the restructuring as particularised at Allegation (3) above
 - 3.3. subjecting the Claimant to a disciplinary procedure
 - 3.4. failing or refusing to investigate her complaints in:
 - 3.4.1. 18 July 2019 investigation meeting went ahead despite the concerns raised that the Claimant was conducting trade union activities at the time
 - 3.4.2. 26 July 2019 letter inviting the Claimant to a second investigatory meeting. The Respondent failed to investigate the complaint made that the Claimant conducting trade union activities at the time
 - 3.4.3. 30 July 2019 email to Lisa Burr from the Claimant. The Claimant reiterated that she had been carrying out trade union activities at the time
 - 3.4.4. 5 August 2019 letter from the Claimant to the Respondent with formal grievance that terminating her employment was victimisation. The extension to the Claimant's secondment was rescinded with no reasonable explanation. She had complained of being victimised but none of the complaints were investigated.

4. The Claimant also confirmed that she was no longer asserting that creating the circumstances in which the Claimant had no choice but to resign amounted to detrimental treatment in that this was a complaint about her alleged (constructive) dismissal.
5. The Claimant indeed brings a claim of automatic unfair dismissal where it is said that having taken part, or proposed to take part in the activities of an independent trade union at an appropriate time (as set out in Allegations (1)–(14) above, those were the reason or principal reason that the Respondent committed the alleged fundamental breaches of the Claimant’s contract of employment that precipitated the Claimant’s resignation? The final straw is said to have been the Claimant being told on 16 September 2019 that she could not continue as a convenor and had to return to her position as kitchen manager on 2 October 2019.
6. The Claimant finally brings a complaint of ordinary unfair dismissal reliant on the same actions of the Respondent, whether or not they had the proscribed purpose.

Evidence

7. This hearing was conducted wholly by CVP videoconferencing due to the coronavirus pandemic. The Tribunal had before it an agreed bundle of documents numbering in excess of 477 pages.
8. Having spent a little time clarifying the issues, the Tribunal broke to privately read into the witness statements exchanged between the parties and relevant documentation. That meant that when each witness came to give her/his evidence she/he could do so by confirming the contents of her/his statement and then, subject to any brief supplementary questions, be open to be cross-examined on it. The Tribunal heard firstly from the Claimant and then, on her behalf, from Ms Rianne Hooley, Union Organiser and her predecessor in such role, Mr Robin Symonds. On behalf of the Respondent, the Tribunal then heard from Anne Kavanagh, Key Account Manager, Jozefine Cox, People and Culture Business Partner, Jackie Cooper, Regional Operations Director, Alison Martin, Senior Operations Manager, Lillian Gorman, Operations Manager and Lisa Burr McGee, Contract Manager.
9. Having considered the relevant evidence, the tribe makes the factual findings set out below.

Facts

10. The Respondent is part of the ISS group of companies which provide facilities management services to clients globally. The majority of its UK operations are in the public sector, including the defence, education and healthcare sectors.
11. Engie entered a contract with the Council of the City of Wakefield to provide various facility management services to the Council’s schools with effect from 31 October 2016. It had an intended term of 15 years. In order to deliver the

contract, Engie entered into subcontracts with the Respondent to provide catering (school meal) services and Acardis to provide professional and project-based services. Engie's direct provision of services was in cleaning together with electrical and water testing services. Engie, the Respondent and Acardis were known collectively as "the Wakefield Partnership".

12. The Claimant was employed by the Council as a kitchen manager at West End Academy, Pontefract and as a cleaning assistant at Oakfield Park School in Pontefract. As a consequence of the Wakefield contract, her employment with the Council as kitchen manager transferred to the Respondent under the Transfer of Undertakings (Protection of Employment) Regulations 2006 on 31 October 2016. The Respondent recognised Unison as an independent trade union.
13. When with the Council, the Claimant had never served as a shop steward and in fact only became a Unison steward with the Respondent in April 2017. Following subsequently the Claimant's appointment (or not) as a union convenor for the Wakefield Partnership (the scope of which is of key contention), in late 2017, a further shop steward was elected within the Respondent who worked initially in a school meal service inside the Wakefield Partnership, but then outside of it.
14. Within the Wakefield Partnership, Engie and Acardis had their own shop stewards. The Claimant's position is that she was the only person representing all three employers in the Wakefield Partnership in the convenor role.
15. Within the Wakefield branch of Unison there was employed a branch development officer, Sharon Simpson, and caseworker. They represented members in the private sector. The branch development officer had represented the Respondent's employees within the Wakefield partnership, but only until the Claimant filled the convenor role.
16. The Claimant, as a branch shop steward for the Respondent's employees in Wakefield, was given paid release from her ordinary duties as a kitchen manager to perform trade union activities, during which she was paid at the kitchen manager grade. She recognised that this contrasted with the role of trade union convenor which she subsequently undertook, which was a 37 hours per week full-time role which attracted the (higher) paygrade for a trade union convenor. To ultimately become a convenor, she accepted that she had to be accredited in the first instance as a shop steward for which she received training in different aspects of workplace relations and regulations.
17. As a branch steward, she assisted and represented individual members subject to disciplinary procedures or who had raised grievances. As convenor, the role was more one of strategic leadership where she said that she attended, for instance, JCC negotiating meetings and was called upon for consultation

exercises regarding redundancies or potential TUPE transfers. She convened meetings of all union representatives across the Wakefield Partnership.

18. The witness evidence of Mr Robin Symond's, Unison Organiser, was that he attended an introductory meeting on 6 July 2016 on the contract being awarded to Engie. The meeting was attended by representatives from the companies within the Wakefield Partnership as well as Wakefield Council. He said that he was keen to make sure that everyone knew about the convenor position, which he considered (accurately) to be a precondition/requirement of the Council and raised it during the meeting. In response he said that Mr Paul Cronin, the Respondent's Employee Relations Director, said that the Respondent did not have convenors working for them, but only local stewards. Mr Symonds said that he explained that there was an agreement that the role of trade union convenor was to be recognised by the Wakefield Partnership, which Helen Grantham from the Council confirmed. He had been alarmed by Mr Cronin's comments at the meeting, which had caused him to check with Ms Grantham. He said he was "crystal clear" on there being an agreed full-time convenor for the entire partnership.
19. Just before the partnership contract went live, Alison Brown of Engie sent an email to the other members of the partnership seeking a response to a proposed trade union recognition agreement submitted by Unison. This included a reference to part of Mr Cronin's feedback that: "There will not be a full-time convenor for ISS."
20. The Tribunal has been shown that template agreement, which included at clause 11 the recognition of a Unison convenor due to the number of members and their disparate spread across more than 100 workplaces. That convenor would be allowed to spend their whole contractual employment on trade union duties with the convenor returning to their substantive post after their period in office.
21. The Tribunal has also then seen a recognition agreement between the Respondent and Unison. This was signed by the Respondent on 16 January 2017 and by Mr Symond's, on behalf of Unison, on 2 March 2017. Its stated date of commencement was 1 December 2016. The agreement is said to be with ISS Education (Wakefield Contract) and applies to all employees of the Respondent working in the partnership.
22. There is no clause within this referring to the position of convenor. There is simply a provision setting out arrangements for time off when fulfilling union duties. At clause 11.3 it is provided that when representatives, other than those with full-time secondment, attend meetings with management during their normal hours which extend beyond normal finish in time they would be paid at plain time rates for those additional hours.

23. Mr Symonds' evidence was that he did not understand why Mr Cronin wanted a separate recognition agreement for the Respondent, particularly because there were no shop stewards at the time within the workforce which was transferring from the Council to the Respondent. He put it down to a lack of understanding on Mr Cronin's part. The union was happy to sign it as appropriate in the event that they were able to recruit any shop stewards. The lack of reference to a convenor in this agreement was expected by him because of the "corporate position" i.e. the agreement he believed had been reached at Wakefield Partnership level.
24. Engie also entered into its own recognition agreement with Unison which did include the clause in the template which provided for the recognition of a Unison convenor.
25. Mr Symonds evidence was that the recognition agreement with the Respondent was supplemental to a Wakefield Partnership recognition agreement with Unison. No such agreement has been produced to the Tribunal, which must conclude that Mr Symond's recollection was flawed and that there was never a separate recognition agreement between all three contractors jointly and Unison.
26. The Claimant agreed that she was seconded from the Respondent to Engie so that she could be a full-time convenor, albeit her position was that this was for the employees of the Wakefield Partnership consisting of all 3 employers, including the Respondent. Mr Symonds considered (but without really understanding the Respondent's position) that the need for her to be seconded to Engie arose out of it becoming apparent that the Respondent did not recognise the role of convenor within its structures and the Respondent being obstructive. The Claimant thought she had probably seen the signed recognition agreement between the Respondent and unison sometime in 2017, although later she was clear that she had not seen it at the time she signed her secondment agreement on 15 February 2018. Nevertheless, she worked on, on the basis that she was seconded to represent the staff of all three partnership employers. She couldn't understand now why the recognition agreement had no reference to the convenor role when that had been agreed, she believed, as a role for the Wakefield Partnership. It is unlikely that she gave any close scrutiny to the agreement during her employment with the Respondent.
27. Ms Holding, HR Manager at Engie, emailed Ms Kavanagh and Ms Cox, People and Culture Business Partner, of the Respondent on 7 August 2017 saying that the Council had agreed to fund the Claimant's convenor role for 2 years initially and suggesting that she remained on the Respondent's payroll with the costs claimed back. She stated: "...it is a Convenor for the Partnership, not the Council." Ms Holding, the tribunal concludes, thought that the claimant's convenor role covered the Respondent's employees.

28. Ms Cox forwarded this to Mr Cronin to update him "...in relation to Wakefield Partnership and the Convenor role." She told the Tribunal that at this point in time she had not seen the recognition agreement between Unison and the Respondent. He replied asking if this was a full-time convenor role and saying that the Respondent did not have any full-time convenors. Ms Cox responded: "Yes for the Wakefield Partnership."
29. Ms Cox emailed Mr Symonds (copied, amongst other people, to Stephanie Holding of Engie) on 9 August saying that the Respondent did not have any full-time convenors and there was not one in their recognition agreement. Ms Holding responded to that email attaching "a copy of the Union recognition agreement for the Partnership which I believe was signed by ISS earlier in the year, section 11.1 relates to the Convenor role." The Tribunal concludes that the attachment was, however, the agreement Engie had signed with Unison. Ms Cox's evidence was to the effect that if the Respondent had intended to be part of a Partnership recognition agreement they wouldn't have had one of their own. Ms Holding clearly, however, believed at this point that the Respondent was recognising the Claimant as convenor for its staff.
30. Mr Cronin had emailed Engie, copied to Mr Symonds (a communication not seen by the Claimant), on 9 August 2017 attaching the recognition agreement with Unison. He said: "Nowhere does it allow for a full-time convenor, in fact it makes it very clear what and when union representatives will be paid for ISS does not have any full-time convenors within its 48,000 employees and 8 recognised trade unions and cannot see the need for one on this contract given the small level of membership the union has on this contract given the high level of union representatives across our business who would want to be given access to full time paid release.... We would, as per our agreement, give paid release for training and union duties but not for a full-time convenor. Had I or Jozefine been notified at an earlier stage of your intentions we would have informed you of our position sooner."
31. Mr Symonds responded on 9 August saying (accurately) that the principle of a full-time convenor had been established by the Council, had been discussed and that the Claimant had been identified within the transferring workforce. There was no expectation that the cost would be borne by the Respondent. He went on: "I would not expect Carol's release to set a precedent for ISS because she is not undertaking the role of ISS convenor, rather she is a UNISON convenor for the Wakefield Partnership. I hope that a workable solution can be found to facilitate Carol's secondment to the convenor position."
32. Mr Cronin emailed further reiterating that: "ISS made its position very clear that we would not have an ISS full time convenor." A further email of 9 August repeated that position and a wish not to set a precedent. He referred to the cost to the business if the concept was adopted more widely and the Claimant having a potential conflict of interest over whose interests she might actually be serving.

