EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mrs K Whitmore	v	**Middlesbrough Council**

Heard at: Middlesbrough **On: 20 to 31 March 2017**

Deliberations 10 April, 12 June 2017

Before:

Employment Judge JM Wade

Mrs LE Sutton

Mr TD Wilson

Appearance:

For the Claimant: **Mrs J Dalzell (Solicitor)**

For the Respondent: **Mr C Jeans (Queen's Counsel)**

RESERVED JUDGMENT

1 The claimant's complaints of harassment are dismissed.

2 The claimant's complaints of detriment on grounds of having made protected disclosures fail and are dismissed.

3 The claimant's complaint of victimisation succeeds.

4 The claimant's complaint of unfair dismissal is well founded.

Introduction

1 This judgment concerns the claimant's dismissal from claimant's long service in local government at a senior level, and addresses her allegations of harassment, whistleblowing detriment and victimisation. The overarching background is well reported local government "austerity", and the consequent reductions in senior management posts from 2009 onwards.

2 Our decision does not fully resolve the dispute between the parties: the claimant has an equal pay complaint outstanding. Equally important: this reserved decision cannot address wider concerns about property transactions. We have limited our findings to those necessary to resolve the live issues before the Tribunal and only those.

3 The claimant's case involves serious allegations about the conduct of the most senior employees of the respondent. We told the parties that our task was principally one of fact finding. The scale of the factual disputes between the parties was considerable; making findings on the relevant disputed facts would resolve many of the issues. There was also a lengthy chain of undisputed facts, not all of them necessary to record here.

Overview of undisputed facts

4 The claimant held a very senior leadership role, including responsibility for the legal and human resources departments in the council. She had raised issues concerning her pay grade from 2013 onwards.

5 The claimant held the statutory role of "monitoring officer" for the Council, which embodied responsibility to report any improper or illegal conduct of the respondent; the post benefitted from special protection from dismissal.

6 In late 2014 public concerns about the council's property disposals were raised; the claimant was asked to report on those matters; her report was circulated internally in mid 2015, but not released to the public until November 2016.

7 The claimant was also the "returning officer" for elections in the constituency. In April 2015 she was consulted about a mayoral candidate issue and her advice determined that a candidate remained on the ballot despite objections.

8 Mr Robinson was chief executive for most of he material times. He briefed Mr Budd, and executive mayor, every day, and their offices were nearby. They worked very closely together. Mr Robinson's was to carry out the mayor's vision. The authority to employ and dismiss most council staff was delegated to Mr Robinson, who also held the statutory post of "Head of Paid Service". The exception was the engagement and dismissal of statutory post holders, including the claimant, about which dismissal decisions could only be taken by the full council of elected members.

9 In July 2015 her boss, Mr Parkinson, commissioned Mr Parkes, a senior colleague, to undertake an investigation into a pay grade increase for one of the claimant's team. Mr Parkinson held the view that he should have been informed, that the job evaluation panel had been misled, and a grade increase should not have occurred. Mr Parkinson considered the claimant (and initially the team member) accountable for that state of affairs.

10 In the summer of 2015 it became apparent that the council's external auditor would give "moderate" assurance that the council delivered value for money. That assessment took into account a number of qualifications concerning property disposals; that final qualified audit report was available in September 2015.

11 On 20 October 2015 the job evaluation investigation report was available; in early November the claimant had exchanges with Mr Parkinson concerning her mid year appraisal; on 9 November the outgoing external auditor produced an overview or "end of term" report concerning progress on matters in the council; by 16 November a two page critique of the claimant's conduct and capability was produced by Mr Parkinson ("the November note"). No disciplinary or capability procedures were taken forward.

12 On 24 November Mr Parkinson proposed the deletion of two posts within the Council's leadership structure and their merger into one ("the merger"). Those posts were the claimant's and that of Mr Slocombe, the chief finance officer, who also held

statutory reporting responsibilities and protection from dismissal ("the Section 151 officer").

13 The merged post was a single finance and governance leader, requiring an accountancy qualification (a qualification held by Mr Slocombe but not the claimant). The proposal addressed the reallocation of the claimant's statutory posts to Mr Robinson the chief executive (returning officer) and Mr Parkinson (monitoring officer). The claimant's dismissal took effect some months later.

14 From the outset and on many occasions during the period prior to her dismissal the claimant raised objections to the legality of the respondent's approach to the restructure; legal advice was obtained by the council from a number of sources.

15 On 8 December 2015 formal redundancy consultation commenced, with the claimant shortly to go on holiday. On 11 December the claimant wrote letters of complaint to Mr Parkinson (927) and to the mayor, Mr Budd (928-931), setting out her concerns (alleged protected disclosures (a) and (b).

16 Before Christmas, while the claimant was on leave papers for a council meeting on 6 January 2016 were circulated, including the merger proposal ("the first report to council").

17 On 4 January 2016 the claimant returned from leave and in her monitoring officer capacity wrote to Mr Robinson, Mr Slocombe in his Section 151 capacity, the external auditor (Ernst and Young), the Department for Communities and Local Government ("DCLG") and the mayor (950-951), to communicate her belief that the first report to council described a process that did not meet legislative, constitutional or contractual requirements, and was likely to result in a breach of legislation by the Council (alleged protected disclosure c).

18 On 18 January the claimant wrote to Mr Robinson in her Monitoring Officer capacity expressing concerns about the process to date and standing down from that role as regards the merger (1019 to 1435 – alleged protected disclosure (d)).

19 On 19 January Mr Parkinson visited the claimant's office and there was a discussion between them.

20 On 20 January the claimant submitted a grievance to Mr Robinson about her treatment (1427-1435 – alleged protected disclosure (e)).

21 On 22 January 2017 preparations were underway to place the claimant on home leave. On 27 January the claimant was placed on home leave by Mr Parkinson and Mrs Clarke walked with her from the building.

22 The claimant had applied to become a foster carer for a neighbouring local authority and in February a reference request was sent to the respondent; it was re-sent to Mr Parkinson on 7 March 2016.

23 On 16 March 2016 a council meeting of thirty five councillors took the decision to dismiss the claimant. On 21 March 2016 the respondent wrote to the claimant to give notice that her employment would end on 14 June 2016 by reason of redundancy and that she would receive a payment of £35, 213.

24 On 25 April 2016 the claimant notified ACAS of the potential dispute. On 3 May 2016 a full council meeting rejected the claimant's appeal against dismissal.

25 On 6 May 2016 Mr Parkinson provided the foster carer reference for the claimant.

26 On 25 May a conciliation certificate was issued. On 14 June the claimant's employment ended. On 24 June 2016 the claimant presented her application to the Employment Tribunal. In August 2016 a third party completed a report recommending consideration be given to: the claimant's grievance not be upheld; Mr Parkinson be provided with guidance and support to better manage his responses when emotional; and technical advisers be engaged at the outset when organisational reviews affect statutory postholders.

The Tribunal's approach to fact finding on disputed matters

27 Fact finding in civil cases involves assessing what is more likely than not. Tribunals are charged with making these judgments in a work context; the Tribunal can draw on diverse life experience from its specialist panel of three. At times we have to assess the inherent plausibility (or not) of some of the facts in dispute.

28 The respondent in this case urged caution in accepting uncorroborated evidence from Mrs Whitmore, saying her evidence was unreliable, and that she was not a witness of truth. The asserted reasons for caution included that she withdrew all allegations of direct sex discrimination during the course of this hearing.

29 The fact finding tools we have used are well practiced by courts and tribunals:

29.1 Is the account consistent with contemporaneous material, including increasingly, social media, smart phone and meta data based evidence?

29.2 Is the account consistent with subsequent investigations or witness statements given?

29.3 What evidence is there from others about the witnesses' conduct and demeanour **at the time,** both before and after any allegations?

29.4 What other evidence is there about the way the witnesses behaved on other occasions, perhaps not in dispute?

29.5 What was the Tribunal's impression of the witnesses when questioned: was the impression that they were telling the truth?

29.6 What was the Tribunal's assessment of the witnesses' reliability on relevant matters: were they generally consistent with other material and good historians or were they mistaken in their recollections or beliefs?

29.7 What does the totality of the chronology or circumstances tell the Tribunal about the inherent likelihood of the accounts?

30 In this case the Tribunal had to make findings about matters in the minds of individuals and whether they caused or influenced certain events. This included determining the principal reason for dismissal. The question "whose mind is it" that the Tribunal should examine to determine that, and other questions, was more complex in this case than is often the case.

31 The claimant said the reason for the dismissal was because of disagreements about her investigation into property disposals and other clashes with Mr Robinson, the chief executive, and Mr Parkinson, her boss. She said the restructuring, which deleted her post, was contrived and a sham to camouflage those true, improper reasons for her dismissal. The respondent said there were genuine and necessary operational reasons for the restructuring and a redundancy was the principal reason for dismissal.

32 In resolving these and other issues of fact we also note: an initial impression or assessment of a witness has to be checked against all the other factors; placing too much significance on demeanour can be unsafe: a confident witness is not necessarily a truthful witness and a nervous one is not necessarily lying; a genuinely held belief which is wrong, or one untruth told, does not necessarily render other evidence from that witness unreliable; people often deny unlawful acts ("well he would, wouldn't he"); generally good historians still tell untruths; people do, on occasions, behave in unexpected ways, whatever the overarching likelihood; skilled cross examination can demolish an otherwise cogent case; the Tribunal has a duty to put the parties on an equal footing during a hearing as part of the overriding objective; the formal rules of evidence do not apply to the Tribunal; justice requires witnesses to have the opportunitiy to comment on disputed matters in, what is still, an adversarial process. Within the hearing the Tribunal did not have time to consider many of the relevant documents in any detail. We have undertaken a great deal of consideration and verification of documention during our lengthy deliberations. It has been necessary to do so in a case of such conflicted oral evidence. For this and other reasons the Tribunal has taken much longer to reach this reserved decision than would ordinarily be the case. The parties were advised of this likely timescale at the close of oral submissions.

<u>The complaints, issues, conduct of the hearing and withdrawal</u>

33 The complaints were set out initially and then in amended pleadings. Comprehensive further and better particulars were supplied. An issue list was then ordered during case management. The claimant's draft made no reference to a breach of contract complaint concerning the implementation of a second job evaluation, albeit similar facts were relied upon as founding a sex discrimination complaint, later withdrawn.

34 Both parties were represented by experienced solicitors, and the respondent by leading counsel. On the first day of evidence they agreed from the claimant's draft, a very clear list of issues identifying with precision the allegations and complaints to be determined.

35 A hearing timetable was also agreed and adjusted as required to complete the hearing of those issues. The Equality Act, detriment and dismissal allegations were directed principally against Mr Robinson and Mr Parkinson, albeit as employees of the respondent rather than as respondents in their own right.

36 Mr Robinson's evidence was closed on the fourth day without all the allegations of direct sex discrimination having been put directly, or some at all. On day five the Tribunal heard from witnesses including Mrs Schofield. She was asked about decisions concerning the claimant's pay, (relied upon as allegations of direct sex discrimination naming Mr Robinson). Mr Parkinson's evidence had to be spread over three days (six, seven and eight) to accommodate other witnesses.

37 At the end of day seven the Tribunal indicated its concerns that the allegations of sex discrimination in the list of issues had not been put to Mr Parkinson; and Mr Jeans highlighted that they were not put to Mr Robinson either and were considered abandoned by the respondent. The Tribunal retired early that day and held Mr Parkinson over to give the claimant the opportunity to consider what of the allegations remained to be put to him.

38 On the morning of day eight the sex discrimination complaint was withdrawn in its entirety and after hearing Mr Bloundele, Mr Parkinson's evidence on other matters continued until lunch time.

39 In closing submissions it was said that the reasons for the withdrawal were as follows: Ms Schofield had given evidence about an extra stage in a second job evaluation process, about which the claimant had not known; her view that various incidents were less favourable treatment on gounds of sex was in large part caused by her belief that Mr Robinson would not afford her the same treatment as male assistant directors in relation to pay; the Tribunal had heard evidence as to why job evaluation scores were not applied as she hoped and expected they would be; the claimant accepted Mr Robinson was not himself treating her less favourably in relation to those scoring outcomes; with that acceptance came the decision the other direct sex discrimination complaints were not ones to proceed with; the claimant's position was that she was treated in an undesireable way and can only speculate as to the reasons; it being difficult to know the motivations (before the hearing), she considered both gender and her investigation into the property disposal issues played their part; she had also learned in relation to an earlier job evaluation that it was the respondent's perception that she had some undue influence on that (which was said to influence a decision not to implement it); and from Mrs Schofield, that it was she who suggested the favourable outcome on the first job evaluation did not feel right, and should be looked at further (rather than Mr Parkinson or Mr Robinson)[1]. Mrs Schofield's evidence and its impact is discussed below.

40 The surviving complaints and issues appear as headings to our conclusions below. In short they are: the reason for dismissal; the section 98(4) question; whether alleged acts of harassment happened in fact; whether they amounted to harassment; whether the complaints were in time; whether particular letters amounted to protected disclosures or protected acts; whether any detriment was suffered in fact; and whether if so, it was materially influcenced by any proven protected act or protected disclosure.

41 The claimant's issue list grouped the issues by complaint, sensibly. When it came to the Tribunal's decision making, we found it convenient to deal with the complaints in chronological order, reaching an early and fact driven decision in the harassment complaints, then addressing the detriment and victimisation complaints, and then the dismissal.

Evidence

42 The Tribunal necessarily had a full reading day. The claimant's statement was some 34,000 words and 90 or so pages. Her only other witness was Mayor Budd, subject to a witness order, and with no written statement; his evidence in chief was conducted by Mrs Dalzell.

43 The respondent's written statements were considerably briefer than the claimant's. The documentary evidence was contained in four bundles of around three thousand pages. A small but relevant number of documents were added in the course of the hearing, some at the Tribunal's request. Numeric references in brackets below are references to pages of the bundle; those preceded by "S" are to the supplementary bundle.

[1] See also 444: Mrs Schofield sourced emails concerning the 2013 evaluation from the external provider and forwarded them to Mr Robinson and Mr Parkinson on 30 April 2014.

44 Oral evidence was heard from the witnesses below. We also set out the Tribunal's general assessments of those witnesses.

Mrs Whitmore, the claimant (days two and three)

45 The claimant at work was described by witnesses as quiet, a person of detail, and a colleague not known for socialising or joking. Her attention to detail was discernable in the conduct of these proceedings.

46 The claimant's performance was generally well regarded. She could be robust. The respondent had supported her gaining qualifications in both HR and law to enable her effectively to take on management of those areas. Mr Robinson considered her a good member of the senior management team.

47 Those who reported to the claimant had functional, helpful and supportive relationships, and considered her truthful at work (Mrs Schofield/Mr Roberts). On occasions the claimant was known to have challenged poor taste or inappropriate humour. She had also challenged her own pay in the past. Her mode of challenge was typically by lengthy correspondence. Her sense of personal integrity was of great importance to her.

48 The claimant was an impressive witness under pressure, unsurprisingly given her statutory resonsibilities within the council; she was subject to lengthy and highly focussed cross examination. Mr Jeans described her as a well prepared witness but not a reliable one, or a witness of truth. Against a very detailed and lengthy statement, very few passages of cross examination lessened the Tribunal's impression of her as a reliable witness; she was calm and consistent with documentation and she knew that documentation extremely well.

49 From the outset of the proceedings full, detailed and consistent[2] particulars were provided of all matters, supported by document references as appropriate, which added to the claimant's credit. That said, several areas did challenge the claimant's credibility and reliability.

50 There was a clear difference in shape and scale between the claimant's initial complaint to Mr Budd and later grievance before her dismissal, on the one hand, and the claimant's case on reason for dismissal in these proceedings, on the other. The first were squarely directed at her treatment in the second half of 2015 by Mr Parkinson: a lack of one to one meetings with him, the pay re-grade investigation, the appraisal, and the merger/dismissal proposals, said to be scapegoating her for his poor performance in role. Advice and runs ins on disciplinary, land and property and election matters appeared to be a post script reason for the alleged ill treatment.

51 A further credit issue foreseen by the claimant was addressed to some extent in her statement and earlier correspondence with the respondent: her failure to earlier report or complain about the very serious (and lesser) matters that she pursued in these proceedings. The explanation for that was a need to keep employment. Perhaps not foreseen by the claimant was the very difficult proposition that explanation offered up: at worst if her allegations were true, as monitoring officer, she had not reported exactly the type of conduct to be halted in its tracks by a monitoring officer, because of concern for her own position; at best she had applied pragmatism. The latter was not

[2] The one exception identified by Mr Jeans was 192(g) of the claimant' s statement, which was a new allegation.

the approach she took to the redundancy proposal, nor to other matters where she insisted (or sought to insist) on the strict application of principle.

52 Thirdly there was no explanation for not keeping notes or other contemporaneous records of very serious allegations.

53 Finally there was a challenge to credit which could not have been foreseen: phone records disclosed by Mr Robinson and by the respondent at the claimant's request, showed the claimant had not received a particular telephone call on 2 May 2014 from Mr Robinson, about which she was adamant.

54 The respondent submitted that for these and other reasons the Tribunal could confidently prefer Mr Robinson's and Mr Parkinson's denials of specific matters. The Tribunal, for the reasons explained in this Judgment, could not safely adopt that binary approach: it did not consider Mr Robinson's evidence nor that of Mr Parkinson to be reliable in the wholesale way contended for; their reliability and that of other witnesses is discussed below.

Mr Robinson (day four):

55 Mr Robinson became the respondent's chief executive, succeeding Ms Rollings, in April 2014. The claimant's case was that her successful situation with good relationships changed dramatically after his appointment, and a change to Mr Parkinson's post in May 2014. Alleged incidents on 2 and 6 May 2014 concerning Mr Robinson were said to be bullying by him of the claimant.

56 Mr Robinson is an engineer and keen tennis player, outgoing at work, known for his humour and use of it at work, and considered affable by others. Mr Robinson was generally concerned about the press and the council's reputation and wanted issues tackling quickly. He wanted managers to feel empowered to take decisions and actions at speed, because the strain on resources did not allow for the previous approach to many tiered decision taking. That approach became known as "the Middlesbrough Manager" and was welcomed by management.

57 Mr Robinson was alleged to have:

engaged in poor taste humour, some of which he accepted;

been insistent with the claimant when she gave him advice he did not want or resisted his wishes (which he denied);

requested that the claimant make no reference to a particular issue in a report on property disposals (denied);

sought delay in the publication of her lessons learnt report (denied);

proposed the removal of the claimant's monitoring officer role and dismissal when she would not change her advice (denied);

and supported or contrived with Mr Parkinson in the claimant's dismissal (denied).

58 Mr Robinson was a "big picture", confident and relaxed witness. Like Mr Budd, the Mayor, he did not strike the Tribunal as a prepared witness. In or around June 2016 he formally announced he would be taking voluntary early retirement that August at age 55. There had been discussions amongst close leadership colleagues around Christmas 2015 arising from an analysis of proposed pension changes, with the effect that he might retire, albeit after only twenty months in post. When Mr Robinson retired Mr Parkinson took over as interim chief executive, by which time the claimant had

been dismissed. By the time of this hearing then, Mr Robinson was no longer employed by the council, which may explain his lesser grip on detail.

59 For example, the rationale for the merger of posts was “something others could better explain” to the Tribunal. In the grievance investigation he had been clearer, saying that it was: “a systemic issue partly as a result of dividied loyalties across services like governance, finance, audit etc.

60 Mr Robinson generally struck the Tribunal as a plausible witness but, as with the claimant and others, there were challenges to that. There were passages of cross examination when he appeared to the Tribunal less relaxed (on disclosure of reports to the public, for example).

61 In the round, there were reasons why Mr Robinson’s evidence on some matters, might not be reliable, including the “he would, wouldn’t he [deny]” factor. We deal with particular conflicts in our further findings.

Mrs Schofield (day five)

62 Mrs Schofield, as Head of Human Resources, reported to the claimant. She struck the Tribunal as a reliable witness of truth, without any particular “angle” or axe to grind. She respected the claimant for the way the latter did not seek to involve her in any of these matters. It is not surprising to the Tribunal that Mrs Schofield’s evidence when cross examined affected the claimant’s perceptions of relevant motivations: no doubt Mrs Schofield was also someone the claimant trusted and respected in return.

