EMPLOYMENT TRIBUNALS

Claimant: Miss J Hyland

Respondent: Cheshire & Greater Manchester Community Rehabilitation Company Limited

Heard at: Manchester **On:** 29, 30 and 31 October 2018
1 November 2018
11 December 2018
15 February 2019
18-20 February 2019
6 and 7 March 2019
(in Chambers)

Before: Employment Judge Sherratt
Mrs C Linney
Ms B Hillon

REPRESENTATION:

Claimant: Miss L Carr, Solicitor
Respondent: Ms D Grennan, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The respondent was not in breach of the duty to make reasonable adjustments for the claimant.

2. The claimant was unfairly dismissed.

3. The claimant was wrongfully dismissed.

4. There will be a remedy hearing on **29 March 2019** at **Alexandra House, 14-22 Parsonage, Manchester, M3 2JA** starting at **10.00am**.

REASONS

The Claims

1. The claimant brings her claims under the Employment Rights Act 1996 and the Equality Act 2010. In a preliminary hearing on 29 March 2018 Employment Judge Franey set out the complaints and issues as follows:

> **Breach of duty to make reasonable adjustments – sections 20 and 21 Equality Act 2010**
>
> Preliminary Issue – Disabled Person?
>
> 1. Was the claimant at the material time a disabled person by reason of congenital hip dysplasia and arthritis?
>
> Reasonable Adjustments
>
> 2. If so, can the claimant show that on any of the occasions to be identified in further particulars the venue for a meeting was such that (by reason of the physical feature of premises, a missing auxiliary aid or the application of a provision, criterion or practice) the claimant was placed at a substantial disadvantage compared to a person who was not disabled?
>
> 3. If so, can the respondent show that it did not know and could not reasonably have been expected to have known:
>
> (a) That the claimant had a disability; and
>
> (b) That she was likely to be placed at that disadvantage?
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> 4. If not, did the respondent fail in its duty to take such steps as it would have been reasonable to have taken (including provision of an auxiliary aid) to have avoided that disadvantage? The adjustments for which the claimant contends include:
>
> (a) Changing the location of the meeting;
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> (b) Arranging for the meeting to be on the ground floor;
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> (c) Making a list available; and/or
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> (d) Providing designated parking close to the venue of the meeting.
>
> Time Limits
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> 5. In so far as any of the matters for which the claimant seeks a remedy occurred on or before 15 July 2017 (three months before presentation

of her claim, allowing for the effects of early conciliation), can the claimant show:

(a) That it formed part of conduct extending over a period ending on or after that date; or

(b) That it would be just and equitable to allow a longer time period for presenting a claim?

Unfair Dismissal – Part X Employment Rights Act 1996

6. Can the respondent show a potentially fair reason for dismissing the claimant, namely a reason relating to her conduct?

7. If so, was the dismissal fair or unfair under section 98(4)? This is likely to include consideration of:

(a) Whether the respondent had a genuine belief the claimant was guilty of misconduct;

(b) Whether there were reasonable grounds for that belief;

(c) Whether that belief was formed following such investigation into the matter as was reasonable;

(d) Whether the respondent followed a reasonably fair procedure; and

(e) Whether the decision to dismiss the claimant rather than impose a lesser disciplinary punishment fell within the band of reasonable responses.

Breach of Contract – Notice Pay

8. Can the respondent prove on the balance of probabilities that the claimant was guilty of gross misconduct which entitled the respondent to dismiss her without notice?

Remedy Issues

9. If any of the above complaints succeed, what is the appropriate remedy? Issues likely to arise include:

(a) The basic and compensatory award for unfair dismissal;

(b) Whether either of those awards should be reduced on account of contributory fault;

(c) Whether the compensatory award should be reduced on the basis that a fair procedure would have resulted in dismissal in any event;

(d) The appropriate award for injury to feelings and for interest in relation to any unlawful discrimination;

(e) Whether any award should be reduced or increased on account of an unreasonable failure by either party to act in accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015.

The Evidence

2. The claimant gave evidence on her own behalf and called Wendy Price who went with her to one of the meetings with the respondent. We received a witness statement from the claimant's mother and a medical report indicating that she was not fit to give evidence. The claimant had hoped to call her daughter, Sophie Hyland, and a friend, Tanya Demir, but on the day set aside for hearing their evidence Ms Hyland, who had been on standby rather than scheduled to work, was unfortunately called upon to work and was not available to attend the Tribunal. Ms Demir, who had attended earlier sessions, was unfortunately called in to work because a number of her colleagues went down with some form of sickness.

3. For the respondent we heard from Vicky Travis who carried out the investigation, Stuart Tasker who decided to dismiss the claimant, and Donna Meade, who dismissed her appeal. The respondent also called Karen Taylor who gave evidence as to the state of the respondent's premises that the claimant attended during the course of the disciplinary process. On the last day the respondent produced a witness statement from Sheron Burton-Francis dealing with how the claimant's work diary came to have been lost or destroyed.

4. The hearing bundle consisted of 800 or more pages.

Introduction

5. The claimant became a Probation Officer in 1998 having obtained her professional qualification from Manchester Metropolitan University. She worked for the Greater Manchester Probation Service, and following the Government's privatisation of the Probation Service her employment transferred to the Cheshire & Greater Manchester Community Rehabilitation Company Limited on 1 July 2014.

6. The claimant was latterly based at Salford working with offenders sentenced to the most intensive form of supervision and was tasked with leading the work with domestic violence perpetrators aged 25 and under, developing intervention models and overseeing less experienced colleagues and staff from other agencies whilst continuing to work with sex offenders.

7. The claimant has an exemplary record in her career as a Probation Officer, and at the time of the matters leading to her dismissal she was employed as a Senior Case Manager.

8. The claimant has congenital hip dysplasia and for the purposes of her claims under the Equality Act 2010 the respondent has accepted that the claimant is a person with a disability.

9. The circumstances which gave rise to the termination of the claimant's employment involved allegations made against her by a person subject to a supervision order, and he will be referred to as the "service user" or "SU".

10. At the claimant's disciplinary hearing it was said that SU was the subject of an 18-month Offender Rehabilitation Act ("ORA") Community Order with 90 hours' unpaid work, 20 RAR days and a requirement to attend the Building Better Relationships ("BBR") programme. The sentence was imposed on 26 March 2016 at Croydon Magistrates' Court for an offence of battery which was committed within a domestic context on 15 February 2015. A probation report was prepared in which the author referred to case papers outlining that the SU had smashed things in the property where he resided with the victim, his then partner of four years. During the incident he assaulted the victim by slapping her once to the cheek and he threw items at her. The victim referred to one previous occasion when SU was allegedly physically violent towards her but this had not been reported. The report indicated that SU was open and honest and did not attempt to minimise or deny his actions and his remorse appeared genuine. He had used cannabis socially in the past but he had become a personal trainer two years before the offence and had stopped using cannabis. There did not appear to be any reported mental health problems. He had convictions for seven offences dating back to 1988 and as a juvenile was convicted of theft, robbery, failing to surrender to bail, criminal damage, possession of cannabis and burglary/theft in a non- dwelling. He had received sentences ranging from a 12 month conditional discharge to 12 months of supervision and 60 hours of community service. He had never received a custodial sentence and prior to the offence for which he had recently been sentenced, his last offence was recorded in 1996, some 18 years earlier.

11. Having been placed on probation in the London area he came to live with a friend in the Greater Manchester area and his probation order was transferred to the respondent.

The Complaint

12. In August 2016 the SU was living in a form of hostel. Wendy Kinder, a support worker, completed an Adult Safeguarding Board notification of alleged adult abuse or concern document on 4 August 2016, noting that:

> "The allegation is that a professional person (probation officer) has allowed SU to live at her house prior to him moving into the hostel. That she has loaned him money (£300) which he is aware that he needs to pay back. That the probation officer has been sending him text messages and photographs of herself and other family members, often late at night. He described that she had a 'cannabis grow' in her spare bedroom."

13. Wendy Kinder went on to say that SU was worried because of repercussions; now he has spoken out and because he was concerned as the probation officer's family knew where he lived but he was relieved to have spoken up about it as he believed that this has happened to someone previously because of what he was told by the probation officer and that it could potentially happen again. She reported her concerns to her Service Manager and then to the Area Manager. She also provided a lengthier statement of the issues that the service user said he had with his

probation officer. According to her note she was concerned about SU as he had not been coming out of his room and appeared to be very low in mood. She had spoken to his probation officer in regard to another matter and the probation officer asked if SU was ok as he was not answering his phone to her. Wendy Kinder advised the probation officer that she would keep a check on SU and asked staff to monitor his mood.

14. On Monday 1 August 2016 she spoke to SU who was feeling down and was having issues with his probation officer. Then on 4 August 2016 they spoke privately and he informed her of various issues. SU told Wendy Kinder that he had been living at the probation officer's home and had met most of her family. She had shared the house with her and her daughter and her daughter's partner. When SU started seeing a female the probation officer's behaviour changed and she started to insult him. He attended a family wedding with her. She had a cannabis grow in her house and supplied him with cannabis on a daily basis. She had previously had another probationer called Jason living with her. The service user had been working and had seen his probation officer away from the office, in particular at a wine bar. He owed her £300. There had been various text messages passing between them and also WhatsApp messages. He was concerned that if the probation officer found out he had spoken about these issues there would be repercussions. She knew where he lived and where he parked his car, and she had two nephews who he was concerned about. The probation officer was no longer interested in him as she had met someone else, a male with a young child. There had been numerous text messages, some sent at midnight and later, and Wendy Kinder had seen them all.

Suspension

15. On Tuesday 9 August 2016 the claimant was invited to a meeting and informed that a number of allegations had been brought to the attention of the respondent and that she was going to be suspended. A script was read to the claimant – although it is not recorded in the minutes as to what was put to her – and the claimant denied the allegations. It was unbelievable, utter nonsense and she was stunned. She could not understand why anyone should make such allegations. The claimant noted that the service user was a domestic violence perpetrator. When she had been off sick from September 2015 to March 2016 the case was reallocated to another officer and the only contact she had had with the service user was his request for her to provide a reference for him, and that this contact was recorded on NDelius, which is the respondent's system for recording contact with service users. Having been told she was being suspended the claimant was escorted out of the office.

16. The claimant's suspension was confirmed in a letter dated 9 August, and it included the allegations that the claimant had:

- Failed to uphold the professional standards and breached boundaries expected of an offender manager;

- Potentially committed a criminal offence by supplying a current service user with an illicit substance;

- Breached C & GM CRC's policies and procedures, including the Code of Conduct, and may have placed C & GM CRC's reputation into disrepute.

The Investigation

17. On 16 August 2016 Vicky Travis, an Interchange Manager with the respondent company, was appointed as the investigating officer. She had been employed by the respondent from 2002 working as a probation officer until 2008 after which she held managerial positions, leading a team of frontline staff.

18. Having been appointed she was provided with various documents, and she made contact with the service user by telephone on 18 August. She wrote to the claimant on 22 August to confirm her appointment as investigating officer.

19. She made arrangements to meet the service user on 5 September 2016 away from the Greater Manchester area, but before that meeting the service user provided her with a formal letter of complaint. It is headed "Formal Complaint against the Probation Service" and is set out over 3½ pages. It was sent from SU's iPad.

20. SU named the claimant and alleged that his experience under her had been extremely stressful and had affected his emotional and physical health, put him at risk of re-offending, put his life in danger, and has effectively made him homeless due to her manipulative behaviour, serious misuse of her power and position and putting him in positions where he was in danger of breaking the law which could have resulted in him being arrested whilst on probation. He had reported matters to his Housing Support Worker – Wendy Kinder. According to SU he had not been able to leave the hostel for 3-4 weeks as he was being harassed round the clock, and believed his life was in danger or at the very least could have been seriously harmed to the extent that he had to escape the hostel with the help of the staff at 5.00am as this is when the harassment seemed to stop. He would watch from his window those that were harassing him riding their motor bikes up the road. They passed his window, they would sound horns and rev their engines as well as congregate at the window with dogs, of which two belonged to the claimant. He would keep his window closed and the curtains shut and would not put the TV on so they would not think he was in, but then they started to shine and flash powerful torches at his window. He was terrified.

21. The complaint goes on to refer to SU talking to the claimant on 11 March 2016 when he had nowhere to stay, and she told him to go to her house. He was grateful because he did not want to sleep in his car. He thought that as his probation officer she would be able to help him, but her efforts were minimal. She allowed him to use her bedroom as she had dogs that slept in the living room and he did not like dogs. He consumed large amounts of alcohol every day to cope with his problems, and the claimant would do the same, and indeed she bought it as he did not have any money. She bought takeaways and paid for them to go out and eat. They would stay up until the early hours. He became addicted to marijuana again as the claimant had had a hip operation and would smoke it to relieve her pain. At first he did not smoke but then started to and became her smoking partner. He was not physically attracted towards her but he thought she was to him. Once when they had been up late she came into bed with him. He did not realise until she put her arm around him and he could not believe what was happening. He went to the toilet to get out of the

situation; then he did not go to bed until she had fallen asleep. He would wake up to find her in the bed sometimes so he started to fall asleep downstairs regardless of the dogs. He had discussed his offence and his relationships and her relationships. He had just started to date and was taking things slowly, and on one occasion when he was about to go out to the cinema according to him the claimant said, “well, what’s wrong with me then?” and he realised that her intentions had an ulterior motive because she had not provided him with any realistic help. He told her she was behaving as if they were or had been involved but he did not want to say he was not attracted to her as she might have kicked him out. The next day she sent a text to apologise.

22. There was an occasion when he was invited to a wedding by the groom where the claimant's daughter was to be a bridesmaid. According to him, the claimant had been drinking at the wedding and was embarrassing. She followed it up with an apologetic text.

23. He continued to find her behaviour inappropriate, asking him how she looked and describing the sexual encounters of her friend whilst on holiday in Turkey. He thought it must have become clear to her that there would be no sexual relationship between the two of them after which her hostility increased towards him. She wanted his assistance but all he did was take, take, take. She started calling him a “gay mong”. He was not the first client in the position. She had had a relationship with another client called Jason who had lived with her for four years.

24. SU made it clear to her that he would never be attracted to her and did not want to see her anymore, and this was in a message which was his final communication with her. According to him, WhatsApp was the main way in which they communicated. In conclusion he found the claimant's behaviour to be aggressively abusive, sexually abusive, controlling, narcissistic, unstable, jealous, manipulative and needy. He had gone backwards and was homeless suffering with depression and anxiety and having lost three stone in weight. Due to the claimant's actions he was in the worst position he had ever been in his life and had never felt so distressed.

25. The meeting between the service user and Vicky Travis took place on 5 September 2016 and notes were taken. The service user attended with a friend. Taken from the notes, the claimant was the second female probation officer that SU had met in Salford. He met her at least five times but not more than ten. He described her address and the layout of her house.

26. As to their meetings, they met outside of work. They met in Asda. They met at a wine bar where they both had alcohol which she bought. There was not much contact after she had a hip operation but when she returned she was his probation officer again. He rang her to tell her he was homeless and she said to go to her house. He moved in on 11 March 2016. The claimant slept downstairs, insisting she would sleep downstairs with her dogs and it would be better for him as he could have a shower in the morning. Her daughter, Sophie, was also living there with her boyfriend, Steve, but they broke up shortly afterwards. She had two Staffordshire dogs. One female was called Isabel and the male was called Tye. The claimant purchased takeaways and they would drink until the early hours of the morning. The

claimant had an old black BMW, although she now had a new Audi. He went with her to pick it up from the dealership. They would talk about relationships. Julia had had a hip operation shortly before he moved in. He moved in just after she had gone back to work. According to him, she did not have a hip replacement. She had gone to have a bone scraped, shaped or something like that. He referred to the claimant being 52 and said that he had a video showing a plaque on her wall. As to sexual advances, he referred to the incident where she got into bed with him and put her arm around him. He described the bedroom. He drew a plan showing a layout of her house. Her behaviour changed after he had been on a date with a girl and reference was made to a text in which the claimant allegedly apologised for her behaviour. The service user showed Ms Travis a text message on his phone.

27. He got a place to live and moved into it on 9 May 2016. The claimant got him the accommodation as she knew there was no chance of a relationship.

28. When asked about the wedding, he said that someone called Jack was the groom and when they were all drunk at the claimant's house one night Jack said he should make sure he came. The bridesmaids went separately and so he and the claimant went to the reception at a hotel with its own grounds. They did not attend the wedding. He could not remember where it was. He thought it was in May but could not remember. He did not have photographs from the wedding but he had text messages. The meeting note describes a number of photographs on the service user's mobile phone. There were some text messages followed by a reference to a video dated July 2016 which the service user had taken inside the claimant's house. It showed the inside of the house starting downstairs and then having gone upstairs the screen goes black whilst the service user tried to locate a light switch. He unzips something and then the video reveals "a large cannabis production complete with all of the equipment necessary to cultivate cannabis".

29. In the video the service user referred to Class A drugs and explained that cocaine would be delivered once a month to the house and she would sell it on. He never had any sight of any Class A drugs but she showed him thick wads of money that she had accrued through supplying drugs. She supplied him with cannabis. There was then a reference to various text messages.

30. The service user stated that the claimant had gone to Turkey for about ten days with a female friend that he had been introduced to.

31. He referred to the claimant having had a sexual relationship with another client for four years. He had moved out not long before the claimant had moved in. SU's last communication with the claimant was on 4 August 2016 in the form of a text but she had not replied.

32. As to his being harassed, he recognised one of the bikes and heard dogs and one of her family members with the harassment starting the day after the hostel staff told the Probation Service of his complaint. His life was in danger because of the people that the claimant sold cannabis to. He moved out of his accommodation on Friday 29 August. He had not behaved inappropriately towards the clamant. He agreed to stay at her house because he had nowhere to go. If she wanted to mess him up she could. She was his probation officer and had the power. He did not have any formal appointments with her for the 2-3 months he was living with her. He had

decided to report it because she never helped him with his accommodation when she could have, and she took advantage of him when he was vulnerable. He did not want her working with anyone in a similar situation.

33. As to two of her nephews, he believed they had friends living near to where he used to live. They were involved in crime.

34. He described his mental health having been affected and he was depressed. He had lost three stone.

35. At the end of the interview he agreed to email to Vicky Travis the photographs, videos and text messages. The last part of the meeting note says:

> "VT made SU aware that her report should be available by the end of September 2016. This may recommend a disciplinary hearing when a senior manager will hear the case and will make a decision. Julia's dismissal from CGMCRC could happen. VT informed SU that she would have a meeting with JH, and her representative, this week. VT agreed to make SU aware of the final outcome."

36. On Wednesday 7 September 2016 Vicky Travis, supported by an HR Business Partner, met with the claimant who was supported by Mark Machin from the National Association of Probation Officers. We have been provided with the respondent's notes of the investigation meeting. The claimant does not agree with all of the notes and sent Vicky Travis an email setting out her comments.

37. Taken from the notes, the meeting started with a statement which included the allegations, with the purpose of the interview being to ask questions to establish the claimant's version of events. We know from Vicky Travis's witness statement that she had pre-prepared her questions to the claimant and the questions appear in bold on the notes.

38. The claimant confirmed that she had re-read the Code of Conduct with regard to personal relationships with service users, and she knew it was a requirement to advise her employer if an employee forms a relationship with a service user.

39. She had first become aware of SU when he was allocated to her between July and October 2015. He was allocated to her because he had complained about two other probation officers. Their first contact was around July/August 2015. They discussed details of the offender and the offence, which we have set out above. She was supervising SU until she went off work in October 2015 and when she returned to work in March 2016 the case had been allocate to a colleague, Paul Johnson, and her contact with SU ended. She had been off work due to the death of her father and then an operation on her hip.

40. According to the claimant, while the service user was allocated to Paul Johnson he had contacted her and asked her to do a reference. The claimant advised the service user she would if the reference was to do with his offending, etc. She said this was appropriate as he had not seen Mr Johnson but she had no contact from the service user after that. She thought she had met the service user more frequently before she went off work and probably on just one occasion after

she had returned. She had met him at the office and on a couple of home visits because the service user had several jobs and worked late and the office was closed when he was available. There had also been telephone contact. Whilst not remembering how frequently they had been in contact it would have been in accordance with national standards. She had never met with him away from the respondent's premises other than for home visits. She never spoke to a manager about this.

41. She gave her current address and stated that she had lived there for ten years with her daughter and her daughter's partner. Her mother lived with her some of the time. Her daughter and partner had now split up. She currently lived with her mother and daughter, and the daughter had never lived away from home.

42. The claimant described the property and its layout. She described her sofa, living room and back garden, and drew a layout sketch plan. The claimant said that the police had searched her house and it was then she realised that the matters in relation to this case were getting deadly serious. The claimant described her bedroom.

43. She was asked had she ever invited the service user to stay at her house and her response was "absolutely not".

44. **How would service user know your address and how would he know the inside of your property?** JH said that her mum told her that while JH was on holiday someone came to the house and looked through the window. He then came in the house through the front door and went upstairs. He talked to her mum in great depth. He told her mum that JH had said it was ok for him to be at the house. JH said her mum told her that the person talked to her from the kitchen also and had walked through the house. He had said to her to "say hello to JH for me". JH said this happened whilst she was on holiday at the end of June/early July 2016, and this had only happened on one occasion. JH said that her daughter, Sophie, was living at home so her gran came and stayed with her at the house. JH said she did not report the matter to the police and the first she knew about the incident was when her mum told her, which was around the time the allegations leading to her suspension from duty were made. JH said she was worried about the incident and felt she was at risk. She was also concerned that a neighbour had seen the man and asked her who was the man hanging around her home.

45. The claimant went on to say that she did not know why her mum had not told her earlier. Her mum was aged 70 plus years. JH said her mum does not know all her friends. JH said her mum told her that he was downloading from the internet but she did not know what. JH said her mum described the man who entered the house as "black and big".

46. The claimant denied that the service user had ever stayed overnight at her address. She explained that she had two cross breed black and white dogs. Although she was asked what they were called, there is no note of her reply. She did not know how the service user would be aware of this.

47. She had had a hip replacement operation. She might have discussed this with the service user and with other service users because she might have moved from

her seated position because of the discomfort she experienced whilst awaiting the operation.

48. She might have discussed things from her personal life with the service user but nothing deeply personal. It was unlikely she had talked about her daughter's upbringing but may have said something as an example.

49. She had never smoked marijuana. To her knowledge it had never been cultivated in her house and she had never supplied anyone with it. It had never been present in her house. She had no idea why the service user had come to have video evidence of marijuana being cultivated at her house, but the police had searched the house and found nothing.

50. She had never made any sexual advances towards the service user and had never felt emotionally or physically attracted towards him. She had absolutely not entered into a personal emotional or sexual relationship with him. She had not been out with him socially and had never been to McDonalds in the early hours of the morning with him. She had never bought alcohol for him or consumed alcohol with him. She had never been to a restaurant in Swinton or a Chinese Restaurant in Bolton or a wine bar in Swinton with him. She consented to CCTV being viewed if necessary. She had never met him in Swinton Asda.

51. When asked if the service user had ever been a guest at a wedding reception she had attended, JH said that SU had not been a guest at a wedding and reflected on how SU would even have known about this. JH said that her daughter had been a bridesmaid at a wedding and details would have been on Facebook. JH also explained that she has a friend (Lisa) who is a florist and she sometimes helped her to deliver flowers at functions/wedding receptions.

52. The service user had never met any of her friends or family. She had no idea where he lived now. She had bought an Audi three or four months ago from the dealers in Bolton. She had a black BMW which was parked on her drive at home and she gave her registration number. The BMW had a personalised number.

53. She had not sent the claimant any photographs via WhatsApp, text message or social media. He had never taken photographs inside her property. She had never to her knowledge sent any text messages to the service user. She had never been verbally offensive, abusive, insulting or bullying towards him, either in person or in communication. She had not breached the Code of Conduct in relation to her behaviour towards him. She had never used the offensive terms alleged by him. She did not have a clue what they meant.

54. In the last 12 months she had been to Magaluf and to Turkey in June but she had travelled on her own. She had not sent the service user any holiday photographs.

55. **How has SU come to have photographs of him in your property, a video of the inside of your property, photographs of you in the UK and abroad, photographs of your dogs as well as numerous WhatsApp and text messages from you, many outside of core working hours that indicate a relationship outside of professional boundaries, over at least a four month period of time?**

56. JH's initial reaction was that SU cannot have these photographs in his possession. She said there are photographs of her on the public network. JH said her mobile phone went missing earlier this year and that she now has a new sim card on a different phone. She said she obtained these on the day she was suspended from duty. JH said that over four months ago she had experienced lots of problems with her phone and texts and had contacted EE who advised her that her old phone can still be used. She questioned how SU could have her mobile number.

57. The claimant's representative asked if the video of the property had JH in it and was advised by VT that it was only of the house interior. The outside of her garden can be seen on the video through her lounge window and SU can be seen in the reflection in a mirror in her hallway.

58. At this point of the interview the claimant became visibly upset so there was a short adjournment.

59. When the meeting resumed the claimant said that she had lost her phone around March 2016 and it was reported at the same time to EE, according to the claimant around the same time. JH said she did not report to EE that the telephone had been stolen as she did not know if it had been stolen or not. JH said that she put the new sim card in an iPhone given to her by her daughter. JH said she did not get the missing phone back and she told EE that it was lost and they blocked the sim and everything was transferred to the new phone. JH said the missing phone was not password protected. She said at one point she thought the phone had been lost at home.

60. The claimant said she had never walked dogs with SU. He had never done any jobs in her home.

61. When asked if over the last 5 years she had supervised a service user called Jason the claimant said that in the last five years she had seen someone called Jason but believed he was now dead. She had never had an emotional, personal or sexual relationship with a service user. There was one service user who was related to her who had been to her house but she reported that some years ago. With regard to SU, her last contact about him was when she had discussed a reference request for him with Wendy Kinder about "four months ago". Wendy Kinder had telephoned her to ask when SU's order expired. She thought that Wendy Kinder was worried about the claimant who might possibly be suicidal. He had been living where he was since March 2016 and before then he had been living elsewhere with a female social worker.

62. The claimant denied ever being involved in harassing the service user and she was not aware of any of her friends or family having done so.

63. As to police attendance at her property, she advised that after her suspension the police had been to her house and fully searched it. They had referred to "intelligence". The claimant said that the front door to her property did not lock from the outside as the lock was broken but it could be locked from the inside. The door could be pulled from the inside and would stay shut but it was not actually locked. The lock had been in this state for around two years and although she realised this was stupid she had never had a break-in.

64. Vicky Travis said that the information she had received from the service user such as the video showing a cannabis growing looked authentic. JH said it was not true that there was a cannabis farm in her house.