33. Mr Symonds attended a meeting on 22 August 2017 with Ms Kavanagh and Ms Cox where the Claimant's release by way of a secondment was agreed which he thought established the Claimant as the representative for the Wakefield Partnership.
34. Ms Holding emailed Ms Kavanagh and Ms Cox referring to "something of a stalemate" prior to setting out issues in respect of the payment arrangements for the secondment. Mr Cronin emailed Ms Cox on 25 August asking if there had been a response to the "union convenor issue yet."
35. Mr Symonds had left his post by the time the secondment agreement was produced by the Respondent. He had not expected it to be time limited as the life of the contract was 15 years and he had told Ms Kavanagh that hopefully the Claimant would see out the life of the contract. His account is accepted as ringing true and a reflection of his belief. He believed that there might have been some confusion as the Council agreed to fund it initially for a period of 2 years. The Claimant's evidence was at times confused on the point. She anticipated an expiry of the secondment agreement on 1 August 2019 on the basis of the period of funding, but expected a new agreement or a continuance of the old, so long as she was re-elected by the union membership.
36. The Claimant remained also a branch shop steward for the Respondent's employees. To be a convenor, you had to be a shop steward. When pressed as to why she was seconded to Engie if she was to be convenor for the Respondent, the Claimant said that she was not involved in those discussions but she did cover the staff of all three employers. She then referred, as a possible explanation, to Engie being the main contractor and that she was the first person to perform the convenor role.
37. On 29 August 2017 Ms Cox emailed Mr Cronin referring to discussions with Engie, the outcome of which was that the Claimant would be seconded to them, the Respondent would continue to pay her and then claim the money back from Engie. She went on that: "part of the agreement will make it clear that this arrangement does not set a precedent on this contract or any other and that the convenor is for Engie under their recognition agreement and not ISS". The Claimant had not seen this communication at the time.
38. In an email of 22 November from Claire Cox of Wakefield Council to Stephanie Holding, HR Manager of Engie there was reference to Sharon Simpson, the branch development officer of Unison agreeing to contact the school business manager to thank her for agreeing to the Claimant's secondment.
39. The Claimant was given a secondment agreement from the Respondent dated 23 January 2018 which was signed by her on 15 February. This provided that the Claimant would act as convenor for the Wakefield Partnership and carry out the duties contained in an attached job description and as reasonably

required of her by the Respondent, at Engie's request and in the Engie business. She would continue to report to Alison Martin, an operations manager within the Respondent and report on day-to-day matters to Mr Symonds of Unison. She was to work at Unison's premises in Wakefield. An increase in the Claimant's salary was noted. The arrangement was terminable on 3 months' notice or the ending of the Claimant's employment with the Respondent. There was no reference to a fixed or minimum term. Ms Kavanagh agreed that any notice had to be given to the Claimant.

40. Again, the Claimant's position was that this confirmed that she was to act as convenor including for the Respondent's employees. She said that she had not been shown the recognition agreement which the Respondent had entered into with Unison. She considered this perhaps was intended to cover other contracts the Respondent had in the Wakefield area. It wasn't, however.
41. The Claimant agreed that the provisions regarding permitted paid time off in the Respondent's recognition agreement were superseded by her secondment, but in the sense that there was no need for the Respondent to give the Claimant paid time off to perform these duties given her convenor role.
42. Ms Kavanagh accepted in cross examination that the secondment agreement read as if it covered all 3 employers in the partnership. Ms Cox's evidence was that this was a drafting error and that her understanding from the 22 August 2017 meeting was that the Claimant was not to be a convenor. When asked how that error could be explained, she said that perhaps they "couldn't see the wood for the trees". This was despite the agreement having been sent to various people including legal advisers. There was a lot going on and the mistake had not been picked up. When put to her that the agreement was one which the Claimant was entitled to rely on she said that she understood that argument. The Claimant's position however, she said, disregarded the context of the 22 August meeting and the Respondent's understanding that the Claimant would not be a full-time convenor for it.
43. The Respondent also negotiated a secondment agreement for the Claimant to which it and Engie were parties. That also referred to the convenor role as being for the Wakefield Partnership. Ms Kavanagh agreed in cross examination that if it was meant to exclude the Respondent it would say so. Again, Ms Cox's position was that the description of the role was an error. In the Respondents minds they were clear, but this hadn't translated to the page. The tribunal does not consider that the wording can be explained as an error given the importance the Respondent's managers knew that Mr Cronin attributed to the need to be precise and careful in how the claimant's role was described. Any other wording would have likely produced an inevitable objection from Engie.
44. The Claimant's evidence was that by now she had already been attending regular Joint Consultative Committee meetings. From the Respondent's point

of view these were in fact opportunities for the employers within the partnership to catch up with the trade unions to update them regarding developments but not to negotiate on anything – not JCC meetings. The Respondent's own description of the scope of these meetings is nevertheless noted. Ms Cox attended these on a couple of occasions and was updated by her management team.

45. The Claimant's position was that she attended JCC negotiating committees once a month, albeit they had then become bi-monthly. These discussions involved health and safety, KPIs with the council and restructurings. They were attended by Steff Holding on behalf of Engie and 2 other Engie representatives. Similarly, Arcardis representatives and representatives of the Respondent would be present. Those would tend to be Alison Martin and Anne Kavanagh although she believed Ms Gorman had attended on one occasion also. She said that she was there to represent all Unison members across all 3 employers. Representatives from Unite were also present in respect of Engie and Arcardis workers. If she had only represented Unison members in Engie and Arcardis she said she would have only been responsible for around 100 members which would not have been sufficient to justify a full-time convenor role.
46. The Claimant was involved in consultation regarding a proposed harmonisation of terms of the Respondent's employees – a move to term-time only contracts. The Claimant resisted that change on behalf of her members and the Respondent withdrew its proposal. This was confirmed by Ms Kavanagh by letter of 21 March 2018 which referred to employees having been represented by the Claimant as "Unison Representative." Mr Symonds had initiated the Claimant's involvement by a letter to Ms Martin dated 25 January 2018 which referred to the Claimant as Unison convenor. Ms Cox agreed that it appeared that no one had told the Claimant that she couldn't be involved in this consultation and said that they were all getting to grips with a new arrangement.
47. On 22 March the Claimant emailed Ms Kavanagh about a safeguarding issue involving an alleged failure to follow a recipe and asking for details of previous incidents of a similar nature and how the Respondent had dealt with them. She signed herself off as Unison convenor. Ms Cooper accepted that it was appropriate for the Claimant to get involved with this issue and that she did represent the individual accused of misconduct. Ms Cooper did not, however, see the potential relevance of the information requested. The Claimant said that she trusted she would receive this without needing to make a freedom of information request or whistleblow. Ms Kavanagh copied this to Ms Cox and Ms Martin. Ms Cox responded saying that she would be escalating the matter to Mr Cronin "due to the threatening nature of the email." She also said that she would like to take the opportunity to remind the Claimant that she was the convenor for the recognition agreement for the Wakefield Partnership but not for the Respondent's Wakefield Partnership element as the Respondent had a separate recognition agreement which did not provide for a convenor. The Claimant told the Tribunal that she signed herself off as convenor in every email

she sent. She said she received mixed messages in that she would be asked to represent Unison members within the Respondent.

48. Ms Cox said, in cross examination, that it did not ever occur to her to go back to the secondment agreement to see how the arrangement was defined. She was basing her view on the recognition agreement. A chain of email correspondence ensued with Ms Cox stating to Mr Cronin on 26 March 2018 that: "She is not going away."
49. On 26 March 2018 Ms Cox emailed Ms Hooley, shortly after Ms Hooley had become Organiser for the branch in the February. Within this she said that the Claimant's secondment as convenor did not cover members within the Respondent's employment. She said that Engie and Acardis had a joint recognition agreement with Unison whereas the Respondent had a separate one which did not recognise the role of convenor. She said that was why the Claimant had been seconded to Engie first and not directly to the union from the Respondent. It was put to the Claimant that this was factually correct when looking at the proposed recognition agreement and then the version which was actually signed by the union and the Respondent. The Claimant agreed, from what was shown by those documents alone.
50. Ms Hooley had been shocked by the suggestion that the Claimant was not the Respondent's convenor. That was contrary to what Mr Symonds had told her when he conducted a handover of his Organiser role.
51. In responding, Ms Hooley said that she did not make a distinction between the various employers in the Partnership because she had already made it by referring to a separate recognition agreement. Ms Hooley asked for a copy of the secondment agreement. Ms Cox responded saying that whilst the Claimant represented the Wakefield Partnership this only included Engie and Arcardis members and not the Respondent's. She did not refer to or provide the secondment agreement, but said in cross examination that this was not on purpose.
52. In an internal email from Ms Cox of 14 May 2018 with the subject heading "convenor role", she referred to a request from the Claimant for health and safety information and the need to be very careful that the Respondent was not treating the Claimant as convenor and therefore giving her and the union the argument that by their actions they had recognised the role. Ms Cox in evidence was again adamant that the secondment agreement had not been checked. She denied that the Respondent was seeking to be obstructive. The purpose was to affirm that the Respondent did not have the role of convenor. She referred to Mr Cronin having a long history of working with trade unions and having a positive attitude towards them. Ms Cooper told the Tribunal that there was confusion about the Claimant's activities – the team was relatively new and had not had much prior involvement with trade unions.

53. On 22 May 2018 Ms Martin emailed the Claimant stating that with regards to her request for an audit of the Respondent's health and safety plan: "you are not our convenor so you will need to liaise with MHarry from Engie." Ms Martin's evidence was that this was her understanding from Ms Cox and that the purpose of the email was to convey this understanding. The Claimant said that she worked 37 hours per week as a convenor and regularly represented the Respondent's members in different aspects of workplace matters.
54. On 13 June 2018 Ms Cox emailed Ms Hooley saying that it would still be useful to have a meeting in relation to the Wakefield Partnership Convenor role and the separate recognition agreement the Respondent had with Unison.
55. Within the bundle of documents was a letter dated 14 August 2018 purportedly from the Respondent's human resource department to the Claimant which referred to her updated salary and to her acting as Unison Convenor for "the Unison Wakefield Partnership (not including ISS Facility Services)". Mr Arnold confirmed to the Tribunal during the course of Ms Cox's cross examination that he was instructed not to pursue reliance on this document as the Respondent could not prove it had been sent out.
56. Subsequently, on 3 October 2018, Ms Cooper emailed a request to Sharon Simpson to arrange talks with the union about a proposed reorganisation of the Wakefield Partnership management team. In an email from Ms Hooley to Jackie Cooper of the Respondent on 4 October 2018 Ms Hooley stated that the Branch Development Officer did not have the capacity to undertake the work. She told the Tribunal that the Branch Development Officer had assisted the Respondent's employees prior to the Claimant's secondment, but that was not a task she would have ordinarily performed, her being a full-time union officer whose remit was to look after Unison members employed in the private sector. She continued: "As you are aware, Carol Dewrow is the convenor for the Wakefield Partnership and in addition to this role she is also an accredited steward for ISS. Carol is on full-time release to support Unison members across the entire partnership. I have just spoken to Carol and she has confirmed that she has the capacity to participate in this consultation and support all members affected by it."
57. The Tribunal accepts Ms Hooley's evidence that she was not suggesting that the branch development officer was the appropriate person to represent the Unison managers in a consultation. That was a branch position with the union and certainly not within the recognition agreement. The incumbent had simply previously helped out in addition to performing her 'day job', prior to the Claimant's election. Ms Hooley said that she was trying to say to the Respondent that the Claimant was Unison's representative and that they would decide who represented their members. Ms Hooley's position was that she was saying that the Claimant was both the convenor for the Wakefield Partnership and the Respondent's shop steward. She said she was trying to be diplomatic. She felt that there had been a positive meeting with the Respondent on 9 July and the Claimant had carried on with her union duties since then as before. If

the Respondent had a problem with the Claimant as a convenor, she was a shop steward of the Respondent anyway. The Respondent had members at risk in a restructuring and who needed help. It did not matter to her in what role the Claimant provided that help. The role of convenor was not one in the Unison rule book – it was part of Wakefield Council’s model/structure for employee representation. For Unison, it didn’t really matter. You couldn’t be a convenor unless you were a shop steward.