63 Mrs Schofield’s evidence was of particular value to the Tribunal; she described Mr Robinson’s use of humour as light relief during strained times, or words to that effect; she described Mr Parkinson as being very firm with her at times such that she was taken aback initially (in response to being asked whether she had seen him angry). She also confirmed that the claimant told her she found it difficult working with Mr Parkinson. She said (and the Tribunal accepted) she had never personally witnessed anything inappropriate between them and that the claimant well understood the council’s processes for addressing inappropriate behaviour.

64 In re-examination in chief concerning a second job evaluation of the claimant’s post (and other senior management posts) she agreed that the final scores were adjusted by the chief executive with her advice (which had been unknown to the claimant at the time); she was then asked whether the claimant’s scores were in line with her advice or contrary to her advice; her answer was : “I felt there was some justification for not using the “4” score [recommended by the external body] because of the detail in the depth of knowledge score, so the comparison was the assistant director, environment and property.” Her relevant note at the time said: score of 4-/4 suggested [by the external body] but given wide range of areas covered by this post depth remains at 3+ in line with other AD posts with respsonsibility for diverse range of services”.

65 Mr Robinson’s oral evidence was that he had spoken to Mrs Whitmore and said everyone would be treated fairly in that job evaluatoin; that when the scores came back from the external ratification he asked Mrs Schofield if they felt fair and her view was that 3+ was fair but 4- wasn’t. He said: “Pip came to speak to me and that is when [the score] changed”.

66 These two passages of oral evidence struck the Tribunal as plausible, coherent and unprepared recollections; they suggested to the Tribunal that Mrs Schofield (and Mr Robinson) were straightforward on these matters; and the combined effect

appeared to have resulted in the claimant withdrawing her sex discrimination claim. Mrs Schofield and Mr Robinson had not addressed this detailed evidence in their witness statements (in comparison with the claimant's lengthy section at paragraphs 95 to 99); nor was the detail of their explanation within the respondent's pleaded case or within other respondent witness statements.

Ms Finnegan (day five)

67 A Human Resources manager in the department working for the claimant; she was seconded to work with Mr Parkinson's team as the Human Resources lead implementing the austerity change programme; she was involved in giving advice to Mr Robinson concerning a respondent employee convicted of an offence whilst a football supporter, and she had knowledge of an alleged "Nazi salute/portugese shower" incident.

68 The Tribunal considered Ms Finnegan demonstrably reliable, neutral, without any particular axe to grind, and a demeanor in giving evidence which gave confidence that she was simply recalling matters to the best of her ability in a straightforward way.

Claimant witness: Mr Budd (day five)

69 Executive Mayor of Middlesbrough from June 2015, and elected councillor for many years. Subject to a witness order, he gave evidence about an alleged conversation with the claimant during her property investigation, her complaint to him in December 2015, a report to the Council in his name advising of the review which led to her dismissal; and the meetings of the full council at which the decisions to delete her post and reject her appeal were taken.

70 Mr Budd did not recall the comment attributed to him by the claimant (that he told her at a meeting in 2015 that he seemed to recall being in a room when the previous Mayor had undertaken, in a telephone call to a property developer, to ensure a price reduction in the purchase price of Acklam Hall). Whether the comment was made is not a matter the Tribunal needs to determine to resolve the issues in this case.

71 Mr Budd was not a "prepared" witness. He dealt with questions as best he could, but he was relying only on recall, in contrast to the claimant's in depth knowledge of the documents. He did deliver several passages which struck the Tribunal has having the ring of truth: he had not before had a letter of complaint like the one he received from the claimant; he took no action for some days before discussing it with Mr Robinson and was unsure whether to do so at all.

Ms Clarke (day six),

72 Employed by a subcontractor to provide Human Resources advice to the council within the scope of a service level agreement. Ms Clarke was involved in the early stages of advising on and supporting the process for the redundancy proposal, and placing the claimant on home leave. She escorted her from the building in January 2016.

73 Ms Clarke did not seem a particularly prepared witness; she did her best with the material, and struck the Tribunal as straightforward and reliable on matters within her knowledge. The claimant's position on the redundancy and dismissal requirements for chief officers were outwith her knowledge or experience.

Mr Parkes (day six),

74 A peer of the claimant's until her demotion in 2013; Director of Neighbourhoods and Communities (which originally encompassed estates and property disposals); from June 2014 Director of Economic Development and Communities, with property moving to report to Mr Parkinson, and Mr Parkes taking public health into his remit instead.

75 It was Mr Parkes' department which had led on the property disposals for the respondent which were the subject of public concern. He felt subject to a witch hunt during the claimant's investigation into those matters because of a perceived widening of its remit. He alleged that the claimant had told him he would have to prove "he had not been taking brown envelopes"; the claimant denied saying that.

76 He was later asked by Mr Robinson to conduct the job evaluation investigation in July 2015, which was said by the claimant to be a flawed investigation; its commissioning was also said to amount to bullying of the claimant by Mr Parkinson.

77 Mr Parkes was not a relaxed witness. He said he had prepared his own shorter bundle, was familiar with that, but not with the volumes at the witness table. At times the Tribunal considered his manner of answering questions, which were not put in a combative style, surprisingly combative and hostile. His evidence to the grievance investigation was that prior to these events he was considered to be closest to the claimant amongst the the leadership management team, in that he talked to her the most in meetings, and was not considered to be in the "in crowd". The Tribunal had some reservations about particular elements of Mr Parkes' evidence, which are explained below.

Mr Parkinson (days six, seven and eight)

78 Mr Parkinson's evidence was the lengthiest, not least because he had direct knowledge of virtually all of the relevant matters, and was the subject of many of the claimant's contested allegations, but also because his evidence was, by necessity, interrupted.

79 By August 2016 he had become interim chief executive, on Mr Robinson's retirement; and that was the capacity in which he attended the Tribunal. In 2013 he had leapfrogged the claimant to take on management of her, Mr Slocombe and Mr Long as part of Ms Rollings' reorganisation, initially as Director of Transformation, implementing staff cuts and other changes for reasons of austerity. The claimant had applied for that transformation role but was not successful.

80 From May 2014, under Mr Robinson, he became the Executive Director of Commercial and Corporate Services, alongside Ms Broad and Mr Parkes as Executive Directors, each having three Asssitant Directors reporting to them. Mr Parkinson's three direct reports were: the claimant, Mr Slocombe, Mr Punton.

81 Prior to 2013 Mr Parkinson had also worked directly under Mr Robinson, then in charge of business development and commissioning, alongside colleague Mr Punton, who was then in charge of environment. Clearly Mr Robinson, Mr Parkinson and Mr Punton had a history of working closely together, and the Tribunal has inferred they were, perhaps with others "the in crowd" to which Mr Parkes referred.

82 Mr Parkinson was, much like the claimant, an impressive witness; he dealt with matters straightforwardly and directly; he remained calm; there were no passages where he became agitated or angry; but he was not subject to a style of cross examination which can expose such responses..

83 Mr Parkinson and the claimant differed considerably in their accounts, even to the extent of apparently inconsequential details: for example, the reason for their swapping offices. Faced with conflicting accounts between them on so many matters, the Tribunal was not helped at all by comparing the way in which they gave their evidence.

84 The significant challenges to Mr Parkinson's credibility were his authorship of the November note, which was submitted to be unwise, rather than Machiavellian; intemperate and disingenuous responses to union consultation; and reliable contemporaneous evidence of his firm, and at times angry, communications. That evidence contrasted with the impression given to the Tribunal of a relaxed style of communication. He was also proven a poor historian in relation to the savings represented as arising from the merger, and to have relayed legal advice to Council members in a way no lawyer would (or did) express it.

Mr Bloundele (day eight),

85 A councillor who attended three meetings of the elected members concerning the merger and the claimant's dismissal (6 January 2016, 16 March 2016, 3 May 2016), and provided a signed witness statement discussing these events. Mr Bloundelle struck the Tribunal as a reliable witness, whose recollections concerning savings later proved consistent with the contemporaneous documentation.

Mr Roberts (day eight)

86 The respondent's current monitoring officer and head of legal services.

87 Mr Roberts had previously worked in the legal department under Mr Long, supporting property and planning matters. He had reported to the claimant since 2013 and their relationship worked well, with only one disagreement recalled. He considered the claimant was "all work", robust and could herself be harsh, but he delivered to her expectations and there were no issues.

88 Mr Roberts did not have so much to do with Mr Parkinson prior to the claimant being sent on home leave, and considered the relationship between Mr Parkinson and the claimant to be "cordial".

89 There was no evidence that Mr Roberts provided advice at the early stages of the merger proposal affecting the claimant, whereas advice had been sought from the monitoring officer of a neighbouring local authority, Mr Newton. Mr Roberts did become heavily involved in the correspondence between the claimant and the respondent concerning the process and arrangements for the proposed merger after the claimant was sent on home leave. As deputy monitoring officer at that time, he also took over full monitoring officer responsibilities from that point.

90 Mr Roberts struck the Tribunal as entirely straightforward. He gave a summary of legal advice to the full council hearing the claimant's May appeal, including direct quotes on the position from different sources. His summary contrasted significantly to the characterisation of that legal advice by Mr Parkinson.

Mr Slocombe (not heard)

91 Until June 2016, Mr Slocombe was the respondent's "Section 151" officer (responsible for statutory finance reporting). His employment and career position was somewhat similar to that of the claimant: he had long service; he had been a peer of Mr Robinson and Mr Parkes with the claimant, with Mr Parkinson at a lower level in the management structure. He found himself leapfrogged by Mr Parkinson alongside the claimant when Mr Robinson became chief executive.

92 Mr Slocombe had provided a written statement on behalf of the respondent for these proceedings. He suffered a fracture around the time of the hearing and was unable to attend. No postponement was sought by either party.

93 It was common ground that Mr Slocombe and the claimant had not seen eye to eye as colleagues; in his written evidence he accepted that insufficient progress had been made on some matters, which was also Mr Parkinson's evidence, particularly in ICT and capital spending, in which there was a significant underspend.

94 Mr Parkinson had introduced an "action tracker" which he used as a tool with both the claimant and Mr Slocombe to hold them to account on progress. Mr Slocombe did not regard that as necessarily helpful or reflecting an accurate understanding on Mr Parkinson's part at all times. His written evidence struck the Tribunal as straightforward and balanced, bearing in mind others said he and the claimant did not always see eye to eye.

Background Findings

Chief officer terms

95 The generic "Chief Officer Terms" applicable to the claimant, Mr Parkinson, Mr Robinson and others, and nationally agreed for senior management in local government, include the provisions set out below. In this judgment we refer to the two consultation obligations below as "paragraph 82 consultation" and "statutory consultation" (paragraph 83).

"*Official Conduct*

54 The public is entitled to demand of a local government officer conduct of the highest standard"; and

"Redundancy

82 Employing authorities should consult with any chief officer affected at the earliest possible stage when there is a suggestion that the chief officer's post might be abolished or proposed for abolition.

83 If after such consultation a proposal is formulated to abolish the chief officer's post, the procedure of Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992, requiring consultation with tradeunions, should be followed, the required statutory information being sent to the chief officer and to each independent trade union recognised by the employers for collective bargaining purposes for the chief officer. A period of not less than twenty-eight days should be allowed for the statutory consultation process. The chief officer and a trade union representative should also be afforded an opportunity of making oral representations to the Committee or Council meeting concerned before a final decision is made.

84 If following such consultation the authority decide that the most must nevertheless be abolished, the officer should be offered any suitable alternative employment that may be available or which may become available in consequence of the re-organisation giving rise to the abolition of the chief officer's post.

85 The authority should also bear in mind the possible application of discretionary powers of premature retirement, and permissible enhancement of benefits or redundancy payments, and the possibilities of providing an alternative post or of extending the period of notice to assist the chief officer in finding other employment."

The monitoring officer post

96 The claimant became the respondent's monitoring and returning officer when Mr Long retired in September of 2013. The duties of a monitoring officer include reporting any incident (proposal, decision, action or omission) which would give rise to unlawfulness or maladministration to the Executive (mayor and others), or the full council of elected members; the effect of such report is to stop the matter until the report is considered[3]. The respondent's consititution requires consultation with the Head of Paid Service (chief executive) and Section 151 Officer (finance director) prior to such report. These powers give the monitoring officer the ability to maintain the rule of law in local government administrations, or as Mr Budd put it, to ensure the council is run in a proper way.

97 Since 2001 the monitoring officer post has had protection from disciplinary proceedings (an independent person must be appointed to oversee); and since 2015 a decision to dismiss a monitoring officer or Section 151 officer can only be taken by the full council of elected members.

98 Given the responsibilities of a local authority monitoring officer, the post is typically held by senior local government solicitors, (Mr Long for example, and now Mr Roberts); a small but significant proportion of monitoring officers are not lawyers, but those typically have some legal knowledge, education or experience, as did the claimant.

Home Leave

99 The claimant's contract of employment provided at paragraph 18.4: "The council reserves the right, at its discretion, to require you to **remain at home on paid leave** at any time and in particular during periods of notice, whether given by you or the Council."

100 No chief officer had been subject to enforced home leave at the respondent in the recollection of the witnesses. Mr Robinson had come across home leave being utilised in other local authorities in redundancy situations.

Austerity, constant leadership change, the reduction in chief officers and the way matters typically proceeded

101 From April 2009 to 2014, the claimant was the respondent's Assistant Chief Executive with responsibility for governance, compliance, HR and other "back office" or "support" functions. She had also had responsibility for "Corporate Performance" and in that capacity had provided mark ups and comments on Mr Parkinson's reports, which he found unwelcome.

102 Until mid 2013 the claimant had been a peer of: Mr Robinson (then Director of Environment and Adult Social Care and an engineer by background who joined the council in 2009); Mr Parkes, Director of Regeneration; Mr Slocombe (Finance) and Mr Long (Legal) reporting directly to several Chief Executives, latterly Ms Rollings. This group of six, including the chief executive, were the then senior leaders of the respondent.

103 The claimant was appointed to the Assistant Chief Executive role by Mr Parker, Ms Rollings' predecessor, when he took up his appointment in 2009 or thereabouts.

[3] Sections 5 and 5A of the Local Government Act 1989; reflected in the respondent's constitution.

Mr Slocombe and Mr Long did not have the opportunity to apply for the Assistant Chief Executive post. Mr Parkinson was then at a lower tier in the management structure reporting to Mr Robinson.

104 Mr Parkinson's promotion to Director of Transformation saw the claimant, Mr Slocombe (Section 151 officer) and Mr Long (then monitoring and returning officer) becoming "Assistant Directors", in the management structure despite holding statutory posts. The other statutory post at a similar level was the Director of Public Health.

105 In 2009 the respondent had operated with thirty eight Chief Officer posts; by 2016 this had reduced to eleven. The Tribunal was provided with a table of chief officer leavers in the highest three pay groups: ("chief officer leavers"). The number of chief officer leavers in that period was twelve, most via voluntary redundancy or voluntary early retirement.

106 The two exceptions (apart from the claimant) were settlement agreements: Mr Slocombe (54) in June 2016 and a Ms Cordiner (50) in January 2015. Only these two of the chief officer leavers were under fifty five, the age at which early unreduced access to pension is available in the local government scheme. There were no such chief officer leavers under the age of fifty in that period (the claimant was 49 when her dismissal took effect).

107 No witness had experience of the dismissal of a chief officer, still less dismissal by the full council necessary for the chief executive and those holding statutory posts. Matters usually proceeded by discussion and agreement, bearing in mind the provisions of the chief officer terms and an inherent acceptance that chief officers must be prepared to put forward reviews which abolish their own posts, or that of their close colleagues, if that is in the interests of the local authority, akin to a fiduciary duty.

108 For example, in 2009 Mr Parker had wished to reduce the senior team from eight to six; he told all members of that team (including the claimant) around the leadership table of his intentions; and the departures took place without dismissal by voluntary means.

109 In May 2012 Mr Parker authored a confidential discussion paper about the reform of the management structure, with a view that change be in place by April 2013. Further iterations described timetables to involve informal consultation with the mayor and deputy.

110 In January 2013 Ms Rollings, as chief executive, distributed a confidential "Council Transformation – Future Management Arrangements" paper, introducing the Transformation Director post to take on the austerity based changes to support services. The draft timetable for that review[4] was provided to those affected confidentially. Again it expressly provided for one month's "informal consultation" with both levels of senior leaders in January, and formal (four weeks') consultation with affected individuals commencing in mid February (ie Messrs Long, Slocombe and the claimant and possibly others). The Tribunal considers that this reflected the chief officer terms requirement for Paragraph 82 consultation and statutory consultation. The new structure did not come to fruition until April or May of 2013, as part of which there was an open competition for the new Transformation Director post.

111 Ms Rollings met with the claimant individually as part of that informal consultation and discussed matters with her confidentially, and followed that up in

[4] 516

writing; she said to the claimant that views of the claimant had improved, with Ms Rollings' support, albeit she conceded it was likely Mr Parkinson would secure the new post. She also noted that the claimant was concerned about her position after Ms Rollings' retirement (which was to happen a year later). That restructure proceeded without any dismissals.

112 In Mr Long's case later in 2013, Ms Rollings explained to him that there was a need to reduce the Assistant Directors reporting to Mr Parkinson from three to two; that was a decision with which she wished to proceed. Having had that discussion, Mr Long was unhappy and had long conversations about it with Mr Parkinson (then his direct boss); ultimately he appeared to Mr Parkinson to be sanguine; he was over fifty five and could retire; and he did so in September 2013; the claimant assumed his responsibilities. Again, there was no dismissal.

113 From 2013 to 2015 then the broad structure of the leadership had its origins in Mr Parker's paper: two broad areas of council operational activity: people (care of adults and children, education and so on); places (buildings and facilities) and a further area to support those: support services.

114 In Ms Broad's case, Director of Wellbeing, Care and Learning during 2014 and 2015 (the "people" part) and responsible for 50% of the council's budget, Mr Robinson had decided that it was not sustainable for that directorate to continue to cover both types of people: adult social care and chidrens services; he wanted to create a children's (only) directorate following an "OFSTED" report; and he had discussed that with the mayor. He spoke to Ms Broad who indicated she had been looking at retirement in any event in twelve to eighteen months, but that she was happy to stay in place until September 2016, and then retire. In the meantime the restructure would go ahead with social care moving to Mr Parkinson's directorate.

115 Between the OFSTED report and Christmas 2015 Mr Robinson formulated a proposal to restructure, deleting Ms Broad's post, and that was presented to a full Council meeting with her agreement. Her retirement then proceeded by agreement. There was no dismissal.

116 In Mr Slocombe's case, also impacted by Mr Parkinson's restructuring which affected the claimant, he was initially somewhat angry (on this we prefer Mr Parkinson's recollection given to the earlier grievance investigation rather than his witness statement to the Tribunal), and he indicated his views about the restructuring: that it would not work to tackle the issues identified. Mr Slocombe believed the proposal should have encompassed the estates department (Mr Punton's area), where there were considerable governance and capital spend issues. He also believed there were process issues in the way the matter was handled.

117 Initially Mr Slocombe completed voluntary redundancy documentation and indicated he would not apply for the available merged post, even though he was qualified to do so. Circumstances then changed affecting his dependents, and he indicated he would wish to apply; discussions with Mr Parkinson then resulted in a settlement agreement rather than a dismissal.

118 Mr Parkinson observed in those discussions that Mr Slocombe might struggle to sell himself to a panel interview when he did not believe the restructuring would achieve its objective. That was Mr Parkinson's evidence and the Tribunal accepted it; it was generally consistent with Mr Slocombe's signed statement. Mr Slocombe, perhaps like Mr Long, had applied pragmatism in discussion with Mr Parkinson, and had negotiated an exist – he was close to the permitted retirement age.

The respondent's culture and the harassment allegations

119 Prior to 2009 Mr Parkinson and others had not enjoyed a hierarchical management culture under chief executive Ms Richmond, as part of which, he and others would receive a "Pen of the Week" award for misdemeanours. It was suggested in cross examination that the claimant may also have found that unwelcome, but the overall impression of the claimant's evidence was that prior to Mr Robinson's tenure she found the culture one in which she could thrive (and had done). That included under chief executives Richmond (hierarchical), Parker (described as a lovely guy but weak), and Rollings (described as "a traditional chief executive").

120 The balance of the evidence was that Mr Robinson's style, which set the tone for the leadership team, was more relaxed and less hierarchical, and that his use of humour was well known and welcome to many. Mr Parkinson and others could and did engage in that humour, including "football" banter; "laddish" was a description used by some; "a wicked sense of humour" was another; Mr Slocombe considered that humour could make Mr Robinson vulnerable to complaints. It was a communication tool which the claimant found more difficult, given her considered and careful style, standing and personality at work, and way of working, which others observed consistently about her.