65. When back at work in March she went home at lunchtime to walk the dogs. She asked why she would do this if the service user was living there.

66. The claimant said she would be happy to provide Bank and telephone statements for the previous six months and her mother would verify the events described.

67. At the end Vicky Travis advised she would consider all the points discussed and would complete her report as soon as possible. The suspension from duty would continue.

68. It was on 21 September that two copies of the notes of the investigation meeting held on 7 September were forwarded to the claimant. She was asked to sign and return one copy. The claimant on 28 September apologised for the delay in replying but her representative had been on leave and she was awaiting his guidance.

69. The claimant subsequently responded saying that she and her representative agreed that there were a number of discrepancies in the minutes and some missing information and the claimant set out her comments, the majority of which we do not regard as material but:

> "In respect of JH's mobile phone, JH advised VT that she had lost her mobile phone, JH couldn't remember exactly when this was but thought it was approximately four months ago. JH stated she believed she had mislaid the phone at her home address and therefore did not report it stolen, JH suggested it was her understanding that the phone could not be used by anyone if she obtained a new sim card, JH stated therefore that she requested a new sim card from EE approx. four months ago, in line with the loss of the handset. The new sim card was received by JH and she placed it in an alternative handset, that had belonged to her daughter. JH stated that she had experienced significant problems with the mobile phone during the next few months. JH stated that the problems related to texts and calls not being delivered or received, etc. JH then explained that on the day of her suspension she was advised not to speak to colleagues or anyone from work, as this may result in further disciplinary proceedings, and to prevent having to offer any explanation. JH said she had therefore removed the sim card from her handset, believing this would prevent receiving calls or messages from colleagues. JH states that despite the removal of the sim card, she received a message on the phone from an external friend. JH stated she then contacted EE to clarify why this might have happened and was advised by EE that an iPhone is a computer and does not need a sim card to send or receive messages. JH then requested a complete new number, phone and sim card which she obtained several days after her suspension."

70. On 8 September Vicky Travis contacted Samantha Stapleton, the Interchange Manager at Salford Probation Office, on the telephone to see whether SU had

brought any complaints. In a written statement Ms Stapleton said that a Miss N, living at the same address as the service user, telephoned her at Salford Probation Office after a visit by two female case managers. According to Miss N, one of them presented as an angry lesbian who hated men. Miss N did not want to make a formal complaint. A few days later SU telephoned and made a similar observation, feeling too many questions were being asked of Miss N and they were unnecessary. He did not want to make a formal complaint.

71. It is apparent from Ms Travis's witness statement that on 9 September she had spoken to a Police Sergeant who had confirmed to her that on 23 August he acted on information provided that cannabis was being cultivated at the claimant's address. He confirmed no cannabis was found on the premises and there was no ongoing criminal investigation.

72. On 20 September 2017 she emailed the claimant requesting further details with regard to how the concerns for her safety were being dealt with.

73. In October the claimant's trade union representative changed to Mr Mick Hoosen, an NAPO national representative, and he emailed Ms Travis on 10 October wanting to arrange sight of the video footage referred to in the investigation meeting. Although various dates were suggested they could not agree anything until 7 November when the claimant attended with her union representative to view the video.

74. Wendy Kinder was seen as part of the investigation on 11 October 2016. Wendy Kinder confirmed that SU moved in to the hostel on 9 May 2016 following a referral arranged by herself. SU may not have stayed overnight at the hostel every night and residents were allowed out two nights a week. The door was not always locked. When SU first came he was very private and quiet. He went on a mentoring course during the day. He seemed happy and not stressed:

> "WK said when she was told by SU of the allegations involving JH on 4 August he also disclosed that he had attended a wedding of a member of JH's family. WK checked and confirmed that SU did not stay out overnight on this occasion…WK said SU appeared to change his daily routine from mid to end of July. A parcel was delivered to SU on 27 July and from around this date she noticed a change in him. WK noticed she was not seeing SU as often and he was staying in his room. WK advised that a welfare check was also undertaken on 13 July, triggered because SU had not been seen. WK said staff monitored him as he appeared to be in low mood. WK said SU appeared to be going downhill.
>
> SU had told WK that he had texted the claimant to request information as to when his probation term ended. She thought it suspicious that SU would text the claimant but when she called the claimant to ask for this information the claimant reacted strangely, stating she did not know why SU asked her to call her again on his behalf. It was shortly after this incident that SU reported the allegations to her. When he presented the allegations SU appeared angry but withdrawn, making outbursts on occasions. SU told her he could not believe what he had done and said he had been stupid. He vented his anger at the claimant."

75. The note goes on to record matters of hearsay evidence in respect of SU.

76. After this Wendy Kinder advised that some contact had been made with the police because staff were suspicious about some cars being continually driven past the hostel. Two Police Officers visited on 15 August. On 24 August a Series 3 BMW was seen and screeching tyres were heard in the immediate vicinity of the hostel at the roundabout. SU had told her that he believed that the driver and occupants may have had guns and he thought he and the staff at the hostel were at risk. WK explained that SU's room overlooked the main road.

77. On 7 November 2016 the claimant and her representative met with Vicky Travis and her HR Business Partner and it is noted that all of the evidence was viewed together. Vicky Travis left the room for an hour and a half and thereafter provided dates of all of the messages included in the evidence and Mick Hoosen made a note of them. It was agreed that the service user had clearly been in the claimant's house. They reached agreement on various points, which included the claimant providing Vicky Travis with her mobile phone records covering the period of the messages included in the evidence and details of to whom she had reported her safety concerns. Vicky Travis was to try to obtain the date of the video and they would discuss whether a further interview with the claimant should be convened now she had reviewed the evidence.

78. On 3 November SU emailed Vicky Travis to ask whether the investigation was complete, and on 7 November she replied to the effect that the claimant had viewed all the evidence that had been provided and she was waiting for evidence from the claimant before she could finalise the investigation. This was to prove her last contact with the service user.

79. On 8 November in an email Vicky Travis asked the claimant if she would meet with her on one final occasion before finalising the investigation, acknowledging that the claimant had also requested a further meeting. This meeting did not take place as the claimant had submitted a fit note signing her off for two months.

80. The claimant appeared to have attended at the Bury Police Station on 8 September 2016 to report concerns for her safety. She was referred to Occupational Health towards the end of 2016 and in an OH report dated 5 January 2017 it was stated she should be able to attend a meeting in 4-6 weeks' time, which would have meant around the end of January 2017.

81. Ms Travis invited a Detective Chief Inspector to review the video footage to ascertain whether a cannabis farm was shown in the claimant's property, and it was the view of the officer that the video showed "paraphernalia present that would suggest cannabis had been cultivated in the room at some point…There is what looks to be evidence of dead cannabis plants".

82. According to Ms Travis, in a statement the Detective Chief Inspector provided, it confirmed the authenticity of the video. The Tribunal having read the witness statement does not agree that it confirms the authenticity of the video. The observations are said to be based solely upon the viewing of the mobile phone video footage and she had not had the opportunity to visually or forensically examine the

relevant items shown, but on the balance of probabilities the items seen in the footage indicate evidence of previous cannabis cultivation at the address.

83. The claimant had obtained her mobile phone records and she wanted to deliver them to Ms Travis directly, so arrangements were made for the claimant to hand deliver the records to Ms Travis at the respondent's new Rochdale office on 11 January 2017. The meeting took place and the claimant provided a photocopy of the mobile phone records which were later reviewed in private. The copying was done for the claimant in the respondent's other Rochdale office and the claimant had the original version when she presented the copy to Vicky Travis. They were for the periods 1 March – 30 June and 13 July – 9 August 2016 rather than for the whole of the requested period.

84. As part of her review Ms Travis contacted EE to be informed that WhatsApp messages did not appear on mobile phone records. EE could not produce records or comment on third party communication services e.g. WhatsApp, Messenger, Skype, Facetime. As a network provider EE only offered the connectivity via the EE network to utilise third party services.

85. The claimant was asked whether she would have any objection to Ms Travis reviewing her WhatsApp account as most of the alleged communications were sent and received via this method of communication, but the claimant stated the records already provided were a complete record of all outgoing communications. Also the claimant had changed her mobile phone number on 11 August but the account remained the same.

86. Following receipt of the statement from the Police Officer and perusal of the claimant's mobile phone records Ms Travis concluded that there was sufficient evidence to support the view that there was substance to the allegations and that the case should proceed to a disciplinary hearing. In her view a further factfinding meeting was not necessary as there had been no evidence provided to her within the six month period of the investigation to refute the allegations against the claimant.

87. At the end of her evidence Ms Travis was asked about this statement by a member of the Tribunal and after some thought she wished to re-word her statement, and rather than saying "there was no evidence to refute the case against the claimant" she thought she should have said "there was no evidence that added substance to the evidence already provided by the claimant".

88. Ms Travis proceeded to write her disciplinary investigation report dated February 2017, with the list of contents being:

(1) Confidentiality;

(2) Matters of concern;

(3) Investigation process;

(4) Summary of findings;

(5) Recommendations; and

(6) Appendices (which were said to be from pages 36-199).

89. In the version provided to the Employment Tribunal we were provided with pages 1-35 with the majority of 36-199 appearing elsewhere within the bundle, although we were not provided with all of the information as some of it was retained for use by the decision maker and never produced to the Tribunal.

90. The matters of concern set out in the report had not changed from the matters set out in the suspension letter sent on 22 August 2016. There was no specific mention of which policies and procedures and/or which part of the Code of Conduct the claimant may have breached and/or how the respondent organisation's reputation had been brought into disrepute.

91. The investigation process section of the report gave a chronology of the investigatory activities that had taken place since the appointment of the investigating officer on 16 August 2016. The summary of the findings went from page 16 to page 35 and concluded on page 35 with the recommendations.

92. The summary of findings starts with the claimant's denial of the allegations at the suspension meeting at which the name of the service user who had made the complaint was made known to her. The claimant had supervised him up to her sickness absence in October 2015 and when she returned in March 2016 his case had been reallocated to Paul Johnson. On returning to work her only contact with SU was in relation to a reference that he had requested and she felt it was more appropriate for her to deal with this as opposed to Mr Johnson who had at that point had no contact with SU. According to the report, the NDelius shows that Mr Johnson had met with SU on 18 February 2016. The claimant stated she only had one contact with SU following her return to work in March 2016 but this was not supported by the NDelius records (which the claimant was not allowed to see).

93. The report refers to the NDelius records relating to SU and sets out his sentence. His first appointment with the claimant was on 16 July 2015 at Salford, and the records show there was regular contact with SU up to 7 December 2015 when the case was reallocated to Paul Whitehill. The case was further reallocated to Paul Johnson on 16 February 2016.

94. According to NDelius records, as interpreted by Ms Travis, the claimant took a telephone call from SU on 15 March 2016 when he rang to confirm his appointment that day. The claimant discussed with SU his progress on his order to date, and she would discuss the case with Paul Johnson specifically as to what work had been completed prior to her sickness absence and her decision to apply to the court to remove the BBR. It is said that the records show the claimant commenting that it "makes sense for me to deal with this as all decisions made prior to my sickness period".

95. There is a further record on NDelius on 12 April 2016 where SU asks for the claimant to provide a reference for a work application. The claimant stated while she was unable to provide a work reference she could offer some information with his consent. SU sent the application to the claimant's work email address which she then forwarded to her personal mobile phone to send on his behalf. According to the

report, it was not clear why the claimant sent service user information to an external partner from her personal mobile phone.

96. On 25 April 2016 NDelius records indicate the claimant referred SU to a housing project to address his accommodation needs, then on 27 April a further NDelius contact states that the claimant referred SU to Wendy Kinder in relation to accommodation needs with a note to the effect that SU was of no fixed abode at that time ("sofa surfing").

97. The last NDelius entry made by the claimant on SU's case was said to be on 10 May 2016 when SU was accepted for accommodation, and according to Ms Travis this contradicts what the claimant reported during the investigation meeting on 7 September when she said that SU moved to live in the new accommodation in March 2016. NDelius records indicate that the claimant referred SU to the place where he ended up late in April 2016 so she would have known that he was not a resident at that time.

98. Notwithstanding the alleged inaccuracies, the Tribunal is aware that the NDelius records were not provided to the claimant to enable her to prepare for the interviews, neither was she provided with her work diary. These items were never shown to the claimant at any stage in the proceedings.

99. Again from the records, the BBR requirement was removed at court on 12 May following an application completed by the claimant.

100. According to the records there is said to be a period of no contact with SU with no explanation, but on 18 August following the claimant's suspension the case was reallocated on NDelius to Paul Johnson.

101. At this point we note that according to NDelius the claimant was never formally reallocated this case and there does not appear to have been any need formally to reallocate it to Paul Johnson following the case being allocated to him on 16 February 2016 to take over from Paul Whitehill.

102. SU's community order expired on 25 September 2016.

103. As part of the summary provided Ms Travis states that SU was on the claimant's caseload from 16 July to 7 December 2015. Their contact resumed on 15 March 2016 with the claimant volunteering to be actively involved in his case management up to 10 May 2016. The last recorded appointment at Salford Probation Office is on 27 April 2016. Ms Travis concludes that the claimant's activity following her return to work is at odds with what she reported to her line manager and then to the investigating officer on 7 September.

104. The claimant informed the line manager on 9 August that SU had made a previous formal complaint about two case managers acting inappropriately, and said that Samantha Stapleton investigated the formal complaint.

105. According to Ms Travis she enquired with Ms Stapleton as to whether she had ever formally investigated a complaint made by SU, who confirmed that she had never investigated any such formal complaint although she had received a telephone

call from a friend of SU objecting to the questions asked of her during a routine visit. SU had also made the same observations to Ms Stapleton. Neither party wanted to pursue a formal complaint.

106. Ms Travis went on to refer to her meeting with SU on 5 September when he had given the claimant's correct home address. They had both provided similar descriptions of the interior and exterior of the property and both had provided similar hand drawn layouts of the interior. According to the report:

> "There can be no question that SU has thorough knowledge of Ms Hyland's home address."

107. The report goes on to recount what was said at that meeting on 5 September as to the claimant and SU meeting at Asda then at a wine bar and the purchasing of alcoholic drinks by the claimant. She contrasts this with the claimant's meeting with her on 7 September when she stated she had only ever met with SU in a professional capacity at the office and a couple of home visits and that she had maintained contact in accordance with National Standards. The NDelius records, according to the report, do not evidence that the claimant had carried out a home visit. The report goes on to recount the different accounts given by SU and the claimant as to whether or not he had moved into her house, then when asked how SU would know her address and the inside of her property Ms Hyland recounted that someone had come to her house and looked through the window when she was on holiday, then that person came in through the front door and went upstairs. He had spoken to her mother in great depth. He had told the mother than the claimant had said it was ok for him to be there and he walked through the house. This was at the end of June or early July 2016 on one occasion only. According to the claimant, the first she knew about this was when her mother told her of it around the time of the suspension, and despite saying she was worried about the incident and felt she was at risk she had not reported matters to the police by 7 September. The claimant had not been able to lock her front door at the property for the past two years because the door lock was broken. The door could be locked from inside.

108. On 5 September SU told the investigating officer that the claimant had had a hip operation shortly before March 2016 and he had moved in just after she had gone back to work. She had a condition that her daughter had also inherited and she had to have a bone scraped, shaped, or something like that. She did not have a replacement. The claimant stated she did have a hip replacement and might have disclosed to SU her hip problems to explain why she might have moved from her seat at times of discomfort.

109. SU described the claimant as being 52 years old. The birthdate was on a plaque on the wall of her house. The claimant confirmed at the time of her interview she was aged 51.

110. The report refers to the contrasting evidence on sleeping arrangements but does not have any details about how the claimant's sleeping arrangements might have been affected by her recovery from her hip replacement on the basis that the claimant does not appear to have been asked about this.

111. Reference was made to the claimant's daughter and her boyfriend being at the house. The daughter separated from the boyfriend. This was confirmed by the claimant who also said that her mother lived with her for some of the time. Both SU and the claimant referred to the daughter and the boyfriend having relationship problems following a mortgage offer being made to them.

112. Reference was then made to the claimant's two dogs which SU had identified and the claimant had no idea how he would know about them.

113. SU made reference to the claimant bringing up her daughter. The claimant said she might have disclosed some of her personal life to SU, nothing deeply personal, but she could not say with any confidence she had not discussed her daughter's upbringing with SU.

114. SU was correct that the claimant had an old black BMW with a private registration number and she now had an Audi.

115. SU alleged that they went to a restaurant in Swinton and one in Bolton. The claimant did not confirm this.

116. There was reference to the wedding invitation for SU to the wedding at which the claimant's daughter was a bridesmaid. The groom was Jack, the boyfriend's friend. The report has various quotations from the claimant explaining how he got there. There is reference to the statement of Ms Kinder where SU spoke about having attended the wedding and then there was reference to communications between SU and the claimant, including two offensive terms. According to the report:

> "On 07/09/2016 Ms Hyland denied ever using the terms 'xxx' and 'yyy' in her communication with SU. She acknowledged that this language is not appropriate. Ms Hyland referred to the terms as 'offensive'."

117. We remind ourselves that the claimant not only denied ever using the offensive language she also denied having undertaken communication with the claimant in this manner.

118. The report goes on to include the claimant's denial that she had ever been out socially with SU and had not bought or drank alcohol with him. He may have found out her daughter had been a bridesmaid from social networking. The claimant occasionally helps a friend to deliver flowers to wedding receptions. The report does not include the claimant's denial that she had ever been to a wedding with SU.

119. SU alleged that he knew when the claimant had been on holiday to Turkey for ten days with a friend of hers. The claimant said SU had never met any of her friends or family. She had travelled to Turkey alone in June 2016. She has friends there.

120. SU said that the claimant's behaviour towards him changed when he had been on a date with someone. He had moved out of her home when he was accepted for the new accommodation. His date of moving concurs with the evidence provided at the new premises and the NDelius contacts. According to the claimant, before he moved into the new accommodation SU had been living in Little Hulton

with a social worker. This contradicts the NDelius contact record entered by the claimant, stating that he was “NFA sofa surfing”.

121. Although Ms Travis states that these two matters are contradictory, we cannot on the information provided conclude that the two statements are mutually irreconcilable.

122. Ms Travis reports SU alleging that the claimant had breached the trust of a Probation Service employee before on the basis that for four years she had a sexual relationship with a service user called Jason from Salford lasting until a few months before he moved in. It records the claimant saying she had contact with a service user called Jason P… who lived in a different place from Salford, and he was now dead. There had been no relationship with Jason P.

123. According to SU, his last contact with the claimant was on 4 August when he sent a text. Ms Kinder had spoken to the claimant because she wanted to know when SU’s order ended, and SU had told her that the claimant had not provided him with this information. Ms Kinder thought it suspicious that SU would be texting the claimant.

124. Ms Kinder said that SU had told her there was a lot more going on, including late night phone calls. The report then went on to refer to SU’s allegations of things going on when he was living in Salford with people known to the claimant harassing him, causing him to call out the police. The claimant's denial of harassing SU is noted, immediately followed by SU stating his belief that his life is in danger because of the people the claimant sells cannabis to.

125. The report goes on to refer to the claimant and SU jointly smoking marijuana. If refers to the video which reveals a large cannabis production complete with all of the equipment necessary to cultivate cannabis. The claimant confirmed that the video was of her house. Ms Kinder, who had seen the video on SU’s phone, said she totally believed what SU told her and had not seen such a rapid change in a person in a short time. He had lost weight and looked a scared man and she did not think that he could have made up the story. (There is no reference in the report to the package received by SU after which he seemed to Wendy Kinder become a changed man.)

126. The report notes that the police had attended the claimant's premises finding no evidence of any illegal substance, although SU stated “she will have removed it after the allegations were reported to the police and she was suspended”. It reports the view of SU that the cannabis had been cultivated before he moved in and he was made aware of it two or three weeks after he had moved in. She was selling it in ounces. He did not know how much she charged but alleged she would drop it off in her car because no-one came to the house. This is said to concur with what was reported to Ms Kinder but no supplementary questions appeared to have been asked of SU when he made these statements. (As SU was a previous cannabis user he might reasonably have been asked whether he was able to smell anything of concern to him when he moved in.)

127. There is reference to the Class A drugs followed by the denial on the part of the claimant that there has ever been any marijuana cultivated in her house and that

she has never supplied any. She had no idea how the claimant would have a video showing marijuana being cultivated at her house, but the police had found no evidence of it. There is reference to the Detective Chief Inspector reviewing the video and concluding the items seen in the footage indicate evidence of previous cannabis cultivation at the address, although no further action was being taken by the police.

128. She referred to SU providing his mobile phone for review of an exchange of WhatsApp messages, text messages and photographs allegedly sent between the claimant and SU between 15 March and 30 July 2016, then there was a description of the various photographs.

129. Ms Hyland's denial that she had ever sent any photographs to SU is recorded. She acknowledged it would not have been appropriate to have communicated with him outside of core working hours using her personal mobile. She did not know how he would obtain the photographs but later made reference to there being some photographs on her social networking page and she referred to her mobile phone going missing in March 2016. In the report, the claimant had emailed Ms Travis on 11 January stating she changed her mobile number on 11 August, which "would mean that Ms Hyland did not have a mobile phone between March 2016 and August 2016, a period of five months". Yet, her mobile phone records show significant usage of the mobile phone number throughout this period to numbers that do not belong to SU, many of whom Ms Hyland has said are her friends and family. No concerns were raised until 4 August 2016 when SU reported to Ms Kinder alleged unprofessional conduct by Hyland. There is reference to the claimant sending a work reference form to an email address she used for work purposes accessed via her phone to enable her to submit the form. Ms Travis raised concerns about Ms Hyland sending service user information from her personal mobile phone and also suggesting she did have use of her mobile phone over this period.

130. SU denied behaving inappropriately towards the claimant. He had decided to report the allegations when the claimant never helped with his accommodation when she could have. She took advantage of him when he was vulnerable. He realised she was just concerned about herself, keeping herself safe. He did not want the claimant working with anyone in a similar situation or for anyone else to go through the same.

131. She went on to record how SU's physical and emotional health had been affected, and how Ms Kinder said he had changed in the period to end of July when she was not seeing him, and he was staying in his room. He appeared to be going downhill.

132. Ms Hyland at the end of her investigation meeting was tearful and stated she was worried about her safety and needed to go to the police, but according to her statement provided to the investigating officer no such concerns or alleged crimes had been reported to the police by the claimant.

133. The final paragraph involved the recommendations and it was her view that there was substance to the allegations after considering all the evidence available to her, and she recommended that the matters should be brought to a disciplinary hearing to deal with the three allegations made at the outset.

The Disciplinary Hearing

134. Following the completion of the investigation arrangements were made for the claimant to attend a disciplinary hearing to deal with the three allegations that were originally put to the claimant at the time of her suspension. The disciplinary meeting was to be chaired by Stuart Tasker, Community Director, supported by an HR Business Partner. Vicky Travis would present the findings of the report and be supported by an HR Business Partner. The claimant in her invitation to the meeting was told that the allegations, if proven, may constitute gross misconduct which could lead to summary dismissal. The claimant was given her entitlement to be accompanied by a trade union representative. She was asked to advise the HR Support if she was calling any witnesses and for any further information she would like to present at the meeting to be received no less than five working days before the meeting.

135. The management report was supplied for the claimant with the invitation, but as noted above various pieces of information remained unavailable to the claimant in relation to her accuser.

136. Although the disciplinary meeting was originally scheduled to take place on Tuesday 28 February, the meeting did not start until 4 April 2017.

137. The claimant provided the respondent with her evidence in support of her denial of SU's allegations and this is set out in the bundle on pages 594-683. Mr Tasker confirms that he received a pack of evidence from the claimant which he was required to consider and he took the documents into account during the meetings and ultimately as part of his outcome.

138. The evidence produced by the claimant started with her mislaid phone with an email sending a replacement sim card on 18 March 2016. There was then a bill for her mobile phone showing that she made calls from Turkey from 26 June to 6 July 2016.

139. According to the claimant, there is no evidence of any contact with SU on this phone bill.

140. The next section of the claimant's evidence is said to support the fact that messages could be fabricated. This is followed by evidence that the photos provided by SU were from publicly accessible social media, which includes the name of her daughter and boyfriend. The claimant included an email from the Greater Manchester Police who attended her home on 24 August and found the door unlocked. House to house enquiries were made to see where the occupant was. After five or ten minutes the claimant returned and when they told her they had a report of cannabis being grown inside her property the claimant seemed very surprised by the allegation. She allowed officers to look around her property and they concluded there was no sign that cannabis had been cultivate by her and no evidence to suggest drugs had been stored inside the premises. The claimant was very cooperative during the search.

141. Mrs T Demir, who attended the Tribunal with the claimant and was willing to give oral evidence but did not for the reasons set out above, provided a signed

statement to the effect that she had never been introduced to SU, had no prior knowledge of him, had never been dismissed from any employment and had never worked for the Probation Service. She spent the summer in Turkey with her husband and she felt targeted by SU which rendered her vulnerable.

142. A statement from the claimant's mother referred to her staying at the claimant's house while she was away on holiday in July 2016. She noticed a man peering through the window, and to her surprise he came in but was surprised to see her there. He said he was a friend of the claimant who had said it was ok for him to enter her house when she was away. Mrs Hyland's initial concerns went away as she thought he knew her daughter. He was polite, had a computer and said he was downloading. She was not alarmed by him walking around the house. She had never seen him before or since, and told her daughter after the police had left as she was there when they came.

143. A signed statement from a neighbour of the claimant said that she had noticed a man hanging around her house during the day on a number of occasions and his behaviour was suspicious. He was a tall, thick set black man. The police knocked on her door a few weeks later but she was not there. They wanted the claimant's contact details but she did not have them.

144. The claimant included a letter from her GP dated 13 March 2017 stating that she had been seen regularly in the preceding four months with anxiety. Had she not been suspended she would have been unfit for work. She was badly affected by her anxiety and low mood.

145. The next evidence demonstrated the impact of matters upon the claimant and her thoughts at that time in the form of emails to her trade union representative. Then she confirmed that she had been to the police station and provided a crime reference number.

146. On 29 March the claimant's sister, Marie, an employee of the respondent, sent an email to the effect that her family had not had a wedding in the last five years. Her two sons, the claimant's nephews, were both in full-time employment and neither had ever been involved in offending of any type and had no convictions against them. She was not very happy that this information had been recorded in a report as a fact without any clarification. She included the fact that she works in the respondent's Central Manchester Office as a case manager and she provided her phone number.

147. The final information provided by the claimant demonstrated her efforts to obtain the information requested by Vicky Travis and why it took so long for the phone records to be produced.

148. The disciplinary hearing was held on 4, 5 and 20 April 2017 and 31 July 2017. Notes of the disciplinary hearing have been provided. It was originally planned to take place on the mornings of 4 and 5 April but more time was needed.