58. In response to this Mr Cronin had emailed Ms Cooper saying that he would include the Claimant on the call as she had represented “these people” in the past and even though they were managers they were also union members. He said, however, that he would make it very clear that all of the information discussed was highly confidential and not be discussed outside the meeting until those involved are notified of the changes. He went on: “Any breach of this will lead to disciplinary action and may lead to sanctions including dismissal. At this stage it is not worth getting the union agitated, let’s wait to see if she can keep a secret.” When put to Ms Cox that the Respondent was waiting for an opportunity to take action against the Claimant from Mr Cronin’s wording, she said that, knowing Mr Cronin as she did, that was not the case and that his comments were more out of frustration. Ms Cooper described Mr Cronin as colourful and outspoken. She said that the operations team had raised concerns about what the Claimant said in front of them. She could not, however, give any details of any breach of confidentiality. The Claimant’s position was that this permission was being given to her as convenor and that the branch development officer did not cover Wakefield in any event. Until this point she had in fact never represented area managers. When put to her that it was strange, if the Respondent wanted to deter her from trade union activities, that Mr Cronin was allowing her involvement, she pointed to the rest of the email as suggesting a hope that she would breach confidentiality.
59. The Claimant complained that in an email of 10 October 2018 from Ms Cox she was told that the Respondent was not recognised and therefore she was not allowed to attend restructure meetings as a union representative. She wrote that Mr Cronin had advised that “unfortunately on checking the agreement that the wrong one has been signed by the union”. The Claimant agreed that it was quite startling to read this.
60. The form of recognition agreement between the Respondent and unison which was signed by Unison defined the staff covered as all employees working in the Wakefield Partnership. On 17 October 2018, Mr Cronin emailed Ms Hooley saying that he believed there had been an administrative error either at the Respondent’s or the union’s end, in that the one which had been intended to be signed by Unison referred to it covering all hourly paid staff. Salaried staff had not been included because there was no negotiating mechanism in place for this group as all salaries across Respondent in the UK were uplifted by the same percentage point in January each year. He went on that this administrative error raised the question of recognition, but he went on to assure Ms Hooley that the Respondent did not want to de-recognise Unison and was

looking to simply put in place the document which had been jointly consulted on. Given the small number of members Unison had amongst managers, the Respondent had reviewed the situation and had agreed that the signed agreement could remain in place. Ms Hooley's position was that there had never been a separate arrangement for managers without a full-time convenor. She intended meeting with Engie and Wakefield Council for them to tell the Respondent as subcontractor the correct position and that it was not in the gift of the Respondent to remove trade union recognition.

61. Mr Cronin went on that the Claimant was not the convenor for the Respondent and that the Respondent's position had been made very clear on this from the start. He said that the Respondent recognised the Claimant's right to represent people at disciplinary and grievance hearings but there was no legal right for representation at workplace reviews or redundancy consultations. In cross examination it was queried with Ms Cox how the Claimant could be accepted as a branch steward if she was seconded somewhere else. She responded that she did not understand the mechanism, but understood that the Claimant would return to the role of branch steward with the Respondent, that she needed to be a shop steward to become a convenor with more responsibilities and that she could do both roles. The Respondent was prepared to allow the Claimant to attend the consultation meetings as an observer, albeit she was expected to abide by the confidentiality that was required.

62. Ms Cox described Mr Cronin's reaction as not personal towards the Claimant and that it was pure coincidence that the issue arose regarding the incorrect recognition agreement being signed and the Claimant's potential involvement in collective consultation. When put to her that the Respondent was frustrated at the Claimant becoming involved as convenor she agreed that, as convenor, it was because they did not recognise one.

63. Whilst the Claimant had no clear recollection, she accepted that Ms Hooley probably did tell her about Mr Cronin's stated reason for his assertion that the Respondent was not recognised.

64. On 9 November 2018 Ms Cox emailed the Claimant saying that she was not the trade union convenor and was only acting as a branch steward. She said that she had still not gone back to the secondment agreement by this point. This followed an email from the Claimant which began: "Your unison convenor returned to work today...". The Claimant signed herself off in this, as was common with other emails sent by her, as "convenor". When suggested that Ms Cox's email was just to clarify the Respondent's position, the Claimant responded that she was employed as a full-time convenor and that the Respondent did not pay her as branch steward, but as a convenor. The Claimant accepted that as a steward she would normally just represent workers in grievance and disciplinary hearings. She said that as convenor she had attended the JCC meetings with all three employers, discussed strategic plans, conducted site visits for health and safety and been involved in restructuring and TUPE transfers. Other than the exact nature of the purported JCC

meetings, this was not disputed before the Tribunal. As a steward, the Claimant said that she would have got paid for the time she was released, but as convenor she did not have to do her substantive kitchen manager role – there was no need to be granted a release.

65. Ms Hooley emailed Ms Holding of Engie on 12 November with concerns about the Respondent's position. Ms Holding responded on 22 November saying that she had been in dialogue with the Respondent and the Claimant had been allowed to participate in meetings regarding a proposed restructure. She asked Ms Hooley to let her know of any examples where the Claimant had been unable to fulfil her role as convenor for the Partnership and she would then look into this with the Respondent.
66. On 14 December 2018 Ms Cooper brought to Mr Cronin and Ms Cox's attention a Unison newsletter article the Claimant had written as "convenor" which was described as "totally unprofessional and also very derogatory." This did not name names but related clearly to the Wakefield partnership and an attempt to de-recognise the union by one of the employers and bullying. The Claimant expressed a commitment to do her utmost to make sure that the union members were treated fairly. Ms Cox said that she could see how Ms Cooper interpreted it in the way she stated and said that it could reflect badly on the Respondent. She said that the union members would know it was the Respondent which was being referred to.
67. Mr Cronin emailed Ms Cooper and Ms Cox on 14 December saying that he thought the article brought the company into disrepute and was factually incorrect. He went on: "Therefore she should be brought in to explain herself with a view to disciplinary action. At the very least she should now no longer act in the convenor role as we have lost trust in her to act in a professional manner. The union will complain and accuse us of bullying her because of her role but she has now crossed a line." Ms Cox said that she saw this as passionate language from a passionate man, but fundamentally the Respondent had not sought to take any disciplinary action. Ms Cooper asked Mr Cronin on 20 December whether he had had any further thoughts. He responded on 2 January 2019 that she needed to get the Claimant in to make it clear that this was not acceptable and the Respondent was reconsidering her secondment which might be terminated. Ms Cooper said that they had sought guidance, but that no action was taken because of a lapse in time, rather than because the Claimant had done nothing wrong.
68. The Claimant said that she had mentioned that she was standing again for the role of convenor in a meeting in December 2018 which had been attended by Ms Kavanagh, Ms Martin, Ms Cox and three operations managers. In January 2019 she said she had bumped into Ms Cooper and told her verbally that she had been elected unopposed. Ms Cooper's evidence is that she was told for the first time in February 2019 and that she went to Ms Cox and Mr Cronin for advice. Ms Kavanagh could not remember the suggested December conversation with the Claimant. If she had been told she thought she would have contacted Ms Cooper as the Claimant's line manager. Given the email from Mr Cronin on 13 February 2019, Ms Cooper's evidence is accepted.

69. On learning of the Claimant's effective re-election, Mr Cronin emailed Ms Cox on 13 February 2019 saying that this put them in a real dilemma. He went on: "My first reaction is to say no, you go back to your old job and only get paid release for TU duties, which will never happen, this will give the union an opportunity to have a go at us. If we say transfer her to Engie she will still be a pain, although less of one in that we can try and reduce her access to our people as she no longer works for us. I would say do not extend the secondment, if Engie complain simply tell them it is their turn to find someone for the role we have done our bit as promised and we now need her back, for her own good as much as anything else, as she needs to keep up to date with what we are doing... We are simply thinking of her career going forward..."
70. When this response was put to Mrs Cox in cross examination she described these as Mr Cronin's "first thoughts only" and not containing all the arguments. When put to her that the Claimant had been concerned that if she went back to her old role she would be prevented from carrying out trade union duties and this showed that her concern was well-founded given the phrase "which will never happen" Ms Cox said: "it's in black and white, but an initial reaction, not a considered response." Again, she was pressed that this was a concerning reaction as it equated to the Respondent going to limit the Claimant's trade union access. Mrs Cox responded: "I can't deny, but it wouldn't have happened just like Mr Cronin had referred to disciplinary action which had not happened."
71. Ms Cooper sent an email on 26 February 2019 to Ms Martin, Ms Cox and Ms Kavanagh with the subject heading of "C Dewrow appraisal". She then stated: "I have asked Jozefine to see if we can remove her ...". The Claimant agreed in evidence that the secondment agreement envisaged that she would be appraised in the usual way, although she said that she had had no appraisal in 2016 or 2017. Ms Martin had emailed Ms Hooley on 29 January 2019 saying she needed to carry out an annual appraisal for the Claimant by 27 February and wondered if Ms Hooley could give her some feedback on her general performance etc. within her role as convenor. Ms Hooley responded on 26 February saying that she was unsure how the Respondent could appraise a Unison role. The Claimant, she said, worked to Unison objectives. She went on that in the Claimant's case it was further complicated by the fact that she was the convenor for 3 employers, naming the Respondent, Acadis and Engie. Ms Martin responded on 26 February that she would still carry out the appraisal the following morning as planned. This was followed then by the query as to whether the Claimant could be "removed". Ms Martin then drafted a response to be sent to Ms Hooley saying that the Respondent would not on this occasion carry out the annual appraisal and that the Respondent would consider for next year how this was conducted in line with Acadis and Engie.
72. When put to her that any removal was relating to the process of appraisal rather than from the convenor role, the Claimant did not accept that proposition. There were many other derogatory emails and this was just another one. The Respondent's evidence is, however, accepted on this point.