121 It was not Mr Robinson's intention to cause offence, still less bully. He was not necessarily live to the impact of comments on those less ebullient than himself. The Tribunal heard about a number of examples of his humour. It is fair to say that the claimant's evidence on those matters gave less context than was helpful.

122 There was no indication from staff surveys or other objective data or any other evidence that the respondent's culture at large had changed for the worse under Mr Robinson.

"Fatty and useless"

123 An email exchange in 2012 concerning joking comments alleged to have been made by Mr Robinson towards a (slender and tall) member of staff ("fatty and useless"), struck the Tribunal has indicative of his approach: the claimant raised the issue and challenged him by email; Mr Robinson acknowledged and thanked her by return, not wishing to have caused offence; he then reflected and sent a second email to refute using those particular words, saying they were not his style of humour, but perhaps he had made other comments.

124 That exchange was light and good humoured and indicated no difficulties in the relationship between the claimant and Mr Robinson, peers as they were at that stage. It did suggest to the Tribunal a willingness on Mr Robinson's part to deny things which placed him in an unfavourable light, and less perception or insight into what could cause offence to others. In the Tibunal's judgment, had he not said the words "fatty and useless" there would have been an instinctive and instant denial. Instead there was an instant acknowledgment, and then a further reflection and denial, when the penny dropped, as it were.

125 On that issue, taking into account all the circumstances, the Tribunal considers it more likely than not that he did use "fatty and useless" in jest with someone slender and tall, in the belief that they would not take offence. In the same way, on occasions he called himself the "thick engineer", deployed humour about accountants (Mr Slocombe), and "posh" (Mrs Schofield), and made jokes about Mr Parkes[5].

[5] 1636

"Ice breaker vulgar joke"

126 Mr Robinson accepted that at a team building session with an external facilitator at the beginning of his tenure in mid 2014, he opened the session and told an ice breaker crude joke; given the claimant's unchallenged evidence we accept this was about nuns; his recollection was the facilitator told him afterwards she did not think much of the joke (but Mr Robinson's recollection was it was about lawnmowers).

127 We accepted the claimant's evidence (and did not accept Mr Robinson's denial) that he prefaced the nun joke with words to the effect: "I know Karen is not going to like this…". The joke did not go down well generally; people looked at the claimant. Mr Robinson learnt from that mistake and he did not tell another crude joke in such circumstances again.

128 In resolving this conflict (for which there was no other evidence other than Mr Robinson's and the claimant's), we considered that there was no report at the time by the claimant other than to discuss with the facilitator, but also that the episode fell flat and so was not repeated. As a team building day, there will have been many present.

129 We also considered our obervations about Mr Robinson's inherent ebullience and that although he said he did not use the preface, and would not have done so to single out an individual, he had reasons to know the claimant would not like the joke, and it was an inherently likely exchange for him at that time: if his insight let him down sufficient to tell a poor taste crude joke, he may well have lacked the insight to resist the additional humour of acknowledging the claimant's role as guardian of appropriate standards.

"High horse" and "get a sense of humour"

130 In 2014 in reference to a "Snoop Dog" concert to be held the town, and discussion of the perfromer's lyrics, Mr Parkinson and Ms Broad had raised issues, and assurances were sought from the promoter. At some point by coffee facilities during a separate meeting, Mr Robinson said about the concert to the claimant: "that's just Richenda on her high horse; she's even worse than you for going on at me; you both need to get a sense of humour".

131 There were no other witnesses to this comment; the claimant maintained it was said despite robust contextual cross examination; Mr Robinson did not deal with it in his statement despite it being the subject of detailed further and better particulars, and in examination in chief he did not recall it (unsurprisingly given the one line nature of the comment). We resolved this matter in favour of the claimant who did recall it, again applying the inherently likely approach: in context it was inherently likely for Mr Robinson, given his humerous and ebullient approach. We note it was not Mr Robinson who had identified the problem in the lyrics initially, it was Mr Parkinson and Ms Broad.

"Portugese shower and nazi salute"

132 The context for this allegation was only apparent when all the relevant witnesses had been heard. It was first mentioned in the closing line of the claimant's letter to Mayor Budd, referring to a council where "the chief executive thinks it is funny to perform Nazi salutes and refers to senior female members of staff as "posh birds" whilst members of staff are routinely bullied and belittled".

133 In January 2015 there was a round table meeting about terms and conditions with a union representative present. In discussion about drafting Mr Robinson said words to the effect: "perhaps we should just put - they should do as they are told - ", in

response to which the union representative raised his hand feigning a nazi salute (as Mr Robinson put it "Dads Army" style, to which there was some uncomfortable laughter and Mr Robinson may have gestured with his hand to say, in effect "steady" (which the claimant did not observe), although she observed the union representative gesture.

134 Later the same representative referred to having to take a "Portgugese shower", meaning no shower at all but a freshen up; the claimant discussed with Mr Parkinson and Mr Robinson the need to raise both these matters this with the union representative and after discussion, they agreed she should.

135 The claimant alleged Mr Parkinson and Robinson were reluctant for her to do so and asked her what had happened in her life that she didn't have a sense of humour. She also alleged that Mr Parkinson and Ms Finnegan had said that Mr Robinson returned the salute (or made a similar gestrure). Mr Parkinson and Mr Robinson ultimately accepted she should raise it and she did and the representative was apologetic. Mr Parkinson and Mr Robinson denied the discussion about the claimant's sense of humour.

136 This allegation was made consistently in these proceedings, but not in the grievance; the claimant stood her ground during cross examination. Ms Finnegan, Mr Parkinson and Mr Robinson all gave consistent evidence about what prompted the representative's gesture; the rest of their evidence was less well recalled or consistent (about where conversations were had and who was present). On balance we consider Mr Parkinson and Mr Robinson had reservations about the matter being raised (because of the overarching industrial relations issues being navigated at that time), but they agreed ultimately and the claimant secured the representative's apology.

137 We do not consider either Ms Finnegan or Mr Parkinson told the claimant Mr Robinson also performed a nazi salute. He did not. We do not consider the claimant was subject to the personalised opposition she describes and her recollection is mistaken. This example illustrates the difficulties of stale allegations: recollections years after an event can be inherently unreliable and difficult to decipher and we fall back on inherent liklihood. Had such personal, hostile comments been made, the claimant would have documented or raised them.

<u>The STD[6] presentation allegation</u>

138 In August or September of 2015, the claimant alleged during a presentation about public health and STDs, that Mr Parkinson, stting next to her, muttered the name of a female colleague in jest, and then texted this to Mr Robinson who laughed; this allegation was made by the claimant for the first time in her witness statement.

139 Both Mr Parkinson and Mr Robinson denied it, not least because of an abhorrence of texting and telephones in meetings. The claimant's belief was based on speculation – she had no sight of the alleged text. There was no disclosure to assist with this allegation. There was no contemporaneous record, and it was during a time when the relationship between the claimant and Mr Parkinson was strained.

140 If it occurred, as vulgar humour, it crossed a line; it was also discourteous to the presenter. The claimant had in the past raised similar matters but she did not do so on this occasion, notwithstanding her role.

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[6] sexually transmitted deseases

141 In these circumstances was it more likely than not to have occurred, or was it more likely that the claimant was mistaken? Taking into account Mr Parkinson's raising of the snoop dog lyric issue, and the humour line allegedly being crossed, we consider that the balance tips against the claimant on this allegation. We do not accept it occurred.

"Posh birds" and "good morning gentlemen"

142 In the first three weeks of November 2015, after a candidate appointment process, Mr Robinson said, with the claimant and others present, "is that two posh birds in LMT". The context was Ms Broad using the term "posh bird from the south" about herself when she first met Mr Robinson (Ms Broad was also a tennis player and "no shirinking violet" as Mr Robinson said consistently). She returned from escorting the candidate being very positive, having said the candidate also had a horse, which prompted Mr Robinson's remark.

143 When Mr Robinson said those words it was apprarent to him that the claimant was not happy. His response in cross examination was also instructive: if Ms Broad had had an issue, she would have taken it up and that the term was coined by Ms Broad herself. There was no recognition on his part that humour, wherever it is directed or its origins, can have an impact on others present.

144 Mr Robinson also accepted that on occasions he would open meetings of the leadership management team ("LMT") on which the claimant and Ms Broad sat, with "good morning gentlemen"; simiilalrly when he had worked in social care with very few male colleagues, he had said "good morning ladies" and was aware that the same group would use "guys" as the collective term without difficulty.

The financial context for the merger of posts

145 One disadvantage of not having Mr Slocombe's evidence was the clarity with which the financial context for senior departures could be understood by the Tribunal, although we read that Mr Parkinson had been an accountant in one role[7]. Notwithstanding the austerity context, the respondent's case, as put to the claimant was not, that the merger saved money, but rather that it was operationally necessary to address perceived hindrances in having the functions split across two directors. Yet one of the reasons the dismissal decision was taken was elected members' belief that the merger of posts saved money. The Tribunal therefore considered the financial context relevant background and relevant to the credibility and reliability of Mr Parkinson and Mr Robinson.

146 Mr Robinson's oral evidence was that £10million was saved during the austerity period, and that medium term financial planning anticipated even lower "back office" costs, suggesting savings in in the areas of finance and governance. His reports to council about the Christmas 2015 Management Review (reporting the merger proposal and new management structure) included the context of the 2017 Tees Valley mayoral election, and the potential impact on the respondent's remit and resourcing. Going forward Mr Parkinson said in oral evidence that since the merger, the gap in the respondent's funding position has been reduced by £17 million and there are other indicators of it having proved a success.

147 As to redundancy costs, Mr Parkinson said that they were funded from a separately held budget; the working assumption for senior departures was that a

[7] 1659

redundancy cost should pay back over two years (so if exit/redundancy costs are £20,000, the revenue saving of salary, national insurance, pension and so on would be £10,000 per anum). The scrutiny of such matters lay with a signature from the chief finance officer and the leadership management team; on occasions a longer pay back period for exit payments could be approved. Reports to elected members on occasions have been made, but generally scrutiny of the financial impact of redundancies lay with the senior management team and chief finance officer.

148 This contrasted with information to the grievance investigation to the effect that departures required a three year pay back[8].

149 Mr Bloundelle chaired the council meeting at which the decision was made to delete the claimant's post, resulting in her dismissal. He gave evidence that amongst the reasons to approve the proposal was that savings would be made. Mr Parkinson's oral evidence was that he did not see any savings by the merger because any salary saving would be extinguished by spending below the level of the merged post. That difference of understanding between a councillor and an acting chief executive appeared surprising, given the overarching austerity context. Mr Parkinson said that the money had not yet been spent on increasing resource lower down.

150 Mr Parkinson's original paper to Mr Robinson included approximate savings in salary cost of £70,000, even allowing for the £10,000 reinvestment in the tier below (page 861).

151 The report to the elected members before Christmas 2015 specified savings of £116,000 (page 979) but did not specify whether these were as a result of the new children's directorate/adult social care demerger, or the governance/finance merger. A statement by the mayor was similarly general as to savings (993).

152 Finally, the chief executive's report to the members on 16 March 2016 (which immediately preceded notice of dismissal being given to the claimant) specified savings anticipated by the governance/finance merger as £80,000, with a caveat about a future review. The claimant's redundancy payment was £35, 213 (1260). The Tribunal heard no evidence about payments to Mr Slocombe.

153 In draft answers to a potential members' question, "how much will this cost the Council", the draft answer from Messrs Parkinson/Robinson was: "any staff are entitled to receive their statutory redundancy payments on termination of contract", which was no answer. When a Unison shop steward asked for clarity (1049) on the redundancy cost, again there was no answer from Mr Parkinson, but instead a defensive and intemperate response.

154 In short, Mr Bloundelle was proven a good historian in his recollection of having been told savings would be made. Mr Parkinson was inconsistent in his oral evidence in comparison with the relevant documents, documents for which he was responsible or had great involvement: he might have been expected to be very clear and consistent.

155 This came at the end of Mr Parkinson's lengthy and disrupted oral evidence, whilst dealing with a question to the effect that council tax payers might have expected him to pursue potential capability or conduct dismissal of the claimant on the basis of

[8] MR 1589

the "November note" [9]. Fatigue may have impacted his recollection of the financial context.

The claimant's job evaluation/pay context

156 In June 2013 Mr Parkinson, in his capacity as the claimant's manager, supported Ms Rollings in providing information for a job evaluation process by an independent third party. This resulted in an increase in the claimant's job evaluation score for previous years (and potentially therefore grade and salary).

157 As a result of the overarching austerity climate and the counterveiling structural changes, Ms Rollings agreed with the claimant that the cash amount of the consequent back pay would be taken in holiday with an £85,000 salary going forward.

158 Just before Ms Rollings retired, the claimant wrote to her asking for full implementation of the new job evaluation score going forward. Mr Robinson succeeded Ms Rolings as chief executive in April 2014. Ms Schofield forwarded to him and Mr Parkinson email trails between concerning the 2013 job evaluation involving Mr Brodie, the independent external evaluator, in order to address that question.

159 In late April 2014 during meetings between Ms Schofield and Mr Robinson, the claimant's job evaluation score for her new post in the new structure was reduced, resulting in future reduced pay (see reasons for withdrawal of the sex discrimination complaints above).

The football match convicition - 2 May 2014

160 Shortly after Mr Robinson's appointment, mid morning on 2 May 2014, a manager alerted human resources to a press report of the conviction of a council employee for ripping up a Koran at a football match; Ms Finnegan forwarded and alerted the claimant; advice was given about following the council's disciplinary process; the claimant forwarded the matter to Mr Robinson for information; by noon he reacted to Ms Finnegan to say he assumed suspension would take place, but asking also about instant dismissal; he was given advice by Ms Finnegan and the claimant to the effect that the council's disciplinary process should be followed; he pushed back on that advice wishing a "shoot first ask questions later" approach and seeking confirmation from the press office about whether comment was sought from the council; in response the claimant asked by email at 14.09 for him to call her; he emailed that was difficult (he was with family on leave), resulting in their conversation continuing by email. The claimant advised him a suspension letter had been sent and due process would be followed or words to that effect.

161 The claimant then asserted Mr Robinson made a telephone call to her (immediately after her email at 14.51pm); was displeased, told the claimant to find a way to dismiss the employee, to change her advice; and that he could not be seen to act against it. (He had earlier asked Ms Finnegan by email "can you find a way?" (for instant dismissal). Mr Robinson denied that call.

162 At 15.06 Mr Robinson sent a temperate email to the claimant, thanking her for the advice, posing some further questions, wishing a good weekend, and saying they could pick it up on Tuesday given the suspension letter had gone out. Telephone records supported Mr Robinson's account that the incoming call to the claimant between 14.51pm and 15.06pm did not happen. The Tribunal on balance considers

[9] 1887 to 1889, a two page note criticising the claimant's conduct and capability, authored by Mr Parkinson and typed by their joint PA on 16 November 2015

that assertion was mistaken and that Mr Robinson's denial on that matter is to be preferred.

163 When this matter arose Mr Robinson was celebrating with family in London on leave. His last email to the claimant, included this: "surely we have sufficient to investigate in an hour and determine an outcome? Let her challenge us. We can pick up Tuesday given a letter has gone out. Have a good weekend and see you next week. Cheers. "

Meeting on 6 May 2014

164 On the morning of Tuesday 6 May Mr Robinson asked his PA to put in a 15 minute meeting with the claimant in the afternoon, with the subject apply heading monitoring officer role, which she attended.

165 The claimant's account of that meeting was troubling; she asserted that Mr Robinson opened with a criticism and discussion of why the claimant could not have given him different advice about the football supporter and "just sacked her"; and asserted that Mr Robinson said if she did not start giving him the advice he wanted "he would dismiss me, or at the very least ensure that my monitoring officer responsibilities were removed".

166 The claimant said she did not keep a note of that meeting, report it, or otherwise make a record, or take any action, notwithstanding her monitoring officer role.

167 She said no more came of it (she retained the monitoring officer role) because by the time they met again on 8 May, Mr Robinson had accepted her advice having spoken to the football club concerned.

168 Mr Robinson's evidence was very different. A "peer chief executive" had highlighted to him on 30 April the difficulty of a monitoring officer post held two tiers below chief executive level (that had a ring of truth about it given his recent focus on management structure and job evaluation). He had wanted to speak to the claimant about it. He asked his PA to organise a meeting. His diary showed a meeting for 15 minutes on Tuesday 6 May in the afternoon; but the invite was only sent that morning, that is, after the football supporter incident occurring the previous Friday, rather than immediately following 30 April.

169 Mr Robinson said his contemporaneous note of the meeting was accurate. The note relayed a discussion about the monitoring officer role, in response to which the claimant accused him of victimisation such that he felt the need to document the discussion, and insist that she withdraw her comment. They then met again in the next day or so. His note of the second meeting said this:

170 7 May: "We will leave monitoring officer role with you but it must be clear you will report directly to Tony except where inappropriate….We need to find a more effective way to communicate… I considered your choice of language to be mildy threatening and not the mature tenor that I would expect from leadership team. You made several proper process references to me around consultation etc but you have accepted promotion in the past without, what some would deem, proper process. I wonder if there is an adequate sense of reciprocity? I would like you to reflect on these matters as we continue to develop the relationships we need to have".

171 Mr Robinson's evidence about these meetings came from three sources: in chief in his statement; in cross examination by Mrs Dalzell; and in response to the Tribunal's questions.

172 The Tribunal considered his sworn witness statement concerning the reasons for a meeting with the claimant on 6 May 2014 to be inconsistent with the contemporaneous notes and diary entry at the time.

173 The heading in the relevant paragraph of the statement referred to "Returning Officer Role", and talked about the challenges of elections to take place in a year's time; the note (696) talked about challenges to the monitoring officer role in a year coming up to elections. During cross examination Mr Robinson stood by his statement but said he recalled both monitoring officer and returning officer were discussed, and the note was perhaps not complete. In answers to the Tribunal he said that he meant that they would also discuss the returning officer role but due to the claimant's reaction they did not get to it.

174 On balance the Tribunal considers the truth lies somewhere between the two protagonists. We consider it inherently likely, in the context of the football supporter incident the previous Friday, that the 6 May meeting opened with a discussion about that, and it is inherently likely Mr Robinson was robust to the effect that he had wanted more decisive advice. The Tribunal does not consider he threatened to dismiss the claimant, but he did go on to talk about removal of the monitoring officer role. He had other reasons for wishing to discuss that, inherent structural ones, but the claimant linked the two and the meeting became fractious. It is also trite to say that Mr Robinson was taken aback and did neither of the things he had contemplated but made a rather defensive note. He did not reallocate the monitoring officer or returning officer roles and he told the claimant that when they met on 7 or 8 May. Even on the claimant's evidence Mr Robinson had said:" perhaps you are the right person to be monitoring officer", no doubt because she had been robust in challenging him and had highlighted due process issues.

175 As to proper processes and reciprocity, Mr Robinson said in evidence that he was referring to the claimant's appointment to the assistant chief executive role under Mr Parker: Mr Slocombe and Mr Long had not had the opportunity to apply. His point to the claimant was that she might reflect on whether to insist on a proper process if the monitoring officer role was to be removed, because she had benefitted from the assistant chief executive appointment without proper process.

176 Some would describe that as "give and take" in management dealings; others, would say two wrongs do not make a right and a culture of "reciprocity" can be toxic. The comment does not reflect well on Mr Robinson indicating, as it does, an expectation of reciprocal tolerance of unfair dealing in this context. Nevertheless, neither 2 May nor 6 May 2014 amounted to bullyng of the claimant. She stood her ground in matters arising eighteen months before the proposal to dismiss her. The Tribunal took into account that her dismissal case included, in essence, that she would not "reciprocate" when asked.

Outcome of job evaluation

177 On 19 May 2014 Mr Robinson wrote to the claimant to confirm with her and the outcome of a new job evaluation exercise undertaken for the senior management team since the implementation of various changes (phase 3).

178 The process for that job evaluation exercise had involved again an independent panel overseen by Ms Schofield who acted as liaison and provided advice on the exercise for those most senior officers of the council. There was discussion and liaison between Ms Schofield and the independent panel.