149. Vicky Travis presented the management case for about an hour. The notes of her presentation are set out over six pages. Ms Travis in the first part of her presentation deals with the allegation of failing to uphold professional standards and

the allegation of breaching policies and procedures, including the Code of Conduct, and may have placed the respondent's reputation into dispute. Nowhere does she refer to the Code of Conduct save to say that Ms Hyland stated that she had not in her opinion breached it. There is no reference to the way in which the reputation of the respondent may have been brought into disrepute.

150. The second part of her presentation deals with the allegation that the claimant supplied a service user with an illicit substance. At the end of this part of her presentation Ms Travis, before concluding, states that the investigation was ongoing for seven months during which time it became necessary to reallocate the claimant's caseload to her colleagues. Inevitably, she said, "this has placed additional pressure on staff resulting from an increased caseload throughout the period of the claimant's suspension. This cannot be sustained". She then went on to say that the investigation had been ongoing for such a significant period of time as the service user suddenly left his accommodation and she as the investigating officer was required to travel a substantial distance to interview him at a large cost to the organisation.

151. After a 20 minute adjournment Mr Tasker asked questions of Ms Travis, followed by MH the claimant's trade union representative asking questions of Ms Travis. Many topics were covered, for example:

"MH: We have shown that it is possible to fake WhatsApp messages. If phone had been sent off for analysis did the service make a view about cost to service? Did you ask the service whether it was willing to fund that?

VT: No.

MH: If we had, it would have confirmed one way or other how they had been sent. May have responded that couldn't be possible to obtain the information. What we have on the surface is convincing information from SU. Did you ask SU for his phone records?

VT: No.

MH: Why not?

VT: I didn't feel the need to as I was reviewing his messages and as outlined earlier WhatsApp messages wouldn't have appeared.

MH: I accept that but there are repeated references to calls and text messages and it would have shown if any texts or phone calls from SU to JH if you had his phone records, would it not?

VT: It may have done.

MH: It was a piece of relevant evidence that you didn't request.

VT: At the time I didn't consider it was necessary as I had seen them.

MH: Have you got police accounts that the WhatsApp messages were genuine?

VT: They haven't been able to confirm. Only the video."

152. The first session of the disciplinary meeting closed at 12:25 on 4 April and it was reconvened at a different office on 5 April at 9.30am, with the claimant's trade union representative continuing to pose questions to Ms Travis. The first questions were about the wedding and Ms Travis said she did not have any evidence that the wedding took place other than what SU made her aware of. It was the reception of the wedding that he went to. He could not recall where but it was in a house like a country house with large grounds. He didn't know the area or the name of the place. She confirmed no photos had been presented in respect of the wedding and this fact was not in the report. Ms Travis said having done her research there was a Facebook photo of the claimant at a wedding in 2015.

153. Following a number of further questions to the investigating officer she was asked about CCTV records and stated she had not contacted various people to make enquiries because her partner advised her that in all cases no information was held after 28 days. When it was put to her that there was a reference to a restaurant in Swinton by the name of Santos and there was no such restaurant, Ms Travis wondered if it had changed its name, saying she could only refer to what the service user reported to her at the time. Restaurants can change hands and SU reported that name.

154. After the end of questions to Ms Travis Mr Hoosen, the claimant's representative, presented her side of the case, and having undertaken the role of representative for a long time he said that this was an unusual case. Ms Hyland was adamant she had not acted in the way alleged. With regard to phone records, his view was that this was the only accurate evidence in the whole case, showing no contact whatsoever during the entire period when it was alleged that SU was living at the claimant's house. If someone was living there then in his view you would expect there would be some contact between them.

155. As to the two phone calls to SU shown on the claimant's phone bill, the 25 second call he suggested did not go through, and as to the one of five minutes 24 seconds the claimant had told him that she may have called SU from her mobile but there were no texts. The call should have been made using a prefix so that her number would have been hidden. This made the individual extremely vulnerable, allowing someone else to access the telephone number to do with as they wish. He may have made a mistake by inadvertently forgetting to put the prefix in. Having said that, in his view if there was an unprofessional relationship between the claimant and the service user there would have been viable evidence.

156. As to WhatsApp messages, they had demonstrated how WhatsApp messages could be faked. If there was evidence that they appeared to have been fabricated it cast serious doubt on the rest of the evidence provided.

157. As to the video evidence, it was clearly taken in the claimant's house. She did leave her front door unlocked; the lock did not work. This was not sensible but she did it. She had not been burgled. She has two Staffordshire bull terriers which would

be off-putting to anyone. The claimant knew nothing about cannabis plants and had no responsibility for anything that was there. He noted the comment from the police from the claimant's documents to the effect that the claimant was said to be very surprised by the allegation, and the police found no trace of any cannabis being cultivated.

158. As to the photos, all of the ones taken by the claimant apart from the ones SU took of himself inside the house were available on Facebook.

159. From Facebook, the service user obtained a huge amount of information about the claimant. He accepted that as a probation officer with 22 years' experience the claimant should have known better than to post personal information on Facebook, but it was not an offence against disciplinary policy. It would be a breach if you declared yourself as working for the respondent or if you put a statement or views on Facebook about the service provided or information, photos or anything else which could bring the Service into dispute, but there was no suggestion of anything of this nature on the claimant's Facebook pages. There was, however, personal information that SU could have linked to other information, such as her friends, to obtain further information about her.

160. Ms Travis did not investigate whether there was a possibility of faking messages. She accepted at face value that they were genuine. She did not ask for the phone records of the service user as she had viewed his phone and assumed things on it were genuine. The claimant's livelihood was on the line. They needed to ensure no stones were left unturned. The stakes could not be more serious for her. A thorough assessment should have been done in terms of verifying the information provided, a request for the service user's phone records should have been made. The claimant's records were requested and supplied. SU's were not. It was not balanced. The NDelius records were not made available at the investigation meeting so the claimant was not able to cross reference things. It was a very stressful experience for her so it was not surprising that she could not be accurate with dates and the minute detail in terms of times and dates.

161. Vicky Travis has referred to things in her report such as the car outside the hostel with armed men in it, but there is no evidence of that and no evidence that the claimant had any involvement in this either. Ms Travis said the claimant had been without a mobile phone for five months. This was not the case. It suggests the claimant is dishonest. There has been no dishonesty or cover-up by the claimant. There seems to have been a blanket acceptance that anything said by SU was accurate. The claimant said he was very articulate. SU had trained as a barrister at one point. He was capable of carrying out complex initiatives. If one piece of evidence is shown to be possibly fabricated then in his view it undermined the whole case because it showed the evidence presented was not honest. He was using some bits of information and twisting them or fabricating entire pieces of information.

162. The claimant making a phone call without putting 141 in front of the number was not gross misconduct. There was not a single photograph showing SU at a wedding.

163. He made reference to the image presented of the claimant, being a drug dealing offender who had broken all links with the respondent and who deserved to

be dismissed. This was referred to in a way by Vicky Travis in her final comments in her presentation when referring to the impact on the claimant's colleagues of her current absence, the fact that her work has had to be redistributed and her continuing absence was unsustainable. This was almost an invitation to dismiss her and was in stark contrast to the glowing description of the service user that was presented with no evidence of bad attitudes towards women, entrenched domestic violence behaviour, etc. The evidence was not safe, it had not been verified, and the claimant must be given the benefit of the doubt.

164. Having made these submissions the claimant was called as a witness and answered questions from her representative, in which she confirmed her case.

165. Mr Tasker asked questions of the claimant. As to the two phone calls from her personal number not recorded on NDelius, the claimant was asked why they were not recorded. Her answer was:

> "It was right before going on leave and my concern was that he might potentially try to do something to himself as he wasn't happy being there. Because I had information that he hadn't been hardly seen for a week I wanted to make sure he was safe before I went off so I think I have probably been comforted that I had done that. It was not recorded because he wasn't my case at the time but I just wanted to check everything was ok."

166. Mr Tasker suggested that the claimant having done it and not recorded it put herself in a vulnerable position, and the claimant accepted that this probably was the case. She should have updated the record to record the contact.

167. Ms Travis had the opportunity to ask questions of the claimant. She was asked about phone calls to the service user and she said she rang him after her conversation with Wendy Kinder. The service user would have known her personal number because she rang him using her personal phone.

168. It was put to the claimant that on both occasions in separate weeks she forgot to put 141 in front of the dialled number. The claimant agreed that she had forgotten. The next question from Ms Travis asked what steps did the claimant take in between if she had not managed to get hold of him when she had concerns about his mental health, and the second call was not made until the following week. At this point it was clarified that the longer call was the first call which caused Ms Travis to ask why would the claimant have rung him back again if she had already spoken to him? The claimant's answer was that she had no idea and could not recall.

169. The questioning of the claimant went on until 13:30 when the meeting had to finish, and it was reconvened on 20 April at Minshull Street. Mr Tasker said that it was the intention for each side to summarise their case and he would have questions for both parties. He was intending to watch the video again in a closed room. After that the summing up could be done.

170. In questions to the claimant, she said she had no idea where the service user was living from 11 March until he moved into the new accommodation. Her understanding was that he was "sofa surfing". References to "home visits" in her statement were to home visits carried out by other staff not made by herself. When

she went out of her house she had locked the door from the inside and went out of the back door. On some occasions she forgot to do it. She would go home at dinnertime to unlock the patio door to let the dogs out and sometimes it would be left open for the rest of the day. Sometimes her sister would go round to do it. She now had a replacement phone and a completely new number.

171. Ms Travis was asked questions. She was not able to find out anything more about the person called Jason. She confirmed that the service user's number did not appear on the claimant's telephone bill when she was in Turkey. NDelius noted the service user as being unsuitable for the "Building Better Relationships" programme. There was no record on NDelius of the service user's negative attitude towards probation. Paul Johnson was no longer working for the organisation.

172. After the video was viewed by Mr Tasker the claimant's representative said that they had obtained some details from a hydroponic company from the internet. In terms of growing equipment, one person could easily set it up in 10-30 minutes with no tools or special equipment required. It involved pieces of plastic, an extractor fan and a light, but no soil. It used a lot of electricity and the claimant's electricity bills were below average. There was a way of overlaying one piece of film over another called "masking". They did not know if this was the case and an IT specialist would need to look at the phone video frame by frame to give a view on this. Ms Travis suspected that the original footage would be required for someone to do this analysis.

173. Ms Travis produced additional evidence in the form of an email from a Detective Chief Inspector dated 12 April. She had looked at the video again. The footage showed clearly ducting and trays full of soil and what looked like dead plants. From her experience it looked like the remnants of a previously functioning cannabis farm. It would clearly take some time to take the items to the address, set up and remove them again without leaving any trace. She could not say how long it would take but there was no further police action as there was insufficient evidence to suggest a crime of burglary had taken place.

174. After an adjournment Ms Travis was invited to sum up the management case then the claimant's case would be summarised. Mr Tasker had a question for the claimant as to why she thought the service user would have done what he had done? It was said that this would be covered in the summary in some detail.

175. Ms Travis summarised the management case recorded on almost three sides of paper. Towards the end of the summary she said:

> "During the disciplinary hearing Mick argued that if there is any doubt over any of the evidence provided by SU then this should cast doubt over all the evidence that he has provided and rule in Julia's favour. On the contrary, if there is any doubt about Julia's account, as she has not to date provided any evidence that categorically disproves the allegations, is it right for her to remain in a position of authority and trust working with vulnerable people? There is also the reputation of the respondent to consider; external partners have provided statements to assist with this case. Additionally, it is concerning that SU has now recently been reported as a missing person; concerning especially as he had reported that Julia's behaviour has had a significant

> impact on his emotional and physical wellbeing; he had surrendered his accommodation and left the Greater Manchester area as he felt his safety was at risk. His whereabouts are not known; it is not known whether he is safe. It is acknowledged that the Chair does today face a difficult decision, which may be helped by applying the reasonableness test. Is it reasonable to think that SU has manufactured all the evidence that he has provided and that he has fabricated the allegations when he had one month remaining on his Order, no history of burglary of dwellings, no history of stalking and a seemingly good working relationship with his probation officer? Is it reasonable to think that an experienced probation officer would leave her home unsecured for two years and that she would fail to report perceived stalking and alleged crimes, having been committed against her and in her home, to the police until seven months after her suspension from work? There remains overwhelming evidence that provides substance to the allegations."

176. The claimant's case was summarised by NH confirming that it was a hugely complicated case. The claimant was adamant she had not committed any of the allegations and wanted to fight. His view was that the role of the investigating officer should have been to examine the evidence and test whether it stood up to scrutiny. In his view the investigating officer did not do this – she accepted at face value what the service user reported to her. She did not, for instance, seek advice as to whether it would be possible to produce fake WhatsApp conversations. It was understandable that as the messages look real Ms Travis was advised that fake or real messages were indistinguishable, but she could have requested the claimant's phone to ascertain whether the conversations could be retrieved. This might have been costly but Ms Travis made no attempt to find out whether the cost could be authorised.

177. The claimant's phone records show not a single text was sent to the service user. If the service user had produced one piece of fake evidence then it shows this was not a genuine complaint but an attempt deliberately to frame the claimant. The WhatsApp evidence was unsafe. There were no texts from him in the evidence. As to the video, the service user was in the claimant's house without her permission. The claimant was not charged with not being the most responsible human being. She accepted it appeared irresponsible to leave the door unlocked. She has only been burgled once when the door was locked. She had the door replaced at a cost of £2,000. It was not the case of not spending £50 to get the lock replaced; it was the cost of replacing the door. As to the video evidence, some cannabis cultivation was shown but the claimant was absolutely denying that the equipment was in her home with her knowledge or that she was responsible for it being there.

178. Why would the service user go to such lengths? He was in the hostel and expected to be there for a week. He did not want to be in Manchester but in London. He had to state that the claimant wanted there to be an unprofessional relationship and he had to prove that he was in danger from the claimant and his life was at risk. The statements that he witnessed cars driving past with the occupants armed with guns were allowed to be produced without credibility of the statement. The claimant's nephews were reported as having criminal backgrounds which is just not true.

179. Ms Travis stated that the service user had provided lots of hard evidence and the claimant had produced none. It had taken time to assess the possibility of everything and they had to gain evidence to refute the allegations.

180. A more detailed examination of whether the video film was genuine or had been faked had not been undertaken. The photos were all available on Facebook except for the ones taken by the service user. He could have used timers to take a picture of himself. There was not a single photograph of the claimant with the service user or him with any other members of her family or friends. No details had been supplied of where the wedding took place. The service user could have accessed information about her house. It may well be that the claimant had been remiss in not being more security conscious about what she put on Facebook, but when someone has access to her page they also have access to her friends' pages so he could have gained enough information to present what he has. Possibly the claimant should not have put all this information on Facebook but there was nothing on Facebook that was inappropriate or identified her as an employee of the respondent or would which bring the organisation into disrepute.

181. The service user was articulate and intelligent with IT skills. Phone records and evidence provided by the claimant showed no contact whatsoever from March to May. The WhatsApp messages postdate the period when he was allegedly living with the claimant, but in the period when they were allegedly living together there was no contact shown. As to evidence of the claimant calling the service user on her mobile, she initially said there could not be such evidence but then she thought she could possibly have called him before going on leave, having received information from where he was living that he was not doing well. The phone call she made to him was not evidence of a relationship but it was evidence about the claimant not being strict about her security.

182. Ms Travis displayed a view that the claimant had been uncooperative and dishonest but the claimant never said she did not have a phone for several months. She was not reluctant to hand over the telephone records. She was doing everything she could to obtain them. They do not show a single text being sent to the service user.

183. They did not consider the report was balanced and the evidence was not fully tested; in particular the claimant was not asked to produce her phone for assessment and the evidence of the service user was taken at face value and not challenged. The phone had not been tested. Wendy Kinder was not an expert, notwithstanding her view that she did not believe any of the texts and WhatsApp messages had been faked. To allow such statements without challenging them continues to build up a picture that the claimant is dishonest and uncooperative. The claimant had worked for over 20 years with an unblemished record.

184. The evidence provided was not safe. They had shown how he could get into the house and it was possible to fake the WhatsApp messages. There were no texts. The service user wanted to move back to London. He had a five year restraining order showing he had attitudes towards women. Why would he do it? The question should be, why would the claimant do it? When her livelihood, good name, career, everything about her wellbeing was at stake. The Service either has to undertake

further investigations on the nature of the film and look into the claimant's phone to see whether further information could be obtained, or they must conclude that the evidence was not safe and on the balance of probability the allegations against the claimant were not proven. It would be unsafe to find gross misconduct against the claimant because it would be based on unsafe evidence.

185. Having heard the summings up Mr Tasker decided that he would take time to reach a conclusion. He hoped to make a decision within three working days and to provide it fully in writing within five, but this was a complex case, highly unusual, with a lot of information for him to ponder.

186. The hearing was reconvened on Monday 31 July at Stretford Probation Office. Mr Tasker said that since they last met on 20 April he had wanted to make further enquiries regarding two aspects of the evidence – the WhatsApp messages and the video. He had emailed the parties on 12 May to say that he had met with Ian Adams from the Anti-Corruption Unit on 28 April. He had provided a response which had been communicated to the parties so they could have an opportunity to comment on the findings which came out of those enquiries.

187. It would appear that HM Prison and Probation Service has a Corruption Prevention Team as part of the national Security Delivery Unit, Directorate of Security, Order and Counterterrorism. In an email sent on 27 June 2017 the anonymised author gave his findings:

> "WhatsApp messages: these messages are separate to text messages and as you are aware do not show up on mobile phone records which makes WhatsApp and other forms of social media a popular form of communication. However, all messages leave a footprint and the evidence present clearly identifies a conversation has taken place. The position put forward that an individual has possession of both mobile phones and has sent the messages raises questions such as:
>
> (1) The length of time to send all the messages between the devices;
>
> (2) The date and time of the messages;
>
> (3) The person sending the messages would be incriminating themselves if the device was stolen;
>
> (4) If the device was stolen why wasn't it reported to the police?
>
> Based on the balance of probability and the evidence presented it is our conclusion that the messages are of a genuine nature of a conversation between two people with the registered mobile numbers to service user and Julia Hyland.
>
> Video evidence: the filmed evidence presented clearly shows a person filming inside a person's house which as per investigation records identifies as Julia Hyland's. There is no evidence that the recording has been edited in any way, this is due to the mobile phone quality of recording. Any attempt to edit or overlay would be clearly evident. The recording is continuous which is

> evidenced by the sounds and also the small amount of light during the period where the light is reduced when the bedroom is entered. The alleged cannabis farm is kept in a tent type structure which is accessible through a zip entry. This would explain the lack of spike in the electricity bill as one could surmise that portable heaters were used (speculation). What is evident is the poor quality of crop which again could be due to lack of heat source. Looking through the investigation it is noted that the police found no trace of the cannabis – the tent would explain this as it could be zipped and removed (speculation). The recorded evidence also raises the following questions:
>
> (1) If the house was accessed illegally then why is the person recording putting themselves at a scene of crime?
>
> (2) The recorded evidence demonstrates the doors to the garden wide open.
>
> (3) The dogs in the recording are at ease with the alleged intruder which is inconsistent with dogs of that breed.
>
> (4) Why has the alleged intrusion not been reported to the police?
>
> Based on the balance of probability and evidence presented it is our conclusion that the recorded evidence is genuine. It is my understanding that this is also the opinion of Greater Manchester Police."

188. Mr Hoosen expressed that he was very disappointed with the feedback from Ian Adams at the Anti-Corruption Unit, following which Mr Tasker said that he was not satisfied with the work done on his behalf. On reaching his conclusion he would not be taking account of any of the information provided, and his decision would be based upon the matters presented to him over the first three hearing dates together with anything added today. A discussion followed at the end of which Mr Tasker said he would write with his outcome within three working days.

189. On 3 August Stuart Tasker sent an email to the claimant and her representative to say that he had taken the decision to summarily dismiss the claimant on the grounds of gross misconduct. The decision had not been easy and he:

> "had to base this on the balance of probability that SU would go to such extreme lengths to make these allegations and fabricate such a considerable amount of evidence against you. I am not satisfied that there is a plausible reason why he would have done so, and I will also highlight in my full outcome explanation the questions that remain for me about your actions and behaviour, the result of which has eroded the level of trust and confidence that the organisation can place upon you."

190. The outcome letter was dated 9 August. It set out the dates of the disciplinary hearing and who was present and then the allegations. He had listened to both sides and took into consideration all the information presented in the management pack plus the claimant's pack of evidence. He had sought information from the Corruption Prevention Unit but would not be using the information provided. He sent the 38 pages of notes taken throughout the hearings and he would comment on what he

considered to be the most significant aspects and would explain fully how he arrived at his decision.

191. Mr Tasker set out what he considered to be the main points of the management case and the evidence presented during the hearing. He then summarised the case presented by Mick Hoosen on behalf of the claimant, and then having considered both sides and presentations of the case he made the following observations which provided significant cause for concern:

- "I have struggled to accept the motive suggested by you as to why SU would go to such extreme lengths to make these allegations and fabricate such a considerable amount of evidence against you. It transpired that following his move back to London SU ended up homeless. In fact he was reported as a missing person to the Metropolitan Police in November 2016 and his whereabouts remain unknown. It appears that he gained absolutely nothing from the evidence that he provided to this investigation.

- I agree with the view expressed by Vicky Travis that given you believed SU had broken into your property to film the video on his mobile phone, it is of significant concern that it took you a number of months to report the matter to the police. I find it highly questionable that a qualified probation officer with your level of experience would delay reporting such grave concerns to the police, but given the evidence that exists in relation to how quickly such severe stalking and harassment can escalate, if this was indeed what you believed to have occurred.

- In fact, I find it extremely hard to believe that SU filmed the video in question having broken into your property. Having viewed the video myself three times, it is very apparent that he knew his way around your home, and your dogs, in maintaining their position on the garden lawn were completely disinterested in SU's presence. This indicates to me that they were familiar with him.

- You stated that SU was able to gain such a significant level of knowledge about you and your family, plus obtain photographs of you, from Facebook. If this is the case I find it troubling that the privacy settings on your Facebook account were so relaxed given your position and role as a Senior Case Manager.

- Similarly given what you know about criminal behaviour and offending I am astounded that you left your front door unrepaired for such a long period of time. You stated that it was as a result of this broken front door that SU had been able to break into your property and film the video that has been presented to us.

- Whilst I accept the evidence presented by you relating to the possibility to falsify WhatsApp messages, it has not been categorically proven that this is what SU did. In fact, it is my belief, which I was open about during the hearing process, that the messages presented within the evidence pack were a combination of both WhatsApp and text messages due to

the different formatting and appearance of some of the messages. I am not aware of any mobile device application than enables 'fake' text messages to be created."

192. The letter goes on to say:

"I have been open with you throughout the course of the hearing process but I have had difficulties in making a decision in this case, hence why I made attempts to seek further guidance and advice from a third party (the Corruption Prevention Unit within HMPPS) which proved unsuccessful. I have therefore had to base my final decision on a judgment as to whether on the balance of probability, the numerous incidents brought out in the process of investigation actually took place. As already stated, I have extreme difficulty in accepting the motives suggested by you for SU making the allegations if they were not true.

In coming to my conclusion I have considered your length of service and the support and instruction provided by management. I have seen no evidence to suggest that you were not fully aware of your responsibilities and the expectations place upon you as a Senior Case Manager.

Having considered all the evidence in both presentations, I conclude that for the reasons stipulated in the previous section of this letter, the following allegations have been founded namely, that you:

- Failed to uphold the professional standards and breached boundaries expected of an offender manager.

- Breached CGMCRC policies and procedures, including the Code of Conduct, and may have placed CGMGRC's reputation into disrepute.

In relation to having brought the organisation into disrepute, whilst SU did not go to the press other organisations (namely the Sash Housing Project and Greater Manchester Police) became involved in this investigation as a result of the nature of the allegations. Consequently it is my conclusion that the CRC's reputation has been brought into disrepute given your role and responsibilities as a Senior Case Manager and these organisations' expectations of us as part of the Criminal Justice system.

In relation to the specific allegation that you 'potentially committed a criminal offence by supplying a current service user with an illicit substance' I do not believe there is sufficient evidence in relation to this. Whilst there is evidence by way of the video of the potential cultivation of cannabis in your property there is no conclusive evidence of you having provided it to SU.

I have considered very carefully the possibility of taking action short of dismissal together with the issuing of a final written warning as a sanction. I believe however that your actions impinge on a number of core values and principles that all staff within CGMCRC must uphold and therefore did not deem this option as viable. There was therefore no alternative for me other

than to summarily dismiss you from the CGMCRC with immediate effect from 3 August 2017 (date informed of my decision)."

193. The letter went on to give the claimant the right of appeal, which must be made in writing within ten days.

194. Ms Travis was cross examined about her role in the investigation, the report that she prepared and in connection with the disciplinary hearing itself.

195. She had previously investigated two misconduct cases. This one was incredibly complicated, evidenced by the length of the investigation. The role of the investigating officer involved objectivity. This was not a black and white case. It was not straightforward. If it had been it would not have taken seven months to investigate.

196. She accepted that there was no evidence that the claimant was not a diligent employee, and that she had a clean disciplinary record over 22 years' service.

197. It was put to her that if she believed SU's allegations they implied that the claimant had a drug farm, took cannabis, dealt in cocaine, consumed alcohol and fast food, was a sexual predator and had nephews who carried out criminal acts. Ms Travis said that SU had not alleged she was a sexual predator but he did suggest she got in bed with him on one occasion.

198. Ms Travis accepted that she had to be particularly thorough and robust because if the claimant was dismissed she agreed that it would be a career changing thing and would affect her future prospects.

199. When asked if she agreed that it was important to verify the truth of other allegations before the texts, she said there was no evidence to suggest that the messages were not genuine. The allegation by the claimant you could fake WhatsApp messages came five days before the disciplinary. Had she received this information earlier she would have followed it up, but SU was a missing person in November.

200. She contacted the Greater Manchester Police to test the video evidence and get a second opinion. As to the wedding, of course it was important to check the evidence as to whether or not it took place, but she believed she did as part of her investigation. She agreed this was very difficult to test without a date or a venue. They attended a reception. It was a country house but there was very little detail to enable her to test it out.

201. As to Sophie Hyland not being a bridesmaid, this was an option for her to consider but she did not. She prioritised impartial witnesses first as part of her investigation. For example when SU's friend offered evidence she decided not to take it. There was no impartial witness to the wedding. There was no-one but the complainant. She did not take evidence from Sophie Hyland. She interviewed impartial witnesses. When Ms Hyland said there was no wedding she did not interview her daughter. She agreed she could have asked Sophie Hyland if SU lived with them. She could have asked Sophie Hyland about her new job if she had interviewed her. She could have tested information concerning the split with the

boyfriend. Some of the questions she asked the claimant corroborated some of what SU said.