73. On 29 March 2019 Mrs Cooper emailed Ms Hooley with an attached letter from Mr Cronin regarding the Claimant's secondment which she noted had been incorrectly dated as 25 February. The letter started by noting that Unison had failed to notify the Respondent that the Claimant was seeking re-election for the convenor role. He reiterated that the Respondent did not have a full-time convenor and that the position would be classed as a Wakefield Partnership Convenor not an ISS convenor. He said that it had been made clear that whilst the individual had the right to represent members at disciplinary and grievance hearings, they would not have a role in consultations or negotiations in the convenor role but simply as a union representative. He expressed the view that it was the turn of someone else to provide a candidate and that the Claimant would be expected to return to her role in August and take on the responsibility of a local union representative with the facilities outlined in the recognition agreement. Alternatively, the Claimant could formally transfer to Engie who could then support her going forward.
74. The Claimant said that she had never seen this letter. The secondment agreement had been with her and any notice that might be given to terminate it had also, she said, to be addressed to her. No one had told that she couldn't do the role and, so far as she was concerned, the secondment was not stated to be for a fixed term. The Claimant rejected Mr Cronin's assertion that the Respondent was unaware of her re-election.
75. Ms Hooley did not consider this to be in the spirit of the Wakefield Partnership contract. She did not want to upset the Claimant by telling her about Mr Cronin's correspondence and thought that she might be able to sort matters out by asking Engie as lead contractor to intervene. She certainly did not consider the Claimant at this stage to be on notice that her secondment was ended, pointing out that the secondment agreement was with the Claimant, not Unison.
76. In her witness statement, Ms Cooper referred to a belief that the appointment would last 2 years which had been agreed to, but another two years put the matter in a completely different light. She referred to having another employee covering the Claimant's role as kitchen manager which had a knock-on effect operationally as they had a number of people acting up and backfilling roles. This was said not to be fair on those employees who needed certainty for their employment. She referred also to the confusion caused by the Claimant being employed by the Respondent, but seconded to Engie to carry out the convenor role. The main issue she said was the constant assertion by the Claimant that she was a convenor for the Respondent.
77. Ms Cooper did not recall a conversation ever with Mr Cronin where he raised a concern about the back-filling of the Claimant's role. Ms Cooper accepted there was no reference in this correspondence to any issue in terms of backfilling the Claimant's role. She said that she could not explain why – unfortunately, it had been left out.

78. The secondment agreement itself did not provide for any end date. The Claimant had a recollection of a mention at some point of the arrangement being for two years to start with but not that it was an appointment for any fixed term. An email from Alison Martin of 10 October 2017 referred to the Claimant having a 2 year convenor role.
79. The Claimant disagreed that there had been no discussion regarding an extension of her secondment. She referred to the meeting in December 2018 of various managers where she said that she was standing for election. The Claimant noted that she had told Ms Kavanagh at that point out of courtesy, but in circumstances where she did not need permission to stand for election. Her secondment agreement was ongoing as no notice of termination had been served. She said that there was no reaction from Ms Kavanagh when she told her. She said that she certainly did not come back and say that the Respondent's agreement was necessary.
80. Ms Cox's position was that there had been such a mix up regarding the secondment arrangement 2 years previously, the Respondent ought to have been informed of the Claimant being confirmed again in the role. This would impact on the person backfilling the Claimant's role and further discussion would be needed with Engie. Previous discussions had taken a lengthy period of time.
81. It was put to the Claimant that Mr Cronin in his letter offered her two alternatives. Firstly, she could return to her local role and continue to take part in trade union activities. The Claimant noted that Mr Cronin, she now knew, had said that he would get her back, but would then restrict her activities. Alternatively, the Claimant could transfer to Engie and carry on as convenor. The Claimant noted, however, that if that happened she would be giving up 20 years' continuous service, her existing terms and conditions and would be expected to accept as her substantive role, which she would revert to if she was ever voted out of the convenor role, a cleaning position, working 11 hours a week.
82. In terms of the reason for the Respondent terminating the Claimant's secondment, Ms Cox referred to there being a mixture of different things and that she was always concerned about the confusion about the Claimant's roles. When put to her that there was no issue about keeping the Claimant's role open for her to return to if she was ever deselected, given that long-term cover was already in place, Ms Cox agreed that technically there wasn't an issue but that was not the main or only reason they did not want to extend the secondment.
83. The Claimant referred to email correspondence in May 2019 where Ms Martin was asking her about her holiday leave so that she could manage her calendar. An email from Ms Speight copied into Ms Martin advised that information was in their diaries to ensure that they were aware of when the Claimant was in the

office and that came in very useful when they needed to book meetings. She said that this was in accordance with the Respondent's holiday procedure "which as convenor for the Partnership you follow." The Claimant was told if she had any concern she should speak to Ms Martin who was her line manager within the Respondent. The Claimant emailed Ms Martin on 7 May asking that her holidays were not shared with members of the Respondent, going on to say that being at work does not guarantee availability. Ms Martin emailed Ms Speight and others noting: "this is the same process as everyone and she is part of the team?"

84. Ms Hooley said that she had received a voicemail message from Mr Carmichael of Engie in June 2019 saying that there had been a "breakthrough" [with the Respondent] and that the secondment agreement was to be extended to August 2021. She relayed this to the Claimant, telephoning the Claimant from the carpark she was in when she received Mr Carmichael's message. She recalled the Claimant being pleased and saying that she could secure a mortgage offer. The Tribunal accepts such evidence and that there were continuing talks which might have resulted in an extension to the claimant's secondment had the Respondent agreed.

85. Ms Martin emailed Ms Cox, copying in Mr Cronin and others on 28 June 2019 saying that the Claimant "is causing us a lot of pain this week with interfering in a lot of sites all of my Operation Managers are complaining that she is out of orderI need to talk to her and feel that needs a very direct message!!." She went on that the Respondent would be getting a formal complaint from one of the schools.

86. On 28 June 2019 Ms Gorman, operations manager, sent an email to the Claimant saying that she had received a call the previous day from the business manager at St Michael's School who was concerned that the Claimant had gone into the school kitchen and advised that the staff should refrain from using the dishwasher. She asked in what capacity the Claimant felt she had authority to give this instruction. She said that she had checked the dishwasher and it was fit for purpose. She said that the Respondent would appreciate the Claimant not getting involved in making decisions that are not for her to make. Health and safety was paramount for the Respondent, but the school was dealing with the issue with the dishwasher and was now considering taking the matter relating to the Claimant further. Ms Gorman's position was that the Claimant was not an engineer qualified to determine whether a dishwasher was safe. The Claimant had emailed Ms Gorman on 27 June to say that she had decided to carry out a health and safety audit at the School on 2 July. She continued that if the Respondent wished for someone to be there too they will more than welcome. She had no issue with the Claimant carrying out a health and safety audit, but the Respondent needed to be aware and have a representative present in case the audit brought up any concerns.

87. The Claimant told the Tribunal that she had been trained in health and safety as a shop steward. Everyone had responsibility for health and safety. She said

that she had quite correctly reported the matter to the school by telling the caretaker, Stuart, who had told her not to worry as the school already knew about the dishwasher.

88. On 1 July the school emailed Ms Kavanagh with its written complaint. Ms Kavanagh replied saying that they would investigate the complaint, apologising and saying that they would ensure this didn't happen again. As far as Ms Kavanagh was concerned, they were investigating a customer complaint and she considered that the Claimant had popped into the kitchen socially and not in connection with any duties, trade union or otherwise.
89. A further issue arose regarding the Claimant possibly having contacted news media. At 13:53 on 2 July 2019, Ms Kavanagh emailed Ms Hooley to say that a complaint had been received from St Michael's School following the aforementioned visit by the Claimant, the Respondent was arranging to investigate this and would be inviting the Claimant to a meeting.
90. At 12:19 on that date Mr Cronin had emailed Ms Hooley saying that he understood that the Claimant had called a meeting to take place on 5 July asking employees to attend with herself and a BBC radio reported to talk about the Respondent. He said that this was in contravention of the Respondent's media policy as no permission or clearance had been sought. He went on: "I'm sure you would not want Carol put her own position and that of other interviewees at risk by ignoring this policy." The possible attendance of a BBC reporter had been brought to Ms Cooper's attention by some operations managers and employees on site. She had no first-hand knowledge, but ultimately understood that no reporter had come on site. Ms Cooper considered that Mr Cronin was simply asking the Claimant to be careful. She was the Respondent's employee and still had to adhere to its policies.
91. Ms Hooley responded that 14:03 referring to a press release which had been issued by her in May and saying that the Claimant, as a representative of an independent trade union, was at liberty to speak to the media on behalf of Unison members. She said that this was a legitimate trade union duty. She went on that if the Respondent did not want negative publicity, rather than send an email threatening Unison members with their job security and suggesting policy breaches to try and intimidate people to be silent, then it could simply treat its staff better and pay them the money they were owed.
92. Mr Cronin responded at 16:50 saying that it was a shame that Ms Hooley hadn't checked with her national officer before releasing her article. He said: "No threats are being made in my email, if anything I'm trying to avoid a situation arising, hence my email asking caution."
93. The Claimant's position before the Tribunal was that she hadn't invited any reporter to a meeting and none came. There is no evidence to the contrary. She was doing her union duties and nothing wrong. She was unaware of this

correspondence until Ms Hooley told her about it after she had been invited to attend the disciplinary investigation regarding the incident at St Michael's School.

94. Ms Kavanagh emailed Ms Hooley at 20:04 on 2 July informing her that the Respondent was investigating a customer complaint. This was in response to an email from Ms Hooley at 14:26 saying that she thought it highly suspicious that within 2 hours of her receiving an email from Mr Cronin about the potential breach of media policy the Claimant was now to be invited to an investigation meeting to discuss a school complaint. In a response Ms Kavanagh said that she was not aware of an email from Mr Cronin but asked if Ms Hooley could let her know what the potential breach might be. Ms Kavanagh repeated that position in cross examination. She asked Mr Cronin for advice on how to respond.
95. On 4 July 2019 the Claimant was invited to attend a formal investigation meeting regarding the St Michael's School issue on 18 July by Ms Lisa Burr. This also referred to instructing the catering team to feed the children off paper plates, which the Tribunal accepts was information provided over the telephone by the school, albeit not included in its written complaint. The Claimant was told that she was not entitled to be accompanied or represented at the meeting and was given a contact number if she had any concerns or queries. The Claimant agreed that the purpose of this letter was to invite her to an investigation meeting. The Claimant was sent a copy of the Respondent's disciplinary procedure as being the only document which referred to investigation meetings.
96. Ms Hooley's view in evidence was that the Respondent's position on extending the secondment agreement was linked to the dishwasher incident and a belief that the Claimant was arranging an interview with a BBC reporter.
97. A radio interview with (anonymised) employees of the Respondent was broadcast on 11 July 2019. The Claimant's evidence was that she was not involved in arranging this. There is no evidence that she was.
98. The Claimant's position was that she understood from Ms Hooley that Engie said that the Respondent had agreed previously to extend the secondment arrangement with them, as already referred to, but then reneged on that. The Respondent's position was that there had been ongoing negotiations but nothing had been set in stone/agreed.
99. On 15 July 2019 Richard Carmichael of Engie emailed Ms Kavanagh attaching a fresh secondment agreement for the Claimant commenting that the only amendments to the existing agreement were to the dates and invoicing arrangements. Ten minutes later Ms Cooper responded that "ISS are not willing to extend the secondment due to the behaviours of Carol."