179 Unknown to the claimant and others there had been a final approval given by Mr Robinson to the various scores, which involved him meeting Ms Schofield to review them in April. Their discussions resulted in subtle changes which resulted in the claimant's post being job evaluated at a lower band because a change resulted in the loss of 60 points. This placed the claimant in the pay band, assistant director (second tier), on a salary of £75,000.

180 Through the summer of 2014 there was correspondence between Mr Robinson and Mr Pakinson and the claimant about hew new post and lower salary, which she did not accept straight away, but sought reassurance about the fairness of the process.

181 The claimant was not told of the extra step of Mr Robinson's/Mrs Schofield's final scores adjustments, but simply that the scores were externally ratified. She accepted the post and evaluation on the basis of the assurances given. Her new post (Assistant Director of Organisation and Governance) and salary were accepted with effect from 7 January 2015.

The claimant's advice about the public recording of council meetings

182 In July 2014 Mr Robinson and Mr Parkinson liased directly with Mr Roberts (who reported to the claimant) concerning an illicit recording of a council meeting. They proposed exclusion of members the public for a year. They asked the claimant to join them having devised that solution; she expressed her concerns and the need for further legal advice, which when taken prevented that solution. The council later settled upon making its own recordings and publishing those for the public to see.

183 This incident was said to be an act of sex discrimination (withdrawn). The claimant took offence at being excluded from the initial meeting, being asked to join it, and being presented with a fait accompli with which she properly took issue. There was no hint of any difficulty expressed or noted at the time, or criticism to be levelled at anyone for accessing Mr Roberts' advice as deputy before running it past the claimant.

184 For the claimant to consider this undesireable struck the Tribunal as instructive of the claimant's preference for clear hierarchy and boundaries to be observed in dealings with her direct reports and nothing more. She would have wished to be included from the outset of the meeting. Messrs Robinson and Parkinson were perhaps more focussed on having the solution they wanted approved, and took a direct path to the laywer; they perhaps saw that course as less likely to encounter resistance, ultimately without success.

185 Around that time Mr Robinson had congratulated the claimant on her work with the coroners service: "brilliant story in the gazette Karen, about enhancing public confidence and reputation of the council – fantastic, thanks. Superb work. Worth making sure it gets in the exec members report to council. Cheers".

186 On 19 September 2014 the claimant completed her mid term appraisal documentation, self assessing her performance well, and ending: "The Leadership Team is functioning well and I am pleased that I can contribute in this forum, this is helping break down some of the traditional barriers that have existed between corporate and service departments[10]."

The beginning of the property disposal issues

[10] 1698-1702

187 The claimant's case is that due to her tenacity on property matters a campaign began to seek reasons for her dismissal commencing with the Fletcher investigation;. She expressly links the delivery of her property report with Mr Parkinson's anger about the Fletcher matter. That anger was not really in dispute. However, the chronology and surrounding events do not support the link to the property disposal matters; these matters were entirely separate.

Acklam Hall

188 2015 was going to be a difficult year in which to manage the respondent's reputation. In or around November 2014 a social media campaign began concerning suggestions that the council had not secured market value for a Grade 1 listed building, Acklam Hall, put up for sale in 2007 with a sale completed in July 2014; the campaign's concern was to the effect that something untoward had taken place. It was reported to DCLG and the respondent's external auditors Deloittes were involved. There were a number of elements to the criticisms including a price reduction, and that a price per acre of hundreds of thousands of pounds was not achieved, when it should have been. Mr Robinson initially briefed the claimant confidentially in her monitoring officer role, but also asked her to undertake a review from a governance perspective.

189 Mr Parkinson initially reviewed the decision making and produced a "decision table". He was happy that there was nothing untoward indicating corruption, but a price reduction did not appear to have the required delegated authority enabling council officers, rather than elected members, to make the decision. The claimant alleged he told her the Mayor and Mr Robinson wanted the lack of delegation covering up and she needed to find a way to hide it, and that Mr Parkes had completely screwed up.

190 There was no date fixed for this alleged conversation; Mr Parkinson had done the initial work. He knew that there were minutes of a committee meeting where the price reduction had been agreed. There was perhaps a process issue, but the reduction was documented. If this was said, it is exactly the conduct the claimant should have reported. The claimant said she did not report or note it because she then found a delegation which Mr Parkinson had not found. This was at a time when the claimant had been in correspondence about her salary and post and she was facing a salary reduction. If something improper was being suggested to her, her duty was to point that out, challenge it, and if necessary report it. It does not ring true to say that she feared for her job, when on other occasions, which posed less of a threat to the highest standards in public service, (the one off union representative remark about a portugese shower, for example), she stood her ground and challenged the conduct.

191 Mr Parkinson denied these comments. His position was that he commissioned the reports, did the intitial work, and wanted to be transparent. We consider it inherently likely that he said Mr Parkes had totally screwed up – or words to that effect – given his straight talking and reputation for holding others to account, and his belief that there was no delegation, such that there had been, to use the euphemism, a "screw up" somewhere along the line[11]. On the balance of probability however, we do not consider that he made the other comments attributed to him by the claimant, not least because covering up the failures was not consistent with the commissioning of an internal audit report or the claimant's report.

The "lessons learnt" report and the "brown envelopes" allegation

[11] see also 1801 for reliable contemporaneous evidence of similar

192 The claimant was asked by Mr Robinson to undertake a "lessons learnt" report on these matters and she liased with Deloittes about her terms of reference, which were to be referenced in their external audit report to the year end March 2015. The external audit report for the 14/15 year was not to be available until September 2015, but was being discussed with Deloittes that Summer.

193 The claimant went to see Mr Parkes to let him know she had been asked to do the lessons learnt report. He alleged she said: "for all I know you've probably been taking brown envelopes" and when he asked what she meant, she said he would have to prove he hadn't. The claimant denied these comments. They were relevant to the respondent's implicit case that far from being bullied, the claimant was quite capable of being inappropriate and brutal herself; they also went to the credibility and reliability of the claimant and Mr Parkes.

194 The evidence of Mr Parkes, Mr Robinson and Mr Parkinson on this matter was confusing. Mr Parkes said he went to see Mr Parkinson straight away to protest, who referred him to Mr Robinson, whom he saw the next day.

195 Yet Mr Parkes did not tell either of them about this alleged comment, despite it being said to be deeply offensive. All Mr Robinson could recall was that Mr Parkes had complained the claimant was not taking his comments on board, which suggests a complaint after the first draft report was available (May) rather than January. Mr Parkes also did not accept in cross examination that if the claimant had made the alleged comment, he would not have considered himself inappropriate to conduct the later Fletcher investigation into her conduct. His response was to the effect that he could rely on his own professionalism in such circumstances, which should not be questioned (by Mrs Dalzell).

196 Mr Parkes did not mention this comment during the grievance investigation either, when he said this about the claimant: "I am not sure if KW trusted me and I felt guarded with her as she rarely saw the positive in things or people. I thought KW revelled in other people's failure and making flippant comments about bad situations eg her reference to someone's heart attack I thought was quite brutal".

197 Nor did Mr Parkes raise the brown envelopes comment during his meeting with the claimant as part of the Fletcher investigation; had the brown envelopes exchange occurred, he may well have "pushed back" a little on the claimant's assertion of inappropriate behaviour by Mr Parkinson, and raised her own alleged conduct towards him. There were simply no contemporaneous references to the remark at all.

198 Despite all this, why would he give evidence against his own reputation? Again the Tribunal falls back on the inherent likelihood, or not, of what was asserted; and we take into account Mr Parkes' combative, as opposed to relaxed demeanour; the asserted comment was certainly a "flippant comment about a bad situation"; but on balance, we do not consider it was said.

Further cover up allegations

199 While the claimant was working on her report, Tees Valley Audit and Assurance Services (TVAAS), which provided internal audit services to the respondent, was commissioned to investigate Project/Programme Management by reference to sample transactions including Acklam Hall. That work was also underway in the Spring and early Summer. At some point TVAAS also issued a separate value for money report ("vfm") for Acklam Hall only, which was annexed to the claimant's report, and into which Mr Parkes had significant input; that report concluded it could give "moderate assurance" that vfm had been achieved in the disposal of Acklam Hall.

200 The claimant alleged that in January 2015 when she informed Mr Robinson that she had found the relevant delegation but there was no evidence that anyone had known about it, she was asked not to include that matter and was told she may not be the right person to be monitoring officer when she resisted. That allegation was denied by Mr Robinson.

201 Mr Robinson instead alleged that the claimant had looked gleeful when she came to see him and said " you are going to have to sack Kevin" (Mr Parkes). Mr Parkinson also alleged that the claimant said to him " we are going to get Kevin sacked", coming into his room smiling on an unspecified day. The claimant denied both these allegations. Mr Robinson said he responded to the "sack Kevin" comment to him, with the need for transparency and that he was not looking to sack anyone, or words to that effect.

202 We have found that it was Mr Parkinson who said Mr Parkes "had screwed up". In that context, and the remit of the report, it is inherently less likely that the claimant suggested or referred to "sacking Kevin" to either Mr Parkinson or Mr Robinson; we also noted that Mr Parkinson did not include any criticism about that in his later critique of the claimant, the "November note".

203 The claimant also alleged that Mr Parkinson came to her to ask her to do what the chief executive wanted and so on, effectively further bullying after that encounter, which she also resisted.

204 None of these allegations sit well with the brief for the report, "lessons learnt", or later comments, marks ups and progress. The first draft of the report was ready by May 2015. "Nobody knew about the delegation" was characterised by the claimant in that report as "the decision making process lacked clarity and was poorly recorded". In that respect her report pulled no punches, but she did not seek to attribute blame or single out individuals.

205 Equally the claimant's January allegations about bullying and cover up (and the "sack Kevin" allegations) do not sit well with the claimant's appraisal in April 2015 which had a favourable outcome overall with no mention of these matters.

206 The claimant's general observation was that Mr Parkinson made more threats than Mr Robinson, but in each case they were made in private with nobody present; on paper Mr Robinson made efforts to appear affable, it was said.

207 This amounts to: whatever the paper record shows, underneath I was subject to threats. It is one thing to keep one's head down, and "play the game" in the face of what might be called ordinary, personal, workplace bullying; it is of another scale to fail to report attempts to cover up organisational failure (for that is what is asserted); if the claimant's allegations are right, Messrs Parkinson and Robinson were prepared to go far beyond due care and attention for the respondent's reputation, and the public and elected members were at risk of being misled (this was characterised in cross examination as "the end of the rule of law in Middlesbrough").

208 Accepting that the "he would deny wouldn't he" principle is in play in relation to these allegations, and acknowledging the general impressions and qualifications to the reliability and credibility of the three protagonists expressed above, we do not on the balance of probabilities accept these January 2015 comments were made on either side: in relation to Acklam Hall the claimant did not make reference to "sacking Kevin" and Messrs Robinson/Parkinson did not ask her or bully her to hide the lack of delegation awareness.

Performance issues highlighted in Mr Parkinson's directorate ("CCS")

209 In March 2015 Mr Robinson wrote formally to Mr Parkinson to record the need for his directorate to address the timely provisions of reports and slippage in ICT, Change Progamme and Capital spend. Mr Parkinson responded with an action plan containing 48 actions for his directorate[12], and he implemented that with the claimant and his other direct reports. He also met with the claimant and Mr Fletcher to emphasise the need to deliver on ICT.

The Training and Development ("TAD") Centre

210 This was an asset disposal issue. The claimant alleged that in early March 2015 Mr Parkinson had said he did not want substantive input from the claimant about value in a report recommending the disposal of this property to an associate of the then mayor, simply advice about the decision making process; and after a committee meeting he aggressively accused her of talking to members to discourage approval of his report.

211 She alleged the respondent had not disclosed emails relevant to this allegation, but this was not put to Mr Parkinson. He denied any aggression or anything untoward about these discussions. The Tribunal accepts there was a discussion about the report, and what input the claimant should have; after members postponed the disposal Mr Parkinson may well have asked whether the claimant had influenced them. Robust communication was not unusual for Mr Parkinson, but this was ordinary, day to day conduct of the business of the council by senior colleagues.

The mayoral candidate issue

212 During the preparations for the Mayoral and general elections correspondence was received by the council about a particular candidate and whether he met the crirteria. Mr Robinson became directly involved because the Mayor and others were much exercised by the issue and wanted the candidate to be disqualified. He asked the claimant to look into it and the claimant's advice was that the candidate remained on the ballot paper.

213 Mr Robinson challenged that advice because he was under pressure from other candidates and political groups. The claimant advised it was a matter for the police. Mr Robinson liased with a senior police officer and began taking notes of any actions on the matter each day by way of audit trail. He asked the claimant to check her advice with the audit commission, which she did. The claimant alleged that some of these conversations were robust, with Mr Robinson wanting decisive action (this is a theme and the Tribunal accepts it); however the claimant stood her ground, was proven right and Mr Robinson thanked her for her thorough approach.

214 There was no hint of sour grapes after such exchanges. The claimant alleges that Mr Robinson had said in one exchange that perhaps she was not the right person to be returning officer; he may well have said that in frustration; in the same way he had said perhaps she **was** the right person to be monitoring officer. These utterances were of no consequence; they were "sounding off" on both occasions following necessarily challenging exchanges with the parties under pressure.

215 A theme of Mr Robinson's leadership was a desire for decisive action, or results, which put the council in the best light, particularly in the local press; the claimant's approach was considered, careful, detailed, and saying "no" or "speaking

[12] see Mr Robinson's cross examination concerning Mr Parkinson's proposal

truth" to power. Frustration is to be expected in such discussions, but Mr Robinson regarded the claimant as a good senior member of the management team.

April to June 2015

216 In April the claimant's performance review was begun with Mr Parkinson; there was a meeting and he recorded comments; targets were set for the coming fiscal year including the elections In May, a TUPE transfer of staff, and adherence to budget reduction targets. The Agresso ICT project, which was overdue, was noted as a failing, but Mr Parkinson arranged for the three relevant directors to gain a Managing Sucessful Programmes qualification (that was the claimant, Mr Slocombe and Mr Fletcher).

217 The May election proceeded with the claimant announcing the results, but with all senior management hands (and others) to the pump to complete the various counts. There was a sense from those present that the claimant had not been visibly on the ground managing staff as might have been expected. She was appreciative of the assistance from colleagues.

218 The claimant also completed the first draft of her "lessons learned" report in May and circulated this; it did not address any other property disposals. in June the claimant was chasing Mr Parkes for comments; he complained at some point to Mr Robinson that the claimant did not appear to be taking his content on board.

219 After the election Mr Parkinson returned the claimant's appraisal. He made favourable comments for which the claimant thanked him: "hi Tony, thanks and thanks for the comments, much appreciated" on 4 June. The claimant says Mr Robinson gave a false impression of affability in documents; this appraisal exchange also indicates functionality and affability between the claimant and Mr Parksinson at this time; and we consider their relationship was indeed functional at that time.

220 Also by June there had been further informal discussions between Mr Parkinson and the claimant and Mr Slocombe; it was clear Mr Slocombe's team were responsible for the late reporting issues highlighted by Mr Robinson; and Mr Parkinson charged the claimant with delivery on Progamme and Project governance, evidenced by slippage. He wrote to them both to confirm matters on 11 June when the election was behind them.

221 The context for these formal performance letters is that dismissal for capability for chief officers requires the appointment of an independent person, a path never undertaken by the respondent. Instead performance issues were put on record, if necessary in correspondence, for remedial action, but outwith any procedure which might lead to dismissal. The claimant later provided a response to Mr Parkinson's letter to her, albeit the following events had overtaken matters to some extent.

Gilkes Street

222 In June the claimant had further discussions with Deloittes about whether she should look at further property disposals in her report. She discussed that with Mr Parksinon and he said to leave it to internal audit; his reasons included to avoid duplication.

223 One of those properties was "Gilkes Street". It had historic issues in the procurement process picked up by Mr Slocombe and there had been a re-tender, with a sale approved to someone known to the previous mayor. There were said to be issues picked up by others in the second sale process also. The claimant expected those to be reflected in the internal audit report.

The Fletcher job evaluation

224 Austerity affected all tiers of management and consutlations were underway from the Auumn of 2014. Between October 2014 and around 3 July 2015 the post of Head of ICT and Capital Programmes, which reported to the claimant was de facto occupied by Mr Fletcher, whom the claimant had worked with on the Building Schools for the Future project in previous years. Like other "Heads of" posts reporting to her, in the new structure, the post was graded at "Q", with the consequent salary banding. Mr Fletcher was an architect; he had taken on ICT initially in 2012 as maternity cover when Ms Coxon was on maternity leave; he had also taken on various matters during the sheding of other staff, with his grade remaining at Q.

225 Ms Coxon was also on maternity leave and a grade below Mr Fletcher when the 14/15 restructure impacted. She suggested she was better aligned to the claimant's ICT directorate area than Mr Slocombe's procurement area. That was accepted in October 2014 and she nominally joined the department with her existing job role. She was a potential ring fenced competitor for Mr Fletcher's post.

226 A selection panel for the post rejected her application on 9 December. She then appealed. Meanwhile Mr Fletcher, supported by the claimant, had appealed the job evaluation of the post, attending an appeal hearing on 20 January with the result that the post was re-graded to "S", that is two grades higher.

227 Ms Coxon's appeal against her rejection was then dismissed by Mr Parkinson using the job description for the ICT post in his deliberations on or around 25 February. Unfortunately that job description did not identify the regrade to S.

228 The claimant gave Ms Coxon notice to terminate her employment on or around 3 March 2015. There was subsequently a settlement agreement: the claimant had found an alternative post as a strategic asset manager for her in Mr Punton's area but he could not be persuaded to appoint Ms Coxon and Mr Parkinson approved settlement.

229 Mr Fletcher commenced on the new grade and salary in March, and a letter confirming that to him was provided. He received back pay to October when the original evaluation was done. Heads of Service in Ms Broad's area were graded Q; but some Heads of Service in the Council were on higher grades.

230 Job evaluation exercises for existing posts could be appealed, but the grading of new posts fixed in the structure were not allowed to be appealed for at least six months. Mr Fletcher's position was that the post was an exsiting post and he was supported in his appeal by the claimant.

231 Mrs Schofield had not been aware of the re-grade: a "Chinese wall" had been in place for job evaluations concerning posts reporting to the claimant, and it had been coordinated by a third party provider colleague. The claimant had not told Mr Parkinson about the appeal of the grade, or the outcome, and neither had anyone else. The budget for the post was split between Mr Parkinson's direct remit and that of the claimant.

232 On 2 July, the day before the claimant's last day before she went on two weeks' leave, Mr Parkinson was told by a colleague, possibly Ms Broad, about the Fletcher re-grade. He was angry that he had not known for many reasons: as part of a restructure designed to save money Mr Fletcher appeared to have secured a backdated pay rise part funded from Mr Parkinson's budget without his knowledge; that was in the context of ICT being an area where there were delivery problems and his determination of the

Coxon appeal when he had not known the grade was subject to change; also he considered the "Heads Of" posts in Ms Broad's department to carry more responsibility and they had not been re-graded.

233 Mr Parkinson asked to see the claimant before she went on leave on 3 July; his anger at not being informed was apparent; he said the job evaluation panel had been misled, the situation was a disaster or words to that effect which may have included swearing; and he held the claimant responsible. The claimant did not accept the criticism; she refered to the ICT job description she had provided for the Coxon appeal, that she had not misled the panel, in response to which Mr Parkinson asserted she was incompetent, which she also rejected. Mr Parkinson said Mr Fletcher's pay increase would be clawed back or taken away, or words to that effect. The claimant said she was unsure what Mr Parkinson wished to be informed about, and that he had seen some information.

234 The claimant said she would provide chapter and verse on return from leave. Mr Parkinson then saw Mr Fletcher; that encounter is best described in an email to the claimant's personal email account from his mobile telephone:

"Apologies for contacting you on holiday but I have serious concerns around a meeting I attended with Tony this morning.

I was told he spoke with you on Friday regarding my job evaluation process. He is determined to have a full review audit carried out becaue he believes I gave misleading info and I could not get a JE while I was still under threat of redundancy and then get back pay because of it.

His attitude stunk, he told me I should have been made redundant at the end of BSF and basically why do I think it's appropriate for me to be the highest paid officer below LMT. I presume he failed to count John Shiels and Lousie Grabham ect in that statement.

In his words this is the biggest Fxxk up ever both you and I will be investigated.

I would appreciate what you know on this please as clearly I am either getting forced out or expcted to leave?

Apologies again but I am sure you understand my concern."