202. Ms Travis had looked at the claimant's Facebook and Sophie Hyland's Facebook. There was a photo of a wedding coinciding with the month SU said the wedding took place. She accepted the picture was of the claimant with her florist sister.

203. She was asked if the wedding had taken place on 29 May, a Monday. Did she look at dates to try to determine when the wedding took place? She did not, but if she had done so she would have checked if the claimant was in work that day.

204. She commenced as investigating officer on 13 August 2016 and 7 November 2016 was SU's last email. He was reported to the Metropolitan Police by a social worker as missing. It was not possible to find him. If he had not been a missing person they would have followed it up. If Sophie had told her things she would have gone back and made further enquiries with SU.

205. She did not take a statement from Tanya Demir about whom SU said that she was a probation officer and had been sacked. She chose to interview impartial witnesses. Tanya was a friend of the claimant. She could be biased. Her job was to investigate the evidence. She spoke to impartial witnesses.

206. It takes time to see witnesses. You cannot just contact someone and get a statement.

207. There was an option to interview Tanya Demir but the investigation was seven months long. She had just got the phone records and was conscious not to delay matters further. She decided she had sufficient evidence and that there was a case to answer. There was no evidence to suggest that he allegations were not made out. All that she received from the impartial witnesses confirmed what SU said.

208. SU had mentioned Tanya Demir to her but she prioritised obtaining evidence. Her primary focus was to obtain the evidence we were here looking at. Had she interviewed these people the investigation report would have taken much longer.

209. It was put to her that the evidence of Sophie Hyland and Tanya Demir was surely vital to the investigation. She said she could have interviewed them but it would have delayed the report further. She did not check if Tanya Demir had been a probation officer. As to her statement, it would have cast doubt but she could not say she would not have referred the case to a disciplinary as the evidence in her report was sufficient for a referral.

210. The claimant produced Facebook evidence five days before the disciplinary. This was the first time she had had sight of it. There was very little time to investigate but at that time she had no knowledge that WhatsApp messages could be faked.

211. As to Jason, it had not been possible to view the claimant's caseload for the past five years. There would have been 60 service users over five years. She was not aware that a Jason Powell was on the claimant's Facebook and she knew nothing about a Jason being managed by the claimant.

212. As to the claimant's car, she never asked the claimant if her car was provided on a disability scheme. She could not recall if she asked for the date when the new car was obtained.

213. It was put to her that at the time of the new car SU was in hiding. She said if the car was collected in June perhaps he was not frightened in June. She agreed that if Ms Hyland had said that she had not got the car on a disability scheme and he had not been with her to collect it, then it would have cast doubt on SU's evidence.

214. As to what the claimant's neighbour had to say, she did not take a statement from the neighbour. She would imagine she could have done. Having viewed the video evidence she could not believe the neighbours would not have reported it to the police.

215. In connection with the alleged harassment of SU near to where he lived, she said that SU had a top floor room of an apartment building. She could not say how high up it was. The staff there took as genuine the complaint that SU made about being harassed. Shortly afterwards he left the accommodation. According to Ms Travis the police took the report as serious and attended the premises.

216. It was put to her that much of SU's case was not believable. Ms Travis said she was equally trying to find evidence to back up what the claimant was saying.

217. She again stated that she did not interview the claimant's family but neither did she interview SU's friend who attended with him.

218. How did he know her address? It was not discernible from Facebook. How did he know that her door was unlocked? She did not know whether or not he could have followed her but potentially this was possible. As to a photo of the claimant's legs, this would not come through the IT filters. She agreed that if the photos were profile photos from Facebook then SU could have obtained them. She agreed it appeared that there were no photographs provided by SU other than ones from Facebook. She did see a picture of some legs but was not able to get a copy.

219. SU said the claimant was 52 although she was at the time 50, thus he was incorrect about her age.

220. As to SU, she agreed that he had a historical conviction for burglary but not in a dwelling. It was done when he was a juvenile some 18 years ago. He was one month off the end of his order at the relevant time.

221. She was aware that the claimant had had her first operation on 20 January 2016. Ms Travis first became aware of the operation when SU mentioned it. She imagined the claimant's mobility was affected. She accepted SU said he moved in to her home in February 2016, a month after the surgery. She did not recollect the date when he said she was driving around and delivering cannabis.

222. If Sophie Hyland said that her mother was not driving around at night then the evidence of her daughter may be tainted. There would be serious consequences for her mother and Sophie might lose the roof over her head.

223. As to the sim card, Ms Travis had asked for clarification on 7 November 2016 but it was not provided.

224. She did not check any CCTV notwithstanding the claimant's agreement to her obtaining any CCTV with her on it. The service user could not confirm the dates and at Santos he would stay in the car while the claimant went in so this would not add any value.

225. As to phone records, the claimant said that her phone records were a complete record of all communications. She said that nowhere would SU's number appear on the records but it was there twice. That was enough for her and she decided to take it to a disciplinary.

226. The claimant said the bill was a full record but according to EE the bill does not record WhatsApp messages. She did not ask SU to take his phone for analysis. He gave it to her when they met and she scrolled up and down and had no reason to believe it was not genuine. She only received the evidence after meeting with the claimant. She sent the video to the police. The fact of fake WhatsApp messages was not put to her until later.

227. SU sent her copies of everything and there was nothing to suggest anything false. She could have asked for SU's handset to be analysed but WhatsApp messages were not stored. She did see the claimant's name and number on his phone. He could not have tampered with it. He pressed "play". "He handed me the phone and provided a narrative. This was another reason why I didn't question it. He was willing to cooperate with the police".

228. As to the claimant's phone, it was put to Ms Travis there was nothing to suggest that the claimant did not have a phone for five months. Her view was to be impartial and not to paint her as dishonest but she did not believe her. It was not clear at the time.

229. It was put to Ms Travis that various items from the appendices to her report were retained i.e. not provided to the claimant. She confirmed that certain information had not been given to the claimant with the report although Mr Tasker had access to it. She confirmed that the claimant's diary was removed when she was suspended.

230. The claimant did not request a copy of the NDelius records. She was sure there was no contact with SU by her personal phone yet there was access twice on her personal phone. Then the claimant remembered her contacts suddenly.

231. The claimant had a caseload of 50 service users. She thought 50-60 was a standard caseload.

232. Ms Stapleton confirmed that there had been a complaint by SU but there was no record of a formal complaint being investigated by her.

233. She was asked why this was presented as an inconsistency i.e. the difference between a complaint and a formal complaint. Ms Travis said that a complaint was

only a complaint if it was a formal complaint, and she would expect the claimant to know what a formal complaint was.

234. It appeared from the NDelius records that the claimant took it upon herself to make contact with SU when all contact with him should have been by Paul Johnson.

235. As to reporting matters to the police, she thought what had gone on would have been incredibly frightening for the claimant and she would have expected the claimant to have reported it to the police when she became aware of it. Ms Travis had not received evidence that the claimant had been to the police on 9 September 2016. She wanted the claimant to confirm that she had reported a crime, and she still struggled wondering what had changed until March when the claimant reported matters. The claimant was at risk and the police were not investigating. If she was genuinely concerned, why stay at the house until March? Her trade union representative told me that the claimant had reported her concerns but she was not able to verify it with the police.

236. It was put to her that the service user had a thorough knowledge of her house and how long would she need to gain a thorough knowledge? She was unable to say, but SU was not bothered about being seen. He knew no-one was going to return. He might have known she was on holiday in Turkey. She did not search as to whether a staffy was a good guard dog but the dogs did not acknowledge him.

237. She had no reason to disbelieve that the claimant's mother stayed at the house on a regular basis.

238. As to a photo of SU in the claimant's back garden, it did not look like a selfie but she could not comment as to whether or not it was taken using a selfie stick. It had not been provided to her for the report and she did not know the date the photograph was taken. If SU was living there he would have been coming and going freely.

239. When the police said it was possible that there was a pop-up cannabis farm it did not affect her view because she had concluded her investigation by this time.

240. There were two calls on the claimant's phone records to SU’s number. One was on 20 June 2016 for 13:46 minutes and the other was on 22 June for 25 seconds.

241. The phone calls gave her the grounds to pass it to a disciplinary. The claimant had ample opportunity to explain why the claimant had been called.

242. It did not occur to her to test if the messages were fake/falsified. The claimant did say she had not sent them. It did not enter her mind to check if WhatsApp could be faked and she was not provided with information as to the possibility of it. There was nothing to prompt her to consider that the text messages could be faked, and whilst important to do a robust investigation she could only work with what she was given.

243. There was no evidence of late night phone calls on the phone bill but you can make calls via WhatsApp.

244. On the phone bills there were two references to phone calls to the service user when the claimant was not managing him, and neither call was recorded on NDelius.

245. It was put to her that the alleged harassment at the hostel started the day after the Probation Service had been told of SU's complaint on 5 August, but the claimant was not informed and suspended until 9 August? Ms Travis could not comment on the claimant having nothing to do with the harassment before she was informed. She did not think to dig into the dates at the time.

246. As to the claimant failing to repair her front door, Ms Travis was concerned that she had prioritised going on holiday in Turkey and buying a new car rather than securing her home. This was a probation officer with 22 years' service with an unlocked property.

247. As to what having her door fixed might have to do with guilt, it was not for Ms Travis to determine guilt.

248. Works mobiles are provided to some people but the claimant did not have one at the time. "You do not send information personally. You send it from work".

249. It was put to Ms Travis that she did little to challenge the view that the claimant was guilty. She said no, there was significant substance as to the evidence.

250. As to her report, it was not written until she had the phone records. She was not sure of the day it was submitted.

251. Ms Travis said she was not aware of the claimant's medical condition until she was told about it in September. She did not have access to Occupational Health records and did not know how long the claimant had been off sick until the claimant told her. She was made aware in September of the hip replacement. The claimant made no reference to a need for any adjustments. Ms Travis refused the claimant's companion access to the investigation meeting. The claimant made no reference to a need for physical support.

252. In re-examination it was established that 29 May 2016 was a Sunday. Where SU was living it was an upper floor of two or three floors. The building was in a residential area. He could see the road clearly from where he was based.

253. In answer to questions from the Tribunal Ms Travis said that there was no manual to guide her investigation. She sought advice from HR Business Partners. She was not advised to interview the witnesses. She was aware of the note from the claimant's other sister (employed by the respondent) that there was no family wedding.

254. She said that some of the photographs were on SU's mobile phone. Some were taken from Facebook. The video was 100% taken on his mobile phone. It was done on a date in July 2016 but she did not write it down. She agreed she did not say to the claimant that she could ask for the retained material that was not in with the documents sent to the claimant for the disciplinary.

255. As to her statement to the effect that there was no evidence to refute the allegations, she said it was her task to investigate the allegations. There was nothing on the other side to provide inconsistency to the allegations. The claimant had not suggested the messages were fake. There was substance there. She was presented with the evidence and there was no reason to question it.

256. She agreed Ms Hyland said that this could not be the case. She was distraught. The investigation continued. If she had accepted everything on face value she would not have gone on for seven months.

257. She then referred to her phrase “no evidence to refute…” and confirmed that what she really meant was that there was nothing that added substance to the claimant's case.

258. Mr Tasker was cross examined and at the outset accepted he had no reason to doubt the claimant's honesty or professionalism. Her work record was impeccable. She presented as open in the disciplinary hearing. She offered her phone up. There were some moments where her information was not provided in a timely manner. She had agreed for CCTV records to be looked at. She provided her phone records after some delay, although maybe this was on the part of EE not her. She provided some research on WhatsApp and texts. She absolutely did present as someone anxious to clear her name.

259. It was put to Mr Tasker that if SU was believed then the claimant was involved in criminal activity. He had no reason to believe the claimant was involved in criminal activity.

260. He agreed there had to be a robust and thorough investigation but it was a real problem for him not having SU. The truth was probably somewhere in the middle. He never believed all that SU had provided and had no doubt that he embellished certain elements. He tried to locate SU to challenge or question him but attempts fell flat.

261. He saw that a friendship may have developed. SU was familiar with her home. He believed text messages were exchanged between the claimant and SU and essentially that professional boundaries became blurred.

262. It was put to him that if he found there was no cannabis farm then surely it called into question the evidence of SU on all things. Mr Tasker did not know for sure there was not one. There was nothing there on the police visit but there was video evidence that there had been one in the past. He believed that there was one at one time but not sufficient evidence to prove the allegation that she had provided an illegal substance. He believed the cannabis farm had been there in July.

263. The evidence he had sought on the verification of the video was inconclusive. His final conclusion was that he was inconclusive as to whether or not the video had been manipulated.

264. As to the claimant's mother, Ms Demir, her neighbour and her sister, he did not know these people. The statements did lead him to question the evidence of SU.

SU had not necessarily lied even if the claimant's witnesses were believed. He may have been confused, embellishing a relationship. He did not know.

265. As to the evidence from her mother, SU may have been at the house between March and May but not necessarily living there. The truth may be somewhere in the middle. There could be a whole range of explanations but he had sufficient evidence in his mind to make the decision he did. He thought he was living there from March to May but there was no element he was 100% sure about.

266. It was put to him that Ms Travis's report painted the claimant in a negative light. He said the whole situation placed the claimant in a negative light. He was happy the investigation was robust, the chronology was clear and as to the lengths she went to he did not believe Vicky Travis tried to portray the claimant in a negative light.

267. As to the wedding, he understood Vicky Travis looked at Facebook but did not speak to the claimant's friends or acquaintances. He thought it was really important to get independent verification and they could not cast aspersions on the claimant's family and friends. He had no doubt her family and friends would support her, hence the need for witnesses to be independent and impartial. There were no independent, impartial witnesses to anything.

268. He could have taken evidence from probation officers Johnson and Robson but did not. It was not clear from the NDelius records what they would have brought to the case, but he accepted it could have added something.

269. As to Miss Sophie Hyland, his understanding was that it was never suggested that the investigating officer could talk to the claimant's daughter.

270. He had the statement from Tanya Demir and it helped him make his decision to seek further verification. If the claimant and her union representative felt they added to the case they could have called the witnesses.

271. He thought Vicky Travis was clear on her reasons why she did not interview certain people. The claimant asked for the mobile phone number of SU.

272. Mr Tasker said that there would be a lot of negativity in Vicky Travis's report and the facts in it. It was put to him that the report should be factual and objective rather than subjective and he felt it reflected the case that Ms Travis had investigated. For instance with the mobile phone number, he did not think it would have been reasonable to have given the claimant more information as to the phone number. She had been categoric that it would not be seen on her bill. This element needed to be tested.

273. Mr Tasker said that the preferred outcome would have been for the claimant to have remained with the organisation. Her suspension and dismissal caused difficulties to the organisation. He went on to say that her diary was taken away when she was suspended. He agreed she had no access to NDelius where she had populated the records. There will have been some information she was not aware of but the policy was that individuals who were suspended were not allowed access to the records.

274. It was his understanding they would not have been able to share this information but he did not recall this being an issue brought to his attention during the hearing. He accepted the claimant was disadvantaged by not seeing the information but he understood this was the protocol when someone was suspended.

275. Ms Travis could have checked if Tanya Demir was a probation officer. She could have tried to find out but he was not entirely sure or did not know what information would have been brought to the case. When put to him this could have been further evidence of SU making things up, he said there were no doubt inaccuracies in what SU said. He had doubts but SU was not here. He had wanted to speak to him and challenge him.

276. He was asked about accuracy and said it was difficult to be specific. It was not possible to go into every inaccuracy because he did not know if things were accurate or not. He felt there was sufficient evidence to uphold the case on the balance of probabilities.

277. Mr Tasker elaborated. The evidence of SU was incriminating to both Ms Hyland and to himself. He had tried to get to the truth but this was very difficult as SU was not here to be challenged. Elements of evidence he has provided significantly called into question the behaviour of the claimant in relation to the allegations. The evidence did not necessarily put SU as a resident in the claimant's property, yet there were things he could not believe such as the claimant's delay in going to the police, there being no crime report and her door not being repaired for two years. This caused her honesty to be doubted. He questioned her judgment and how a qualified professional's judgment was so flawed in not securing the property and of this being used as an explanation as to how SU could produce all of the evidence against her. He agreed the police had walked into her house so it have been convenient that the door remained insecure. He could not categorically prove that SU lived there but it contributed to his belief that there was sufficient evidence that the allegations were proven. The issue of the unrepaired door and other elements built a picture that led him to believe there was sufficient evidence that the allegations were proven.

278. The claimant's behaviour led him to question the unrepaired door. This on its own did not contribute to her guilt. He did not accept her explanation as a plausible explanation for SU being able to falsify the evidence. He was astounded that a probation officer would let the state of affairs of the unrepaired door continue. It added to the list of circumstances causing him real difficulty in accepting elements of the claimant's case. All of the reasons on their own did not lead anyone to conclude that the claimant had done what was alleged, but together they led him to question the plausibility of her account. Mr Tasker had never seen the statement from the daughter. He had never got any independent verification of whether a wedding took place. He accepted that a wedding may not have taken place. He concluded that there will be elements of SU's evidence that were embellished or inaccurate potentially.

279. It was put to him that if he accepted there was no wedding did this not call into question the text messages? Did not one follow the other?

280. At this point Mr Tasker said he had not said there was no wedding. His recollection of the statement that there was no family wedding did not mean that there was not another wedding. It could have been another wedding he went to but in reality he did not know. Mr Tasker did not go into detail or consider the wedding as part of the disciplinary hearing. It was mentioned in the evidence.

281. It was put to him that SU had given details about the wedding and was this an important piece of evidence? Mr Tasker said it was but he did not go into it in any detail. He agreed he could have contacted the claimant's sister, Marie, but he would have questioned whether it was the right thing to do. He accepted he could have contacted her, and indeed he knew her having managed her a long time ago. They worked in the same office.

282. The cultivation of cannabis allegation had not been upheld in relation to supplying it to SU. He did not agree that if SU had fabricated the cannabis evidence then he should not be believed in any respect.

283. It was put to him that if SU lied about the cannabis farm was it reasonable to believe him when he stated he stayed in the house? Mr Tasker thought the truth highly likely to be somewhere in the middle. It is possible he could have lived in the house and lied about the cannabis farm. He did not know whether or not he had lied was the honest answer.

284. Was it more reasonable to believe Ms Hyland than the service user? The answer to this was “not necessarily”.

285. Returning to the wedding, at the time he believed that SU had been to a wedding. It was referred to in a text. If not, there was a very elaborate and realistic statement of what happened at the wedding. Now on the basis of information provided by Sophie Hyland it was less likely that SU had been to a family wedding in the circumstances he described.

286. As to texts and WhatsApp messages, this was a feature of the case they needed to get to the bottom of. He was uncomfortable with the phone bill but there was no evidence it had been edited, but he believed it had been edited although he did not say so at the time. Having looked at it he could see it had been edited but he did not ask for the original. He did not put it to the claimant that the bill had been edited, although he suspected it.

287. If the bill was falsified there was phone activity at the same times of the day, the early hours of the morning. He became aware of this after the appeal hearing. He heard Miss Hyland’s evidence that WhatsApp could be faked. He did not research if texts could he faked. He accepted he should probably have checked this at the time. The problem he had with the texts was that they seemed very realistic over a protracted period. They were conversational in style but quite subtle. If faked, if SU wanted to prove the claimant had done something she had not “he could’ve done a lot worse than he’s done…” If he had been faking evidence he was incriminating himself with the organisation responsible for assuring he did not commit any offences. He handed over evidence that could have incriminated himself in stalking/harassment. “This was one of the elements I’ve struggled with throughout this case”.

288. As to the photos, he did not know whether they were her profile Facebook pictures or not. No-one could know whether SU got them got them from Facebook but he accepted they could have been profile pictures from the claimant's Facebook.

289. He did research into "Staffys" and had accepted all along that the dogs might not have reacted aggressively to an intruder, but in his experience dogs are more likely to come and give attention to a visitor. SU appeared to have a thorough knowledge but he possibly could get a thorough knowledge of this property in 20 minutes.

290. As to Facebook, he would have expected a probation officer to have had tight settings on their profile. The lack of them called into question their judgment and decision making. On its own this did not contribute to his findings but it was part of a list of things contributing to him finding the list of explanations implausible.

291. When in his new place of residence, the support worker noticed changes in SU's demeanour, both physical and emotional. He accepted that there was no linkage between the cars driving up and down outside and the claimant. There was just what SU had told Wendy Kinder. He accepted that the claimant had been to the police in September. He had evidence the claimant had been to the police the day after she knew SU had been to her property. His view was that she knew he had been into her property and he believed she had allowed him to live there and developed a relationship that broke boundaries of the professional role. Had the claimant reported a crime at that stage it would have involved the police who could have independently verified the unknowns. This would have benefitted all concerned.

292. As to motive, he agreed accommodation was a theme for SU. He had asked Vicky Travis to contact Brent Council for him. It was put to him that if SU was at risk he might more easily get a place to live. Mr Tasker understood he was in the right place to get support, but did not think it was a plausible explanation for concocting the amount of evidence in the form of the videos, messages, statements. It was just so far-fetched.

293. There was convincing and compelling evidence on both sides. SU had previous convictions including dishonesty. The claimant had no history of dishonesty. It was put to him that the claimant should have had the benefit of this when considering who to believe. The answer was that they could not respond in that way to a complaint. There was a protocol and procedure to be followed and they would not automatically believe what the employee tells them. He had outlined his decision in his statement. There were implausible elements from the claimant's side. He was unable to challenge SU's version of events robustly at that stage.

294. No questions had been raised with Mr Tasker as to the dates or venues in respect of the meetings that were arranged. It was never put to him that any other arrangements needed to be made.

295. In re-examination Mr Tasker said that he had never had to make a decision as difficult as this one. This was a fine balancing act.

296. In answer to questions from the Tribunal he accepted that he had not verified the evidence from the claimant's mother, her neighbour and Tanya Demir giving the

situation as they saw it. Mr Tasker did not see what meeting them and talking to them added to the process. He did consider talking to them but did not see what else it would bring him.

297. On 22 August 2017 the claimant sent an email setting out the grounds for her appeal. The first was that Stuart Tasker had stated in his conclusion that SU gained nothing from his involvement in the investigation and ended up homeless. In the view of the claimant the eventual outcome for SU was not a relevant point when considering his motivation for making such claims. He did in fact gain support to move back to London with no guarantee he would be successful in terms of being provided with accommodation. This did not reduce the relevance in terms of motivation but it was unfair to expect the claimant to provide accurate information regarding his motivation. Similarly, one would not question the validity of any victim's account merely on the basis they are unaware of the perpetrator's motivation.

298. Her second ground was that conclusions had been drawn by Stuart Tasker and the investigating officer that the claimant should not have taken months to report the incident to the police. She was not made aware of any facts of the case against her other than what she was told at the time of her suspension. She could not understand what was happening. She was visited by the police some two weeks following her suspension suggesting her involvement in criminal activity, and they searched her house. This sent her into panic and emotional turmoil and she lost total faith in any agency to safeguard her and she was not reassured either by the police or her employer that they had her interests at heart. This hugely affected her ability to report her concerns to the police who had attended at her home to investigate a crime not to protect her. She was advised on 7 September 2016 a month after the investigation that SU had been in her home. She attended the police station on 8 September in a very distressed state, and then the claimant contacted her union. She did not see the video evidence until November 2016. Her safety had been significantly compromised. She was suffering mental health problems and was afraid to leave the house. She believed the respondent had failed to safeguard her or put in any safeguarding measures despite being aware that a known offender with a history of violent offences, one of which was against women, who was subject to a five year restraining order, had significant personal information about the claimant and this directly impacted upon her ability to safeguard herself. This significantly affected the claimant's health.

299. The third matter was that Stuart Tasker stated he did not believe the claimant's home had been broken into. According to the claimant, there was never any doubt that he gained entry via an unlocked broken front door. The police confirmed this.

300. Stuart Tasker stated the behaviour of the dogs would suggest that this was not his first visit but there was evidence that Staffordshire Bull Terriers would not necessarily react to strangers. The police went in in the same way as SU and never raised the dogs as an issue. There was no way of knowing how many times SU had been into the property once he had established a simple and easy way of gaining access.

301. Stuart Tasker stated the claimant had insufficient privacy settings on her social media site. This was irrelevant because the claimant's employment was not mentioned nor were there any questionable matters on her Facebook.

302. Whilst Mr Tasker might have been astonished that she had left her front door unrepaired for a significant period of time this was not evidence in support of any finding that the claimant had lived in her home with SU.

303. Mr Tasker stated they had not provided evidence that categorically proves SU falsified the WhatsApp messages but they did categorically prove it was possible via a ready available app. It was not appropriate to simply reject the possibility that SU used this app.

304. As to the investigation as a whole, she believed that it demonstrated a presumption of guilt formed at the point of the allegations, and taking things on face value from SU had led to a biased, untimely, non-objective investigation process.

305. The claimant went on to set out why in her view the investigation was inadequate. There was a failure to interview the witnesses that she had provided information about. No attempts were made to establish what, if anything, they could provide by way of information. This demonstrated a lack of consideration given to information coming from her and showed a biased unfair investigation.

306. The investigation failed to establish the credibility or validity of the evidence the claimant provided to the investigating officer and/or the information that SU provided.

307. According to the claimant, the investigation pack demonstrated that supporting evidence was withheld, and the investigators failed to explore all potentially relevant avenues of investigation. The claimant went into considerable detail with regard to these matters.

308. The claimant was invited to attend an appeal hearing on Friday 6 October at the Stretford Probation Office. The appeal would be heard by Donna Meade, Head of Operations, who would be supported by an HR Business Partner. Stuart Tasker would be in attendance to present the management case, and the claimant was entitled to be accompanied. Further papers were provided to the claimant in respect of the appeal in addition to the disciplinary hearing documents that would be referred to in the meeting.

309. The notes of the appeal hearing held on Friday 6 October 2017 reveal that at the start the claimant produced a copy of an analysis which had been undertaken by an expert sound engineer. She had only just received it and it was not in her possession five days before to enable it to be submitted before the hearing. The analysis had been undertaken by Michael Casey, a school friend of the claimant. She had paid £50 to Mr Casey who produced it independently of his company as the claimant could not afford to pay a fee of £600 had the report been conducted through the company. Further, the claimant was obtaining evidence from the police as to her visit to Bury Police Station on 8 September 2016.

310. Having taken some time to consider the potential new evidence Donna Meade agreed that it should be considered but it was to be referred back to Stuart Tasker as the original hearing officer so he could have sufficient opportunity to consider the evidence presented and to provide Donna Meade with a report as to what if any impact it had on his original decision to dismiss. On receipt of that information the appeal hearing would be reconvened.