100. The Claimant attended an investigation meeting on 18 July. She agreed that a complaint had been made which required investigating. The Claimant's explanation, from a statement she read out at the meeting, was that she had been conducting trade union activities. She agreed that the purpose of the meeting was to investigate the complaint and to hear the Claimant's version of events. The Claimant's position was that she had spoken to 2 Unison members employed by the Respondent in the kitchen and that she was representing them as the partnership convenor.

101. The meeting did not, however, progress very far. The Claimant's account to the Tribunal was that she had answered all the questions asked of her, but her evidence suggests that the only point she made was to correct the date upon which the incident had occurred before then reading out her prepared statement. She agreed that she then got up to leave, having passed over the written response. Ms Burr told the Claimant to hang on as she hadn't finished and the Claimant said that she would be happy to attend a full disciplinary hearing as she could have trade union representation at that. The Tribunal is clear that Ms Burr had not come to any decision regarding any further action to take in respect of the Claimant. She simply didn't know because insufficient investigation had taken place. She needed another meeting to try to establish the facts surrounding the incident. She did not feel it fair to go to a disciplinary hearing without having talked to the Claimant about the facts.

102. Ms Cooper's evidence was that, at the end of the meeting in July with Engie to discuss the Wakefield contract, she mentioned that the Respondent was having some problems with the Claimant's behaviour and Engie asked her to put them in an email. She indeed did so on 24 July 2019. Within this she said that over the last 6 months they had had several issues in relation to the secondment and after long consideration the Respondent would not be extending the secondment after 1 August 2019. She went on: "We have made this decision due to continued inappropriate behaviour of the employee which I have listed below:...". She then listed a series of issues. There was no reference to the backfilling of the Claimant's role. Ms Cooper said that Engie was always aware of that issue, so a reference to it was unnecessary. Nor was there a reference to the BBC broadcast. Ms Cooper said that they had no issue with the broadcast itself, just any potential breach of its media policy.

103. They included:

103.1. A failure to inform Respondent that the Claimant had been put forward for re-election and that she then had been re-elected. Ms Cooper agreed that in fact there had been no failure to inform the Respondent about the Claimant's re-election. There was a dispute whether the Claimant had disclosed her intention to stand again.

103.2. The failure to advise employees to follow the grievance procedure, in essence that the Claimant didn't seek an informal resolution first, but told

employees to lodge grievances. The Claimant's position was that this was a distortion, that she always tried an informal resolution and suggested raising grievances as a last resort. She wondered how Ms Cooper could be aware of how she conducted her activities in circumstances where she was not a witness to them. Ms Cooper said she had spoken about this with the Claimant, but could not give specific examples and accepted that this was the first time the issue had been documented.

103.3. Inappropriate instructions to employees on school premises, a reference to the St Michael's School incident. Ms Cooper accepted that this was raised with Engie despite the investigation not having been progressed and completed. She said Engie was aware that a complaint had been made.

103.4. Instructing employees in a recent meeting that they should leave work tasks unfinished. This was a reference to a situation where employees could not be paid overtime and the Claimant had told them that they should do what they could, but then leave any uncompleted tasks to the next working day. Ms Cooper's position was that the employees could have called their managers and would have had overtime authorised.

103.5. The Respondent said that it felt that the Claimant was working against it and trying to incite issues while she was still in the Respondent's employment which caused conflict. This related to the Claimant repeating that she was the Respondent's convenor and to the raising of grievances referred to above.

103.6. There was a conflict of interest in the fact that the Claimant was a kitchen manager and she used this in her conversations with union members instead of taking an independent approach. Ms Cooper said that some processes had changed and it was unhelpful to raise old issues.

103.7. There was said to be a lack of trust, with senior managers having asked on many occasions whether the Claimant was questioning their integrity. This again was said by Ms Cooper to relate to the Claimant's assertion that she was a convenor.

103.8. The Claimant did not inform the Respondent when she was attending schools and just turned up unannounced. This related to the dishwasher incident.

103.9. Recently the Claimant wanted to undertake a health and safety audit without the appropriate uniform and without following correct procedures. Ms Cooper was unsure what this related to, but thought it might again be to the dishwasher incident.

103.10. She discussed private matters with a member of Ms Cooper's team. Ms Cooper could recall no specifics.

- 103.11. At a recent meeting, the Respondent understood that 2 union members left a meeting as they thought all the Claimant wanted to do was be negative about the Respondent. Ms Cooper said that the employees felt unsettled and told the Respondent about their issue.
- 103.12. Management felt that they couldn't go about their work because of "the activity and bad feeling" that the Claimant was trying to create in the partnership saying that they felt it was never like this when Sharon (Simpson) was doing this job. Ms Cooper accepted that Ms Simpson never did the role the Claimant carried out.
104. Ms Cooper concluded that, with the removal of the secondment, the Claimant would move back to her substantive post unless Engie wanted to offer an alternative.
105. Ms Martin was of the view that the Claimant was anti-ISS. She felt that the Claimant was possibly not comfortable with the Respondent taking over the contract and when she was in the trade union role it caused a little bit of conflict. She accepted that sometimes you won't always agree with another person, but on numerous occasions the Claimant was difficult. She felt that the Claimant came to her to report that employees had a problem rather than asking employees to go to their own line manager. When referred in cross examination to some information she had given the Claimant about sick pay, Ms Martin said that "knowing Ms Dewrow, she would have chased me for it."
106. The Claimant said that area managers would sometimes call and say they were being forced to write emails about the Claimant with Ms Kavanagh directing them what to write. They called the Claimant on their personal phone so that their calls could not be tracked. They felt embarrassed at how the Respondent was behaving.
107. There then followed a further letter of 26 July 2019 inviting the Claimant to a second reconvened investigatory meeting. The Claimant said that the Respondent's policy did not provide for a reconvened meeting. When put to her that the purpose of the letter was to invite her to a further meeting as the earlier one had not been completed, she repeated that she had answered the questions she had been asked and that she couldn't stay at the first meeting because she didn't feel safe. She agreed that the purpose of the meeting had been for Ms Burr to ask questions but said that Ms Burr was aware why the Claimant felt she could not stay at a meeting. The second investigatory meeting never took place and no further action was taken on the issue raised by St Michael's school.
108. On 2 August 2019 Ms Cooper wrote to the Claimant referencing a telephone call the previous day with the Claimant when she had informed her that the Respondent would be extending the secondment for 1 month until 2 September. She went on that Engie were currently reviewing if there were any

suitable posts within their company “that you may want to apply for”. If by 1 September there was no role within Engie suitable for her, the Claimant would return to her substantive role as kitchen manager with the Respondent. The Claimant accepted that the content was clear but that this went against the secondment agreement as only 1 rather than 3 months’ notice of termination was given. She did not recognise that the notification given to Unison in March 2019 constituted notice to her. The suggestion regarding employment with Engie would involve, the Claimant said, giving up 20 years’ service and it turned out she was only offered an 11 hour per week post cleaning. On 7 August Ms Cooper sent the Claimant a list of vacancies with Engie and advised her to contact them if she was interested. The roles were all as term-time only cleaners working part-time hours. The Claimant considered that the Respondent was encouraging her to resign and move to Engie to restrict her union activities.

109. On 30 August 2019 Ms Cooper emailed Ms Hooley to say that the Respondent had agreed to extend the secondment for a 1 further month until 2 October 2019, continuing this would be the final date with no further extension provided. She was asked to communicate this to the Claimant. The Claimant said that this meant that she would have to go back to the shop steward role working as a kitchen manager. The Claimant did not understand why, if the post was fully funded by the Council, the Respondent was now giving her the option of reverting to her substantive post or leaving.
110. The Claimant raises a meeting which took place between her and Richard Carmichael of Engie on 16 September 2019. At this meeting she was informed that Engie could not offer her any other roles, therefore she had no option but to return to her substantive role and no longer be a trade union convenor. She said that she felt that the Respondent had a duty of care towards her still.
111. The Claimant raised a grievance regarding the ending of the secondment on 5 August 2019 which was posted by recorded delivery to Peter Wilson, Director of Operations at the Respondent’s Weybridge headquarters. This was signed for as received on 7 August. The evidence, however, suggests that it was somehow misplaced. Ms Mateus emailed Ms Cox on 25 September answering queries as to who might have signed for the letter. The Claimant complained that there had been no investigation into this grievance.
112. Ms Hooley emailed Ms Cooper on 9 August 2019 referring to the Claimant being in a state of significant panic and distress. She said that the Claimant felt that Ms Cooper was actively encouraging her to resign from her post as kitchen manager to apply for a part-time term time only position on less favourable terms with Engie. She said that to apply for these positions the Claimant would have to resign from the Respondent and it appeared that not only did the Respondent not want the Claimant to be seconded to the convenor role, they also did not want her in their employment. The Claimant was said to feel under “incredible pressure” to resign.

113. Ms Cooper said that that was not what they were doing. If the secondment ended, her substantive post was there for her. Alternatively, she could try to continue as a convenor if she could agree an alternative role with Engie. Ms Cooper denied that if the Claimant came back to her kitchen manager role disciplinary action would have been taken against her arising out of the dishwasher incident. She said that the decision of the investigation could have been that there was no case to answer. Despite the wording in the email to Engie, the Respondent had not decided that the Claimant was guilty of inappropriate behaviour. The wording reflected how the school felt.
114. The Claimant's resignation of 18 September 2019 was treated by the Respondent as a grievance. It was stated to be a resignation with immediate effect, with then reference to constructive unfair dismissal and victimisation for undertaking trade union duties. The Claimant raised a number of complaints, including a number of alleged attempts to remove her from her union role.
115. An outcome letter of this grievance was sent to the Claimant dated 23 December 2019 which referred to a grievance hearing which had taken place on 12 November and proceeded to answer in detail the Claimant's allegations, including those relating to the termination of her secondment. The Claimant accepted that in her resignation she had put in everything which led to her resignation, but that still her separate 5 August grievance had been ignored.
116. The Claimant was given the right to appeal the aforementioned grievance outcome, which she did and an appeal decision was ultimately issued to her.
117. The Claimant said that she feared that if she went back to the kitchen manager position the Respondent would use the still outstanding disciplinary case involving St Michael's School to get rid of her. This matter had never been resolved. She feared if she returned to her substantive role she would be dismissed. She didn't feel she would be protected on her return as she had not been protected performing her convenor role.
118. Following her leaving, she was offered a position with Unison on a temporary basis backfilling 2 office vacancies of branch officials who had looked after members in the private sector. She was subsequently given a permanent role as a full-time union representative doing similar type of work to that which she had undertaken as a convenor. She said that there had been no discussion regarding the position prior to her resignation from the Respondent. Ms Hooley said that each Unison branch was run independently. She did not know whose idea the Claimant's appointment had been and said that the Wakefield branch was "not a poor branch".
119. The Claimant's role as kitchen manager had been backfilled by an individual called Diane. The Claimant believed she was still in that role. This involved a small promotion for her and she was paid an increased rate of pay when she

stepped up into that role. The Claimant said that Diane was not aware that the Claimant had been asked to come back to that role.

Applicable law

120. The Claimant brings claims of trade union detriment contrary to s.146 Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), Automatic Unfair Dismissal for Trade Union activities contrary to s.152 TULRCA and Constructive Unfair Dismissal pursuant to s.95 Employment Rights Act 1996 (ERA).

121. Section 146 TULRCA sets out the following:

146 Detriment on grounds related to union membership or activities.

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

(a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so,

(b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so, F5. . .

(ba) preventing or deterring him from making use of trade union services at an appropriate time, or penalising him for doing so, or

(c) compelling him to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions.