235 The Tribunal was not made aware of a reply to that email from the claimant. The impact of that meeting on Mr Fletcher is instructive, given that there had been "holding to account" meetings about ICT with Mr Parkinson earlier after the March performance letter, with no such impact. On this occasion Mr Parkinson had gone beyond his ordinary reputation for holding people to account; he had, to use the colloquialism, gone off the deep end: he had done so spontaneously and angrily in response to the information from Ms Broad; his ire was directed at both the claimant and Mr Fletcher.

236 Consequently Mr Parkinson did not wait for the claimant's chapter and verse explanation. He had formed a view, based on the notes of the job evaluation appeal, that the panel had been misled by the claimant and Mr Fletcher, because he disagreed with some of the statements made about delivery and responsibility for capital projects, in contrast to a role only monitoring those projects. He and the claimant also held a different view as to whether the post was "a new post" or "an existing post".

237 By 8 July he had written to both the claimant and Mr Fletcher saying Mr Parkes would undertake an investigation; he had also reported it to Mr Robinson. Mr Fletcher and the claimant separately prepared detailed notes of the chain of events. After

taking HR advice, Mr Parkinson confimed to Mr Fletcher that no steps would be taken to recover monies.

Further TAD developments

238 This disposal had been postponed by the committee in March; further work was to be undertaken on valuation; it came back in July and again in August; and Mr Roberts became involved, because the legal advice in connection with the correctness of the proposed sale process had not been in writing, and was based on Mr Parkinson's summary that: "the Council was neither in breach of protocol, nor at risk to any form of challenge going forward". Mr Roberts expressed his reservation about the unequivocal nature of that summary (unlikely to have been given by a lawyer he said), and requested that such reports referencing legal advice be copied to his department in future.

239 The claimant said she was placed under considerable pressure to withdraw her insistence on proper process concerning the protrarayal of that legal advice to the decision makers: Mr Parkinson said allegedly, "the Mayor just wants it sold". Mr Parkinson denied that conversation.

240 Mr Parkinson had sought further advice himself concerning a late bid and was satisfied there was no need to consider the late bid; he agreed the solution was for the attendance of Mr Roberts at a subsequent scrutiny meeting (to take place early in 2016) to provide the legal advice directly to elected members if required. The claimant was later told that Mr Roberts had not addressed the point (and the minutes are silent on it). She draws an inference that her insistence on proper legal advice to the committee and members was part of Mr Parkinson's reason for dismissal.

241 It struck the Tribunal as no insignificant matter that a body of the elected members sought scrutiny of this disposal decision of the respondent by committee. Their concerns included that the orginal bidders had not all been told the desired use was commercial, and only the preferred bidder had this information; and that best value had not been achieved. This was their role: to hold the relevant sub committee to account. And that process took its course.

242 It was no doubt a source of regret to Mr Parkinson that the sale was delayed, but the claimant's position in that was supported by Mr Roberts. The mayor may well have wanted the asset sold once a decision was made to sell it; Mr Parkinson may well have said that; but that gives rise to no inference of impropriety or that Mr Parkinson was troubled by the claimant doing her job on this matter. She did her job and if the elected members had concerns, no doubt they could properly have influenced and determined the outcome; just as the claimant could have stopped the sale had she detected illegality or impropriety herself in her monitoring officer role.

243 The Tribunal noted that Mr Parkinson did not appear to take detrimental action towards Mr Roberts as a result of these delays: Mr Roberts had also acted to ensure legal advice was not misrepresented.

July to September

244 Before her departure on holiday, the claimant had produced a version, said to be final, of her lessons learnt report and circulated this; having collected comments from Mr Parkes and others.

245 When the claimant returned from leave it was clear that internal audit (TVAAS) had expressed their opinon on programme management as a whole at the respondent as follows: "TVAAS considers there to be a **cause for concern** in relation to the areas

examined. Weak management of risk exists within these key areas that are crucial to the achievement of objectives. Major improvements need to be made to the Council's project governance processes in order to ensure the control environment is effective going forward. The auditors have noted that the Council is already taking steps to address the issues identified in this and the recent Project Management audit."

246 Between July and September arrangements were made for internal audit's vfm assessment on Acklam Hall to be added to the claimant's report. There were ordinary exchanges between the claimant and Mr Parkes about his input and suggestions for her report, including an email from the claimant welcoming internal audit's changes to its report (to moderate assurance of vfm) which the claimant felt was far better than its first draft; in that, she too was supportive of the respondent's reputation being protected. This is entirely consistent with the claimant's evidence in cross examination: that she found no evidence of property disposal impropriety in her investigation, but she did point out process errors.

247 In late July the claimant's response to the June performance letter included a reference to the new, and more limited, vision, which she considered Mr Parkinson had for Mr Fletcher's post. This was based on Mr Parkinson's view that Mr Fletcher's post had no responsibility for the delivery of capital projects, just oversight.

248 On 7 August 2015 the claimant had an ordinary one to one with Mr Parkinson to review action items; that included his comment there should be liason with Sunderland (to understand how they returned their count in the election so quickly); and other routine matters.

249 There was also much correspondence about the Fletcher investigation between Mr Parkinson and Mr Fletcher and the claimant in this period.

250 Mr Parkes' inteviews were complete by 7 September 2015. The claimant did make her own notes of her interview, as did Mr Parkes; the two sets of notes differed considerably. Mr Parkes also sought witness statements from others.

251 Mr Parkes did not consider it his remit to investigate Mr Parkinson's conduct with the claimant and Mr Fletcher on 3 and 6 July; he advised them both that they were aware of the appropriate grievance policy; the claimant pressed him on this, but he was not to be deflected from his single purpose. He later checked that with Mr Robinson in a one to one (see below). Neither the claimant nor Mr Fletcher presented a grievance at that time.

252 Deloittes' audit for 14/15 was available in September 2015. As to overarching value for money, Deloittes noted all the other reports produced, including the "cause for concern" report from internal audit and, for the first time in the respondent's history, qualified its report to the effect that there were "exceptions' to its assurance that the Council provided value for money.

253 The Deloittes qualifications were in relation to inter related areas: project management arrangements; capital programme monitoring reports; and governance arrangements for the disposal of properties. Its report was clear that ICT investment projects had been delayed and were contributing to the respondent's difficulties, which were within the claimant's department.

254 Around this time the claimant told the Tribunal that the internal auditor had relayed to her concerns about the amendments the auditor was being asked to make to a report concerning Gilkes Street by Mr Parkinson; the claimant raised those matters and there was a meeting with Mr Parkinson, Mr Slocombe, the internal auditor

and the claimant, conducted entirely properly to go through the report and all were then agreed. After that, the claimant said, the internal auditor again reported difficutlies to her, this time in having the report signed off.

255 During August the internal auditor and Mr Parkinson had exchanges about the value for money report on Acklam Hall, with Mr Parkinson explaining his concern that "moderate assurance" would be be treated by some as support for an allegation that the site should have secured £650,000 per acre (multiplied by 20 acres). Those exchanges were normal day to day business.

256 On 9 September the claimant had a one to one meeting with Mr Parkinson and that included discussion of the Deloittes' audit and qualification and the need for a list of recommendaitons to address them. They did not discuss Mr Fletcher's position, but later that month the claimant and Mr Parkinson had email exchanges about that, with the claimant seeking to have a further job evaluation and amended job description to reflect Mr Parkinson's view.

257 In mid-September in a one to one meeting Mr Parkes told Mr Robinson about the claimant and Mr Fletcher's concerns about Mr Parkinson's behaviour in July, and "the breakdown in their relationship"[13]. Mr Robinson told Mr Parkes to stick to his remit; namely the conduct of the claimant and Mr Fletcher concerning the job evaluation, rather than the conduct of Mr Parkinson on 3 and 6 July.

258 In contrast to reporting a breakdown in relationship, Mr Parkes' witness statement said this:

"I had a number of conversations with Karen in her office when passing the time of day. After Tony assumed her management she did speak favourably of Tony saying how she'd enjoyed working for him. I had no indication that there was any breakdown whatsoever in their relationship, quite the opposite….Karen told me that she thought that she and Tony made a good departmental team. She said she had not been too sure about Tony when he was first appointed but had found him dynamic and had a great sense of humour. This was uncharacteristic for Karen and I was surprised as she was not normally as positive about people".

259 The explanation for this apparent inconsistency is this: the claimant accepted she tried to be positive and supportive of Mr Parkinson after his appointment as her manager in 2013. In our judgment, his behaviour towards her in July 2015, which included swearing, and suggested wrongdoing on her part, crossed a line for her and did put a strain on their relationship, hence Mr Parkes' report to Mr Robinson. Outwardly though, she behaved as normal and tried to maintain professionalism and functionality.

260 Also in August and September there were discussions about the claimant's lessons learnt report coming into the public domain and she gave some advice about that; in short her emails record that Mr Robinson decided the report need not to go to a committee but that an action plan would be drawn up first, which delayed the need to consider publication. There were discussions about whether at that stage, the report would need to be in the public domain. Mr Parkinson remained of the view that the moderate assurance on vfm gave support for the original price per acre allegations and did not think that was helpful or accurate. Again the exchanges reflect ordinary giving of advice by the claimant and responses by Mr Robinson. It was also clear that

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Mr Parkinson's concern lay with the internal audit, vfm content, and not that drafted by the claimant.

The "great team" comment and the state of the relationship that summer

261 Mr Parkinson alleged that in August or September by the kitchen near their respective offices, he recalled "with absolute clarity" a conversation with the claimant about "head hunters" seeking out candidates for Rotherham Borough Council. Mr Parkinson alleged that the claimant asked him if he had applied and said "you and I would make a great team".

262 The claimant's account was that she told Mr Parkinson an agency had asked her to apply for a role and she had done so; there were a series of interviews and assessments to undergo; she told him the dates of the interviews; Mr Parkinson said he had been asked to apply by the same agency; her face must have given the game away (in that she looked horrified); she denied the "great team" comment, saying, in effect it could not be further from the truth; she asked him if he had applied (because if he was a candidate, she would have withdrawn her application for assistant chief executive at Rotherham).

263 At that time the claimant had the management investigation hanging over her; Mr Parkinson had sworn at her and accused her of misleading a job evaluation panel; these matters were part of her reason to apply to Rotherham, notwithstanding the difficult travel and potential move it would have posed for her, at a difficult time for her daughter.

264 These more detailed accounts were not contained in either of the protagonists' witness statements; they emerged in the claimant's cross examination and supplementary evidence of Mr Parkinson. Mr Parkinson included the "great team" allegation in his interview for the grievance investigation which was completed by 1 August 2016.

265 It was not apparent from email exchanges that the claimant's relationship with Mr Parkinson had totally broken down by September as Mr Parkes had reported; the claimant had taken part in a one to one meetings with Mr Parkinson without anyone else present, and other meetings with others present: the relationship appeared functional at that stage, despite what had been said to Mr Parkes the same month; the claimant had not presented a grievance; she had outwardly let the July Fletcher related treatment go, but she was looking at a future elsewhere.

266 Either the "great team" comment was made, indicating the relationship was cordial and fine (the respondent's case) and the claimant did consider they were a great team; or it was a "recovery" comment lest the claimant had given away her true feelings at the prospect of Mr Parkinson joining her at Rotherham; or, at that time she was continuing to give a positive impression of their relationship; or the comment was not made (claimant's case).

267 In context we fall back to what is more likely than not, or the most likely occurrence in context, neither protagonists' recollections being demonstrably universally reliable. We consider it inherently unlikely, even in the interest of self preservation, that the claimant would have given Mr Parkinson encouragement to apply to Rotherham. We consider the comment was not made.

The "sick of your manner" allegation

268 Mr Parkinson's management team met periodically and considered reports to members. That team included the claimant and Mr Punton, the latter responsible for

property disposals. Authority levels within the respondent were set such that above a certain threshold disposals had to be approved by the Land and Property Committee. The claimant picked up in those meetings that some draft reports from Mr Punton, whether inadvertently or otherwise, recorded decision making with Mr Parkinson, rather than the relevant committee.

269 The claimant alleged that in October or November 2015 Mr Parkinson had followed her into her office after such a meeting, leant very close to her face and said: "I am sick of your manner and if one of my reports contains a delegation I do not expect you to comment on it".

270 The claimant had requested disclosure of those draft reports in these proceedings and they had not been disclosed; that was put to Mr Parkinson who said he was not aware of that and could not respond; he said the reports would have been in draft form; they may have inadvertently reflected errors; he denied the confrontation in the claimant's office.

271 The claimant maintained the confrontation had happened as she had described; she did not make a note of it; she did not complain at the time; nor did she complain about it in her grievance, despite referring to other examples of alleged inappropriate communications and behaviour by Mr Parkinson.

272 Her reasons for not complaining then or keeping a note were simply to keep her head down and keep her job; that does not explain a failure to make a note especially when she had already told Mr Parkes in the strongest terms about Mr Parkinson's treatment of her on 3 July and knew very well of her grievance options.

273 The claimant's office had a viewing screen in the door, and beyond that a kitchen and around fourteen staff in an open plan area outside the office.

274 Taking these matters into account, and our general direction about fact finding, and our assessment of the protagonists, and the failure to disclose the draft reports without explanation, we consider it more likely than not that Mr Parkinson expressed his frustration at the claimant commenting on his reports, but not that he did so in the terms or manner alleged. The claimant was quietly robust at work, undoubtedly, but had Mr Parkinson behaved in the abhorrent way described it simply beggars belief that she would not have at least recorded it, or reported it at the time, or included it in her grievance or letter to the mayor.

<u>The Conclusions of the Parkes' report</u>

275 On 20 October Mr Parkes provided his investigation report to Mr Parkinson and Mr Robinson; it exonerated Mr Fletcher on the basis that he was supported and guided by the claimant and did not recommend further action as far as he was concerned; it was highly critical of the claimant and considered there was a need for further investigation of three potential charges: whether there was an attempt deliberately to pervert the job evaluation process; whether the claimant acted imparitally and fairly; and whether she ensured the process was delivered correctly given her line management of human resources.

276 That report was not provided to the claimant or to Mr Fletcher for comment at any stage, despite Mr Parkes asserting Mr Fletcher accepted that the job evaluation panel had been misled (which Mr Fletcher had not said). The report was also silent about Mr Parkinson seeing the job description for the Coxon appeal. It did not explain that job evaluations for those who reported to the claimant were **not** undertaken by a panel including those reporting to her such as Mrs Schofield (instead a chinese wall

was set up and they were undertaken by a separate panel made of staff in the third party HR supplier); nor did the Parkes' report present the confused evidence about whether Mr Fletcher's post was considered a "new post" or "an existing post", about which there was a wholesale lack of clarity and consistency from witnesses.

277 The damming report was provided to Mr Parkinson on 20 October. Mr Parkinson would usually take time off around that time for half term; he did not discuss the report with Mr Robinson, nor the claimant nor Mr Fletcher.

278 The claimant's appraisal meeting was due to take place on 2 November and took its course as usual. There was no negative reaction by the claimant to that meeting; there was a discussion of the claimant's direct reports including Mr Fletcher, Mr Roberts and Mr Stephens and continuing difficulties with delivery against some work objectives. Mr Parkinson's frustration with the ongoing ICT problems was so apparent that the claimant asked whether he wished her to sack Mr Fletcher. They worked through the work objectives for the year, many of which had target dates for March 2016.

279 The claimant had not emailed through her own documentation or comments for the meeting. Mr Parkinson offered to write up the appraisal and took notes during the discussion.

<u>The Deloittes "end of term" report</u>

280 After the claimant's appraisal Mr Robinson received a further report from Deloittes reflecting back on the objectives and progress of the Council over the previous years; ICT issues were said to have been a barrier to progress back in 2012 and were still not resolved. There were many other issues highlighted in the report, but they had been foreshadowed by the September qualified audit and an action plan was in progress to address them.

281 The report was shared with Mr Parkinson and other members of the senior team.

282 On 16 November Mr Parkinson sent the claimant the appraisal documentation with a new section containing progress and comments on the work objectives for that year, with his analysis of her performance against those objectives of between 59% and 75% (the director standard was 80%). That document recorded as "achieved", the TUPE transfer of Mouchel staff[14].

283 The respondent regularly reported the performance of the nine areas run by Assistant Directors to its elected member scrutiny committee in the form of a "RAG" (Red, Amber Green) analysis. For the second quarter (July to September) 2015, the performance of the claimant's area was aggregated to 73% (which was said to be "Amber") and the same score as two other areas. The only area with a "green" score was Public Health with 76%; Mr Slocombe's area was at 67%, one of four areas scoring worse than the claimant's area.

284 On the same day as her appraisal was typed up, the personal assistant (PA) shared by Mr Parkinson and the claimant, also typed up a rather different, but connected, document.

<u>The November note</u>

[14] 1882

285 At some point Mr Parkinson had decided to start documenting conduct "issues" concerning the claimant. The first draft was a one page handwritten note, which was undated, in the form of shorthand points, suggesting: the claimant had improperly influenced Ms Rollings job evaluation of her post in 2013; had engineered her own appointment as returning officer without due process; and had not declared properly her pay connected with that role.

286 That manuscript draft referred to at least two documents which were in the Tribunal's bundle: an email of 16 May 2013 (446); and a document "back of fag pack suggestion" (464), concerning resolution of the claimant's then pay complaint.

287 The Tribunal noted that in the summer of 2013, Mr Parkinson had supported the job evaluation exercise which increased the score for the claimant's post, providing his thoughts to Ms Rollings as to why the post should score more highly. Yet by November 2015 he considered a potential disciplinary charge that the claimant had improperly influenced that same job evaluation, apparently forgetting his own involvement.

288 Mr Parkinson's explanation for that apparent inconsistency was this: his support for the increased score happened in his first week in a new post in 2013; he had not worked at that level before, he acceded to the then chief executive's wishes; he said he had reservations at the time.

289 Mr Parkinson could not recall when he produced the handwritten note of disciplinary charges, but it was said to be a note used to produce a typed document, a version of which was created by his secretary on Monday 16 November 2015 ("the November note").

290 Mrs Dalzell referred to this document as "the dodgy dossier" and it was said to lend much force to the claimant's case on the reason for dismissal. It was a critique of both the claimant's conduct and her performance and listing many allegations with the headings: "Disciplinary" and "Capability". It also drew on performance statistics which were in the claimant's appraisal, as later written up by Mr Parkinson. Those performance statistics were his own analysis, outwith the respondent's "balanced scorecard" performance management tool, which painted a favourable picture of the claimant's performance. The references to a few supporting documents in the manuscript note, had become formal appendices in the typed version(albeit they were not attached but Mr Parkinson said they were available to him).

291 Included as an item in the capabilitiy section of the November note was the claimant's appraisal itself, which was said to show a lack of self awareness or understanding: the claimant self assessed as "exceptional" in many categories when the eventual score was satisfactory or good, Mr Parkinson noted.

292 He said in oral evidence that he produced the note because he anticipated that when he announced the merger, the claimant would bring a grievance against him. He said he knew that because "she was a fighter" and would think nothing of doing that if her livelihood was threatened; he knew that from three years of working with her. Mr Jeans submitted that the note was unwise; that it was more Roderigo than Iago (unwise rather than manipulative); and that Mr Parkinson was proven right: the claimant did bring a bullying grievance against him once he commened the redundancy process.

293 The manuscript draft, and the 16 November note, were not addressed at all in the witness statements of either Mr Parkinson or Mr Robinson. More puzzlingly their witness statements, the reports they produced to elected members before dismissal,

their draft answers to potential questions from elected members taking the decision to dismiss the claimant, all said that there was no individual capability or performance issues with Mr Slocombe or the claimant, giving rise to the subsequent merger proposal.

294 The Tribunal had this from Mr Robinson, following the receipt of the Deloittes' letter: "Tony took some time to think about this and came back to say that whilst there was no capability issue with either Karen Whitmore …or Paul Slocombe… it seemed that as things were going through the system they were getting disjointed". And from Mr Parkinson: "For some time I had worked with the two leaders, and we hadn't made enough progress. It is not about capacity or capability. It is about correcting a facture of responsibility. Karen and Paul had two opposing views on approach and weren't bridging the gap which then got bigger further down the management structure. The biggest risk was in continuing what we were doing. This led me to the conclusion that joining the two roles had become the only solution."

295 Mr Robinson's evidence of Mr Parkinson's explanation in relation to the merger proposal (no capability issue) is simply incredible, and if true, renders it even more unlikely that when Mr Parkinson later presented serious capability allegations in the November note, Mr Robinson did not even question the inconsistency (on his evidence).