311. Mr Casey's report was described as an "expert video analysis report" by a person with 27 years' experience in sound and visual production. He was a professional sound engineer. The footage was approximately four minutes in length and appeared to have been recorded on a handheld device in daylight within a residential setting. Authentication would have been easier if the original device had been produced. He noted that there was no security as to the video footage between the time the recordings were made and the time of its production.

312. He noted that the footage shows images from within a private residence; things are visible up to 2.14 minute/second when visuals are lost and interspersed by flickers of lights. Visuals are resumed at 2.44 when what appears visually is understood to be the paraphernalia involved with the production of cannabis. This is visually displayed until 3.08 when visuals are lost again interspersed by flickers of light until 3.26 when visuals are again resumed.

313. There appeared to him to be no valid reason why visuals should be lost. The footage was recorded in daylight and as far as he understood the purpose of tent like structure was to enclose all activity without the need to make any adjustments to the room, therefore in his opinion one would expect light.

314. As to sound bars, the left and right sound bars were similar prior to the individual allegedly entering the darkened room, but at the point where visuals are lost the sound bars become distinctly different, both to the previous sound bars and from each other with one containing no sound at all. At the point of return to the visuals the sound bars return to normal with no explanation for this other than foul play. During the loss of visuals, the individual suggests he is locating the light switch and is heard to be switching four light switches. Is this consistent with the room? A fan is heard to be activated directly prior to entering the room, however upon entry this sound is absent and requires explanation. In conclusion it is Mr Casey's expert view that the recording shows numerous unexplained anomalies and could not in any circumstances be considered as genuine.

315. Mr Tasker deemed the evidence of Mr Casey to be unreliable and assessed that he was not sufficiently independent as a personal acquaintance of the claimant. He sought agreement from the respondent's Chief Executive for resources to pay for an outside company to provide a separate expert forensic analysis of the footage, and this was made available on 9 January 2018 and copied to the claimant. According to Mr Tasker, the findings of the Senior Forensic Imaginary Investigator were not sufficient for him to reconsider his original decision to summarily dismiss the claimant.

316. Mr Danny Wheeler, a Senior Forensic Imaginary Investigator, had 11 years of experience in video forensics but was not an expert in audio forensics. Any comments in relation to audio were made as a layman.

317. He received a USB stick containing two files, one with the file name ending in ".avi" and the other ending in ".mp4". He was aware that the media provided to him on the USB was a copy. It was suggested that one of the files was a first removable i.e. a duplicate of the original recording.

318. Having examined the metadata the conclusions reached were that:

> "(1) There are aspects of the .MP4 file, namely metadata, that are consistent with a file that has been created on a low end/budget Windows phone with operating system version 8.1.
>
> (2) An inconsistency was noted between the media create date and the date within the file name that I would have expected to be consistent. However, without the original recording device or a similar device with which to carry out experiments I cannot determine the nature of this inconsistency.
>
> (3) There are moments of complete blackness that could be used to hide the editing of clips; however, I did not positively identify any edits within the clip.
>
> (4) Overall while I am not able to assert that the media is authentic, I was unable to identify manipulation of the video that would disprove its authenticity. Therefore I consider my findings inconclusive."

319. With regard to the ".avi" file he understood this had undergone significant interpolation which is why he focussed his analysis on the .MP4 file.

320. Mr Tasker wrote to the claimant on 18 January 2018. He stated that the findings outlined by Danny Wheeler in his report "have not been sufficient for me to reconsider my original decision to summarily dismiss you from the organisation".

321. He noted the claimant had provided an email from the Greater Manchester Police which confirmed that someone could recall the claimant having attended Bury Police Station sometime in September 2016. Whilst the evidence supported the claimant's declaration of having attended at the Police Station in September 2016 it did not provide him with sufficient reason to reconsider his decision. He had concerns that despite having met with the investigating officer and being informed that SU had been in her property she did not feel there was sufficient evidence to report a crime. He was aware that having viewed the video in November 2016 she still did not report a crime until March 2017.

322. The appeal hearing was rescheduled for Wednesday 24 January 2018. This had to be cancelled and then the claimant was to have another total hip replacement operation on 20 February 2018 and so the appeal did not take place until 16 March 2018. The parties met on the ground floor of the Stretford office with a parking space outside being arranged for the claimant.

323. According to the notes of the meeting, the appeal would be considered under the following criteria:

(1) Severity of the sanction;

(2) New evidence coming to light;

(3) Procedural irregularity;

with the Chair noting that certain elements of the appeal letter dated 22 August 2017 had been dealt with under a separate grievance procedure.

324. Mr Hoosen spoke on behalf of the claimant, making submissions in respect of the appeal, commenting on the points set out in the letter setting out the reasons for the decision to dismiss the claimant. He commented upon each one of the points. When Mr Hoosen had made his comments upon each of the findings of Mr Tasker, Mr Tasker was invited to ask any questions but he did not have any. There then followed a discussion between the appeal officer and Mr Hoosen, with the claimant contributing as and when appropriate.

325. Mr Tasker agreed that it was “an incredibly extensive case” which on the surface appeared to be and open and shut case but it was not. He hoped the approach he took confirmed he had ensured a really robust and thorough investigation with the evidence. This was evidenced by four lengthy hearings, consequences were that it was really difficult to come to a final decision and he was open about this throughout and in the letter. There was very convincing and plausible evidence on both sides and seeking independent evidence led to delays but they attempted to give full consideration to the evidence. He had to make a decision on the balance of probability. There was no one single piece of evidence that swung it: it was the cumulative evidence that led to his conclusion on the balance of probability.

326. After questions and answers between the parties Mr Tasker confirmed matters from his perspective. It was a difficult decision to dismiss the claimant. He was presented with a vast amount of complex evidence and he attempted to get as much verification as possible. As time went on it became apparent there was not going to be conclusive evidence to help the decision. His most worrying concern was the length of time it took the claimant to report matters to the police when her mother had stated someone had been in and a neighbour in June/July had said someone was hanging around. It was reported in September 2016 that SU had been in the property and worrying evidence she was potentially being targeted. He would have expected a formal report to the police, certainly in November when the claimant had looked at the video, but it did not happen until March. The second concern was having seen the video, which he thinks is a powerful piece of evidence and has familiarity in the property, but this did demonstrate some risk taking behaviour which compounded his feelings re the delay reporting the crime to the police in March – these two points summarised the overwhelming evidence; it was a very difficult decision to make and on the basis of balance of probability the evidence pointed to JH breaching a number of the values and “deemed the decision on this form in August 2016” (sic).

327. Mr Hoosen summarised the appeal. The claimant had worked since 1992 in various roles and never been subject to any disciplinaries. The accusation that she was a criminal drug dealer made by SU was not credible, and these allegations were

found not proved. Regarding the text and WhatsApp, it was very powerful and he thought it would be an open and shut case at first viewing and no doubt on viewing this Vicky Travis thought the case was made and would need some powerful evidence to dispute this. This evidence has not proved the case against the claimant, the WhatsApp is faked easily and quickly, the number can be used in a conversation and need to be clear that this is very quick and not a long process. He had shown:

> "This was unsafe evidence, quick to fake a conversation – nothing to do with the claimant and she did not go to a wedding, and the family have confirmed this. Re the texts, this is more powerful, the texts don't exist. We have provided third party evidence to prove that they don't exist. MH encouraged you to look at it again as has been suggested. If you accept this point the dismissal has to be reversed. If he has gone to such lengths to fake texts he has to question as nothing else can be taken on face value and it is a malicious complaint against JH. This alone is enough to find in JH's favour. The film was damning evidence; does appear confident and does know his way around, small house, don't know how many times he has been inside, said about the dogs being at ease with him – it doesn't show they were at ease and are evidence of a relationship – just now showing – not aggressive, not good guard dogs. Cannot say this proves beyond that he knew the dogs for a significant amount of time or had a relationship with JH. When you get quality assessment, significant interpolation – clear statements – and inconclusive so this has to mean it is unsafe piece of evidence. No other conclusion you can come to with this as it is expert witness. Reiterated the point of SU motivation is important but we can't know it and there are holes in it, and not had the opportunity to cross examine SU does not mean that the case against JH is proved. Even if we accept the texts don't exist and we don't know SU wanted to achieve. We know he made points he was going to the press but he didn't – not JH's responsibility to conclude why he did this. And if her guess isn't wholly accurate this is because it's a guess. Haven't explored what is JH's motivation; she had professional care which perhaps went too far when he wasn't a subject of probation – not uncommon to do this. If someone helps you don't say I'm no longer your officer. There is only one phone call. ST has found against her, failed to uphold professionalism without explicitly in what way. SU has never lived with her. There was no relationship. There is faked WhatsApp and text messages and MH has shown that this did not take place; phone records provided. JH has not breached the discipline as alleged, then she hasn't brought the service into disrepute. We have shown this is not safe, provided credible alternative views. We have shown that it is not safe to come to the conclusion that the case against JH has been proved on the balance of probability but is unsafe and you have to find in JH's favour and reinstate her."

328. The appeal outcome letter was sent to the claimant on 22 March 2018. The appeal was dismissed. Having outlined the process followed and summarised the matters raised in the appeal including the information presented by Stuart Tasker who had made the decision to dismiss, Donna Meade wrote that:

> "My assessment was that the points you had raised fall under the criterion of 'procedural irregularity' and the position that you were presenting was that the

Stuart Tasker's assessment of the evidence available to him was, in your opinion, flawed. I would echo the points made by both parties in this matter that this has been a complex case and I note that for the purposes of this process, the benchmark test is of 'balance of probabilities' rather than 'beyond reasonable doubt'. I highlight this as I do believe this is a critical factor in terms of the assessment and judgments that have been made in relation to this case. Indeed, as appeal authority, I noted that during the hearing you referred consistently throughout your presentation to the need for 'concrete, irrefutable, conclusive' evidence. However, HR procedures require evidence to be tested on the 'balance of probabilities' and it is with this in mind that I am satisfied as appeal chair that the conclusions drawn in this matter have been made in accordance with this principle."

329. Donna Meade then went on to provide her conclusions and the reasoning behind them:

"(29) I believe it was reasonable that there was consideration of the potential motive/s for SU's actions and that the assessment of the motive/s was reasonable. I note that you said that SU had made these allegations in order to facilitate a move back to London but I find it reasonable to assess that he would unlikely have gone to such great lengths to facilitate such a move, particularly as his order was due to end imminently.

(30) It was relevant to me that you had reiterated at the appeal hearing how vulnerable and scared you had felt following what you said was an intrusion in your property by SU. I also noted that in your appeal letter dated 22 August you had stated that you had felt you were 'panic stricken…completely victimised' and that your safety had been significantly compromised and no measures were in place to ensure your safety'. Hearing your account, and noting the comments made in your appeal letter, I was also surprised that you had not formally reported the incident to the police or put any additional measures in place, i.e. immediately strengthened up the security in your home or even moved out of it, to fully protect yourself despite formalising to the organisation that you felt there were safeguarding issues. The very fact that you had not taken any action yourself to afford yourself a greater degree of immediate protection, given your professional background and your significant years of working with offenders, in my view was concerning, and that in making this assessment, Stuart Tasker's conclusion appeared reasonable in my opinion and did not represent a procedural irregularity.

(31) Taking account of the representations made in respect of the video, and having viewed the video myself, I believe that Stuart Tasker's assessment of this was reasonable. I took account of the fact that the front door lock had been broken and was unrepaired/unlocked and the question in dispute was how SU had entered the property. I assess that it was not inappropriate for Stuart Tasker to consider the dogs were totally unaffected by SU's presence within your home. I am also of the

view having viewed the video, that it is a powerful piece of evidence and that SU clearly appears fully familiar with your property. As such, I am of the view that Stuart Tasker's assessment of this element of the case was reasonable and did not represent a procedural irregularity.

(32) I believe it was relevant for Stuart Tasker to consider how accessible your personal information was on your Facebook account particularly as you stated that SU had taken his information about you from your Facebook account and shared it. This puts you in a vulnerable position and it is surprising that you did not have tighter security settings particularly given your role. Stuart Tasker acknowledged that your lack of privacy settings did not in itself constitute a disciplinary matter nor had you brought the service into disrepute by not having tighter security measures on your account. Stuart Tasker's assessment of the relevance of this in making his decision was reasonable in contributing to his overall decision and did not in my view constitute a procedural irregularity.

(33) Regarding the telephone messages, Stuart Tasker acknowledged that it is possible to fake this type of communication. He confirmed that his concerns related to the protracted and detailed dialogue over text and WhatsApp messages over a period of time. The additional two phone calls from you to SU which you originally denied making, at a point in time when you held no responsibility for the management of his case, and the clear evidence presented on SU's phone of your number and a series of messages that related to that number. Stuart Tasker noted that the phone records you provided did not evidence text messages to what was understood to be SU's phone number. It has been previously accepted that there are means to fake some form of messaging communication and whilst this is accepted, the protracted nature of the dialogue and the detail in it, coupled with the calls which were originally denied, lead me to assess that, in the absence of any telecommunication forensic analysis (which was not available as part of this non criminal investigation) and taking account of the fact that messaging communication can originate in many forms, from different devices and will not necessarily be shown on an itemised bill, that Stuart Tasker's assessment of this communication was reasonable. Again, it is the cumulative impact of those and other evidence detailed throughout this letter that leads me to uphold Stuart Tasker's decision.

(34) In taking account of all the above, I assess that the approach taken by Stuart Tasker considering all these elements, which in combination he took into account to reach his decision and findings with regard to the allegations was reasonable and appropriate and that this did not represent any procedural irregularity. As such I uphold Stuart Tasker's decision that on the balance of probabilities the allegations are proven.

(35) I am of the view that these findings do evidence actions and behaviour which have eroded the trust and confidence that the organisation has in you as an employee. In terms of the sanction applied, as the

> allegations proven constitute gross misconduct, the decision to summarily dismiss you made at the original hearing was appropriate."

330. Donna Meade was cross examined. Ms Meade accepted that her role as the appeal officer was critical given the significance of this matter to the claimant. She took it very seriously, realising that the claimant's career was affected. She received the disciplinary pack and she read it. There was lots of information on both sides where there was no conclusive evidence on which to draw conclusions. There were arguments on either side in some aspects e.g. in relation to the video and texts. She was pretty confident she got the unredacted version of the pack but did not recall seeing the NDelius records. She had the opportunity, in Tribunal, to look in her bag at the pack provided to her and it seemed to be the version without the full appendices.

331. When the claimant put in the report as to the video she took the extraordinary decision to allow it in and referred the matter back to Mr Tasker who sought a report. In her view the report was an inconclusive analysis. The only thing they could have some confidence with regard to was that the video was taken in the claimant's premises and it was a visual representation of someone walking around and providing guidance en route.

332. Ms Carr asked if the issues involved the service user's consent to be there on the premises or had he been there before, and as to the cannabis farm whether the footage had been tampered with or edited to insert fake information. Ms Meade agreed that this was one of the things being assessed. It was still an unclear picture regarding certain aspects. It was not the original recording that was analysed. The analysis did not positively identify any editing. Her assessment was that it did not take them any further. There was an ongoing uncertainty. She accepted that there was a police email confirming that there was no sign of cannabis cultivation in the claimant's property when they went on 24 August 2016. The video was taken in July 2016.

333. She accepted SU had a criminal record and that the claimant had a good record as an employee for 22 years.

334. The appeal was not a re-hearing. Her job was to focus on procedural irregularity, further evidence and the severity of the sanction. She focussed on all of these.

335. The key fact concerning the video was that SU appeared to have accessed the claimant's property with ease. He knew his way around the property. She felt it very unusual that there was no response whatsoever from the dogs. The video was very powerful.

336. As to the cannabis aspect, she understood Mr Tasker had decided not to take account of that aspect of the video. He found there was no evidence that the claimant had supplied cannabis.

337. She took the view that they need to leave no stone unturned to establish the correct position regarding the video but the video analysis was inconclusive. All that was clear was that he had been in the property and walked around with significant

ease. He could have done it because he was let in or before of a relationship. She agreed however there was every potential he could have got to know the house in 20 minutes.

338. She was asked if she did not think it odd that SU had not referred to the claimant or her father or sister. She said he could have done that but he chose to refer to family members without identifying them.

339. As to texts and WhatsApps, she noted there was a mix and she accepted Mr Tasker's findings. There was a range of messages on the itemised bills and she pointed to certain of them. It was off that SU would have had texts at a time when the claimant was texting.

340. The Tribunal note that the telephone numbers shown on the claimant's mobile phone bill at the time of these texts was not the number said by the respondent to be that of SU. Ms Meade was asked to go away and check all of the information and she did just that. She felt it highly unlikely there were texts from the claimant's phone at the same time as SU got texts from the claimant.

341. The messages themselves were detailed. There was a range of facts in the telecoms information that left her feeling very concerned. She saw and viewed the analysis of information as critical. She accepted that these matters were not put to the claimant. She agreed that the claimant's phone records did not indicate any texts to SU. There was no communication to his number.

342. As to fake messages, she thought WhatsApp messages could be faked but was not aware text messages could be faked. She had an open mind on fake messages but there had been no forensic analysis of the phone.

343. The phone messages were detailed, elaborate and over a period of time.

344. She was asked if it was not fair that the claimant had not been given the opportunity to deal with these points. She said that her conclusions were not based on one point but a range of matters.

345. After a short adjournment Ms Meade said that if she had pulled this information out before the hearing it would have been helpful to have questioned the claimant on it, but there were a range of features that left her feeling quite concerned.

346. She could only speculate if texts were faked. She did not believe they were faked. They were detailed and they were protracted. Whilst there was no conclusive evidence she felt there were some concerning features.

347. Clearly if there were doubts as to credibility it would leave some level of concern with the assertion from the claimant that there was no contact with SU by phone, but there were some inconsistencies. The claimant insisted there was no communication but there was evidence that there had been and she then recollected what had happened. She recalled the very contact.

348. As to the claimant's diary and NDelius records which might have jogged her memory, Ms Meade thought she understood that the claimant had not requested them. If she felt she did not have the information she might have requested it and it would have been provided with redactions. A full pack would have been made available to the claimant unless there was a reason not to. There was a potential for unfairness but any information would have been seen within the scope of the investigation. This was not a point raised in the appeal. It was important to test as much as possible in the confines of the investigation which involved he said/she said…

349. As to the wedding, it was he said/she said. Sophie Hyland did not present evidence at the disciplinary hearing. It may have added some value but there was every opportunity for any additional evidence to be brought to the table. The claimant had the opportunity to bring extra evidence and present witnesses but she chose not to do so.

350. She agreed that it was for Ms Travis and Mr Tasker to ensure that the evidence was tested. This was the evidence brought to the table by the claimant. It was for Ms Travis to test the evidence. They sought to ensure as much relevant evidence as possible was provided.

351. She had seen the evidence prepared by Sophie Hyland for use at the Tribunal. She acknowledged there may be some bias.

352. She said she were clear anomalies in the information presented. She considered that amongst all the information available it essentially boiled down to the fact that someone was not telling the truth about the wedding. There were so many features. Whether or not there was a wedding was one of them.

353. If SU had lied, lies from any of the parties would cast doubt on the quality of their evidence. She did not know Marie Hyland but she was an employee of the respondent and she had no reason to doubt Marie.

354. She accepted Ms Travis wanted to deal with impartial witnesses first, but agreed there was no statement taken from Sophie Hyland who said she had never met SU.

355. If the claimant's evidence that SU was not at her house, there was no wedding, that he had not met Tanya Demir who had not worked for the Probation Service and was not divorced, then if this evidence had been presented at an earlier point in the hearing it might have cast doubt upon the evidence of the service user.

356. The claimant's trade union representative urged her to consider six key points, and this she did as well as all the other information when she was considering matters.

357. She would have struggled to reach a conclusion beyond reasonable doubt. The evidence of the claimant's mother was one of the pieces of information that was conflicting. The evidence would have led her to question the full range of information being presented. It was a reasonable decision for Mr Tasker.

358. “We fully and critically investigate issues. Rarely are allegations made of improper conduct”. There was the claimant's lack of immediate responses to protect her safety. There was a delay in reporting. She visited the police in September but did not report a crime. She accepted that at this date the claimant had not seen the video. If the claimant had perceived herself to be a victim then it was all the more surprising that police action was not triggered.

359. She felt it an unusual response for the claimant not to engage with the police to provide her with safeguards in the usual way. This was such an untypical response that it did not convey the level of fear portrayed by Ms Hyland. It beggared belief that she was so concerned yet not taking measures when a person was intruding into her property and could have harmed her. It was very unconventional and not as someone would react. In her view it was credible that Mr Tasker consider this a feature in his decision making in a complex case. She felt it made it more likely that the claimant had had the service user staying at her house.

360. As to motive, it was possibly to help the service user to move to London. Accommodation did seem to be an issue. It was one of the potential motives but she did not believe it was the motive. If it was his motive then his outcome was not delivered.

361. Ms Meade accepted that it would have been helpful to have engaged with the service user had he not been reported missing.

362. There was an 18 year gap in SU’s offending history. There was a potential for him harassing. He was deemed unsuitable for the “Building Better Relationships” programme.

363. As to the front door, the fact that it could not lock – it seemed unclear as to whether it was left open or locked from the inside. Given that she worked with prolific offenders on probation she should have been acutely aware of security matters. She felt it reasonable that Mr Tasker had formed a judgment that she chose not to secure her home sufficiently. Mr Tasker conveyed a range of concerning facts in terms of the claimant and her responses. She felt it reasonable that he inferred a view as to her level of security. She thought it right that it contributed to the balance of probabilities that he (SU) had stayed at her house.

364. As to Facebook, information on Facebook is accessible and changeable. Whether the service user sourced the information from Facebook is speculation. We do not know when it was on Facebook.

365. The fact that the claimant had her profile on Facebook was not a reason for her dismissal. Her settings on Facebook were not the reason she was dismissed. These did not make her guilty. It did not relate to whether or not she had him in her house. In and by itself it was not a reason why Mr Tasker decided as he did.

366. Ms Meade felt it relevant that the claimant’s settings were at a level which allowed someone the opportunity to get into her Facebook.

367. The second hip operation was one of the reasons for the delay in the hearing. She believed the HR Business Partner was aware of the fact that the claimant had

an operation. At Stretford she was ushered to a disabled parking spot and given appropriate seating on the ground floor.

368. In re-examination Ms Meade referred to the video commentary, taking the view that SU was wanting to convey a very clear familiarity. In her view perhaps SU viewed it as an insurance policy.

369. In answer to a question from the Tribunal as to what weight she had applied to the evidence from the claimant's sister, Ms Meade did not specifically answer the question but said that the claimant's representative had made his six points in relation to Mr Tasker's decision. It was her role not to re-hear but to make her decision in accordance with the criteria that she had stated.

370. The last witness to be cross examined was the claimant. Her evidence started with her answering questions from her solicitor about some late documents from the respondent that had been allowed in to evidence. The claimant knew who Jason Keogh was. He was a distant relative some way back on her sister's family tree. He was not someone she saw regularly and they had never had a relationship, and she had never seen any of the Facebook postings that appeared in the documents produced by the respondent. He was her sister's friend on Facebook. She had not been asked by him to marry him.

371. When Katie Kirkham got married her sister, Lisa, did the flowers for the wedding. She went with Lisa to set the flowers out but there was no-one from her family at the wedding. Her daughter, Sophie, was friends with Katie Kirkham on Facebook. She knew June Kirkham.

372. In cross examination she accepted that it would be wrong for a probation officer to have a relationship with a client. If she was socialising with someone or they were staying at her house and the person was a service user then it would be right to disclose it. She agreed there was a need for clear boundaries and if anything was blurred it should be disclosed. She agreed that service users could be vulnerable so respecting boundaries was for their protection as well as for the probation officer.

373. When dealing with service users there is sometimes a need to disclose elements of personal information which might assist if there is a particular problem that you are familiar with, such as a race or a disability issue. She would try, to the best of her ability, to ensure that any information she disclosed was not so personal as to present a risk to her.

374. What had been alleged against her by the service user was absolutely wrong.

375. If the complaint made was correct, if it was true, then absolutely it would be gross misconduct. If someone had stayed at her house and was socialising then if this had not been disclosed it would not come as a surprise to her for the person to lose their job.

376. She accepted that the disciplinary policy provided that "an employee who commits an act outside work, which adversely affects their contract of employment, may face disciplinary action under this procedure". She accepted that Ms Travis was

in a suitable position to carry out the investigation. She accepted that she had been suspended and was not surprised.

377. She accepted that in the respondent's process an appeal was not a full re-hearing.

378. She thought it fair for Ms Meade to refer the video back to Mr Tasker. She felt her grievance should have been dealt with as part of the disciplinary but it was not.

379. The claimant was taken to the respondent's Complaints Management Policy which was for use service users. The claimant accepted that a service user was entitled to be spoken to, kept informed and given information as to the outcome.

380. She noted that Ms Travis met SU and obtained information from him and that Ms Travis seemed to be investigating both the complaint of the service user and the disciplinary investigation against her.

381. The claimant accepted that an investigator could not start with the mindset that what was said by an offender would be less plausible than what was said by a probation officer. She agreed the investigation had to approach both from an equal perspective.

382. As to her disability claims, the claimant accepted that she had been given notice in advance of the meetings. They were all on the respondent's premises. She would imagine that all of the buildings were accessible. She had been accompanied at all meetings by an experienced trade union representative. The claimant said they knew what they were doing about the case but they did not know her personal issues.

383. It was put to her that if a building or another aspect of a meeting proposed did not suit the claimant she could have complained and objected. She agreed that she could, but at the first meeting there were several flights of stairs to get in and at the point of going to the meeting she lost all faith in the company and would not have asked them for anything to be fair. She felt that they should have said what was available but they never offered anything. She just managed her disability. To be fair she did not think she would have asked them for anything. Her head was in such a state that asking for a different chair would have been the last thing on her mind. She was feeling suicidal and keeping alive was more important than a parking space. Matters as to location, parking etc. were not at the forefront of her mind. With her trade union representative she focussed on the case as opposed to her difficulties. The trade union representative did not see her struggle. She did not have a blue badge although she had applied for one.

384. In relation to the first meeting, her ability to get there was not the first thing on her mind. She did not know how long she would be there. Carrying her handbag was difficult at times. Her method was always to have a friend come along with her to help her. The friend waited in the waiting room.

385. As to further meetings, times and dates were put and we were asked if they were convenient, but given the seriousness of the issue the claimant did not think

about her disability issue. There was no occasion when she asked for a different meeting date or time that was declined.

386. On 11 January 2017 she went to the old office in Drake Street, Rochdale with her phone bill. There was a photocopier there. “The people at Drake Street did the copying and told me how to get to the new office”.