(2) In subsection (1) “an appropriate time” means—

(a) a time outside the worker's working hours, or

(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union or (as the case may be) make use of trade union services;

and for this purpose “working hours”, in relation to a worker, means any time when, in accordance with his contract of employment (or other contract personally to do work or perform services), he is required to be at work.

Section 148 of TULR(C)A provides that:

(1) On a complaint under section 146 it shall be for the employer to show [what was the sole or main purpose] for which [he acted or failed to act].

122. The Tribunal must examine the sole or main purpose of the act or failure to act. If the purpose was to prevent or deter the Claimant from taking part in the activities of an independent trade union, then the purpose is prohibited. Conversely, if it is for some other purpose, then it is permissible. The Respondent is not rendered liable if the effect (but not the main purpose) is that the Claimant is deterred from taking part in trade union activities – see *Gallagher v Department of Transport* [1994] IRLR 231 CA – “for the purpose” connotes an object which the employer desires or seeks to achieve. It is not sufficient that the effect is foreseeable, nor is knowledge of the likely effect sufficient to prove an improper purpose to bring it about – see *North Essex Partnership NHS Foundation Trust v Bone* UKEAT/0352/12 (overturned by the Court of Appeal, but on a different point). It is not sufficient that the employer is pleased with the result. The employer who has mixed purposes will contravene the provisions only if the unlawful purpose is the dominant one. If there are 2 purposes with equal weight, neither will be a dominant purpose.

In a detriment claim, *Yewdall v The Secretary of State for Work & Pensions* EAT 0071/05 establishes that, as with a claim of discrimination, the burden of proof only passes to the employer after the establishment of a prima facie case of detrimental treatment on the proscribed ground by the employer which requires to be explained. Once it requires to be explained, then the burden passes to the employer.

123. Section 152 TULRCA sets out the following:

Dismissal of employee on grounds related to union membership or activities.

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

(a) was, or proposed to become, a member of an independent trade union,

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

(ba) had made use, or proposed to make use, of trade union services at an appropriate time,

(bb) had failed to accept an offer made in contravention of section 145A or 145B, or

(c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.

(2) In subsection (1) “an appropriate time” means—

(a) a time outside the employee’s working hours, or

(b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union or (as the case may be) make use of trade union services;

and for this purpose “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

124. The Respondent submits that if the Claimant was not given permission to be a convenor for the Respondent, there was no appropriate time at which she could be prevented or deterred from taking part in trade union activities when performing that convenor role, or be penalised for doing so.

125. The classic test for a constructive dismissal is that proposed in **Western Excavating (ECC) Ltd v Sharp 1978 IRLR 27CA** where it was stated:

“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed. The employer is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover he must make up his mind soon after the conduct of which he complains; or, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract”.

126. Here no breach of an express term is relied upon. The Claimant asserts there to have been a breach of the implied duty of trust and confidence.

127. In terms of the duty of implied trust and confidence the case of **Mahmud v Bank of Credit and Commerce International 1997 IRLR 462** provides guidance clarifying that there is imposed on an employer a duty that he “will not without reasonable and proper cause conduct himself in a manner calculated [or] likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee”. The effect of the employer’s conduct must be looked at objectively.

128. The Court of Appeal in the case of **London Borough of Waltham Forest v Omilaju 2004 EWCA Civ 1493** considered the situation where an employee resigns after a series of acts by the employer.

129. Essentially, it was held by the Court of Appeal that in an unfair constructive dismissal case, an employee is entitled to rely on a series of acts by the employer as evidence of a repudiatory breach of contract. For an employee to

rely on a final act as repudiation of the contract by the employer, it should be an act in a series of acts whose cumulative effect is to amount to a breach of the implied term of trust and confidence. The last straw does not have to be of the same character as the earlier acts, but it has to be capable of contributing something to the series of earlier acts. There is, however, no requirement for the last straw to be unreasonable or blameworthy conduct of the employer, but it will be an unusual case where perfectly reasonable and justifiable conduct gives rise to a constructive dismissal.

130. In the Court of Appeal in **Kaur v Leeds Teaching Hospitals NHS Trust 2018 EWCA Civ 978**, Underhill LJ provided the following helpful guidance to Tribunals

“ I am concerned that the foregoing paragraphs may make the law in this area seem complicated and full of traps for the unwary. I do not believe that that is so. In the normal case where an employee claims to have been constructively dismissed it is sufficient for a Tribunal to ask itself the following questions:

What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

Has he or she affirmed the contract since that act?

If not, was that act (or omission) by itself a repudiatory breach of contract?

If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para. 45 above.)

Did the employee resign in response (or partly in response) to that breach?

None of those questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy.”

131. Applying these principles to its factual findings, the Tribunal reaches the following conclusions.

Conclusions

132. The Tribunal considers firstly the issue of the Claimant’s recognition as convenor for the Respondent’s employees. It refers to the evidence and factual findings set out above, including at paragraphs 18,19, 22-28, 30-32, 37, 39, 41-47, 52, 56, 61, 64 and 67.

133. It was a precondition of the Council, that there would be a trade union convenor for the Wakefield Partnership. The Respondent, however, entered into a recognition agreement with Unison which contained no reference to the

convenor role. Mr Cronin would not have agreed to that and Mr Symonds of Unison understood the Respondent's "corporate" position. There was no overall Wakefield Partnership agreement with Unison. Each employer had their own individual recognition agreement. Mr Symonds presented a standard draft recognition agreement to the employers. Engie entered into an agreement which included a clause relating to a convenor role. The one concluded with the Respondent omitted that clause and contained only a provision relating to the appointment of shop stewards. The convenor provision is likely to have been removed by Mr Cronin as appropriate to avoid any appearance that the Respondent might recognise convenors. Mr Symonds knew that to be Mr Cronin's position, but he still believed that this did not alter the reality (for him) of the Claimant being recognised as convenor by all 3 employers in the Wakefield Partnership in respect of union members employed by each of them. It may have been Mr Cronin's belief that this agreement would negate any arguments as to the recognition by the Respondent of the Claimant as a union convenor – he certainly intended to raise that argument if he ever had to.

134. Engie and the Council considered that the claimant was a convenor for the Partnership representing the employees of all 3 employers. To them, that was the whole purpose of having a Partnership convenor as was the intention of the arrangements under the Wakefield Contract. There wouldn't otherwise be a lot of convening to do where Engie had within it fewer Unison members than the Respondent and Acardis fewer still.

135. The Respondent's corporate position (to avoid direct recognition by it of a convenor role), on balance, explains the reason for the Claimant being seconded to Engie. The Tribunal agrees that this was unnecessary if the Claimant was to serve as the Respondent's convenor or as convenor in respect of its employees. The Tribunal notes, amongst other things, Ms Holding's correspondence on behalf of Engie to the Respondent of 7 August 2017 where the Claimant's role she described as being for the Wakefield Partnership. Ms Cox took an opportunity to clarify with Mr Cronin that the convenor was "for the Wakefield Partnership" not for the Respondent. She thought that would be sufficient to satisfy Mr Cronin, but the Wakefield Partnership did include the Respondent and its employees.

136. An issue of some stalemate had arisen between the Partnership employers, but which was resolved by the secondment arrangement (transferring the Claimant to Engie) and the Respondent's avoidance of having its own individual recognition agreement expressly accepting the role of convenor. Nevertheless, that is the role in fact which the Claimant undertook on behalf of the 3 employers in the Wakefield partnership, the Respondent included.

137. The Claimant in fact was appointed under the secondment agreement she signed on 15 February 2018 as convenor for the Wakefield Partnership and indeed on an indefinite basis subject to notice. The Respondent's agreement

with Engie for the secondment of the Claimant to Engie was on the basis that the Claimant would then act as Partnership convenor. That is objectively what Engie would have expected and intended given the insistence of the Council that there be a convenor and the need by definition for someone who could speak for the employees of all the Partnership employers. The Respondent had working on the Wakefield Contract, the majority of Unison members across the Partnership. There was no straightforward drafting error.

138. The Claimant at all material times in practice served the Unison members employed by the Respondent, who worked on the Wakefield Contract. She also represented the smaller number of Unison members within Engie. On the evidence, she rarely came across any employee issues involving the third contractor, Acardis. She was not clear even as to the role that company had in the Wakefield Partnership.

139. When she represented the Respondent's employees, she did so as convenor, not on the basis of her receiving paid release from her ordinary duties as she would, had she been acting in the capacity of branch steward. The Respondent's position is that the Claimant took off her convenor hat when she was involved with the Respondent's employees and put on her shop steward hat. She needed consent to act as convenor – and had none – whereas consent was unnecessary if she was acting as a shop steward. In fact the Claimant would as a steward have had to have been granted facility time. Mr Arnold accepted that it might be tricky to distinguish which hat she was wearing at a particular time. The Respondent wants to say that the Claimant was merely a steward, yet was happy to call upon her when a union representative was required as a representative whose services were fully funded by the Council – the Respondent had and utilised a free resource when otherwise paid release would have had to have been granted to the Claimant had it only had a steward to represent their employees' interests.

140. The Respondent did indeed use the Claimant's services. There was some confusion on the ground with operational managers unsure as to the permitted scope of the Claimant's involvement. There was a lack of experience amongst them of dealing with trade unions. Local managers raised issues about the Claimant however predominantly because they felt she was acting in an inappropriate manner, not because they did not believe her to be a union representative.

141. The Claimant's activities were not limited to the type to be expected of a shop steward – she did a lot more than represent members at disciplinary and grievance meetings. Early on after her appointment, the Claimant was involved by the Respondent in discussing a harmonisation of terms and conditions. There were examples of her acting as a convenor across the partnership in terms of her attendance at joint meetings of employers and their representatives to talk about issues affecting the whole Partnership and the

Wakefield Partnership Contract, whether or not these were JCC meetings as is clearly disputed.

142. The Respondent internally however strove at all times to be in a position to maintain an argument that the Claimant was not a convenor of the Respondent. Those closer to Mr Cronin strove to uphold his principle that the Respondent didn't give full-time paid release to employees to act as union representatives. The Claimant was constantly pulled up, as a consequence, when she referred to herself as union convenor. Ms Cox's email of 14 March is illuminating in that she notes that the Respondent had to take care not to give the Claimant an argument that she was acting as convenor. The reality of the situation that that was the capacity in which she was acting (at an appropriate time), albeit which the Respondent strove at all stages not to expressly accept – albeit it indeed did so in the secondment agreement itself.

143. The Tribunal turns then to the alleged acts or failures to act relied upon by the Claimant.

(1) 26 March 2018 13:40 – email from Jozefine Cox to Rianne Hooley that the Claimant does not act as the trade union convenor for ISS members

144. As Mr Arnold submitted, if the Respondent's purpose in refuting any suggestion that the Claimant was its convenor, was that it believed or was mistaken in a belief that the Claimant was not the convenor, then the purpose was not to deter her in her trade union activities, even if it was the effect. If the purpose of keep stating that she was not convenor was to deter those activities then that was illegitimate, but that required the Tribunal to look into the mind of the alleged discriminator. Mr McHugh seeks to link each refutation of the Claimant as convenor to a preceding activity of her which caused the Respondent concern. Its refutation of her holding the convenor role is, however, virtually continuous regardless of her union activities.