296 There was also some lack of coherence in the two documents created or considered by Mr Parkinson on the same day (the claimant's appraisal and the 16 November note): one said the Mouchel TUPE transfer objective was met; the other listed Mouchel as a capability issue. Mr Parkinson's explanation for the Mouchel allegation was that the deletion of six posts had not been included in the measures proposed for the transfer, resulting in redundancies (and settlement agreements according to the November note critique).

297 Mr Parkinson did however accept that this inconsistency was not indicative of an open and transparent relationship: he had performance concerns which he recorded in the November note, but did not discuss with the claimant, instead recording the same matter conversely as "achieved" in her appraisal document. Mr Parkinson had not discussed the great majority of the allegations in the November note (both disciplinary and capability) with the claimant, notwithstanding they were, at face value, serious allegations.

298 The November note and the appraisal documents were drafted by Mr Parkinson in exactly the period when he was discussing with Mr Robinson what to do about the challenges highlighted in the Deloittes' letter. He had said to Mr Robinson that he would come up with a solution to what he saw as disjoinder between the two posts.

<u>The emergence of the merger proposal</u>

299 Mr Parkinson's explanation of the timeline of the development of his thoughts on the merger proposal was not clear. The undisputed chronology is: an uneventful appraisal meeting on 2 November with the claimant; the Deloittes' letter on 9 November (which the Tribunal accepts was a wake up call as to the longstanding nature of some problems within the respondent); the creation of the November note and worsened appraisal feedback on 16 November; and the first meeting with the claimant and Mr Slocombe on 24 November concerning the merger.

300 The chronology between 9 and 24 November matters for three reasons: it goes to the reliability and credit of Mr Parkinson and Mr Robinson; it is relevant to the

claimant's case on reasonableness in the context of the chief officer terms requiring paragraph 82 consultation; and it may have a bearing on reason for dismissal.

301 Mr Robinson said that Mr Parkinson came to him with the merger solution some one or two days before he met with the claimant and Mr Slocombe on Tuesday 24 November; that was Friday 20 November or Monday 23 November. He said he slept on it (which has the ring of truth in relation to a decision which had serious consequences for the claimant, possibly also Mr Slocombe, and unified leadership of functions which had been separate for many years in the Council's structure).

302 Email disclosure revealed that Mr Parkinson had sought advice from Mr Newton, a lawyer at Redcar and Cleveland Borough Council ("Redcar") and that council's monitoring officer, by hand delivering a document with him on Tuesday 24 November.

303 That "dropped off" document (which was not available to the Tribunal) contained a timeline of the process for the proposal. Mr Newton recommended in his response on 25 November that there would normally be a "before and after" structure chart and more detail about the justification for the changes and how they would address the weaknesses; he also said that there would normally be a line in the timetable "to show that the two were being placed formally "at risk" and handed "at risk" letters. He commented on the brevity of the report, that he had not seen contracts or policies, and that Redcar was working with a different member dynamic. He also recommended "getting on with the job evaluation now, rather than delaying until 4 December". He did not mention the Chief Officer terms and conditions.

304 In oral evidence Mr Parkinson said he dropped off papers to Mr Newton on the way home and was aware that Redcar had been through "chief officer processes before". He could not remember what was in the report he provided to Mr Newton, but thought it was shorter; he could not remember, he said, whether it just contained paragraph 16 (which related only to the reassignment of statutory roles). That suggestion was simply not reliable given the tenor of Mr Newton's advice.

305 The respondent disclosed a "properties' report said to indicate the creation of Mr Parkinson's document proposing the merger, saved by his PA as: Review of CCS AD Roles, at 17.44 on 25 November 2015[15].

306 It followed from the Newton disclosure that: the document recorded as created by Mr Parkinson's PA was not the first version; that the version provided to Mr Newton contained a process timetable, suggesting job evaluation of the new post on 4 December; and it was a report which Mr Newton considered brief as to the rationale for the merger proposal, but otherwise had the components of the final report.

307 The Tribunal noted that Mr Parkinson gave oral evidence that he recalled typing the November note himself, given its sensitivity and purpose, but a similar "properties" report for that document recorded again, creation by his PA. On balance, the Tribunal considers that on both occasions (the November note and the Review of CCS AD Roles) Mr Parkinson earlier typed and produced a word document himself, later providing it to his PA and it being saving on the respondent's system; with further appendices being added as appropriate. The appendices for the merger proposal report were the governance improvement plan and the person and job specifications for the new post.

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[15] S256

308 It was accepted by Mr Robinson that a confidential report[16] dated 26 November was Mr Parkinson's proposal to merge the posts held by the claimant and Mr Slocombe. The purpose of the report was said to be: "to provide the Chief Executive with proposals to improve Governance arrangements across the Council, which include a proposed change to senior management arrangements within the Commerical and Corporate Services Directorate".

309 That report (some five pages plus appendices) contained a timeline with the chief executive's agreement to the proposals on 26 November, formal consultation of 45 days starting on 30 November, a compulsory redundancy process for the claimant commencing on 22 January; and if necessary for Mr Slocombe on 23 January 2016. The report was clear that neither post holder had the right to be allocated the new merged post, but that because of the finance qualifications required, Mr Slocombe had the right to be interviewed for the post.

310 The length and subject matter of the report, its required approval date by Mr Robinson of 26 November, the earlier advice on the document from Mr Newton, the drafting of "an alternative approach"(see below), the over arching liklihood of the time such reports take, have all led the Tribunal to conclude that Mr Parkinson started working on a report recommending the merger of the two posts between 17 and 23 November at the latest. By 23 November his idea or thoughts on the matter had developed into a very clear and detailed proposal which had Mr Robinson's approval.

311 The truth at that time was not that Mr Parkinson belived there were no capability issues with the claimant as expressed in his statement, and the report; and to members: to the contrary he considered there were such issues and the merger would, in effect, "kill two birds with one stone" from his point of view: it would solve the fracture issue between the approaches of the claimant and Mr Slocombe, which he saw as hindering Council improvement, and it would remove the claimant given his poor view of her conduct, and capability on some matters he considered important, and tenacity and attention to detail on others he considered less so or unnecessary (for example the TAD Centre legal advice, the correct documentation of delegations in property reports).

Informal meeting on 24 November

312 Having secured Mr Robinson's approval to his proposal Mr Parkinson called both the claimant and Mr Slocombe to a meeting on 24 November. He told them of his proposal, and that they were potentially at risk of redundancy, and was not clear about the length of consultation but would seek advice. The claimant raised the issue of the special position of their statutory posts. Both she and Mr Slocombe were angry and unhappy and the meeting was short. The claimant said no meaningful discussion was possible because Mr Parkinson provided no real information about the process or proposal. On leaving that meeting Mr Slocombe had not understood that a new post was being proposed, but simply the reallocation of duties.

313 On 26 November Mr Parkinson said he would make available his report and other documentation at formal consultation meetings to start on 30 November. Both the claimant and Mr Slocombe were concerned about representation at that formal meeting. On that day Mr Parkinson also provided Mr Robinson with a copy of the November note.

[16] 859 et seq

Mr Robinson is presented with the November note

314 Mr Robinson's initial oral evidence about the November note struck the Tribunal as inherehently unlikely: Mr Robinson said he did not go through the note, but Mr Parkinson brought it to him on 26 November, he had it placed on file in a cupboard in his room as Mr Parkinson requested. Mr Parkinson, he said, was concerned about the claimant's reaction to his redundancy proposals (in that she would raise a complaint against him), but there were no capability issues in Mr Robinson's mind concerning the claimant, and he could not say why Mr Parkinson had the concerns documented in the note: "Tony explained to me…if [he] had been a non supportive, aggressive manager, this is the approach".

315 The Tribunal's assessment is that Mr Parkinson's explanation of the note and Mr Robinson's recollection of what was said on 26 November do not have the ring of truth about them at all: they have been affected and informed by subsequent events (including a grievance that Mr Parkinson was aggressive and not supportive).

316 It is inherently unlikely that a very senior local authority director would approach the chief executive and say words the effect of which is: "I'm worried that because I have proposed the deletion of the claimant's post she will bring a grievance against me, so I have put together a list of disciplinary and capability allegations which demonstrate that I have been supportive and not aggressive (because I have not sought to dismiss the claimant in respect of these matters in the past)".

317 'Unwise" does not come close as a description of such conduct: a lack of wisdom of that scale is inherently unlikely in a senior director who has had considerable responsibility for carrying out redundancies (as Director of Transformation), with great awareness of staff issues, and who was exceptionally critical of the claimant's handling of complex staff matters (Fletcher/Coxon and the Mouchel transfer), indicating that he understood their dynamics and pitfalls far better.

318 The November note was not unwise or ill considered documentation seeking to demonstrate how supportive Mr Parkinson had been by not taking forward such matters. It was, at the time it was created, a "thinking aloud" of grounds on which the claimant could be dismissed for either capability or conduct reasons. There are many reasons to reach that conclusion: the timing of its creation; its level of detail; the inherent lack of plausibility in the asserted reason for its creation; Mr Parkinson's unreliability on some matters, and the lack of clarity about versions of the 26 November proposal, notwithstanding that he was otherwise a relaxed, impressive and plausible witness.

319 Mr Robinson's replies to later questions about the November note were also more instructive. He was asked: given the tax payer was going to make enhanced redundancy payments, were you as chief executive not concerned you should look at some of these issues (performance and conduct)?: "No, because it was not presented to me as a problem it was presented to me as an alternative approach".

320 The Tribunal considers that the note was indeed brought forward as "an alternative approach", in Mr Robinson's words, namely, that the claimant's dismissal could have been taken forward on a number of footings in Mr Parkinson's view.

Was the business case for the merger of the posts nonsense?

321 There was a suggestion in the claimant's evidence and questions put to the witnesses, that there was no real reason to merge the two posts because the concerns were already being addressed in plans to run that full year, to the end of March 2016.

322 Mr Robinson agreed that the timescale for delivery of the forty eight actions in the governance improvement plan was April 2015 to March 2016. He was asked what caused Mr Parkinson to conclude that a restructuring proposal was needed when the plan had not run its course; his answer was as he recalled a general lack of progress such that the accounts would be qualified; he was not up to his elbows in detail and he had to trust his executive directors.

323 When asked about Mr Parkinson taking the governance improvement plan to an elected members' committee in September, where there was no indication then that the deadlines for milestones could not be met, Mr Robinson referred to the Deloittes' letter, which indicated siloed information and issues as far back as 2012: the council had not made as much progress as it would have liked over a long period.

324 After the September scrutiny meeting the respondent received the Deloittes' letter; time was running out for delivery of the plan. As with all organisational difficulties, it was inherently unlikely that the difficulties identified by Deloittes, and the pace of resolution, had one golden bullet solution, the merger of two senior posts. A different employer may have given it to the end of the financial year to review where things stood, but that was neither Mr Robinson's nor Mr Parkinson's style.

325 Assessing all the evidence before the Tribunal, including about savings and progress after the merger of the posts, the Tribunal considers that merging the posts was not irrational or nonsense, such that it was devised with the principal purpose of dismissing the claimant (Mr Slocombe being potential collateral damage). It was Mr Parkinson's proposed solution to perceived failures to deliver where delivery involved both the claimant and Mr Slocombe: to that extent it was a plague on both their houses in the areas for which Mr Parkinson would be accountable.

326 Mr Parkinson was under pressure for his Directorate to deliver. By November 2015 he saw the claimant and Mr Slocombe as hindrances to his achieving what was required for the Council. He did not consider that was the case for his other Assistant Director, Mr Punton, whose post was not considered by the proposal or review, because, the report said, he had no responsibility for governance matters. That was said notwithstanding that governance issues had significantly arisen in the past in the property disposals area (Mr Punton's remit), and were at risk of arising again. A recent example would be the claimant raising the need for Mr Punton's reports not to attribute decision making to Mr Parkinson if there was insufficient delegation for that (see the "sick of your manner" allegation). Mr Slocombe felt Mr Punton's post should have been reviewed also, and the claimant considered Mr Parkinson's decision not to do so as evidence of the personal purpose of the proposal.

327 It may or may not have been wise to exclude Mr Punton from the review, but it was Mr Parkinson's decision, just as his merger proposal was his solution to the proposed difficulties faced.

<u>The parties fall into dispute about the legality of Mr Parkinson's process</u>

328 As it turned out Mr Slocombe went ahead with a formal consultation meeting without representation on 30 November; the claimant could not secure representation even in time for a delayed meeting on 8 December and she declined to meet Mr Parkinson alone.

329 Mr Parkinson then sent her the papers instead late in the day on 8 December and confirmed to Mr Slocombe that the formal consultation period of 45 days would end on the same date for both, notwithstanding Mr Slocombe had commenced earlier.

The script for that first formal consultation meeting indicated that the proposal had the approval of both the Mayor and the Chief Executive.

330 The claimant raised at the earliest stage her imminent departure on annual leave from 11 December, not due to return until 4 January 2016 (a good part of the 45 day consultation process envisaged), and the potential unfairness in that.

331 From the outset communcations between the claimant and Mr Parkinson about the proposal became fractious, with the claimant pointing out problems with the process he was adopting and Mr Parkinson seeking to drive matters to his timetable (which he did not provide to the claimant until 8 December despite having a draft available from before 23 November).

332 The short letter of 11 December[17] to Mr Parkinson said the process was invalid because the timetable and sequence to implement redundancies for chief officers and monitoring officers were binding; as his process was invalid the claimant said she could not engage with it, and that effectively remained her stance.

333 In the long letter to Mr Budd[18], raising allegations of bullying and other matters against Mr Parkinson and less directly, allegations against Mr Robinson, the claimant gave much fuller explanations of her understanding of the legal position. After criticising Mr Parkinson's treatment of her culminating in the proposal the claimant said this:

334 "I am at a loss to understand his almost indecent haste to move this process forward at the fastest possible pace. However the chief executive recently indicated to his management team that he intends to retire early before the cap on severance payments comes into force in the late summer/early autumn of 2016…..It has been suggested to me that there may be a connection with this proposal but naturally I have no way of knowing if this is part of the explanation. Were it to be part of the hidden rationale…..it would beg the question as to whether the further financial advantage of [Mr Robinson] is an appropriate use of scarce financial resources… In terms of both my own position and in my role as Monitoring Officer I have significant concerns that the process is procedurally flawed in fundamental ways and would not stand up to external scrutiny…the timetable and sequence of events …[for] chief officers and monitoring officers are contractually and legislatively binding. These require, amongst other things: significant consultation, member involvement and an entitlement to make personal representations prior to a decision being made. The proposals I have received from Tony Parkinson clearly set out a timetable and process which would not meet these requirements……" She also said this about the timetable and process for implementing chief officer redundancies: "I have absolutely no desire to rehearse this in the public setting of a tribunal which would be personally stressful and damaging to the reputation of the council more widely".

335 The claimant closed her letter to Mr Budd suggesting he would not want to preside over a council where the chief executive considered it funny to perform Nazi salutes and refer to senior female staff as "posh birds'.

336 The claimant had provided much more detail of her objections to Mr Budd than to Mr Parkinson. Mr Budd did not talk to Mr Robinson about that letter until some days later. There was no evidence of analysis of it, investigation, or answers to the issues

[17] 927

[18] 928-931

raised. Meanwhile Mr Parkinson took advice from Mr Newton based only on the short letter; the latter forwarded him the relevant chief officer terms, but otherwise gave little advice other than suggesting the leave issue might be relevant in terms of overall reasonableness. Mr Parkinson's response to this was to press on regardless, saying: "Her contract allows for 28 days and our consultation policy 30 days. We went with 45 knowing how she was going to behave so that we could demonstrate how reasonable we had been by extending the consultation period by between 15 -17 days – a luxury not afforded to other staff in other reviews. I'm just pressing on despite her stance that she will not engage with the process (I think she genuninely believes we can only invoke the process with her agreement). Pretty much her choice but process carried on regardless. For example she did not attend either of the formal consultation kick off meeting I arranged with her so I just commenced consultation in writing as I told her I would."

337 Against that mindset on 17 December 2015 it was not surprising that before Christmas, while the claimant was on leave, papers for a council meeting on 6 January 2016 were circulated, including the merger proposal ("the first report to council"). That report also included Mr Robinson's proposals concerning children and social care changes, which he had agreed with Ms Broad, and would lead to her retirement, alongside his, later in 2016. Mr Parkinson then wrote to the claimant on 23 or 24 December asking her to set out what exactly was wrong with the process.

338 On 4 January 2016 the claimant returned from leave and learning of the papers for the full council members, which had been sent out under cover of a letter in her name, and that her letter to Mr Budd appeard to have no impact, or acknowledgment, she wrote formally to Mr Robinson, Mr Slocombe in his Section 151 capacity, the external auditor (Ernst and Young), the Department for Communities and Local Government ("DCLG") and the mayor (950-951), in her monitoring officer capacity to communicate her belief that the first report to council described a process that did not meet legislative, constitutional or contractual requirements, and was likely to result in a breach of legislation by the Council. She also emailed her team of five managers, including Mrs Schofield and Mr Roberts to apologise that she had not been able to inform them about the report herself, but would answer questions if they had any in relation to the implications for them.

339 At this time Mr Parkinson was taking further advice from Mr Newton seeking to understand the claimant's legal points. That exercise was not fruitful and Mr Newton recommended external advice.

340 The claimant's letters to DCLG and so on resulted in Mr Robinson intervening and agreeing an urgent meeting with the claimant attended by Mr Parkinson, Mr Robinson, Mr Slocombe and the mayor.

341 The claimant also wrote directly to Mr Parkinson at the same time to say she considered some correspondence about the record of her appraisal a final straw, and would be submitting a grievance of bullying and harassment. Mr Parkinson forwarded that email to Mr Robinson saying he considered it simply a malicious act on her part without any foundation or evidence, but an attempt to frustrate the review, but appreciating Mr Robinson would need to deal in accordance with Council policy.

342 At the meeting on 5 January the claimant agreed an amendment to the first report to Council as follows: "Members note that issues have been raised in relation to the processes being followed. There will be further discussion to address those issues and ensure proper process has been followed prior to the implementation of the Review". With that amendment she agreed there was no immediate need for her to

provide her full report to council in her monitoring officer capacity, thereby stopping progress in its tracks. She later said she felt pressure to reach that agreement. At the time she said: " thanks that addresses my concerns adequately"[19].

343 During the meeting or at some other point, Mr Parkinson alleged that the claimant had said "you should know" to him when she was asked for the detail of the respondent's defaults. She did not deny this was said and the Tribunal can well believe it was said in frustration by this stage given her letter to Mr Budd, albeit the claimant later provided chapter and verse detail. The claimant also then sought legal advice on behalf of the respondent from an external firm and provided that on 8 January to Mr Robinson.

344 On 10 January 2016 Mr Parkinson said this in an email to Mr Robinson.."Subject to Bryns advice you might want to think about kicking back a bit mike by asking why she is not following the correct MO processes, involving external orgs etc… By my reckoning all she is throwing at us, even if correct, only adds a matter of weeks to the process we have initiated…" to which the reply fro Mr Robinson was "And lets not lose track that this is a restructure of ADs that requires a resdesignation of the monitoring officer person. Cheers"

345 On 18 January the claimant wrote to Mr Robinson in her Monitoring Officer capacity expressing further concerns about the process to date and standing down from that role as regards the merger (1019 to 1021) Her letter said this: "Put simply and avoiding legalese, there is not statutory authority for this proposal to be the subject of formal consultation, since it includes the dismissal of one or more post holders who are specifically exempted from the general provisions which give HPS authority over staff appointments and dismissals...The various written references in reports and correspondence to the proposal being approved by yourself and the Mayor are ireelevant and indeed actively misleading, since it requires the express approbal of either the Full Council, or an appropriately constituted committee/sub-committee to take it forward at all, and certainly to embark on formal consutlations leading to dismissal". She went on to make points about the difficulties in having given the impression to councillors that authority did lie wth the mayor and HPS.

<u>The relevance of the dispute about the legality of the process</u>

346 The intricacies of the interaction of the various local government regulations concerning statutory posts with the chief officer terms were an unfortunate tension between the claimant and Mr Parkinson.