387. The meeting at Warrington was pre-arranged. She was given notice of meetings at Stretford. She did have problems carrying things but did not feel she could say anything about it to the employer. She had other things to talk about with the union. There was never a specific discussion about the meetings being inconvenient. Her hips got worse as time went on. When compared with the impact of the whole case on her, her hips were secondary. At the rescheduled first appeal meeting she was given a parking space and there was no complaint about the last meeting.

388. The claimant agreed that there was no mention of a failure to make adjustments. This was something she thought about after the event but it was her employer’s responsibility to provide for her. They knew of her disability. She agreed that the first time a disability complaint was spelt out was in the further and better particulars.

389. As to the decision to dismiss, she believed the decision was flawed because there was not a proper investigation. She felt had there been a better investigation she would not have been dismissed.

390. The service user’s offending history was discussed and the claimant agreed that there had been nothing since 1996 so there was 18 years without any activity recorded. She agreed no stalking or harassing was reported against the service user. Having said that, restraining orders were not uncommon in domestic violence cases.

391. The service user was quite articulate and held down employment. The claimant thought domestic violence might be persistent because they are told to assume that there have been 30 offences before the police are called. “When trained we are told to take into account that there are lots more times when someone should have rung the police but have not done so”.

392. She managed the claimant on his probation order from July to October 2015 when she left for bereavement and/or sickness leave for her hip replacement.

393. In the ten months from October 2015 to August 2016 she had one session with SU at the office and never saw him out of the office. Ms Travis had not made her privy to information on the NDelius system. SU was relatively challenging. Jim Robson had done a full assessment but she had not seen it.

394. The service user was no more difficult than any normal domestic violence perpetrator. There was nothing particularly difficult about him other than he was not suitable for the “Building Better Relationships” programme.

395. The claimant thought that when she was SU's probation officer she saw him weekly to start with for up to two hours and she thought weekly continued, then when she was on compassionate and/or sick leave she had nothing to do with the service user for six months or so.

396. The operation on her first hip was on 20 January 2016.

397. The claimant returned to work on 16 March but she did not drive. She had a lift in from a colleague. She used two crutches. Her role was such that she did not have to go out on visits. The return was phased over a couple of months when times increased gradually.

398. On returning she was not given specific instructions on who she was to deal with but it was apparent that SU was transferred to Mr Johnson in February 2016.

399. She first had dealings with SU on 15 March but she had not seen the NDelius records to enable her to find out exactly what her involvement was. She knew she had seen SU on one occasion face to face and that there had been telephone contact and there was a discussion with Wendy Kinder.

400. On 10 May 2016 SU was accepted at the Sash Project. This was the day after SU said he moved out of her property.

401. He had been in to see Wendy Kinder and the claimant had seen him then. There had been phone calls with him.

402. She accepted that Wendy Kinder did the right thing in reporting that which SU had told her. So far as the claimant was concerned, the case against her was all made up. For instance, he did not owe her any money.

403. She accepted that the suspension had to happen. "The respondent prepared a note of the suspension meeting but I was never provided with it until the disciplinary hearing".

404. It is apparent from the suspension meeting note that the claimant denied the allegations saying they were unbelievable, utter nonsense, that she was stunned and could not believe them.

405. The claimant spoke to Lorna Shellabear, a Human Resources Business Partner, on 10 August asking whether SU knew her home address, reiterating that she had had never provided accommodation to him, but according to the claimant all she was told was to contact the police. The claimant was unhappy that they had not given her information about the risk. She knew the allegation against her was not true but wanted to know if SU had given them her address. She was thinking as a victim not as a probation officer. "It's different when you're a victim and not a professional".

406. The written complaint from SU was then considered. The claimant said that she did not sleep downstairs. She had aids to allow her to use the stairs and she slept upstairs.

407. She could not have slept on the sofa. Her bed had to be at a particular height following the operation.

408. In her sessions with SU the claimant had spoken about bringing up a mixed race child. SU had been brought up by a single mother. The claimant was not specifically talking about her own daughter but she may have said she struggled as a single parent from which SU may have made assumptions.

409. Photographs were looked at. There were two pictures of SU taken in her garden and it was suggested that the photographs might have been taken in March. The claimant thought it was absolutely incredible that these photographs were taken in her garden but thought the service user must have been actioning a plan to set her up.

410. Ms Travis obtained a letter from the police about the video in her home. The claimant said that the police had given an opinion as opposed to the video evidence being properly looked at.

411. When the claimant obtained her telephone records she was not aware that WhatsApp did not appear on a phone bill. She had agreed that the respondent could take the phone to examine it. She was adamant from day one that there would be no text messages to SU as she did not text clients.

412. As to the Travis report, it took the claimant four months to get the phone bills but it was seven months from the start of the investigation until the report appeared.

413. The claimant agreed that she had had the investigation report in February and that she could put in statements or call witnesses and the information must be provided five days before the hearing. She said Mr Tasker chaired the process fairly.

414. On the question of mobile phones, the claimant said she was not the only person who used a personal mobile phone at work. She agreed “you do have to look after yourself” and she had made the same mistake twice of not using a prefix to hide her number before using her personal mobile phone.

415. She may have written a note in her office diary concerning SU but this was not provided to her.

416. There was no proper analysis of the video. It was her view that the video had been tampered with. The union raised the fact that there is a way of overlaying one piece of film over another piece of film called “masking”. The representative did not know if this was the case and an IT specialist would be needed to give a frame by frame view on the video, but the original phone may be needed to do this.

417. When the initial report concerning the video came from the Corruption Prevention Unit she agreed that it was the fair thing for Mr Tasker to disregard it.

418. The claimant also said that she was concerned that she did not have her own copies of the information so she was not able to do her own investigation.

419. Turning to the appeal the claimant was unhappy as to the length of time taken for the respondent's report on the video to be produced.

420. At the 16 March appeal meeting a parking space was provided.

421. The claimant said that she believed the respondent did not believe she had been to the police station but she did go after she had moved house in March 2017.

422. As to texts and/or WhatsApps, the claimant knew she had not sent them. One way or another they were faked.

423. The claimant did not accept there was evidence available to Mr Tasker to reach the conclusion he did. She did not accept he was entitled to weigh in the balance things like her open Facebook account, her ringing service users on her own mobile and not reporting matters to the police. She did however agree there were factors for him to consider.

424. Her car was collected from Bolton, which is what she told Vicky Travis. The service user said it was in Manchester.

425. The texts and the WhatsApps are all faked. SU has obviously got his information from Facebook. We don't know why he's done it. She accepted she did leave her front door unlocked, it was broken.

426. There was cross-examination in respect of the messages and the claimant's phone bills. Whilst accepting that the claimant had sent some texts at the time the service user received "messages", the claimant's phone bill showed that they were not to his number and this was because she did not text him. This had happened twice. She could not explain why he had got the time in the fake messages to be the same as when she was using her phone. For this to have happened twice was something she could not explain. It was a coincidence.

427. It was apparent from the claimant's bills that at the times she made the calls one was to her sister and one was to her mother. She was legitimately messaging them. She had not made any changes to the phone bills that she produced.

428. The discussion moved to Jason K… The only Jason the claimant had supervised was Jason P… The claimant accepted that there was a picture of her on Jason K's Facebook but it was a bit of a joke. Jason K was not her friend on Facebook. There was nothing between her and this Jason K.

429. In answer to a question from the Tribunal, Ms Hyland confirmed that she returned to work in March 2016 following her hip operation and she used two crutches. It was about 12 weeks from the operation at the end of January. She was not able to drive for 12 weeks after the operation.

430. Her investigation by Vicky Travis involved just one meeting. She was told of an allegation that she had sent texts and there was a video, but nothing was provided at the meeting. No evidence was shown to her at the investigation hearing.

431. She had been asked by Ms Travis about a wedding reception, but no other information was provided about it. She never knew the date of the alleged wedding and was taken to Wendy Kinder's investigation meeting where Wendy Kinder had checked and confirmed that SU did not stay out overnight on the occasion of the wedding. The claimant said that she had never been given the date.

432. She had never been given copies of the NDelius records that she had made or copies of her diary.

433. She was on holiday from 25 June to 6 July in Turkey.

434. She first saw the video with her trade union representative in November.

435. As to the two calls to SU's phone, she said that the first call was to see if he was alright, and the second call was to check on him but he did not answer.

436. Taken from the claimant's phone records, the first call was on 20 June 2016 at 13:46 with a duration of 5.24. The second call was on 22 June at 14:01 with a duration of 25 seconds. This is the call the claimant says was not answered. The first phone call would appear to be consistent with Wendy Kinder informing the claimant of her concern about SU.

<u>The witnesses who were not cross examined</u>

437. The claimant's mother, Louise Hyland, provided a statement of fitness for work. Because of the condition stated her GP advised that she was unable to go to court for a period of three months from 10 December 2018. The untested evidence of Louise Hyland is that following the death of her husband in October 2015 she would stay at her daughter's house from time to time, usually for one or two nights each week. If not staying she would normally visit twice a week. Her daughter, the claimant, lived in a three bedroomed house with her daughter, Sophie. She would usually sleep in the spare room but sometimes in Julia's room. At no stage had SU or indeed any man other than Sophie's former boyfriend lived at the address over the last few years. She could certainly confirm that SU did not live with her daughter from 11 March to 9 May 2016. No-one from the respondent had sought to interview her.

438. She went on to say that the respondent was made aware of the fact that in July 2016 she was present at her daughter's house when a man she now understands to be SU entered the house. This was the only time she had ever seen him. He entered the house and her presence seemed to surprise him. He said he was a friend of her daughter who had said he could come round. He was polite. She felt at ease with him. He had a laptop computer and said he was "downloading" but she was not fully aware of what that meant. He left after about ten minutes. She did not inform her daughter about it as she believed he knew her and she was aware of his attendance. She only believed it an issue when the police attended on 24 August. She confirmed that she provided a signed statement to this effect for use in her daughter's disciplinary process.

439. Sophie Hyland's untested witness statement includes various expressions of her opinion which we disregard. As to facts, she lived with her mother at their home

address at the material time and the only people who lived at the property were Sophie and the claimant. Her grandmother would stay at the house on a weekly basis. Her then boyfriend, Steve, stayed at the house from time to time but still lived with his parents. On the date SU alleged he moved into the house her mother was "still recovering from a total hip replacement done less than six weeks before, and during this time she found walking difficult and was using two crutches. She was also unable to drive".

440. There was no cannabis farm. Her grandmother stayed in the spare room and Sophie kept her clothes in the spare room as her room was small. She confirms that the front door could be locked from the inside only but it was not uncommon for them to come and go without locking the door.

441. Sophie was a bridesmaid for a close friend in 2014 where the name of the groom was Gary not Jack. She had provided her mother with the invitation to use during her disciplinary process. No-one from the respondent followed this up with Sophie.

442. Her mother did not attend the 2014 wedding.

443. SU could not have obtained photographs of the claimant at the wedding from the Facebook page as she did not attend.

444. Tanya Demir has known the claimant for over 11 years. Although she provided a witness statement for the purposes of the claimant's disciplinary process, no-one from the respondent contacted her.

445. The claimant told her in March 2017 that a photograph of her and the claimant was used in the disciplinary process. It was a photograph of the claimant and Tanya Demir on holiday in Turkey in June/July 2016. Tanya Demir was on holiday with her family and spent the summer in Turkey. The claimant joined them for a period of time having flown out by herself. She provided a witness statement to the claimant in which she confirmed that she was contactable by telephone but no-one from the respondent contacted her.

446. The photograph was described as "a photograph of JH on holiday in Turkey with a female friend who has long brown hair. SU states that Julia's friend had married someone from Turkey. She went on holiday with Julia to sort something out about their pending divorce. SU stated that this information he received from Julia. He also said that Julia had told him that the same friend had been sacked from probation recently. SU did not know the name of Julia's friend".

447. She was also aware of SU "describing her and her friend's sexual encounters while on holiday in Turkey". According to Ms Demir:

> "In addressing the allegations I can advise the Tribunal I was on holiday with my family. I was at that time happily married to my husband. I am aware that SU alleged…that Julia informed him of our sexual encounters whilst in Turkey, something which is not only a complete fabrication but also extremely upsetting and derogatory given I am a happily married woman and was abroad with my husband. I can also advise that I have never worked for the

> Probation Service and therefore never been dismissed by them. It is not unreasonable to expect this employer to be able to easily verify this information."

Claims under the Equality Act 2010

448. In respect of the Equality Act 2010 claims the respondent admits both the claimant's disability and knowledge of it. The claimant pleads that her disability arises from congenital hip dysplasia and arthritis, and as such the respondent was under a duty to make reasonable adjustments for her in connection with attending the various meetings connected with the disciplinary process.

449. In her closing submissions the respondent's counsel has helpfully provided a list of the relevant meetings and the venues, which we have amended slightly:

Description	Date	Place
Investigation meeting	7 September 2016	Oakland House
Review of evidence meeting	7 November 2016	Drake Street, Rochdale
Delivery of evidence	11 January 2017	Drake Street, Rochdale
Disciplinary hearing 1	4 April 2017	Minshull Street
Disciplinary hearing 2	5 April 2017	Warrington
Disciplinary hearing 3	20 April 2017	Minshull Street
Disciplinary hearing 4	31 July 2017	Stretford
Appeal hearing 1	6 October 2017	Stretford
Appeal hearing 2	16 March 2018	Stretford

450. In her witness statement the claimant explains that her conditions significantly impact upon her mobility. She was unable to walk without pain and required a rest after walking approximately 50 metres on a bad day and slightly more on a good day. She suffered pain when putting any significant weight on her legs which made her extremely unstable. Running would cause severe pain and premature deterioration of the joints, making crossing busy roads impossible. This caused her problems at work especially having to travel into the city centre. For this reason she transferred to the Salford office in 2015.

451. She was unable to carry bags due to additional weight and needed to keep a hand free for balance in case she cannot manage walking. This impacted on her work and caused problems during the disciplinary hearings where she needed to take her files and paperwork to meetings.

452. The claimant says she was not able to park close to the location of the venues on 13 January, 4, 5 and 21 April 2017.

453. She was unable to sit for long periods without discomfort. In a 2015 workstation assessment prior to relocation of her place of work it was recommended she would need to get up and stretch every 30 minutes. This issue significantly impacted upon her work and affected her in the disciplinary proceedings. An inappropriate chair causes significant problems/pain/discomfort. No special chair was provided for her during the disciplinary proceedings.

454. The claimant was groggy in the morning due to the medication which slowed her responses.

455. Climbing stairs was problematic and she would use a lift wherever possible.

456. Having been transferred to the Salford office which was flat, without stairs and with an attached car park, the claimant was provided with a specially adapted chair, footrest, keyboard and given four physiotherapy sessions.

457. The claimant contends that the respondent failed to put in place any adjustments at the investigation meeting on 7 September 2016. The meeting commenced at 10.00am. She contends the respondent should have changed the meeting to a later time and preferably in the afternoon. No assistance was provided with the carrying of folders, paperwork/bag. A companion was refused entry to the meeting. The claimant required provision of car parking close to the location or for disabled parking to be available close to the venue. The claimant was required to walk through the office to a small cupboard-like room with inadequate seating and she contends the meeting should have been relocated and the room should have been adapted by providing seating, more space and less restricted access.

458. Wendy Price told us that the claimant, a friend of hers since going to school together, asked her to attend a meeting in Manchester on 7 September. She was there to provide physical and emotional support to the claimant because at that time the claimant was having difficulty walking and carrying items and was feeling very vulnerable. She met the claimant and they travelled together to the venue in the claimant's car. When she arrived at the meeting venue she was informed by Vicky Travis that she could not attend. She was made to wait outside in what appeared to be a staffroom until the meeting was finished.

459. The claimant attended a meeting to review the evidence on 7 November at 193-195 Drake Street, Rochdale. She contends that the meeting should have been arranged for a later time than 9.30am. No parking was provided and no information was given regarding the provision of parking. The venue is an old building accessed via steps to the front, and the meeting took place on an upper floor with no lift available. There was no suitable seating and limited space. The video was presented by Vicky Travis on her personal mobile.

460. On 11 January 2017 the claimant took her telephone bill evidence to Vicky Travis at the Rochdale office and the same issue arose with regard to adjustments. She alleges that the respondent failed to put in place reasonable arrangements for her to deliver the evidence forcing her to travel to two different offices to locate the relevant individual.

461. With regard to the 4 April 2017 disciplinary at Minshull Street, it started at 9.30am but in the view of the claimant a later start should have been considered. It was a city centre office with no parking. The meeting was held in a third floor office with the stairs needing to be used as the lift was broken. In the view of the claimant the venue should have been changed, parking should have been made available and in the absence of a working lift the meeting should have been located on the ground floor. The respondent should have provided appropriately adapted seating.

462. For the 5 April meeting in Warrington the claimant raises the same issues as the 4 April meeting in regard to start time, parking and seating.

463. With regard to 20 April at Minshull Street, the same issues as on 4 April but the claimant was not made aware whether or not the lift was working. She was simply taken to the stairs and not shown where the lift was.

464. On 31 July at Stretford no parking was made available. The staff car park was full and no provision was put in place for her attendance. The meeting room was located on the first floor with no lift available and no adequate seating. The claimant was expected to carry all of her paperwork, her handbag and a cup of tea up two flights of stairs.

465. For the second appeal hearing at Stretford no adjustments were put in place. The room was on the first floor with no lift available, no designated parking and no adapted seating.

466. The respondent called Karen Taylor, an employee with operational responsibility for Estates with training in health and safety. She had no previous knowledge of the claimant or her claim.

467. According to Ms Taylor at the entrance to the Stretford office there is a ramp with railings leading to the front door reception area. There are no steps which individuals would need to climb to get to the reception area. The building has two floors and there is a stairlift which goes to the second floor if required. Outside the building there is one disabled car parking space, three further spaces at the front of the building and a large car park across the road from the entrance approximately 100 metres from the office. It is a surface car park with easy access to the office without steps. The charge is £1 for a full day.

468. Access to Oakland House, Trafford, to the front of the building is by five shallow steps after which it is flat to the reception/lift area. There is a ramp at the back of the building with rails taking you to the main reception area without the need to climb any stairs. The lifts are in the reception area and go to the fifth floor where the respondent was based. It was all on one level. General parking was limited with visitors usually using the Old Trafford Cricket Ground a five minute walk away or a retail park ten minutes walk away. She was advised that if someone telephoned in advance, who did not have a blue badge but had limited mobility, then they would try to accommodate them. Disabled parking spaces can be used by blue badge holders using intercom access at the barrier.

469. At Minshull Street there are five steps to the entrance at the front of the building and two more once inside. The reception area is flat with access to a lift and

all floors within the building. If an individual is unable to use the stairs at the front there is disabled access at the side via a ramp with railings and an intercom. Once through the door there is a disabled lift which would accommodate a wheelchair and takes you through to reception. There are no further steps between reception and the lift area and no steps on any of the upper floors. Vehicles can be parked outside the building if a blue badge is available. There is a surface car park across the road and spaces around the side of the building. Both are pay and display.

470. At 20 Chichester Street, Rochdale, the reception area is easily accessible with no steps. The lift is in the hallway taking you to the upper floors if required. The office has two disabled parking spaces.

471. At 193-195 Drake Street, Rochdale, there are steps to the main entrance. At the rear there is a ramp with railings and a bell ringing through to reception. There is a car park at the rear of the building with one marked disabled parking space for use by anyone with a blue badge. There is a ramp leading into the main building and free parking along Drake Street outside the front door.

472. At Priory House, Warrington, there are entrances to the front and back. The front has two steps and the rear has a sloped entrance suitable for wheelchair use. There is a lift in the hallway off the ground floor taking you to reception on the first floor then up to the second floor where there is a conference and group room all easily accessible from the lift. There are two disabled parking spaces at the back for the use of all with blue badges. They are generally unused without a need to book in advance. There is a multi-storey car park down the road and a surface car park less than five minutes away with access over pedestrian crossings.

473. In cross examination Ms Taylor accepted that at some point the lift at Minshull Street may have been broken.

474. The respondent's witnesses say that neither the claimant nor her representative made any representations as to the times or venues of the meetings nor did they make any specific requests for a different chair or more space for the claimant. The meetings were changed as to date and time to suit the claimant and/or her representative.

Claimant's Submissions

475. Ms Carr on behalf of the claimant started with the background involving the claimant's unblemished 22 year record when employed as a Probation Officer. She managed SU from March 2015 until she commenced a period of bereavement leave in October 2015, following her father's death, and then a period of sick leave in respect of a hip replacement operation on 20 January 2016. Following the operation, the claimant did not drive for around 12 weeks which would have taken her towards the end of April 2016. She returned to work on a phased basis at the beginning of March initially working one day a week and moving up to full-time work. She used crutches for six or seven weeks following her return to work. (The evidence of the claimant to the Tribunal was that her return started with 2 half days rather than one full day.)

476. On her return from work she does not appear to have been informed as to which cases she retained but it would appear that SU's case had been passed to Paul Johnson, although the claimant continued to have some interaction with him. She thought, in the investigatory interview on 7 September 2016, that she had met SU probably on just one occasion when she returned to work, and there had been telephone contact. She confirmed that she had not provided SU with any photographs and had not taken any pictures of him inside her property. She had not to her knowledge sent any text messages to him. She was not asked if she had contacted SU on her mobile phone, neither was she asked if she had telephoned SU following her return from sick leave. It was, however, apparent that the claimant had spoken to Wendy Kinder about SU as it would appear that the claimant trying to contact SU and she was aware he was in low mood.

477. The claimant was on holiday in Turkey from 25 June to 6 July 2016. There was a picture of the claimant and Mrs Demir but Mrs Demir's name was not apparent from the picture as she does not have a Facebook account.

478. It was on 7 September 2016 that the claimant was advised by Vicky Travis that SU had taken a video at a property that he claimed was her house. The claimant visited the local police station the next day at a time when she had not seen the video. The police confirmed this visit subsequently.

479. The claimant did not see the video until 7 November 2018 and was not provided with a copy of it until after her dismissal. She was not provided with a copy of SU's statement following his interview on 5 September and so had nothing to take to the police by way of evidence. The claimant formally recorded the crime in March 2017.

480. The claimant submitted a considerable amount of evidence in advance of the disciplinary hearing. This included ways in which WhatsApp and/or text messages could be faked and a statement concerning the visit of GMP officers to her home. There was the letter from Tanya Demir denying she had worked as a Probation Officer and denying that she had ever been dismissed. There was the statement from the claimant's mother and a letter from the claimant's neighbour, Donna Newall. There was the email from the claimant's sister, a Case Manager employed by the respondent at Minshull Street.

481. Samantha Stapleton subsequently confirmed that a complaint had been raised about two Probation Officers who visited SU and someone with whom he was then associated albeit this was not a formal complaint.

482. There was some delay in the disciplinary process whilst the claimant's mobile phone records were awaited. There was then a six week delay until the first proposed hearing date in respect of which there were availability difficulties resulting in the hearing not being scheduled until 4 April. Following the hearings on 4 and 5 April there was an adjournment until 20 April for the initial decision to dismiss and then the first appeal hearing was not scheduled until 31 July.

483. In her submissions on the question of unfair dismissal Ms Carr relies on a number of cases.

484. The first is **Hargreaves v Governing Body of Manchester Grammar School UKEAT/0048/18/DA**, a decision of Her Honour Judge Eady QC on 11 June 2018. In the summary it states that:

> "The ET had correctly directed itself as to the higher standard of investigation and process that might be expected given the potentially career changing nature of the allegation against the claimant…As for the fact that the claimant had not himself taken the point during the internal process, whilst this was not an irrelevant consideration the ET did not lose sight of the fact that it was the respondent's obligation to ensure that there was a fair investigation."

485. In **A v B [2002] UKEAT1167 01 1411**, a case in the Employment Appeal Tribunal, in a Judgment given by Elias J, as he then was, dealing with the standard of reasonableness paragraph 58 states:

> "We accept the submission of Mr Galbraith-Marten, for the appellant, that the relevant circumstances do in fact include a consideration of the gravity of the charges and their potential effect upon the employee. The lay members of this Tribunal have no doubt from their own industrial experience that what would be expected of a reasonable employer carrying out say an investigation into a disciplinary matter leading at worst to a warning would not be as rigorous as would be expected where the consequences could be dismissal."

At paragraph 60:

> "Serious allegations of criminal behaviour, at least where disputed, must always be the subject of the most careful investigation, always bearing in mind that the investigation is usually being conducted by laymen and not lawyers. Of course, even in the most serious cases it is unrealistic and quite inappropriate to require the safeguards of a criminal trial but a careful and conscientious investigation of the facts is necessary and the investigator charged with carrying out the enquiries should focus no less on any potential evidence that may exculpate or at least point towards the innocence of the employee as he should on the evidence directed towards proving the charges against him."

At paragraph 61:

> "Employees found to have committed a serious offence of a criminal nature may lose their reputation, their job and even the prospect of securing future employment in their chosen field, as in this case. In such circumstances anything less than an even-handed to the process of investigation would not be reasonable in all the circumstances."

At paragraph 63:

> "We accept the observations of Mr Pepperall, for the respondent, that the standard of reasonableness required will always be high where the employee faces loss of his employment. The wider effect upon future employment and the fact that charges which are criminal in nature have been made all

> reinforce the need for a careful and conscientious enquiry but in practice they will not be likely to alter that standard."

486. In **A v B** certain members of staff who may have given relevant evidence were not interviewed. It was submitted that it was unlikely that those witnesses would have had anything material to add, but at paragraph 82:

> "Mr Pepperall may be quite right in submitting that their evidence may well have added nothing to the evidence already available, but the fact is that one simply does not know."

487. At paragraph 86:

> "It is no answer for an employer to say that even if the investigation had been reasonable it would have made no difference to the decision…If the investigation is not reasonable in all the circumstances then the dismissal is unfair and the fact that it may have caused no adverse prejudice to the employee goes, at least as the law currently stands, to compensation."

488. As to the evidence it was considered important in that case that the documentation was made available to the employee.

489. The final case referred to by the solicitor for the claimant was a case in the Court of Appeal, 2010, EWCA Civ 522, **Salford Royal NHS Foundation Trust v Roldan**. The case was before the Chancellor of the High Court, Lord Justice Etherton and Lord Justice Elias who gave the Judgment.