145. The email was sent in the context of the recognition agreement between the Respondent and Unison omitting the clause in the Unison draft relating to a full-time convenor. This agreement was intended to govern the relationship between Respondent and Unison. Mr Cronin's intention, as found by the Tribunal, was to avoid any express recognition of the Claimant as its convenor so as to avoid creating a precedent within the business and a departure from his conviction that the Respondent would not recognise a convenor role. Whilst the agreement in this form gave Mr Cronin the ability to argue against there being recognition, such recognition did occur in practice arising out of the Respondent's use of the Claimant and other documentation including the separate secondment agreement it reached with her and Engie. Nevertheless, this email is an example of the Respondent's managers seeking to hold the Cronin line. As such certainly the main purpose of the email was to inform Ms Hooley, following her recent appointment as Unison Organiser, that the Respondent's position was that it did not recognise the role of convenor. Ms Cox was ensuring that Mr Cronin's position was reaffirmed. Indeed, she would

have done so regardless of who held the role of convenor within the Wakefield Partnership and regardless of how that individual conducted their trade union activities. Certainly, the main purpose was not to prevent or deter the Claimant from undertaking trade union activities.

(2) 22 May 2018 13:53 email from Alison Martin to the Claimant which stated that the Claimant is not the trade union convenor

146. The email goes on to inform the Claimant that she is Engie's convenor. Ms Martin's accepted evidence is that this was her own understanding of the situation derived from what Ms Cox had told her, which in turn was in the context of the situation described above in respect of Allegation (1). Again, certainly the main purpose of the communication was to reaffirm Mr Cronin's position and hold the Respondent's corporate line.

(3) 10 October 2018 17:14 email from Jozefine Cox to the Claimant that Unison are not recognised therefore she is not allowed to attend the restructure meetings as union representative

147. This relates to the need to consult with members of management about a reorganisation. Fundamentally, Mr Cronin allowed the Claimant to act as the representative of these members in a consultation on a proposed restructuring. He resiled from a position he had taken that Unison could not represent the managers, as salaried employees, in a subsequent email of 17 October 2018.

148. That was not, however, until Mr Cronin had taken the opportunity to "rattle the union's cage" – the use of such slightly colourful language perhaps best illustrates how Mr Cronin saw the Respondent's relationship with Unison and his provocative nature. He had discovered that Unison had signed a recognition agreement which covered all staff whereas the one which had been agreed with the union was one which covered hourly paid staff only. Somewhat confrontationally, he saw this as an opportunity to assert that there was no recognition therefore in place by the Respondent of Unison in respect of any of its employees. This was a bomb which Mr Cronin quite enjoyed dropping, albeit it does not appear to the Tribunal that he was ever seriously seeking to de-recognise Unison. Nevertheless, Ms Cox was communicating the bombshell in this communication and upon Mr Cronin's instructions.

149. Again, certainly the main purpose of the 10 October 2018 email was to assert a position that there was no legal recognition by the Respondent of Unison, not to prevent or deter the Claimant from taking part in trade union activities.

(4) 9 November 2018 17:20 email from Jozefine Cox to the Claimant that she was not the trade union convenor and she was only acting as a branch steward

150. This is a further example of Ms Cox communicating the Respondent's position regarding the recognition of a convenor as determined by Mr Cronin. It forms part of a pattern of the Respondent ensuring that it rebutted any assertion by the Claimant that she was its convenor. Again, this was the main purpose and not to deter the Claimant from taking part in trade union activities.

(5) 29 March 2019 letter to Rianne Hooley from Paul Cronin that the Claimant had run for election as trade union convenor without their permission and the Claimant would have to return to her previous role

151. The Tribunal refers in respect of this and the later Allegations (12) and (13) to the evidence and factual findings set out above, including at paragraphs 58, 66, 67, 69, 70, 76, 85, 90, 99, 102 and 103. There was, the Tribunal finds, no clear understanding, as is contended for on behalf of the Respondent that this was a straightforward 2 year secondment and that the Claimant would return to her substantive role in August 2019. The Claimant's secondment was not for a finite period. The relevance of the period of 2 years was the initial period of funding commitment given by Wakefield Council. If ongoing funding was in place, there was no imperative for the Claimant to be returned to her substantive role. As the Tribunal will further describe, there was no urgent need for the Claimant to return to her kitchen manager role in circumstances where this was being backfilled and could continue to be so. The letter does offer the possibility of the Claimant returning to her role and taking on the responsibility of a local union representative i.e. a shop steward with the opportunity for paid release. This was, however, in circumstances where the reality was that Mr Cronin saw this as an opportunity to restrict the Claimant's trade union activities as betrayed by his email to Ms Cox of 13 February 2019. Mr Arnold hoped that Ms Cox might put a spin on this communication and explain the meaning of Mr Cronin's words and how she took them to be different to one legitimate reading of them which suggested that the Claimant's opportunity for trade union activities, once she reverted to her substantive role, would be limited. He hoped in vain. Ms Cox did not seek to attribute a different meaning to the words used noting that what Mr Cronin thought was there in black and white albeit she sought to maintain that this was, effectively, typical of Mr Cronin – he shot from the hip saying things which he didn't really mean and would subsequently not dream of following through on. Objectively, the meaning sought to be attributed on behalf of the Respondent – that the Claimant would not seek time off for union activities – is unsustainable. Mr Cronin was not speculating as to the likely state of the Claimant's mind and he would have had no basis for thinking that the Claimant would not still seek to push to get involved in employee issues.

152. By this point in time there was some disquiet within the Respondent about how the Claimant conducted her trade union activities. Her article in the union newsletter had provoked a reaction from Mr Cronin where he had at least considered disciplinary action and said in his email to Ms Cooper and Ms Cox on 14 December that at the very least she should no longer act in the convenor role – in fact a suggestion that Mr Cronin privately understood that that was the role she was acting in – as trust had been lost in her acting in a professional capacity. The Claimant was said to have crossed the line. Mr Cronin was complaining here about the Claimant acting as a representative of the Respondent's employees.

153. If there was ever a realistic opportunity that the Claimant might transfer her employment to Engie, this was not to provide a potential solution to allow the

Claimant to continue her trade union activities. Mr Cronin recognised in his 13 February 2019 email that the Claimant would still have access to the Respondent's employees – again supportive of his private recognition of her acting as convenor. The key point he makes in respect of this allegation is that the transfer of the Claimant to Engie meant that the Respondent could try and reduce her access to the Respondent's employees as she would no longer be working for it.

154. The Respondent's reaction cannot on the facts simply be attributed to an annoyance that the Claimant had not kept the Respondent up to date regarding her intention to stand for re-election and only disclosed this after the event. Again, Mr Cronin's email of 13 February is not corroborative of that being his primary concern. He had sent an email on 2 January 2019, before he was aware of that intention, where he was considering terminating the secondment agreement.

155. The Tribunal concludes that this communication and the options given to the Claimant had the main purpose of preventing or deterring the Claimant from trade union activities.

(7) 28 June 2019 08:01 email to the Claimant from Lilian Gorman that the Claimant refrain from involving herself with decisions regarding health and safety of their employees

156. This communication related to the concern raised by St Michael's School as a result of the school's perception that the Claimant was interfering with the performance of the kitchen staff's duties in advising them not to use the dishwasher in the kitchen. Indeed, the Tribunal finds that that was the main purpose of the communication as well as to query in what capacity the Claimant felt she had the authority to give such an instruction to the kitchen staff, to inform her that the dishwasher was regarded as safe to use and to ask her not to get involved in decisions that were not for her to make. She told the Claimant that the school was dealing with the known issues with the dishwasher and was considering taking the matter of the Claimant's conduct further. The Claimant had informed the school caretaker of the issue, who had said that the school was already aware of it, but she did not inform anyone more senior. In cross examination the Claimant accepted that she could see why Ms Gorman might have an issue if the Claimant had not informed the school correctly and a complaint had been made about her.

157. The sole or main purpose of the email was to ensure that the Claimant was aware of Ms Gorman's concerns and not to deter her from taking part in trade union activities.

(8) 2 July 2019 16:50, 13:53 and 20:04 emails to Rianne Hooley from Anne Kavanagh reported that the Claimant had contacted the media about the restructuring contrary to their media policy and that they were investigating a complaint made while acting as a trade union convenor

158. The first email in the chain sent at 13:53 informs Ms Hooley of the complaint from St Michael's School, that there would be an investigation and the Claimant would be invited to a meeting. The Tribunal accepts that the words on their face convey the sole or main purpose of informing the relevant trade union official about a potential disciplinary issue involving a union representative.

159. Quite separately (genuinely the Tribunal finds) Mr Cronin had emailed Ms Hooley at 12:19 informing her that he believed the Claimant to have arranged for a BBC radio reporter to speak to herself and staff members about the Respondent. He warned Ms Hooley that this would be in contravention of the Respondent's media policy and would put the Claimant and other employees' positions at risk. Ms Hooley responded that the Claimant was at liberty to speak to the media on behalf of Unison members. Mr Cronin then gave his reply at 16:50, which forms part of this allegation, where he advises Unison to be careful to avoid a situation arising. Whilst Mr Cronin's communication may be seen as involving a threat, the purpose was to avoid a potential breach of policy in advance of the breach occurring, which the Respondent would have viewed as a more damaging situation. The Tribunal accepts Mr Arnold's submission that the Claimant might justifiably have complained had the Respondent been aware of the potential breach and allowed her to effectively walk into it. The sole or main purpose was not to prevent her from taking part in trade union activities. The Tribunal considers it relevant to note that when Ms Cooper wrote to Engie on 24 July 2019 with a comprehensive list of the Claimant's perceived misdemeanours, there was no reference to any radio interview.

160. The final communication from Ms Kavanagh to Ms Hooley at 20:08 was in response to an email from Ms Hooley at 14:26 saying that she thought it suspicious that there was to be a disciplinary investigation shortly after her becoming aware of the alleged breach of media policy. Ms Kavanagh replied informing Ms Hooley that the Respondent was investigating a customer complaint. The purpose of the communication was to address Ms Hooley's concern. There was no proscribed purpose.

(9) 4 July 2019 letter to the Claimant from Lisa Burr invited the Claimant to an investigatory meeting while conducting trade union activities

161. This letter was an invitation to a meeting to discuss the school complaint. The nature of the complaint was explained and the Claimant given the right to be accompanied. In cross examination the Claimant agreed that the purpose of this letter was to invite her to an investigation meeting. That was the straightforward purpose. The invitation would have been sent regardless of the Claimant's exact status at the time of the acts complained of. The Respondent was seeking to get to the bottom of the concern raised by the school. There was no purpose of preventing or deterring trade union activities.

(10) 18 July 2019 investigation meeting went ahead despite the concerns raised that the Claimant was conducting trade union activities at the time

162. The school's complaint required investigation as part of which Ms Burr wished and intended to give the Claimant an opportunity to provide her explanation for her actions. The Claimant did in fact read out a pre-prepared

statement setting out her position. The Respondent's purpose was to understand what had happened from the Claimant's point of view. Part of her explanation for the Respondent to consider might have been her status as a trade union representative. Ms Burr genuinely wanted to hear it. The purpose was not to prevent or deter the Claimant from carrying out trade union activities.

(11) 26 July 2019 letter from Lisa Burr inviting the Claimant to a second investigatory meeting

163. Again, the sole purpose was to investigate the customer complaint. The need for a further investigatory meeting arose out of the Claimant's behaviour at the first meeting when she walked out, unreasonably and prematurely, before Ms Burr was able to ask the questions she wished.