347 The important points are these. Firstly, neither Mr Parkinson nor Mr Newton nor Mr Robinson identified or deployed the contractual requirement for Paragraph 82 consultation, unlike Mr Parker and previous chief executives to chief officers, and previously written into process timetables accordingly. However, Mr Robinson had applied this informal "earliest possible stage" approach sufficiently in advance of the removal of Ms Broad's post. We also refer to our other findings above (the reduction in chief officers and the way matters had typically proceeded). In context the anger of Mr Slocombe and the claimant at the 24 November meeting had some justification, particularly when it was followed by an invitation to commence statutory consultation without further discussion on 30 November.

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348 One explanation for this apparent departure from previous practice is that in the minds of Mr Robinson and Mr Parkinson, the grade of Mr Slocombe and the claimant as Assistant rather than Executive Director, disentitled them in some way to Paragraph 82 consultation. We draw that inference because of Mr Parkinson's comparison to the treatment of "other staff", in his email to Mr Newton (had he said "other chief officers", that might have alerted him to the contractual terms); Mr Robinson's reference above to "a restructure of ADs" rather than a restructure of chief officers; and the gist of Mr Parkinson's representations to the appeal body of elected members, to the effect that the claimant had to be treated in line with the respondent's redundancy policy applicable to all staff, and to do otherwise was unjustifiable preferment.

349 There may be other explanations. The short point is that Paragraph 82 consultation did not feature in Mr Parkinson's timetable, in his paper to Mr Robinson, or the first report to Council; and on the Tribunal's findings the 24 November meeting was **after** a proposal had been formulated (within paragraph 83). The "earliest possible stage when there was a suggestion that the post might be proposed for abolition", was, on our findings at the time Mr Parkinson was considering "alternative approaches" including redundancy from 17 November 2016; and in the ordinary meaning of consultation, and in the past practice of the respondent, statutory consultation may not have been necessary, or if it had, it would not have commenced for some weeks.

350 Secondly Mr Parkinson and Mr Newton had not initially appreciated that the dismissal decision for the claimant and Mr Slocombe had to be taken by the full council (Mr Newton's initial advice had been wrong on this); and therefore that had not appeared in the process timetable until later after external advice.

351 Thirdly even when the need for a full council decision on dismissal was understood, an opportunity for the claimant to make representations was not included, despite the claimant mentioning this in the letter to Mr Budd. The timetable was later delayed to accommodate that.

352 There was a fourth point about whether or not a chief executive (head of paid service) could commence formal consultation which might lead to dismissal, without the authority of the full council. The claimant expressly conceded that he could commence a review, on 25 January 2016. It was on that point that between 9 and 19 January Mr Parkinson (via Mr Roberts) had sought advice from leading counsel on behalf of the respondent.

353 Added to these points of dispute about matters rarely arising, the claimant also made general reasonabless points about representation and the timing of consultation.

354 Despite the rarity and complexity of the dispute, Mr Parkinson continued to maintain to the claimant that he had legal advice the gist of which was a total legal green light for his conduct of the process. That had the ring of the representation of legal advice concerning the TAD centre as legally unchallengeable in August 2015, to which Mr Roberts and the claimant had wisely drawn attention as unlikely.

355 Given her experience and technical knowledge in the area, the claimant was not persuaded that her concerns were unfounded. Mr Parkinson and the respondent sought to suggest the process had been flawless by suggesting legal advice to that effect, but it clearly had not been, and she knew that, as did Mr Slocombe.

<u>Allegation 1 (PID detriment): "you had better negotiate a settlement"….and "you won't get a reference"</u>

356 On 19 January Mr Parkinson visited the claimant's office and there was a discussion between them. Their accounts of that discussion varied enormously.

357 The claimant characterised this as bullying in her grievance and it was recorded in Ms Clark's notes of a meeting on 5 Feburary 2016 with Mr Robinson as follows: "TP came into my office and aggressively, on the border of losing his temper, told me that Lead Counsel advice was that the process was correct and told me I need to seek a settlement". The claimant noted that for herself as: a few days prior to being escorted off the premises Tony suddenly appeared in my office. He was not in complete control of his temper, he said in a very aggressive manner that despite the points I had raised his "consultation" process would continue, he now had leading counsels option and he was right and I had better negotiate an exit". That was in very similar terms to the way it was put in the written grievance the next day. Her witness evidence to the Tribunal included considerably more detail including an allegation that Mr Parkinson ended that conversation saying she would not get a reference (unless she agreed a settlement). That second allegation did not appear in any contemporaneous documents albeit the claimant maintained she had told her union representative.

358 Mr Parkinson did not deal with the allegation in the grievance investigation. Nor did he deal with it in his witness statement. In a response to the union, which had raised the conversation about advice/settlement (but not reference), on 22 January he said: I have no idea who this conversation took place with so am unable to comment[20], which was uttlerly disingenuous given the true position.

359 In his oral evidence he said things were becoming very strained and he felt for the claimant or words to that effect and so went to talk to her to try and agree a settlement (as he achieved with Mr Slocombe). He accepted he said he had counsel's opinion. He denied the reference allegation; he denied he was angry or lost his temper or was threatening. He said the claimant had smiled at him, not in a friendly way and said thanks for the advice; meaning, she considered he was wrong, and he had left her office.

360 The contextual documentation included advice from Mr Newton on 5 January that Mr Parkinson might want to negotiate a settlement with the claimant. It did not help directly with the tone or content of the 19 January conversation itself, but Mr Newton said this: I suppose I would be trying to head this off via a settlement…I'm not sure if you have any enhancement for Vol Redundancy, but it might be a case of offering that with a bit added on to cover any contractual issues she might raise, plus an agreed reference….most people are conscious of their reputation and the need to get another job – and issuing a MOs report about your own redundancy is hardly low profile."

361 Tone and context being everything, on balance the Tribunal prefers the claimant's account, taking into account our general assessments of the witnesses. Asking in context whether it was likely that Mr Parkinson lost his temper and said the things attributed to him, we consider he did. There was great strain in the communications at the time, and Mr Parkinson knew there was to be a grievance submitted, and his views of that were clear, that it was malicious. Given the tone and content of his communications with colleagues about the claimant by this stage, we do not consider it likely that care and concern were his purpose in seeking her out that day; his purpose was to try persuade or coerce her into backing down. He failed; he

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lost his temper; and in doing so added that a consequence of not negotiating was that she would not get a reference; this may well have been in his mind because of the advice of Mr Newton about the elements of a settlement.

362 The next day the claimant submitted a grievance to Mr Robinson about her treatment (1427-1435). The grievance contained obvious allegations of contraventions of the Equality Act 2010 and addressed other matters.

Did the claimant withdraw from work?

363 Between her return to work from leave on 4 January, and 22 January, these events were clearly impacting the claimant. She had her own one to one with Mr Parkinson on 8 January with their PA present. She was carrying out normal one to one meetings and routine correspondence with her direct reports and others, including sourcing legal advice on behalf of the council, but she considered she could not contribute to a priority setting workshop for the 16-17 year given the uncertainties. She withdrew from that meeting.

364 Her workload was also naturally impacted and she prepared for departure by tidying up her office so there was little to see, and it was clear to Mrs Schofield that she was under strain. She also did not attend a budget setting meeting on 18 January; we prefer Mr Roberts' recollection about that; the claimant's statement was not clear; it was rescheduled to a different venue to the claimant's room and she did not attend. All in all the claimant was undertaking work, but not the full range of leadership matters as she had previously. The situation was unsatisfactory for all concerned.

Allegation 2: PID detriment and Section 27 Victimisation

365 On 22 January 2016 a script was prepared for Mr Parkinson to place the claimant on home leave at a forthcoming consultation meeting. That script included three reasons for that decision agreed with the chief executive which were: an active withdrawal from work (said to be non attendance at two meetings); a loss of confidence and trust, including not adhering to constitutional processes in reporting matters to DCLG and the external auditor; and a breakdown in the working relationship between the claimant and Mr Parkinson given her stated intention to bring a grievance, which Mr Parkinson said in his script, had not yet been submitted. Without having seen a grievance, his view was that it was malicious and without foundation.

366 As to the criticism of her for writing to DCLG/Ernst and Young, the claimant had corresponded with Messrs Parkinson and Robinson, referring to a different provision of the respodnent's constitution, which empowered the MO post to forge relationships with external bodies, providing them with relevant information as appropriate. This, she said, was the remit for her to provide them with a copy of her letter to Mr Robinson.

367 On 27 January 2016 a revised script effecting home leave was read to the claimant; this second script referred only to Mr Parkinson's ability to deal with work matters from which the claimant was withdrawing and her ability to look for alternative employment from home. The script also said this about matters to date: "Sadly you have chosen not to participate in this process, other than to question its legality in relation to statutory, contractual and constitutional matters; to date, however, you have not provided any cogent evidence for your assertions. As you have been informed on several occasions ALL of the advice I have received confirms that the process is lawful. In the absence of qualified legal opinion that supports your view, the process has continued."

368 The script had changed from the first version on 22 January in the reasons given for the home leave decision because Mrs Clarke had given advice to Mr Parkinson about it. Mrs Clarke said this in cross examination: "as far as I am aware that {the breakdown in relationship due to stated intention to bring a grievance} was not taken into account in the decision to send her home…do you know why it came to be part of this document – I would not have allowed it to be included – that should not have been taken into account – we would not send someone home because they had submitted a grievance – we would for all those other reasons – I know that is a significant reason but it would not be a reason to send someone home –so you would [instead] consider what would be the appropriate action and whether you move someone".

369 We infer from that advice, and the deletion of "a grievance had not yet been submitted", from the script, that by then she knew, as did Mr Parkinson, that the claimant's grievance had been submitted. It is also clear from that oral evidence that whether contained in chief officer terms or not, "being sent home" was regarded as a power not to be exercised lightly or for improper reasons because it could carry stigma or otherwise damage someone.

370 Reading out the new script then, the claimant was placed on home leave by Mr Parkinson. Mrs Clarke walked with her from the building and she said to Mrs Clarke she had been expecting this to happen or words to that effect. Her IT access was then removed and steps taken for Mr Parkinson and others to cover her duties. Her expectation that would happen does not remove its stigmatising effect.

371 Mr Robinson acknowledged that grievance by letter dated 27 January which provided an opportunity for them to meet on 2 February, later put back to 5 February, in his office. The first question from the claimant at that meeting was why she was sent on home leave only after raising a grievance, to which Mr Robinson's reply was that it was "in the best interest of KW and the organisation".

Allegation 3: PID detriment

372 The claimant had applied to become a foster carer for a neighbouring local authority and in February a reference request was sent to the respondent; it was resent to Mr Parkinson on 7 March 2016.

373 On 6 May 2016 Mr Parkinson provided the foster carer reference for the claimant. There was no explanation available for the time taken to respond to the reference other than "that was when I got to it" or words to that effect.

After home leave

374 The claimant and the respondent continued to correspond in detailed and lengthy terms about the fundamental dispute and the claimant's participation in the process. She sought to exercise her right to make representations to the full council meeting to discuss her dismissal, but in the end her union representative attended with a lengthy script rehearsing many of the arguments about the process indicated above. These events were taking their toll on the claimant's wellbeing and she did not feel in a position to attend.

375 We refer also to our findings about the representations in the report to councillors about savings from the dismissal. Councillors were also told that a separate grievance process was taking its course and discussion of that grievance was not for this meeting (dismissal or appeal), or words to that effect.

376 After the 5 February grievance meeting Mr Robinson then arranged for a third party provider (Ms Machers) to investigate. Ms Machers met the claimant and carried out other interviews which resulted in the statements from many individuals being available in the Tribunal's bundle, but the report and final versions of the statements were not available until June to August 2016, too late to impact the dismissal decision affecting the claimant. Mr Roberts' advice to the appeal body was that if the grievance was upheld it would be "Wednesbury" unreasonabless not to reinstate her. The grievance was not upheld.

377 Between the pre-Christmas first report to council, and the March meeting, the papers were amended to reflect consultation responses. This included that when managers who reported to the claimant and Mr Slocombe had been consulted, a proposal had emerged for the statutory posts of monitoring and returning officer to be allocated not to Mr Parkinson and Mr Robinson, but to Mr Roberts and and another colleague. Those proposals were accepted.

378 The union representative had entered one substantive counter proposal to the deletion of the claimant's post, namely that as delivery issues appeared to be identified in posts accountable to Mr Parkinson, perhaps his post should be eliminated instead as he was arguably accountable for failing to ensure the two posts below him functioned effectively. That proposal was not accepted. The claimant had provided information to the union for its response and many of the process points were also addressed.

The decision to dismiss the claimant

379 On 16 March 2016 a council meeting of thirty five councillors took the decision to dismiss the claimant. On 21 March 2016 the respondent wrote to the claimant to give notice that her employment would end on 14 June 2016 by reason of redundancy and that she would receive a consequent payment of £35, 213.

380 On 25 April 2016 the claimant notified ACAS of the potential dispute. Actionable employment claims occurring on or after 26 January 2016 were likely to be in time, in accordance with the "stop the clock provsions" or one month extension provision.

The appeal against dismissal

381 On 26 April the claimant submitted a lengthy and documented appeal, which was resisted by a documented management case presented by Mr Parkinson and point by point submissions or advice from Mr Roberts.

382 Mr Parkinson included this in his management case about the process: "in relation to the process followed throughout the review, the panel has received a great deal of commentary from the Assistant Director regarding alleged process irregularities. The evidence does not support this view. I personally requested external legal advice through the Head of Legal Services who sourced such advice from an external law firm and Leading Counsel. Both confirm that the process meets all statutory, contractual and constitutional requirements." The advice itself was not annexed.

383 Mr Roberts presented a report summarising the legal advice[21] and why it was not appropriate for it to be provided to the claimant. Nor was it annexed to the report.

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384 He addressed the claimant's points on Paragraph 82 consultation thus: "Early consultation is a question of fact. KW's comments are based on an assumption that a report cannot be written, and a brief meeting arranged, within the specified period. TP's contention is that it can and it was". Mr Roberts presumably had no knowledge of the November note or its date of creation, or the draft proposal dropped off with Mr Newton at Redcar.

385 Mr Roberts' report included that Bevan Brittan advised: the decision to commence consultation could commence under the authority of an officer with responsibility for staffing matters. Leading Counsel's advice was quoted as: "the procedure may be instigated by the head of paid service". From Bond Dickinson he quoted: "the Council has not, from a local government law perspective, acted unlawfully, but must follow the requirements of the 2001 regulations so that the dismissal is made by the Council". Mr Roberts added: none of this advice supports KW's position.

386 Mr Roberts said this about home leave: "in addition to TP's reason for placing KW on gardening leave, MR also had his own reason, related to a breakdown in trust between him and KW, arising from KW's decision to report MR and the Mayor to two external bodies, on two separate occsions, for acting illegllally, without justification or discussing this with either of them. That illegaility has never been established, but this showed extremely poor judgment on KW's part."

387 Mr Parkinson concluded thus[22]: "on the evidence provided it is therefore impossible to conclude anything other than: the process meets all statutory, contractual and constitutional requirements. As a senior manager within this organisation, responsible for HR issues, I expect the Assistant Director to understand, as I am sure the Panel do, that it is nonsensical for it to consider it appropriate for employees within the scope of any review to set the parameters and timescales for that review and subsequent consultation….To afford such an opportunity in this review (as the Assistant Director insists should be the case) flies in the face of the Council's Consultation, Redundancy Selection and Appeals Policy and would result in the Assistant Director being treat [sic] differently to other employees in a similar situation."

388 On 3 May 2016 the further full council meeting took place in private, at which, again, the claimant's representations were made by a union representative, Mr Clifford, because the claimant was unwell. In that hearing Mr Parkinson again said : "all [in reference to legal advice] confirmed what I had done met constitution/law/contractual obligations."

389 There were discussion of several of the issues raised in the grounds of appeal, but there was no discussion of matters touching on the claimant's grievance because, it was said, that was a separate matter which could result in reinstatement, and dealing separately was how all other similar situations had been handled in other cases.

390 The meeting was also told that "home leave" provisions had been used in several other cases. The meeting was not told of the original script for home leave, nor the reference to the bullying and harassment grievance contained within it, as a reason for home leave. The meeting rejected the claimant's appeal against dismissal.

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[22] 1365-1366

391 On 25 May a conciliation certificate was issued. On 14 June the claimant's employment ended. On 24 June 2016 the claimant presented her application to the Employment Tribunal.

392 In November 2016 a freedom of information request for the claimant's lessons learnt report was again brought to Mr Parkinson's attention (by then the Information Commissioner was about to issue a decision). Mr Parkinson directed that the report be released.

The law, submissions, discussion and conclusions

393 The Tribunal had helpful and full written submissions from both representatives, each implicitly accepting that fact finding in this case would drive many of our conclusions when the law came to be applied. They were developed orally, also at some length, unsurprisingly given the length of the oral evidence. We do not repeat them here: it will be apparent from our factual findings and our direction why we have reached the findings of fact above, and conclusions below, assisted as we were, by comprehensive submissions.

Decision in respect of the harassment allegations

394 The framing of the issues reflects sections 40 and 26 and 123 of the Equality Act 2010 and were identified as: Did Mr Robinson engage in unwanted conduct relating to the Claimant's sex by any of the following alleged acts with the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant ("the statutory effect"):

1) By Mr Robinson's addressing the Claimant and other female colleagues as"posh birds" "gentlemen" or referring to Richenda Broad as being "on a high horse" and the Claimant as "needing to get a sense of humour".

2) By Mr Robinson making an inappropriate joke on a team building away day.

395 The parties agreed that there was a limitation issue, given that the allegations were not presented within three months (subject to ACAS conciliation): should the Tribunal determine "such other period as the employment tribunal considers just and equitable" for the complaints to have been brought?

396 These complaints were made in the context of an alleged culture relied upon in determining the reason for dismissal (and, pre-withdrawal, sex discrimination allegations). Issues of reliability and credibility have proved complex in this case. The parties have spent time and money addressing the matters on merit, albeit the respondent included a final submission on limitation.

397 Had these allegations been isolated and out of time; or irrelevant and severable from the other parts of the claim; or factually beyond doubt, then the Tribunal could have avoided making the relevant findings of fact in the context of the other claims. Having needed to make the findings, it strikes the Tribunal as a just exercise of our discretion, and exceptionally so given the interrelationship of the cultural issues in this case, that we extend time to determine them. The matters are stale, yes, and some Limitation Act factors are against a different time limit. Many of the allegations in this case going to the reason for dismissal are also stale, but we have needed to fact find in relation to those. Given the extensive disclosure (the 2012 email chain is the exemplar), and the lack of prejudice to the parties in determining these complaints, justice is served by fixing an alternative limitation date. In many ways it would be unjust to those involved not to determine them. This is an exceptional case and

exercising our broad discretion we extend the limitation period to the date when the claims were presented (24 June 2016).

398 Section 26(4) provides: "In deciding whether conduct has the [statutory effect], each of the following must be taken into account-(a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect.

399 It is right to say that the claimant has made out the factual matrix to satisfy Section 26 (1)(a): true it is Mr Robinson intended his reference to "posh birds" to Ms Broad and a potential future colleague. That is nothing to the point: the comments and "nun" joke were unwelcome and they inherently related to gender or sex in context in our judgment.

400 We have also found that Mr Robinson had no intention to humiliate or cause offence, even in saying "I know Karen will not like this etc": his purpose was misguided humour, not humiliation. These matters do not preclude the claimant meeting the requirements of Section 26: the Tribunal has to determine whether the conduct had the effect in accordance with Section 26(4).

401 Whether an individual perceives dignity is violated or a work environment is made intimidating, hostile, degrading, humiliating or offensive, is highly fact sensitive, and often takes into account the relative status of those affected, their ability to influence that environment, and the nature of the conduct: one off or rare conduct can have the statutory effect, but it is less likely than frequent or repeated conduct encountered regularly.

402 The claimant perceived matters 1) and 2) as undesireable and was concerned about how such things could affect others. Her evidence was that she felt uncomfortable and had approaches from other more junior staff who felt similarly. Such alleged approaches were evidenced only by the 2012 example; there were no others before the Tribunal.

403 The claimant was prepared to challenge unwise humour when appropriate (in 2012 and with the union representative). Had she perceived that Mr Robinson's conduct in the two matters relied upon (one of which was never repeated) had created the statutory effect for her at work, the Tribunal has no doubt she would have highlighted that at the time.

404 The claimant was described by witnesses as quiet, a person of detail, but robust. There are countless examples of her challenging a wrong course (see for example in relation to the "barring" of members of the public) where her view prevailed. She was well qualified and obliged to give clear explanations of how misplaced humour can offend, or have unintended consequences, if she perceived matters were creating the statutory effect for her (or indeed others).