490. Ms Roldan was a woman who had given service to her employer over four years, apparently without complaint, and there was a real risk that her career would be blighted by this dismissal. We were referred in particular to paragraph 73:

> "The second point raised by this appeal concerns the approach of employers to all allegations of misconduct where, as in this case, the evidence consists of diametrically conflicting accounts of an alleged incident with no, or very little, other evidence to provide corroboration one way or the other. Employers should remember that they must form a genuine belief on reasonable grounds that the misconduct has occurred. But they are not obliged to believe one employee and to disbelieve another. Sometimes the apparent conflict may not be as fundamental as it seems; it may be that each party is genuinely seeking to tell the truth but is perceiving events from his or her own vantage point. Even where that does not appear to be so, there will be cases where it is perfectly proper for the employers to say that they are not satisfied that they can resolve the conflict of evidence and accordingly do not find the case proved. This is not the same as saying that they disbelieve the complainant. For example they may tend to believe that a complainant is giving an accurate account of an incident but at the same time it may be wholly out of character for an employee who has given years of good service to have acted in the way alleged. In my view, it would be perfectly proper in such a case for the employer to give the alleged wrongdoer the benefit of the doubt without feeling compelled to have come down in favour of one side or the other."

491. The claimant submits that at the time of the dismissal the respondent did not have reasonable grounds for believing that the claimant was guilty of the misconduct charges levied against her. The claimant maintains that the respondent did not carry out as much investigation as was reasonable in the circumstances, and that the respondent did not act within the band of reasonable responses. In particular the claimant submits that Vicky Travis did not carry out a fair, impartial or thorough investigation. Her view of the claimant's guilt is evident throughout the process and she believed, as she stated to the GMP on 4 October 2016, in an email to the Greater Manchester Police asking whether the claimant had reported any concerns for her safety or harassment and if so when it was reported and what action was now being taken, Ms Travis went on to add that:

> "The evidence/case so far is heavily weighted in SU's favour. I would appreciate any support that you can provide in respect of this."

492. This, as Vicky Travis accepted in cross examination, was a career changing decision for the claimant and she accepted the need for a robust and thorough investigation.

493. As to delay, the claimant submits that very little was done to pursue the investigation from mid September 2016 until the report was prepared in February 2017.

494. The claimant maintains that defects can be identified in the investigation process:

(1) The failure to properly assess the evidence determining that the claimant's phone records provided significant evidence to implicate her, stating "Ms Hyland remained adamant throughout the investigation that SU's mobile number would not be listed on her personal mobile telephone records", and in the management report Vicky Travis stated that the claimant had categorically stated that, "there is absolutely no way that SU's phone number would appear on her personal mobile phone records". No evidence has been put forward by the respondent to the effect that any such remarks were made by the claimant and, in fact, what is evident from the investigatory interview is that the claimant stated that she had had telephone contact with SU and the questions put to her concerning the sending of text messages and photographs not the making of telephone calls. It is contended that the evidence in this regard has been, at best, misconstrued and is wholly inaccurate, painting the claimant in a very negative light so that she appears to have been dishonest.

(2) Vicky Travis accepts, at face value, the evidence provided by SU, for example that Sophie Hyland had a new job, that she had been a bridesmaid at the wedding of someone called Jack who was an ex partner's friend, and that SU had been to that wedding with the claimant, then that the claimant had purchased a car on a disability scheme and that SU had collected it with her. Vicky Travis accepted in evidence that if it had been shown that the car was not on a disability scheme or that it was unlikely that SU had collected it with the claimant

that this would have "cast doubt upon the evidence"; then that Tanya Demir had met SU on a couple of occasions, had recently been dismissed as a Probation Officer and was in Turkey to pursue her divorce.

495. In the claimant's submission third party evidence could have been obtained to substantiate or otherwise these claims. The respondent could have taken evidence from Sophie Hyland and could have asked for further evidence concerning the car purchase and collection. Tanya Demir and Louise Hyland could have been questioned but none of these steps were taken or indeed considered. Ms Travis agreed in cross examination that if Sophie had said that there was no wedding and that SU did not reside at the house this would of course have affected her view. Sophie Hyland and her then boyfriend both had Facebook accounts and publicly available information. Tanya Demir and Louise Hyland do not have Facebook accounts, which is consistent with SU not knowing the name of Tanya Demir or the name of the claimant's mother. The names of the claimant's dogs are on Facebook.

496. Ms Travis chose to interview "impartial" witnesses and did not prioritise those she considered to be partial witnesses. The claimant submits that as the investigating officer it was not for Ms Travis to make determinations as to which witnesses might be partial or otherwise but to collate the relevant evidence for consideration by the disciplinary officer. The claimant submits that Ms Travis entirely inappropriately and unreasonably made determinations as to the reliability of witnesses without testing their evidence. To have carried out this further investigation would not have caused any delay to the investigation, particularly in the lull from mid September until the report was prepared in February.

497. Ms Travis did nothing to chase up information concerning the claimant's denial that she had had a relationship with another client called Jason.

498. The question of the relationship between Sophie Hyland and her father was not put either to the claimant or to Sophie Hyland.

499. SU claimed he went to collect a phone for the claimant from a neighbour but there was no evidence that the clamant had a new phone at this point.

500. SU said he thought the claimant was 52 although she was actually 50, but on his video there is a plaque referring to her birthday on the wall of her house. No questions were asked about this.

501. Vicky Travis was aware that the claimant had had a hip replacement in late January 2016 but there was no investigation as to how the claimant's mobility was affected in the post-operative period. SU referred to going out drinking and going out for food in the early hours, and being driven by the claimant. No enquiry was made as to the claimant's ability to drive and/or where she slept following her operation.

502. Vicky Travis relies on the content of the NDelius reports which include details of the respondent's contact with SU. From an examination of this system she would have been aware that an employee of the respondent had prepared a report about SU not continuing with the "Building Better Relationships" programme. There is no mention of this in the report although it may have been relevant as it would have

detailed matters such as SU's attitude to women, his demeanour and his unsuitability to be part of the BBR programme.

503. The claimant's diary was removed from her when she was suspended. A copy was not made available to her during the investigation. The NDelius records that she had completed were not made available to her either. She was significantly hampered in responding to queries concerning her interaction with SU during the period when she managed him before her sick leave and in relation to her contact with him following her return.

504. The way in which the management information report presents information by the claimant is sometimes wholly inaccurate and tends to suggest dishonesty on the part of the claimant.

505. As to reporting matters to the police, the claimant was asked to confirm when she had done it and her union representative confirmed the date. The claimant explained why she was reluctant to make a formal complaint. In the report it was stated there was no evidence that she had reported any concerns to the police throughout the six month period of the investigation. The claimant submits this is another example of the evidence being set out in a way that is entirely detrimental to the claimant and calls her truthfulness into question.

506. The claimant consented to CCTV being obtained at the places SU alleged they had visited together. Ms Travis took the decision not to pursue this line of enquiry on the basis that her partner had told her that CCTV was overridden after 28 days. She did not seek to clarify this with the institutions that might have had the CCTV records.

507. The claimant offered up her mobile phone for forensic examination. The respondent did not accept it.

508. Ms Travis appears to accept the report of Clare Devlin of Greater Manchester Police at face value, although there was no forensic examination of the video, and police who visited the claimant's property at the time confirmed there was no sign that cannabis had been cultivated or that drugs had been stored inside the premises.

509. No efforts were made to determine whether the texts and/or WhatsApp messages could have been faked.

510. Vicky Travis did not ask SU to submit his phone for analysis or for him to provide telephone records. She was in contact with him until November 2016.

511. With regard to the complaint made by SU concerning two Probation Service employees who visited him before the claimant became his probation officer there was an attempt by Ms Travis to distinguish between a formal complaint and a complaint, thus making the evidence of the claimant appear inaccurate and/or unreliable.

512. The fact that all of the photographs provided by SU were the claimant's Facebook profile photographs which were publicly available was not set out by Ms Travis in the management report, nor that other information that SU had given was

freely available on Facebook. There appeared to be no question in the mind of Vicky Travis as to why if SU lived with the claimant for three months he had no photos of the claimant or any of her family members other than those that were publicly available, and why there was no mention of her mother being at the property when she stayed there for part of each week during the relevant time.

513. Vicky Travis did not give the claimant details of SU's mobile phone number, although it was on her phone records, and refused to tell her the dates on which calls to him were made, thus preventing her from preparing her case in advance of the disciplinary hearing. Without this information, the NDelius records or her diary she was hampered in trying to remember when and/or why she might have phoned him.

514. Vicky Travis refers to the claimant prioritising a holiday and a new car over the fixing of her front door but whilst saying no evidence had been provided to substantiate that it was the whole door that needed to be replaced rather than just the locks, the claimant was not asked to produce any evidence to substantiate what repairs were needed to the door.

515. The claimant submits that Vicky Travis's approach to the investigation is apparent in her summing up at the end of the disciplinary hearing when she said:

> "During the disciplinary hearing Mick argued that if there is any doubt over the evidence provided by SU then this should cast doubt over all the evidence that he has provided and rule in Julia's favour. On the contrary if there is any doubt about Julia's account, as she has not to date provided any evidence that categorically disproves the allegations, is it right for her to remain in a position of authority and trust working with vulnerable people?".

516. The claimant would submit that she has provided her phone records which show that she did not ever text SU, she provided statements attesting to the fact that a large black man was acting suspiciously around her property and let himself into her house. She produced evidence from her sister who confirmed there had been no family weddings and evidence from Tanya Demir who had never met SU despite his claims to the contrary. The claimant did produce evidence but it was simply ignored.

517. The claimant submits that the investigation was wholly inadequate and flawed. Witnesses who could have given evidence to support the claimant's position were not interviewed. Her phone could have been analysed but was not. Attempts could have been made to obtain CCTV evidence but this was not followed up. Evidence pointing to her innocence such as the absence of any text messages to her on her phone records, the fact that all of the photos provided by SU were publicly available, her discussion with Wendy Kinder concerning SU's wellbeing and attempts made to phone him were seemingly ignored. Evidence was misrepresented. Subjective and speculative comments were submitted. Evidence was withheld from the claimant in the form of her diary, NDelius records and information about the calls to SU on her phone. The claimant submits that the content and findings of the investigation report were insufficient and unreliable.

518. The claimant's submissions move on to consider Mr Tasker, the dismissing officer. When questioned about SU's evidence he thought the truth was probably somewhere in the middle. He never fully believed SU and had no doubt he

embellished certain elements, but he did believe texts were exchanged and that boundaries were blurred and did not know for sure whether there had been a cannabis farm. He could not explain how the text messages were not on the claimant's phone bill.

519. He was aware of the ability to fake WhatsApp messages and the evidence the claimant produced in support of this. He agreed there were reasons to doubt the legitimacy of the videos and messages and there were times when the claimant was very authentic when giving evidence. Her evidence was plausible. On the basis of this the claimant contends that Mr Tasker did not obtain any evidence to verify that the texts and video were genuine. No text messages were shown on the claimant's mobile phone bill.

520. As to the video, the claimant's report prepared by Mr Casey referred to the video recording showing numerous unexplained anomalies and it could not in any circumstances be considered as genuine. In the respondent's expert report the findings were inconclusive. Notwithstanding this Mr Tasker still found against the claimant.

521. The claimant submits that if the footage of the cannabis farm could have been faked then Mr Tasker was obliged to find that the messages were also faked and that SU had lied about other evidence and let himself into the claimant's home to make the video. If SU appeared to have been dishonest then taking into account the plausibility of the claimant and her long record of good service, the career changing nature of the decision, then Mr Tasker should have found in her favour and not dismissed her. Either the claimant allowed SU to live in her house, messaged him and had a cannabis farm in her spare room and was a drug dealer, or she was not and did not.

522. SU was previously guilty of dishonesty as set out above. Some of the convictions occurred some years previously but Stuart Tasker was faced with believing an individual who had been previously found guilty of dishonesty.

523. Although Mr Tasker thought it important to test the evidence he did not speak to the claimant's family members in terms of her mother and daughter. He could have spoken to the two probation officers subsequently involved with SU but did not. He had previously managed Marie Hyland, an employee of the respondent, but he did not approach her to take evidence, notwithstanding the fact that she had provided relevant information in an email.

524. Mr Tasker appeared to think that if the claimant was guilty of not having high privacy settings on her Facebook or failing to fix her door over a long period then this made her guilty of sending messages to SU and allowing him to live in her house. The fact that the claimant had not had her door repaired caused him difficulty in believing the claimant. He conceded that the wedding may not have taken place but seemingly accepted the authenticity of the text messages which followed from the wedding.

525. The video appears to have been a factor in his decision to dismiss the claimant. The claimant produced evidence from her neighbours and her mother. This is not mentioned in the outcome.

526. In the outcome letter he sets out six points which led him to determine that the claimant had developed a personal and inappropriate relationship with SU, and that SU's allegations were not malicious or false. These points are set out above:

(1) With regard to the first point, the claimant submitted at the disciplinary hearing that a possible motive for SU was that he wanted to move back to London and he requested that Vicky Travis assist him in this regard at the conclusion of his investigative interview. He asked her to contact Brent Council as they would not house him as a matter of priority. As SU disappeared and it was not possible to question him as part of the disciplinary, the fact that he became a missing person and appeared to have gained nothing from the evidence he provided is not relevant. He could not have known the eventual outcome at the time when he made his complaint.

(2) The claimant was very clear to both Vicky Travis and her union representative that she was concerned that if she reported SU on a formal basis then this could escalate his behaviour. This fear was exacerbated by what the police officer said to her at the time she visited the police station, warning her that she might increase her problems by making any formal report. Whilst the respondent did not accept the claimant's position in this regard it is contended that it is not a reason to justify dismissal simply because the claimant was a qualified and experienced probation officer. As the claimant said, she was acting as a victim not a probation officer.

(3) It is the claimant's position that the length of time it took her to get her door repaired is irrelevant for the purposes of determining whether she allowed SU to reside at her house, sent messages to him, was a drug dealer or was growing cannabis at her property. The claimant has said that sometimes she left a door unlocked and sometimes she locked it from the inside. It may have been bad judgment on the claimant's part to wait for a protracted period before spending £2,000 on this repair, but this has no direct relationship to the allegations made against her as a consequence of the disciplinary process.

(4) The claimant's property is a three bed newbuild with an open plan downstairs and small landing on the top floor. It would have taken virtually no time for SU to become familiar with the layout of the property. It is noteworthy that if SU had such familiarity with this property and the claimant and her life he did not point to any individuals in the photos that he showed during the footage to say who they were and therefore to suggest a degree of familiarity with the claimant's family and friends. A man fitting SU's description was seen acting suspiciously around the house during this period of time on several occasions. A man fitting his description let himself into the claimant's house while she was on holiday at a time when it was agreed between the parties that the film was probably taken. Even if it were reasonable for Stuart Tasker to determine that SU was in the property without consent, this evidence had to be weighed against the other evidence put forward by the

claimant, for example that there were no text messages to SU on her mobile phone bill. As set out above, there were many critical pieces of evidence that weighed in the claimant's favour and these appear to have been ignored or not meaningfully explored because Mr Tasker found it extremely hard to believe that SU had filmed this footage whilst trespassing.

(5) The issue of the claimant's privacy settings on Facebook is irrelevant in the context of determining whether she allowed the claimant to live at her house, sent him messages, was a drug dealer or was growing cannabis in her spare room. This is not indicative of guilt of these allegations in any way and in fact emphasises the unreasonableness of the respondent's decision making in this case.

(6) Stuart Tasker believed that the messages were a combination of WhatsApp and text messages and he therefore had no credible option other than to determine that they were faked as there were no text messages sent by the claimant to SU. If there had been they would have been shown on her phone bill, and all Stuart Tasker could say in this regard was that "I couldn't explain how that happened". Her text messages were not genuine (and they cannot have been) and the only reasonable decision in relation to the WhatsApp messages was that they were fake as well.

527. The cannabis question appears not to have been considered by the appeal officer as Mr Tasker had decided not to take account of that particular aspect of the video, but in the claimant's submission it is critical to take into account that aspect of the video as if it had been tampered with to show the cannabis farm then it gave weight to the claimant's contention that SU was dishonest and as such none of his evidence should be believed. In the submission of the claimant, the evidence should not have been disregarded. A determination should have been made as to whether they believed the claimant was dealing in drugs and growing cannabis at home. If she was not then they had to believe that SU was lying and dishonest. If he was lying in this regard then there is uncertainty about other elements of his evidence, and the claimant should have been believed.

528. The appeal officer does not appear to have taken into account the claimant's long unblemished service and any mitigating factors.

529. In the submission of the claimant, the investigation was inadequate and dismissal was not a reasonable response, particularly in the light of the career changing nature of the decision and the allegations concerning criminal activity. Further evidence should have been obtained and assumptions should not have been made about the partiality of witnesses who were not even interviewed. The assessment should have been based on the evidence itself with the burden to conduct as much investigation as was reasonable resting with the respondent. Ms Travis did not focus on evidence that could have proved the claimant's innocence. On the contrary she did not interview relevant witnesses, even someone working within the respondent's organisation. She did not check upon Jason, did not analyse the phone and withheld vital evidence from the claimant. The decision to dismiss

was unreliable and based on irrelevant conditions, such as the fixing of the front door and Facebook privacy settings appearing to overlook the plausible evidence provided by the claimant.

530. As to wrongful dismissal, the claimant submits that she did not send messages to SU and did not allow him to reside in her house. She was not a drug dealer and did not have a cannabis farm in her spare room.

531. As to photographs of SU in the claimant's garden showing little by way of leaves on the trees, there is no hard or reliable evidence as to whether they were taken at different times of the year but it does not support the contention the claimant allowed him to enter the garden. The man was seen hanging around on a number of occasions and is wearing a T-shirt, suggesting it unlikely the photographs were taken in winter.

532. The claimant gave good evidence as to the telephone numbers she had used where the times of phone calls seemed to correspond with messages involving SU.

533. The new Facebook evidence produced by the respondent it is submitted adds nothing to their case and merely involves clutching at straws. There is no evidence to support a finding the claimant was in breach of contract and no new evidence supports any such findings.

534. As to the Equality Act claims, the claimant was required to attend meetings during the disciplinary process and was placed at a substantial disadvantage by the arrangements that were made for those meetings as a consequence of her disability. There were no suitable parking facilities at any venue save at the final hearing. There was no suitable chair. Meetings should have started later as the claimant struggled in the mornings. The lift was broken at Minshull Street on 4 April and the meeting was on the third floor. On 20 April at Minshull Street the claimant was shown to the stairs and not advised as to whether the lift was working or not. The Stretford 31 July meeting was on the first floor and no lift was made available with the same occurring at the October appeal meeting.

535. The respondent knew about the claimant's disability and that she had recently had surgery, so it was for them to make the adjustment not for the claimant to propose such adjustments. If the claims are out of time then it was submitted that there was a continuing course of conduct.

Respondent's Submissions

536. After setting out the claims and the issues the respondent deals with the relevant law, starting with the claims under the Equality Act and the duty to make adjustments. Counsel then turns to unfair dismissal.

537. Counsel submits that there is no legal requirement for the employer to show that the employee's conduct was culpable, nor is there a requirement to show that the employee was subjectively aware that his or her conduct would meet with the employer's disapproval. This question is not relevant when determining the reason for the dismissal.

538. As to fairness, counsel reminds us of the words of section 98(4) and the cases of **British Home Stores Limited v Burchell [1978] IRLR 379** and **Iceland Frozen Foods Limited v Jones [1982] IRLR 439**, reminding us that the Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer.

539. She referred to a summary given by Lord Justice Aikens in **Graham v Secretary of State for Work and Pensions [2012] IRLR 759**:

> "…Once it is established that the employer's reason for dismissing the employee was a 'valid' reason within the statute, the ET has to consider three aspects of the employer's conduct. First, did the employer carry out an investigation into the matter that was reasonable in all the circumstances of the case; secondly, did the employer believe that the employee was guilty of the misconduct complained of; and, thirdly, did the employer have reasonable grounds for that belief.
>
> If the answer to each of these questions is 'yes' the Employment Tribunal must then decide on the reasonableness of the response by the employer. In performing the latter exercise the ET must consider by the objective standards of the hypothetical reasonable employer, rather than by reference to the ET's own subjective views, whether the employer has acted within a 'band or range of reasonable responses' to the particular misconduct found or the particular employee. If the employer has so acted then the employer's decision to dismiss will be reasonable. However, this is not the same thing as saying that a decision of an employer to dismiss will only be regarded as unreasonable if it is shown to be perverse. The ET must not simply consider whether they think that the dismissal was fair and thereby substitute their decision as to what was the right course to adopt for that of the employer. The ET must determine whether the decision of the employer to dismiss an employee fell within the band of reasonable responses which a reasonable employer might have adopted. An ET must focus its attention on the fairness of the conduct of the employer at the time of the investigation and dismissal (or any internal appeal process) and not on whether in fact the employee has suffered an injustice."

540. Counsel goes on to state that the relevant test in relation to the requirement to conduct an investigation is whether the investigation, viewed as a whole, meets the band of reasonable responses standard and not whether it is one which was perfect, incapable of criticism or even one which the Tribunal itself would have dealt with differently. The same point applies to the sanction of dismissal. It is not for the Tribunal to substitute its own view. It is not for the Tribunal to ask whether a lesser sanction would have been reasonable but whether or not dismissal was reasonable.

541. The Tribunal shall have regard to the ACAS Code of Practice with regard to procedure and general guidelines as to what a fair procedure requires, with specific reference to guidelines set down by Wood J in **Clark v Civil Aviation Authority [1991] IRLR 412**:

> "Industrial relations practices have now been the subject of careful and constructive examination for a number of years. Whilst every case must

> depend upon its own facts, the industrial members express the view that the general principles are now quite clear.
>
> Where something has occurred and where disciplinary proceedings may possibly be held, but where further investigation is thought to be necessary, the appropriate course for an employer is to suspend the employee on full pay and, if so desired, to require that employee to remain away from work.
>
> After due investigation and before reaching any final decision a disciplinary hearing is obviously necessary as are any appeal hearings. The practice at such hearings will follow the rules of natural justice, which are really matters of fairness and common sense.
>
> As we have said, the procedure may vary from one situation to another but the industrial members would suggest a broad approach on the following lines: explain the purpose of the meeting; identify those present; if appropriate, arrange representation; inform the employee of the allegation or allegations being made; indicate the evidence whether in statement form or by the calling of witnesses; allow the employee and representative to ask questions; ask whether the employee wishes any witnesses to be called; allow the employee or the representative to explain and argue the case; listen to argument from both sides upon the allegations and any possible consequence, including any mitigation; ask the employee whether there is any further evidence or enquiry which he considers could help his case. After due deliberation the decision will almost certainly be reduced into writing, whether or not an earlier oral indication has been given."

542. As to wrongful dismissal, counsel submits that in order to terminate the contract without notice it is for the employer to show that the claimant has in fact committed an act of gross misconduct. This requires the Tribunal to make findings of fact on the balance of probabilities. In this case the respondent accepts that the statutory notice period is 12 weeks.

543. As to the claims under the Equality Act, the claimant has nowhere set out the precise PCP and the respondent has had to assume that the PCP relied upon is the practice of inviting employees to attend work premises in person for the purposes of investigatory, disciplinary and similar meetings. The respondent does not accept that this practice places the claimant at any disadvantage compared to people who are not disabled let alone at a substantial disadvantage.

544. The Tribunal should remember the important and uncontested evidence of Karen Taylor as to the accessibility of the respondent's premises and that in cross examination the claimant accepted that every one of the buildings in question is accessible to people with disabilities. The claimant had plenty of notice of the meetings and ample opportunity to raise any concerns. Every request made by the claimant was accommodated. There is no suggestion that any challenges the claimant now makes in terms of access had any impact on her ability to participate in the meetings or discussions and again, in the submission of the respondent, in such circumstances it is difficult to identify any substantial disadvantage. Nothing was raised by the claimant or her representative at any of the meetings concerning any

access problems, and indeed they did not arise until the ET1 was presented in which it appears in two lines.

545. The question of the timing of the meetings was first raised in the further and better particulars. The claimant was given plenty of notice and on some occasions dates and times were specifically agreed. There is no credible evidence to suggest that the claimant was placed at any disadvantage by some of the meetings being held in the morning. The claimant and/or her representative made numerous requests to change dates of meetings for a variety of reasons and if the timing of them was an issue then there is no doubt it would have been raised, particularly if the claimant sought to rearrange a suggested meeting.

546. The seating arrangements were not mentioned in the particulars of claim. Whilst it is accepted that the claimant following a workstation assessment was provided with a suitable chair to use in her office, there may be a world of difference between seating which is suitable for a full working day and seating which is suitable for limited duration meetings with breaks. There is no evidence that the question of seating was raised by the claimant or her trade union representative.

547. Lack of space was never mentioned nor were any issues in relation to the claimant carrying a bag and/or papers to the premises. On 7 September the claimant was accompanied by Wendy Price and thereafter the claimant could have made arrangements with her trade union. The respondent therefore submits there is no evidential basis for a finding that any PCP placed the claimant at any substantial disadvantage, and indeed the claimant has not stated what the alleged substantial disadvantage actually amounted to.

548. The respondent accepts knowledge of disability but denies it invoked any PCP that placed her at a substantial disadvantage. Given that the buildings in question had appropriate facilities in place, there would be no reason to believe inviting the claimant to attend any one of them would place her at a substantial disadvantage. Had any concern been raised at the time it would have been addressed.

549. The respondent submits these claims are no more than an afterthought, long after the event. Had there been a PCP which placed the claimant at any substantial disadvantage, and if the claimant had genuinely felt there was a need for adjustments, then in the submission of the respondent it beggars belief that the issue was not raised at the time. In evidence, when asked about her failure to raise the issue the claimant said, “I decided not to say anything…it was the last thing on my mind”. The real crux of her complaint was her feeling that the respondent had not “shown proper care and attention”.

550. Finally on this subject the claims are out of time. They are one-off events with different allegations for each and do not amount to a discriminatory state of affairs. Save for the appeal meeting on 6 October 2017 in respect of which no complaint was made, the claims are all out of time and there is no reason why the Tribunal should exercise its discretion to extend time, particularly in the absence of any explanation as to why the claims were not brought within the primary limitation period when the claimant was in receipt of trade union advice throughout. Indeed had the

claimant brought such a claim in the first instance it would have put the respondent on notice of an issue in respect of future meetings.

551. Turning to unfair dismissal, the respondent submits that there can be no doubt that the reason for dismissal was one related to the claimant's conduct. In cross examination the claimant accepted that whilst she disagreed with the decisions taken she accepted the reason for the decisions related to her conduct.

552. The respondent submits that the decision makers, Stuart Tasker and Donna Meade, had a genuine belief that the claimant had engaged in the misconduct in question.

553. As to reasonable investigation, the respondent submits that Wendy Kinder acted perfectly properly in filing her report. The allegations were capable of amounting to gross misconduct, being in clear breach of the respondent's Code of Conduct, and were capable of amounting to gross misconduct under the disciplinary policy. Such allegations had to be investigated.