(12) 2 August 2019 letter to the Claimant from Jackie Cooper, which stated that she would not be able to continue in role as trade union convenor if Engie could not find a role

164. The Tribunal's findings in respect of Allegation (5) are relevant here as the act complained of here (and indeed at allegation (13) below) constitutes a continuation or revival of a move to deter the Claimant's trade union activities.

165. The Claimant might have reverted to the role of shop steward, but the Tribunal has noted how the Respondent then would intend to restrict her activities. The Respondent's willingness to extend the secondment for a short period was in the context of the Claimant possibly transferring to Engie, where again it has been noted that the Respondent saw this as a means to restrict her access to its employees (and her union activities in respect of them).

166. The Respondent's view of the Claimant as an inappropriate union representative had not changed. When Ms Martin emailed Ms Cox on 28 June 2019 she raised the forthcoming school complaint. She also however referred to the Claimant as causing a lot of pain, interfering in a lot of sites and of the Respondent's operations managers complaining that she was out of order. Ms Martin referred to the Claimant needing to receive "a very direct message". On 15 July 2019, Ms Cooper stated that the Respondent was not willing to extend the Claimant secondment due to her behaviours. Engie asked Ms Cooper to put her concerns about the Claimant in an email which she did on 24 July 2019. She said that the Respondent had made the decision not to extend the secondment after 1 August due to continued inappropriate behaviour which she then listed. The Tribunal has set out that list in its factual findings. Ms Cooper struggled to explain the detail behind a number of her comments but it is clear that a substantial number related to the Claimant's union activities including the Respondent's view that she did not seek an informal resolution at first, that she interfered with employees in the performance of their duties, that it felt she was working against the Respondent and trying to incite issues including the raising of grievances, that the Claimant was creating bad feeling within the partnership and that the Claimant was anti-the Respondent.

167. The Tribunal had been expecting from the witness statement evidence and the pleadings that the Respondent was going to maintain that the reason for the refusal of the extension of the secondment was difficulties in backfilling the Claimant's role and the need for her to resume her kitchen manager role. Such issues, however, are nowhere to be seen in the long list of issues produced by Ms Cooper to Engie and the Respondent's witness evidence was in fact that this was not a major factor. Ms Cox conceded that technically this was not a problem. The Tribunal can only conclude that the major factor was indeed the Claimant's conducting of trade union activities and that the main purpose of this communication was to prevent or deter those trade union activities in the future.

(13) 30 August 2019 09:37 email to Rianne Hooley from Jackie Cooper that the Claimant's trade union convenor role would expire on 2 October 2019 and there would be no further extensions

168. The points made in respect of Allegations (5) and (12) are repeated. Whilst there had been an extension of the Claimant's secondment, it was now to expire on 2 October but with no additional reasons behind that decision (for it to expire) beyond those already recited. There was an exploration as to whether or not the Claimant would take any available role within Engie, but again transferring to Engie in itself would be a part fulfilment of the Respondent's aim of deterring the Claimant's union activities. In any event, the prospect of the Claimant transferring was illusory in circumstances where the only vacancies ever discussed, which might form the Claimant's new substantive role within Engie, were relatively junior cleaning roles with limited hours of work. They were unlikely to have been acceptable to the Claimant, as the Respondent knew by this stage certainly. Whilst the Claimant would have continued as convenor and been paid as such, she was always at the mercy of the union membership and whether or not they would re-elect her. If not, she would have no option but to revert to her substantive role. A reversion to the potential roles available within Engie was far different and inferior to a reversion to a kitchen manager role with the Respondent.

169. The Tribunal rejects the argument that the main purpose of the communication was to inform the Claimant that the Respondent would provide assistance in her search for another role within Engie. If that was a purpose, it was very much the secondary one.

170. Again, the main purpose of the communication and the decision not to allow the role to go beyond 2 October was to prevent or deter the Claimant's trade union activities.

(14) 16 September 2019 meeting with the Claimant that Engie could not offer her any other roles and therefore she would have no option but to return to her previous role and no longer be a trade union convenor.

171. Engie informed the Claimant at this meeting that it could not offer any other roles beyond those previously discussed. The consequence of the Claimant then returning to her previous role and no longer being a trade union convenor

arose from the Respondent's actions addressed in allegations (12) and (13). There was no proscribed purpose in the third party communication given in this meeting.

172. The Tribunal turns now to the acts of detriment as alleged by the Claimant.

(1) Rescinding the extension to the secondment of trade union convenor or otherwise failing or refusing to allow secondment to continue

173. This alleged detriment relies on Allegation (5), (12) and (13). These have already been addressed above where it was found that the Respondent's decision to rescind or not extend her secondment as convenor was indeed for the main purpose of preventing or deterring the Claimant's trade union activities. They did cause the pleaded detriment. The secondment was not necessarily limited to a term of 2 years. There was no consideration that the Claimant was needed for operational reasons to revert to her kitchen manager role. There was no consideration that the role could no longer be backfilled or by the particular employee who was in the Claimant's post. The Claimant's behaviour in not keeping the Respondent up to date as to her intention to continue as a convenor was of annoyance to the Respondent. Mr Cronin's intention to end the secondment was evident before then, for instance in his email of 2 January 2019 he said that he was considering terminating the secondment. The Claimant's behaviour was a significant concern as conveyed to Engie by Ms Cooper, but the majority of that behaviour related to her trade union activities and had caused the Respondent to form the view that it no longer wanted the Claimant to continue in her full-time union role. The Respondent's primary purpose was to prevent or deter her union activities by restricting her scope to do so as a shop steward or by limiting her access to the Respondent's employees if she was to transfer her employment to Engie. The Claimant's secondment could have continued at no cost to the Respondent, but the Respondent did not want it to.

174. The Claimant clearly relished her union role. She preferred it to a reversion back to a kitchen manager role, indeed on reduced pay. As a branch steward her scope for union activities would inevitably be diminished and dependent on the Respondent granting paid release. The Claimant clearly saw the loss of this role to be to her detriment and the alternative with Engie, where she might have been returned on any failure to be re-elected to a part-time lower paid cleaner role. She was objectively reasonable in viewing matters that way.

(2) Failing to allow the Claimant to act in her role as trade union convenor and represent the members of the union particular in regards to the restructuring as particularised at Allegation (3) above

175. This detriment relies on Allegation (3) primarily and also, on Mr McHugh's submission on Allegations (1), (2) and (4). It relates to an allegation that by its actions the Respondent was refusing to recognise the Claimant as convenor. Indeed, it was and in circumstances where the Tribunal has found that the

Claimant was convenor in respect of the Respondent's employees. However, the Tribunal's findings as to the main purpose do not support the assertion that this was to penalise or deter the Claimant from taking part in trade union activities.

(3) Subjecting the Claimant to a disciplinary procedure

176. Mr McHugh relied on Allegations (9), (10 and (11) in respect of this detriment and there is then an obvious overlap with the more specific detriments pleaded within the fourth detriment below. The Tribunal's findings do not support detrimental treatment in respect of the St Michael's school complaint and certainly not that the Respondent's actions had the proscribed purpose.

(4) Failing or refusing to investigate her complaints in:

18 July 2019 investigation meeting went ahead despite the concerns raised that the Claimant was conducting trade union activities at the time

26 July 2019 letter inviting the Claimant to a second investigatory meeting. The Respondent failed to investigate the complaint made that the Claimant conducting trade union activities at the time

177. The Tribunal takes these alleged detriments together. Ms Burr was hoping to and tried to understand what the Claimant, on her own account, had done and why? There was no detrimental treatment and no proscribed purpose, as found in the conclusions to Allegations (10) and (11) above.

30 July 2019 emailed to Lisa Burr from the Claimant. The Claimant reiterated that she had been carrying out trade union activities at the time

178. The invitation to the re-convened investigation meeting was due to the Claimant's abrupt and premature departure from the initial meeting and for no other reason. The first meeting had not been completed. There was no bar on the Respondent holding a second meeting in any event.

5 August 2019 letter from the Claimant to the Respondent with formal grievance that terminating her employment was victimisation. The extension to the Claimant secondment was rescinded with no reasonable explanation. She had complained of being victimised but none of the complaints were investigated.

179. Mr McHugh declined to make any submissions in support of this alleged detriment. The Claimant's complaints were investigated as part of the grievance perceived to be contained within her letter of resignation. It is clear that the 5 October letter did genuinely go astray. An outcome was provided and the Claimant given a right of appeal. There was no detrimental treatment.

180. The Allegations set out above are then relied upon as singularly and cumulatively amounting to a fundamental breach of the Claimant's contract of employment, the final straw being her being told on 16 September 2019 that she couldn't continue as convenor and had to return to the position of kitchen manager on 2 October 2019.

181. Allegations (5), (12) and (13) have been upheld as actions of the Respondent committed for the main purpose of preventing or deterring her trade union activities. The aforementioned final straw cannot be relied upon, as this was not conduct of the Respondent – it was Engie who was unable to offer the claimant on 16 September 2019 a position she considered suitable.

182. The Tribunal considers that the Respondent acted in fundamental breach of contract (breach of the mutual obligation of trust and confidence) in its actions at Allegations (5), (12) and (13) - which caused the detriment of the rescission of the secondment of the Claimant to the trade union convener role or otherwise the failure or refusal to allow the secondment to continue. The Respondent had agreed to the secondment which allowed the Claimant to act as a full-time union convener on enhanced pay. The Claimant valued that role and had no wish to return to the substantive position of kitchen manager. The role was not time-limited and there was no imperative that it be brought to an end at the two-year point in circumstances of continued third-party funding being available and the claimant having been re-elected. To bring that arrangement to an end, where the main purpose was to prevent or deter the claimant's trade union activities, as the Claimant justifiably believed at the time, was not for reasonable and proper cause. It was, viewed objectively, likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee. Again, the claimant was the convenor for the Wakefield Partnership including the Respondent. She had been carrying out trade union activities at an appropriate time.

183. The refusal to extend the secondment agreement was an effective cause of her resignation. The Claimant believed that the Respondent wished to limit her trade union activities, felt that she had been subjected to unjustified criticism and that the Respondent was attempting to penalise her for the performance of her trade union representative role. The Tribunal is aware and reminds itself that the claimant did not know at the time of her resignation the contents of Ms Cooper's email to Engie listing alleged problematical behaviours on 24 July 2019, nor of Mr Cronin's internal communications.

184. The claimant said in evidence that she thought she would be removed from her kitchen manager role if she returned to it, either over the St Michael's School incident or otherwise. There is no evidence that she would have been, although the matter was still outstanding, but this does not diminish the ending of the secondment agreement as a means to deter the Claimant's trade union activities as amounting to an effective cause of her resignation. Potential disciplinary action as a kitchen manager was simply how the Claimant thought that the situation might escalate in the future. The Tribunal has not concluded that the Claimant left her employment to take up to vacancies at the local Unison branch. Those positions were indeed temporary and, whilst the Claimant was subsequently offered a permanent role with the union, this was not, as with the temporary positions, envisaged prior to her resignation.

185. Whilst the suggested potential last straw falls away, as at the point of the Claimant's resignation she had not affirmed her contract of employment and had simply spent a relatively brief period of time seeking to understand whether any alternative option might emerge. The Claimant was constructively dismissed.
186. The acts relied on by the Claimant involved her taking part in union activities at an appropriate time and those trade union activities were the principal reason that the Respondent committed the breach of trust and confidence which caused the Claimant's resignation. The Claimant was automatically unfairly dismissed.

Employment Judge Maidment

Date 8 December 2020