405 Our short conclusion is that in context, and given the claimant's role and influence within the respondent at the time, and taking into account the three 26(4) factors, she has not made out that the unwanted conduct related to sex had the statutory effect at the time. The harassment complaints fail on merit.

Decision in respect of protected disclosure detriment complaints

<u>In relation to the alleged detriments as set out at 2.3.1 to 2.3.3, whether the Claimant's claim is out of time?</u>

406 Section 48(3) ERA 1996 provides: "An employment tribunal shall not consider a complaint under this section unless it is presented – before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates, or where that act or failure is part of a series of similar acts of failures, the last of them…".

407 Mr Parkinson's angry conversation about settlement and withholding of reference, and invoking home leave, and failure to provide the Stockton reference in a timely fashion, are inherently a series of similar acts, that is a series of acts prejudicial to the claimant reflective of his poor view of her. By January 2016 that had become ill feeling, given the fractious correspondence between them. Consequently we were not time barred from determining them.

Whether the matters complained of amounted to "detriment"

408 Section 47 B of the Employment Rights Act 1996 relevantly provides at 47b (1) : "A worker has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure".

409 It is convenient and necessary to record here that we do not consider the claimant had an unjustified sense of grievance[23] about home leave, notwithstanding the provision was contained in her employment contract: it had never been invoked for a chief officer and was not invoked for her benefit, but because of the organisation's concerns. The original script did not contain reference to her welfare; and nothing changed between 22 January and 27 January to suggest that her welfare was in the mind of Mr Robinson and Mr Parkinson at that time. "I felt for Karen" was not apparent in any of the correspondence between them at the time. We reject that evidence.

410 The fact of being sent home, which was known to her direct reports, carried stigma, because it had not been used before for chief officers. Others in the organisation may not have realised she was walked from the premises, but those close to her did know of the invocation of the leave. The conversation about settlement, threat concerning a reference, and delay in providing a reference are also, inherently, paradigm acts of detriment within the meaning of the section.

Whether in the following letters the Claimant made (i) a disclosure of information which, (ii) in the reasonable belief of the Claimant, (iii) was made in the public interest and (iv) which tended to show that a person had failed, was failing, or was likely to fail to comply with any legal obligation to which he or she was subject: to Tony Parkinson on 11 December 2015 (a); to Dave Budd on 11 December 2015 (b); to Mike Robinson on 4 January 2016, copied to Chrissie Farrugia, Nicola Wright, Dave Budd and Paul Slocombe (c); to Mike Robinson on 18 January 2016(d); and to Mike Robinson on 20 January 2016(e)(the grievance).

411 In submissions the claimant accepted (a) may not contain sufficient information to meet the statutory test. The Tribunal agrees. The respondent submitted that (c) and (d) contained statements of assertion or opinion rather than information relying on the line of cases beginning with Cavendish Munro v Geldud [2010] ICR 325, but the Tribunal must assess whether communications in the round meet the statutory language of Section 43B qualifying disclosure components.

[23] St Helens v Derbyshire [2007] ICR 841

412 The Tribunal does not agree that (c) and (d) were mere statements of position, looking at the letters in the round. In letters (b) to (e) (including letters (c) and (d) the claimant disclosed information which in the claimant's reasonable belief tended to show the respondent was failing to comply with legal obligations, be that chief officer terms or local government regulations, or principles of fair dismissal, or discrimination and harassment.

413 We also consider the disclosure of information in letter (b) to an executive mayor of this local authority to be disclosure "to the employer". There was no authority relied upon as to why it would not amount to disclosure to an employer in the circumstances of an executive mayor, whom Mr Robinson briefed every day and when the two worked so closely to deliver the mayor's vision. We note that both restructures (Ms Broad's area and that of Mr Slocombe and the claimant's) came to members with the support and knowledge of the mayor and albeit staff structures were Mr Robinson's remit, he would not have altered them without the approval of the mayor.

414 The Tribunal also considered that copying the claimant's 4 January letter to others, in addition to Mr Robinson, does not mean it was not a disclosure "to the employer".

415 The respondent further submitted that the Tribunal should find that the claimant's belief that she made those disclosures in the public interest was not objectively reasonable in all the circumstances: she was ventilating a private dispute about her personal interest in maintaining her employment and statutory post.

416 See Chesterton Global Limited (trading as Chestertons) and another v Murmohamed [2015] ICR 920: an employee's belief that disclosure is made by him or her in the public interest must be objectively reasonable.

417 It does not follow in this case that because the employer is a public sector employer, the claimant was objectively reasonable in her belief that disclosure was made in the public interest, any more than a similar belief would not be objectively reasonable if the employer is a private sector employer. We adopt Mr Jeans' submission on that point.

418 We then weigh in the mix the care and detail with which the claimant set out the legal position in writing at various points; in contast to her one off flippant reluctance to further assist Mr Parkinson ("you should know") on 5 January or thereabouts. We also weigh in the mix that the claimant had, in the past, written in similarly lengthy terms concerning her own pay. We take into account the reference to ventilating the dispute in an employment tribunal in the Budd letter, the first of the disclosures, and the unnecessary, on our findings, reference to "posh birds" and "nazi salutes", and that the claimant's employment and career was under threat. In the round we consider that her belief in the public interest purpose of her disclosures was not objectively reasonable, no matter how acute her sense of outrage at a public authority taking a wrong path. The objective observer with knowledge of these events would conclude that the outrage was in the taking of a wrong path **towards her** and how best to remedy that, and that a reasonable belief would have been that the disclosures were made in her own interest.

419 With that conclusion we do not come to decide whether Mr Parkinson subjected the claimant to the "detriments" "on the ground that" she made protected disclosures. The only suggestion to him in cross examination that he had done so was in relation to the home leave decision.

Decsion in respect of victimisation complaint

Did the Claimant carry out a protected act as set out at section 27 (2) Equality Act 2010 when she submitted a grievance on 20 January 2017.

420 Section 27 relevantly provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act, or….

(2) Each of the following is a protected act –

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information or making a false allegation is not a protected act if the evdeince or information is given, or the allegation is made, in bad faith….

421 Referring as it did to harassment, sex discrimination and equal pay, it was accepted in submissions that the claimant's grievance contained protected acts pursuant to Section 27 (2)(d) of the 2010 Act (in that it contained allegations that the respondent had contravened the Act).

422 We note that the reference to "any other thing" in Section 27(2)(c) follows references to bringing proceedings, (2)(a), and giving evidence (2) (b) in connection with proceedings under this Act. Given the landscape of industrial relations, equality policies and workplace dispute resolution, in which the encouragement to present and resolve written grievances before commencing 2010 Act proceedings, is embedded, including in the respondent's policies[24], we reject Mr Jeans' ingenious submission that the grievance contained protected acts, but was not itself a protected act. Rather like a Russian doll, it can be a doll; and it can contain a doll. Of itself, the grievance amounted to a protected act under (2)(c): the doing of any other thing… in connection with this Act. To consider the position otherwise is to disapply common sense in this case.

423 That being our decision, the question for the Tribunal is whether Mr Parkinson's decision to place the claimant on home leave was materially influenced by (given the purpose of the Act) her making of the grievance. His unchallenged evidence was that he had not seen the grievance document at this time.

424 Mr Jeans submitted that it was not put to Mr Parkinson that he had put the claimant on home leave because she had made an allegation pursuant to the 2010 Act or because she had taken relevant action under it. We agree the point was not put expressly in those terms, but taking the phase of cross examination in the round, Mr Parkinson had a chance to address his state of mind in sending the claimant home, and the substance of the allegation which was well understood and put. He was asked if he prepared the script read to the claimant on the day of home leave; he did; He was asked whether Mrs Clarke amended the first version; he agreed; it was put to him that he had taken out "the breakdown in the working relationship" and the loss of trust and

[24] 138 to 148

confidence from not adhereing to processes (concerning external bodies); he agreed; he said he took out that part because he was not party to the third external bodies issue (but did not explain why the reference to the grievance came out, save on advice). It was suggested to him that the claimant was not withdrawing from work for any extensive period, and he explained how he became aware of that concern from the claimant's direct reports. He was referred to his witness statement evidence concerning the reasons for home leave.

425 The home leave decision was also discussed with Mr Robinson and that Mr Parkinson had discussed it with him; Mr Robinson gave evidence that the reasoning included the breakdown in the relationship between the claimant and Mr Parkinson.

426 We remind ourselves of Mrs Clarke's evidence about the advice she gave and its context. From that it is clear Mr Parkinson knew of the existence of the grievance by 27 January at the latest (which was also the day Mr Robinson acknowledged it in a letter to the claimant). He also knew the grievance was, at the very least, a grievance about bullying and harassment.

427 The latter, harassment, is well understood as a potential free standing contravention of the 2010 Act and was so understood, in our judgment, by an experienced director like Mr Parkinson. We recall his being live, for example, to the difficult potential discrimination issues in relation to Mrs Coxon. Notwithstanding Mrs Clarke's wise advice that "we would not send someone home because they have submitted a grievance", he did not abandon his wish to send the claimant home, but characteristically pressed on, intead amending the script on advice so that all the reasons for doing so were made opaque.

428 We note that the respondent did not defend this case on the basis that the complaints in the grievance were false allegations made in bad faith (and therefore did not amount to a protected act). That was the gist of Mr Parkinson's position (that they were untrue and malicious, a position reached before he had knowledge of the content).

429 In all the circumstances the Respondent did subject the Claimant to a detriment by placing her on home leave because the Claimant had carried out a protected act: the grievance, a protected act, was a material influence on the mind of Mr Parkinson in taking that decision, notwithstanding that decision was also driven by a number of other factors including Mr Robinson's concern about disclosure to outside bodies without the courtesy of prior consultation him, and Mr Parkinson's concern about work tasks not getting done. In reaching that conclusion we note that again, the work matters concerning Mr Parkinson (the two meetings not attended) were not discussed with the claimant, nor any steps taken to try and address the awkward position in which the parties had placed themselves. Nor were any steps taken short of home leave, as envisaged by Mrs Clark, to separate those involved in a grievance.

430 The claimant's victimisation complaint succeeds.

Unfair Dismissal

431 <u>The reason for dismissal: was the Claimant dismissed by reason of redundancy, or some other substantial reason (being potentially fair reasons as set out in section 98 (2) of the Employment Rights Act 1996 (ERA 1996) or was she dismissed because her "face did not fit", previous runs ins with Mr Parkinson and Mr Robinson, the restructuring being "engineered" or a "sham" to achieve their objective?</u>

432 The Tribunal had an otherwise comprehensive authorities bundle, but a collection of cases where the reason for dismissal was in issue were not included (Dynamex Friction Ltd v. Amicus [2008] IRLR 515, Orr v. Milton Keynes Council [2011] ICR 704, *Co-Operative Group Ltd v Baddeley* [2014] EWCA Civ 658, the last of which is Royal Mail Group v Jhuti [2016] ICR 1043) (an "Iago" case), albeit Mr Jeans' addressed Jhuti in his submissions. Jhuti is the subject of an appeal and the otherwise absence of these cases in submissions encouraged the Tribunal to concentrate on the words of the statute and well secured principles derived from it, as they might apply to these, highly unusual facts.

433 We were also provided with a note from Mr Jeans confirming the principle that no adverse inference could be drawn from a decision not to disclose the written legal advice to the council about these matters and we directed ourselves accordingly.

434 Section 98 ERA 1996 relevantly provides:

(1)In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

> (a)the reason (or, if more than one, the principal reason) for the dismissal, and [etc]
>
> … (2) A reason falls within this subsection if it –
>
> (c) is that the employee was redundant
>
> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
>
> (a)depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case.

435 Section 139 relevantly provides:

a. For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundnacy if the dismissal is wholly or mainly attributable to -

…

(b) the fact that the requirements of that business -

i. for employees to carry out work of a pariticular kind…have ceased or diminshed or are expected to cease or diminish.

436 It is trite law that the reason for dismissal is the set of facts known to the employer, or the set of beliefs held by him, that causes him to dismiss the employee: *Abernethy v, Mott, Hay and Anderson* [1974] ICR 323, CA.

437 Where an employee has been dismissed by an organisation, section 98 is silent as to which individual within an organisation counts as the "employer", for the purpose of ascertaining the reason for dismissal and whether the employer acted reasonably or

unreasonably. Nevertheless it follows from Abernethy that the Tribunal has to identify those whose mental processes it has examined.

438 The Tribunal did not hear from all thirty five councillors who took the decision to dismiss the claimant, but from two: Mr Budd and Mr Bloundelle. Mr Budd had been given a detailed sense of the claimant's concerns by the December letter, but other councillors' awareness, including Mr Bloundelle's, was much more limited. Of that large group of decision makers, we infer Mr Bloundelle was typical in his beliefs or knowledge (and the mayor exceptional). Mr Bloundelle believed the elimination of the claimant's post (and that of Mr Slocombe) would save money; he believed it would improve delivery; he believed all due process had been followed and endorsed by independent legal advice; he believed there had been consultation and that the claimant's contract had been observe. Those beliefs were reasonable beliefs to have formed from the papers submitted to council members, both in March and in May. The substantive change from March to May was that there crept into Mr Parkinson's management case on appeal and implicit criticism of the claimant and Mr Slocombe in that he said there had been opportunities for them to remedy governance issues and they had not done so, or words to that effect. Those beliefs were also reasonable because the proposal had the endorsement of the Mayor, the chief executive and the relevant executive director, Mr Parkinson.

439 Mr Budd's knowledge and beliefs were more extensive: he was aware from the December letter to him that the claimant considered Mr Parkinson was advancing criticisms of her concerning the Fletcher job evaluation, and her appraisal, and she considered his unseemly haste in launching and progressing formal consultation to be indicative of bullying, and being set on dismissal, come what may.

440 Mr Parkinson may well have shared his criticisms of the claimant with Mr Budd directly, given his role as an executive mayor; but does the knowledge of the executive mayor, as one of thirty five decision takers with democratic accountability, that Mr Parkinson was also influenced in his proposal by his poor view of the claimant, affect the principal reason for a dismissal decision by that full body of councillors in these circumstances? They were not, after all, provided with that information. In fact the opposite was represented to them by the paperwork: there were no performance or capability concerns with the claimant or Mr Slocombe it was said, before the March meeting.

441 Mr Parkinson's poor and personal view of the claimant does not then, in our judgment, alter the principal reason for dismissal. That is all the more so when at both the dismissal decision stage, and the appeal, the details of the grievance were kept from all councillors; and the mayor had not seen the grievance itself, but the forerunner of it in the 11 December letter.

442 The proposal was inherently a proposal for a diminished number of employees to carry out work of a particular kind: a reduction from two to zero of Assistant Director level leaders covering the areas covered by the claimant and Mr Slocombe. The way of delivering the leadership and technical tasks of those areas in the future was by one post, but carrying out higher level work, and potentially also further posts at a lower level. That is a paradigm dismissal under subsection (c): the respondent has shown that the principal reason for the dismissal was that the claimant was redundant (because her post was eliminated), because it was the councillors' belief in that paradigm proposal that caused them to take the decision to dismiss.

443 We also observe here that our findings as to Mr Parkinson's reasons to canvass dismissal by redundancy (see paragraph 311 above) were multifactorial. The statute

requires us to find a principal reason – the beliefs and facts which cause dismissal; he did not propose or seek dismissal for performance or conduct; he proposed it for elimination of the post, albeit he was influenced in that solution by his poor view of the claimant. His principal reason was also redundancy, and in all these circumstances we have included that the respondent's principal reason was redundancy.

444 Applying equity, and the substantial merits of the case, did the Respondent act reasonably in treating the reason for the Claimant's dismissal as a sufficient reason for dismissing the Claimant?

445 We have given ourselves the "band of reasonable responses direction". These facts are very unusual if not unique in this Tribunal's experience, but to those facts we must apply that direction.

446 The question is not whether the respondent acted in a flawless manner in treating the reason for dismissal as sufficient reason to dismiss the claimant in all these circumstances, but whether the respondent, acted reasonably in so doing.

447 Having accepted that the reason was a decision to address structural issues through elimination of posts and a new post, it is right to say that the respondent adopted many aspects of a reasonable process. A forty five day statutory consultation process involving the union; colleagues reporting to the affected posts were later consulted and changes were made (albeit not to the central decision to eliminate the claimant's post); the claimant had the opportunity through her union representative to make submissions, and she did make those mostly on the legality of the process, but also one alternative suggestion (for the elimination of Mr Parkinson's post). There was also a meeting before thirty five councillors and a full appeal at which she had the right of representation and appearance. All these matters are features of a reasonable process, which would meet aspects of the Williams principles, and general principles of fairness.

448 On the other hand the vast number of elected members, the decision makers, were unaware until the appeal (and only then obliquely) that Mr Parkinson had capability concerns about the claimant; why would they have that knowledge when the detail of most of his private concerns has only emerged through this litigation? They were also not aware that he had mixed motives for the solution he settled upon including conduct.

449 They were also unaware that there had been a departure from the outset from the respondent's previous approach to potential chief officer redundancies, and that there was no Paragraph 82 consultation which is very clear and mandatory in its terms. They were told legal advice had given the green light to all Mr Parkinson's actions. That contrasted with Mr Roberts summary of the legal advice which identified that there was a relevant dispute of fact: sadly Mr Roberts' advice was not what was recalled, and relied upon, but Mr Parkinson's characterisation of all the advice repeated by him several times.

450 They were also unaware that Mr Parkinson in reality had a closed mind to an outcome which did not involve the dismissal of the claimant, evidenced by his conduct on 19 January 2017; and his relentless pressing on, come what may, irrespective of the "process" and other matters raised by the claimant.

451 They were unaware of the claimant's grievance; and they were unaware that home leave had been for more reasons that those they were told about, including that grievance. Elected members were told that no other employee had had a grievance considered as part of a redundancy process and that it would proceed separately.

That, of itself, does not strike the Tribunal as outside the band of reasonable responses ordinarily, but where part of the claimant's submissions about unfairness include sending home because of a grievance, they might reasonably have been expected to be given all information about the rationale, including the original script, because it is further indicative of Mr Parkinson's closed mind and less than objective position.

452 This is a case in which the Tribunal has had to draw upon all aspects of the statutory language in Section 98(4), including equity and the substantial merits of the case. Neither of the principle protagonists in this case can be said to be without conduct they might regret and we have made findings of fact against them both. Aspects of the claimant's factual case have not succeeded, particularly prior to the Fletcher job evaluation issue, but also after that.

453 Nevertheless, the Tribunal is concerned with the termination of a contract of employment. That contract has provisions for chief officers which are not present for others. They have been negotiated nationally and have been deployed by this employer such that there have never before been dismissals of this kind. No doubt the fiduciary type nature of these senior roles means it is encumbent on those chief officers, if consulted when suggestions are made, to stress test and express their views, for the benefit of the organisation, in the knowledge that those holding senior posts can contribute to the shape of things to come after they depart, much like Ms Broad and Mr Robinson.

454 The claimant (and indeed Mr Slocombe) were, in summary fashion deprived of that early opportunity. We cannot know the outcome, had Mr Parkinson undertaken Paragraph 82 consultation, confidentially, as others had done, before any other steps were taken, or proposals formed. We remind ourselves that Williams principles include avoiding compulsory redundancies, and hardship, where possible; and the chief officer terms clearly reflect those principles in a particular way, and in the context of those who might have much to contribute by way of ideas. That of course does not preclude a "firm position", but can one imagine, in Mr Robinson's case, if Ms Broad had said, I really do not think that your proposal will achieve its objective, he would have pressed on regardless and without further thought?

455 The tragedy in this case is that Mr Parkinson's approach led the claimant to conclude he was set on her dismissal, come what way, including his insistence to both councillors and the claimant that there was a legal green light for his actions. That meant that there was little reasonable prospect of her making sensible contributions or analysis on the substance, or that there could be recovery from soured relationships. Where did responsibility for that lie? Did it lie with the claimant for pointing out errors and defending her employment using all means available to her, or did it lie with Mr Parkinson for pressing on come what may, seeking to use a characterisation of legal advice to intimidate the claimant into backing down?

456 All these matters considered, in the round, did the respondent act reasonably, that is within a band of reasonable responses, in treating the elimination of the posts as sufficient reason for the claimant's dismissal, we consider it did not.

457 The claimant's unfair dismissal complaint is well founded and succeeds.

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Employment Judge Wade

16 June 2017

Sent to the parties on:

19 June 2017

For the Tribunal:

G Palmer