554. The decision to suspend pending the investigation was clearly within the range of reasonable responses and a step sanctioned by the disciplinary policy. At the suspension stage the claimant was adamant that the only contact she had had with SU was in respect of his request for a reference, and she provided details.

555. Vicky Travis was an appropriate person to carry out the investigation. She was a senior manager with no significant prior dealings with the claimant and independent of the matters involved in the investigation. It was always going to be a complex investigation. The complainant was a service user to whom the respondent had a duty as well as its obligation to act reasonably towards the claimant as an employee. In counsel's submission it was appropriate for the respondent to take the view that what was required was a non-partisan gathering and analysis of the evidence rather than starting from the position that the account of a service user is less likely to be credible than that of the employee about whom the complaint is made, and the claimant accepted that investigating officer should not think that if there was a difference in accounts between the service user and the probation officer it is more likely that the service user was being untruthful. Any complaint from a service user would be from someone with a criminal record of sufficient seriousness to justify involvement with the Probation Service, and this would be compared with a probation officer being someone of good character holding a responsible position.

556. The Tribunal should consider the actions of Vicky Travis at the time rather than with hindsight, and as to the claimant suggesting that messages and/or video evidence had been faked, it was only raised by the claimant five days before the disciplinary hearing which was a considerable time after the report had been finalised.

557. It was submitted that Ms Travis was dealing with a serious complaint by a service user who was not a regular offender with no known history of making complaints of this type. She had a copy of Wendy Kinder's report and was aware of her concerns. Wendy Kinder had seen text messages and a photograph. It was

reasonable for Vicky Travis to have met the complainant first and she rightly went to see him out of the Manchester area.

558. Before she saw SU she had received his letter of complaint. She did not seek information from the friend of SU who attended the meeting with him "and instead to focus on wholly independent evidence". Thus, it is submitted, to the extent that she is criticised for not interviewing the friends and family of the claimant, it is nonetheless clear that her approach was a balanced one in this respect.

559. SU was prepared to hand over his phone so that Vicky Travis could view the photographs and messages, and the video evidence was handed over by SU knowing that it was going to be supplied to the police. It is submitted that it is remarkable that he would have willingly handed over such evidence if he knew it to be faked and which therefore showed him having broken into the claimant's home without her knowledge and permission if this were the case. There could be no criticism of any decision not to seize SU's phone for potential future examination. He was fully cooperating and providing evidence when requested. It could not be predicted that he would subsequently go missing, such as happened in November 2016.

560. When Vicky Travis interviewed the claimant on 7 September she reiterated that she had had no contact with SU following her return to work save for dealing with a reference request. The claimant referred to home visits to SU outside of core working hours but they were not recorded on the NDelius system. At the meeting the matters of complaint were put to the claimant and she had the opportunity to respond and provide any evidence, in particular telephone records and bank statements for six months, and that she would make a report to the police about her concerns for her own safety. Ms Travis had to chase the claimant for the information promised.

561. A meeting was arranged for 7 November to enable the claimant and her representative to view the evidence. This meeting might have been earlier but proposed dates were rejected.

562. A further meeting was planned for 21 November 2016 but by this stage the claimant had not produced either telephone records or confirmation of a report to the police.

563. Ms Travis sought expert opinion from the Greater Manchester Police and a report came in December.

564. The mobile phone records were delivered by the claimant in person, as was her preference, to a venue agreed between the claimant and Ms Travis.

565. As to those records, the claimant had been adamant there would be no record of any telephone contact between herself and SU on the mobile phone records. It became apparent to Ms Travis on perusal that there was a record of contact on two occasions. Ms Travis satisfied herself that WhatsApp messages would not appear on an EE mobile phone bill.

566. In the respondent's submission, several months after the investigation started, following some delay caused by the claimant's ill health and a failure to produce the mobile phone bill any earlier, it was reasonable for Ms Travis to feel she had sufficient information to prepare her report:

> "It is accepted that she did not interview members of the claimant's family. It was agreed between the claimant and Ms Travis that no contact would be made with her elderly mother so there can be no criticism now of her failure to do so. Vicky Travis could not have been aware at that stage that the claimant's daughter or friend, Tanya Demir, might be able to provide any relevant evidence – at no stage did the claimant request this. It was also reasonable for Ms Travis to take the view that interviewing the claimant's sister (another employee) would not assist the investigation and that it was preferable to focus on independent and objectively verifiable evidence. Of course, Ms Travis would have been aware at that stage that should this matter proceed to a disciplinary hearing, the claimant would be at liberty to call witnesses to give evidence, irrespective of whether or not they had been interviewed as part of the investigation."

567. Ms Travis prepared a detailed investigation report and it was provided to the claimant well in advance of the hearing. A disciplinary process would inevitably follow.

568. As to the disciplinary hearing, the respondent submits that Stuart Tasker conducted a careful and detailed process in meetings which took place over three dates. When it became clear that the claimant was alleging that evidence had been faked he set about investigating this, and indeed as matters were raised by the claimant the respondent continued to investigate things. This was done by Vicky Travis as well as Stuart Tasker and Donna Meade who remitted a question back to Stuart Tasker when the claimant raised it at the start of the appeal.

569. In cross examination Stuart Tasker said:

> "I do not believe the whole report painted the claimant in a negative light. The whole situation did that. I was happy that the investigation was robust, that the chronology was clear and at lengths VT had gone to to try to verify the information given. I do not believe VT tried to deliberately paint the claimant in a negative light."

570. The claimant had ample opportunity to prepare for the disciplinary hearing and was supported by a very senior and experienced trade union representative. She had ample opportunity to obtain witness statements and to call witnesses to give evidence. If the claimant had any concerns as to the completeness of the investigation process, such as interviewing her family and/or friends, then she was able to fill any perceived gaps at this stage by calling them to give evidence at the disciplinary hearing.

571. At the end of the four separate disciplinary meetings all the evidence that either side wished to present was placed before Mr Tasker and was factored into his decision making.

572. As to the outcome, Stuart Tasker explained the rationale for his decision. He did not uphold all of the allegations which indicates the care he took to act fairly, and only upheld allegations where he was satisfied on the evidence. According to Mr Tasker:

> "I have never had to make a disciplinary decision as difficult as this one. My deliberations have continued ever since, and even to the present day."

573. He was not satisfied that the complainant, SU, was telling the truth. He concluded that there had probably been some embellishment but he also concluded that the claimant was not telling the whole truth and in particular that there had been more to her relationship with SU than she was prepared to admit. From cross examination:

> "There were times when I was looking at the evidence, that I felt that it was potentially open and shut. Then there were times, in the hearing, when I absolutely believed Julia Hyland…"

574. However, he confirmed that ultimately he believed "the evidence showed that a friendship developed and that he [SU] was familiar with her home. I believe messages were exchanged between them and that essentially, professional boundaries became blurred…".

575. Mr Tasker was faced with a claimant who was a long-serving employee with a clean disciplinary record and a good work history. He was also faced with a very serious complaint made by a service user the claimant claimed barely to know. If the claimant's evidence was to be believed SU, for whom she had never taken back responsibility since her return following her operation, and who had met him only once during 2016 when he came into the office for another reason, had deliberately and carefully set up the most elaborate plan to frame her. This was a plan which included setting out to discover a wealth of detail about her personal life, stalking her and her family and friends online, breaking into her house to familiarise himself with it, taking photographs of himself in her garden, faking in respect of cannabis only a video taken inside her house, and creating an elaborate series of WhatsApp and text message exchanges. The alleged victim of misbehaviour was someone he had barely had any dealings with for a long time at a time when he was no longer even assigned to her caseload.

576. Accepting the claimant's innocence of the allegations would have required Stuart Tasker to have found innocent explanations to question such as:

- How did the service user know the claimant's address?
- How did he know her door did not lock properly?
- How did he know that her property was unoccupied during the day?
- Who was living at the property with her?

- How did he know he could enter the property without the dogs, who were left at home during the day, barking and alerting neighbours or attacking him?

- How did he know about the claimant bringing up her daughter singlehanded and having no relationship with her father and then have details of her daughter's recent life, relationship and the falling through of a planned house purchase?

- How was it that the claimant, who was adamant all along that there was never any telephone contact between herself and the service user on her mobile phone, was then able to remember the details of those phone calls and what the discussions entailed?

- Why was there no record of those contacts on the NDelius system, if the claimant was genuinely worried for his safety and wellbeing, when recording was so important that the ethos was if it was not recorded then it did not happen?

577. In the submission of counsel for the respondent Mr Tasker would also have to have accepted that it was credible that all of the following happened:

- The claimant's mother had been confronted by a strange man in the house yet mentioned nothing about until weeks afterwards;

- The service user took the chance of entering her property as a trespasser, on more than one occasion, running the risk that he would be seen entering or at the property and the police called, then filmed the video, in broad daylight, with the patio doors open and the dogs unconcerned by his presence; feeling comfortable enough to open the patio doors, let the dogs out, take photographs of himself in the garden and be apparently unhurried and unconcerned when filming the video;

- The claimant had not taken appropriate steps to report her stated concerns as to her safety to the police, notwithstanding her professional knowledge of the importance of doing so and of the steps that may be taken by way of protection;

- The claimant has such lax open settings on her social media profile that a stranger was able to find out significant information about her personal and family life (which he regarded as extraordinary for an experienced probation officer used to dealing with a range of serious offenders);

- The claimant had chosen on two separate occasions to telephone the service user on work related matters in working hours using her own mobile phone and on both occasions forgetting to follow the step of using prefix 141 first.

578. Mr Tasker would also have to accept that SU's health and wellbeing deteriorating was also part of his plan to frame the claimant, and the concerns about

what was happening outside the premises at night was either a coincidence or he had set up the harassment himself.

579. Similarly, he would have to accept that the service user having gone to such extraordinary lengths to frame the claimant carefully stepped back from making more serious allegations, such as having had a sexual relationship with the claimant, and that he wrongly alleged that he owed money to the claimant when he did not.

580. Perhaps most importantly Mr Tasker would have had to accept that SU knowingly and willingly consented to evidence that he had faked in the form of video and phone messages being handed over the police so that they could also investigate. If the evidence was faked then it is utterly extraordinary that he would have consented to this knowing that the video evidence in particular placed him in her property as a trespasser and in possession of paraphernalia associated with cannabis production. In the words of Mr Tasker:

> "This would have meant that SU simply handed over the very evidence which would have incriminated himself for stalking and harassment."

581. In the submission of the respondent Mr Tasker was entitled to take account of the sheer unlikelihood that SU would have gone to the lengths and taken the steps he had without any apparent motive. The suggestion that this was to secure a move was clearly fanciful. In any event by September 2016 he had relocated out of the area and by this time the probation order was at the point of completion.

582. According to Mr Tasker he took on board the statements the claimant provided from family members and friends. He was very alert to the fact that this was potentially an extreme case of stalking and harassment. The statements and the evidence of Julia Hyland contributed to his out of the ordinary response in adjourning and going to the Corruption Prevention Unit to try to get to the bottom of it. He later stated that it was never suggested that he or Ms Travis should have obtained evidence from the claimant's daughter, but the statements from people such as Tanya Demir were factored in and helped him for example to make the decision to seek further verification.

583. Finally, turning to the appeal hearing, it was held by a more senior and independent manager in accordance with the procedure. Donna Meade allowed the claimant to adduce a report provided on the morning of the appeal hearing and adjourned it to enable Stuart Tasker to reconsider his decision. The claimant was also able to put forward evidence as to her attendance at the police station. In this regard Ms Meade could not have dealt with the matter more fairly.

584. Donna Meade's conclusion was one falling within the range of reasonable responses. She was urged by the claimant's trade union representative to go away and check everything, and she did. She noted a coincidence in timing between the dates and times of the alleged messages supplied by the claimant and the content of the claimant's mobile phone bills, showing she was active and sending messages at those times.

585. As to reasonable grounds for the belief, the decision to uphold the allegations that were upheld by Stuart Tasker was not an easy one. Stuart Tasker wrestled with

the decision and found it extremely difficult but he did make the decision, albeit a very finely balanced one. There was evidence to support his conclusion and this was balanced against the evidence to the contrary. The point is not whether or not the Tribunal agrees with his decision but whether it was a decision a reasonable employer could have reached.

586. As to procedural fairness, the ACAS Code was followed. There was no element of procedural unfairness.

587. The NDelius records were not provided within the investigation pack but their existence was noted in the list of appendices and reference was made to their content. At no stage did the claimant or her representative make any request to attend to view the records held on NDelius or for copies of them, and this was not done at the appeal stage either. The issue was raised for the first time in the Employment Tribunal. The respondent cannot fairly be criticised for not providing access to this information when it had flagged its existence and content in writing and no request was made for it by the claimant.

588. Notwithstanding this Stuart Tasker confirmed that they were of no significance to his decision. As such the respondent submits that the issue relating to the NDelius records is not one which is capable of rendering this dismissal unfair.

589. It is not clear whether the claimant pursues issues of delay but from the timeline delays were caused by the claimant's ill health absence, delay in receiving the telephone records, unavailability of the claimant or her representative and the obtaining of further evidence. The respondent therefore submits that if the actions of the respondent in terms of the investigation and the basis for decision making are upheld as reasonable there is no procedural aspect which could possibly render the dismissal unfair.

590. As to sanction, the decision to dismiss fell within the range of reasonable responses. The allegations that were upheld clearly went to the heart of a probation officer's professional duties. The claimant accepted that it was an unbreakable rule that there should not be any non professional relationship with a service user and the claimant accepted that such allegations if upheld would leave her to expect to lose her job.

591. In respect of **Polkey**, in the event that the Tribunal finds that the claimant was unfairly dismissed due to a defect in the process that resulted in that decision, the respondent avers that even in the absence of that defect the likelihood is that the claimant would have been dismissed in any event. Quite simply, the respondent submits, there were too many unanswered questions and areas where credibility was stretched to the limit.

592. As to contribution, it will be for the Tribunal to identify conduct which was both blameworthy and causative of the dismissal. The respondent submits that her actions were sufficiently blameworthy and causative to lead to a significant reduction in any compensation to be awarded, and the respondent repeats the submissions relevant to the wrongful dismissal claim.

593. As to that wrongful dismissal claim, the Tribunal is able to take into account the entirety of the evidence provided. The Tribunal already has before it all the evidence that was before the relevant decision makers and it should be cautious in respect of evidence provided by the claimant's family members and close friends because of those close relationships. However, the Tribunal should have regard to the additional evidence provided in relation to the Facebook pages relating to Jason and the coincidence in the timings of the messages supplied by the service user and the claimant's telephone bill.

594. In conclusion the respondent submits that on balance the correct finding is that the claimant had an undeclared relationship with a service user which crossed all proper professional boundaries and which amounted to an act of gross misconduct entitling the respondent to summarily dismiss the claimant.

The Relevant Law

595. The law relating to the making of adjustments for disabled persons is to be found in sections 20 and 21 of the Equality Act 2010 as follows:

> **20 Duty to make adjustments**
>
> (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
>
> (2) The duty comprises the following three requirements.
>
> (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
>
> (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
>
> (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
>
> (6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to –

(a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to –

(a) a feature arising from the design or construction of a building,

(b) a feature of an approach to, exit from or access to a building,

(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d) any other physical element or quality.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

Part of this Act	**Applicable Schedule**
Part 3 (services and public functions)	Schedule 2
Part 4 (premises)	Schedule 4
Part 5 (work)	Schedule 8
Part 6 (education)	Schedule 13
Part 7 (associations)	Schedule 15

Each of the Parts mentioned above	Schedule 21

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

596. The Employment Rights Act 1996 deals with unfair dismissal, with the question of fairness being dealt with in section 98 as follows:

(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

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it –

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a) –

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(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.

597. The respondent has conceded that the claimant is a disabled person for the purposes of the Equality Act 2010, and so we are not concerned with this question.

598. In a reasonable adjustments case the guidance in **Environment Agency v Rowan [2008] IRLR 20** states that:

"The Tribunal must make findings in respect of –

(a) The provision, criterion or practice applied by the employer; or

(b) The physical feature of premises occupied by the employer;

(c) The identity of non disabled comparators; and

(d) The nature and extent of the substantial disadvantage suffered by the claimant."

599. The word "substantial" is to be taken as meaning "more than trivial".

600. Section 123 Equality Act 2010 deals with time limits and provides that:

(1) [Subject to section 140A] Proceedings on a complaint within section 120 may not be brought after the end of –

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of –

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section –

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

601. Section 98(1) of the Employment Rights Act 1996 provides that it is for the employer to show the reason for the dismissal. The respondent submits that it was a reason which related to the conduct of the employee. The claimant does not seek to argue otherwise.

602. From the cases submitted by the claimant, we accept the proposition confirmed most recently in **Hargreaves** that a higher standard of investigation and process might be expected in a case where there is a potentially career changing allegation against the claimant.

603. From the Judgment in **A v B** at paragraph 60:

> "A careful and conscientious investigation of the facts is necessary and the investigator charged with carrying out the enquiries should focus no less on any potential evidence that may exculpate or at least point towards the innocence of the employee as he should on the evidence directed towards proving the charges against him."

604. Paragraph 61 states:

> "In such a case anything less than an even-handed process to the investigation would not be reasonable in all the circumstances."

605. The ACAS Guide to Discipline and Grievances at Work (2015) reminds us that "The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee's case as well as evidence against."

606. Counsel for the respondent refers to the well-known cases of **British Home Stores Limited v Burchell** and **Iceland Frozen Foods Limited v Jones** and the summary given by Lord Justice Aikens in **Graham** which we accept and have set out at paragraph 539.

Wrongful Dismissal

607. Counsel for the respondent sets out that in order to terminate the contract without notice it is for the employer to show that the claimant has in fact committed an act of gross misconduct and this requires the Tribunal to make a finding of fact, on the balance of probabilities.

608. We accept this simple summary of the law in respect of wrongful dismissal.

Discussion and Conclusions

609. The respondent received a complaint from a service user and was right to investigate it. Ms Travis was at an appropriate level within the respondent organisation to be appointed as the investigator.

610. The allegations that had been made against the claimant at the point of suspension were serious and there was never any doubt that if the allegations were proven the claimant's employment could be terminated. The consequence to the claimant was therefore potentially career changing. In our judgment a higher standard of investigation than might have been undertaken for a lesser allegation was appropriate and it was for the investigator to keep an open mind and look for evidence supporting the employee's case as well as for evidence against her.

611. Was the investigation fair?

612. When Ms Travis met with SU on 5 September 2016, following his formal written complaint on 4 September, SU made various statements concerning the claimant but not all the matters raised by SU were put to Ms Hyland when she was interviewed on 7 September, some two days later. Notwithstanding this failure the full written complaint from SU and his notes of interview were appended to the Disciplinary Investigation Report.

613. The claimant was not provided with her diary or with copies of the NDelius entries that she had made in relation to SU or with any other evidence when she was interviewed.

614. As to who lived in the claimant's property, SU said it was the claimant, her daughter, Sophie, and the daughter's boyfriend, Steve.

615. The claimant said that she lived there with her daughter and Steve, but that her mum lived with her for some of the time. The claimant later added that SU had never met any of her family or friends.

616. The claimant was clear that she had never invited SU to stay at her house and described how a person visited her house, when her mother was present, when she was away on holiday.

617. As to a wedding, SU referred to being invited to a wedding where the claimant's daughter was a bridesmaid. From the respondent's note of the question to the claimant, she was only asked if SU had ever been a guest at a wedding reception that she had attended. There was no mention of the daughter being a bridesmaid. The claimant in answer confirmed that she had not been a guest at a wedding with SU but stated that her daughter had been a bridesmaid at a wedding in respect of which details were available on Facebook.

618. Although SU referred to the claimant telling him about going on holiday with a friend who had been sacked from the probation service recently this was never put to the claimant. She was just asked if she had been on holiday abroad.

619. SU provided the investigator with photographs from his mobile phone and what were described in the meeting note as "text message communication", which in the meeting note were described as "evidencing a relationship outside of professional boundaries" before the claimant had even been asked about them.

620. The claimant was asked if she had ever smoked marijuana or whether to her knowledge it had ever been cultivated in her house, and she said "no" to both. Neither had she supplied anyone with marijuana. She had no idea how SU came to have video evidence of marijuana being cultivated.

621. Although SU referred to the claimant selling marijuana by the ounce, and selling cocaine, these matters were not put to the claimant. The respondent was not asked whether he could smell the growing drug that he alleged was in the house.

622. The claimant was asked if she had ever sent text messages to SU outside of core working hours. She said that to her knowledge she had not sent any. The information known to Vicky Travis as to the alleged text and/or WhatsApp messages was not put to the claimant during the meeting. She was not asked to comment upon them.

623. SU was asked if the claimant had made any sexual advances towards him and reported that one night when they were drunk he went to bed and she got in bed with him and put her arm around him, etc. The claimant was only asked if she had made any sexual advances towards SU and she said she had not. Had she been asked about getting into bed with SU as he alleged then she may have been able to support her denial with an explanation as to how having had a recent hip replacement might have precluded such activity. Ms Travis did not ask the claimant about her hip operation and how it affected her mobility or her ability to drive.

624. SU reported to Vicky Travis that he was concerned about two of the claimant's nephews who were involved in crime. The questions to the claimant did not mention the nephews at all. Neither was she asked about the harassment that SU had referred to in his complaint which allegedly involved the claimant's two dogs.

625. Although at the end of the meeting Ms Travis advised the claimant that she might need to attend a further investigation meeting when further enquiries following that meeting had been made, there was never any further investigation meeting with the claimant. We know that an attempt was made to have one but nevertheless it did not take place.

626. The claimant was never asked any further questions about the video taken inside her house or about the various messages allegedly passing between her and the claimant following her viewing of them in November.

627. Other than as set out at paragraph 631 the claimant's denial of all SU's allegations and/or facts was not followed up with SU, or indeed with anyone else, by the investigating officer who told us that she only wished to talk to "impartial" witnesses.

628. The management information report was provided to the claimant with a letter dated simply February 2017 which included an invitation to a disciplinary meeting on Tuesday 28 February and informing the claimant that if she would be calling any witnesses and/or if there was any further information she wished to present at the meeting she should advise Lorna Shellabear of this. Any additional information must be received no less than five working days (21 February) prior to the meeting date, which was scheduled to be 28 February.

629. When the disciplinary meeting was postponed and rescheduled for 4 and 5 April the claimant made arrangements to submit her evidence for consideration at the disciplinary hearing by 29 March, some five working days prior to the meeting.

630. Only when the claimant received the disciplinary investigation report and the redacted appendices was the extent of the case against her made known to her.

631. There was a later addition to the Tribunal's hearing bundle showing email exchanges between Vicky Travis and SU. This evidence does not appear to have been made available to the claimant for the disciplinary hearing. She asked him if he could confirm date, day and/or times of visits to McDonalds and Santos. He could only say it was mainly in the early hours of the morning and mainly in the early stages of him staying there. He did not actually go in to Santos. SU was sent the respondent's notes of his meeting with Vicky Travis and with regard to her friend he said that she had married someone from Turkey not that she had lived there, and that she went on holiday with Julia to sort out something about their pending divorce which was information he received from the claimant, also that she had been sacked recently rather than many years ago. In regard to the police not finding any evidence of drugs at Julia's house, he stated that she would have moved everything once the hostel had reported her to Probation not to the police.

632. SU was not asked for any further details about the wedding.

633. On 3 October Ms Travis asked if SU could provide the mobile number used by the claimant for texting and whether she paid by cash or card for meals, and as to her investigation she was hoping to complete it by the end of October at which point "it is likely to be referred to a disciplinary hearing where a decision will be made by a senior manager".

634. The question as to whether or not a wedding had taken place is, in our judgment, a matter of fact which could have been proven either way on further investigation by the investigating officer. The wedding is important because it goes to the credibility of either SU or the claimant, but it is also important because some of the messages allegedly arose as a result of the claimant's behaviour at the wedding

reception. Had the existence of a wedding been proven then this would have potentially added to the veracity of the messages or alternatively proved that they did not arise from the wedding. It would also have been possible for the investigator to have gone back to Wendy Kinder to have specifically asked her for the date of the wedding that she had referred to in her witness statement as being one when SU was in the hostel rather than out all night.

635. We have noted that in cross examination Ms Travis accepted that she had to be particularly thorough and robust with her investigation because if the claimant was dismissed it would be a career changing thing and would affect the claimant's future prospects.

636. As to Sophie Hyland not being a bridesmaid, this was an option for Ms Travis to consider but she did not seek to make enquiries of Sophie as she prioritised what she called impartial witnesses first as part of her investigation. She agreed that she could have asked Sophie Hyland if SU had lived with them, she could have asked her about her new job and whether or not she had split with the boyfriend. She had not looked at dates to determine when the wedding took place.

637. She had not met with Tanya Demir, the person SU said had been sacked recently as a probation officer. This was allegedly because as a friend of the claimant she could be biased and it was only impartial witnesses that Ms Travis spoke to.

638. According to Ms Travis, interviewing Sophie Hyland and Tanya Demir would have delayed the report further. In our judgment this could have been done whilst she was awaiting the claimant's phone records.

639. When Ms Travis became aware of the information provided by the claimant's sister, who works for the respondent, which dealt with there being no family wedding and that her sons, the claimant's nephews, were not involved in criminality there was no approach to the sister to check on what she had written.

640. The investigation report makes reference to SU talking about cocaine delivered to the claimant once a month for her to sell on. This statement appears to be prejudicial against the claimant, particularly when at interview she was never asked about it.

641. In our judgment, considering the matters set out above, the investigation carried out by Ms Travis was not a sufficient investigation in respect of this claimant facing these potentially career ending allegations.

642. In our judgment Ms Travis did not keep an open mind, as evidenced by her desire only to speak to "impartial" witnesses, and did not look for evidence which supported the employee's case even when the potential witnesses were identified to her.

643. We therefore conclude that the dismissal was not fair because the investigation was not in the particular circumstances of this case a sufficient investigation upon which to found the respondent's conclusion as to the claimant's guilt in respect of the first and third allegations.

644. Having reached this conclusion we shall not go on to make findings in respect of the remainder of the disciplinary process save to say that in the absence of any further investigation in respect of the matters set out above the appeal did not cure the fundamental defect in respect of the investigation.

Breach of duty to make reasonable adjustments

645. The respondent has accepted that the claimant was a disabled person by reason of congenital hip dysplasia and arthritis.

646. Can the claimant show that by reason of the physical features of the premises, a missing auxiliary aid or by the application of a provision, criterion or practice that she was placed at a substantial disadvantage compared to persons who were not disabled?

647. The claimant was to provide further and better particulars of the allegations.

648. In the further and better particulars the claimant contends that the respondent was legally required to give consideration to the fact that she was disabled and should have had discussions with her regarding her health in respect of any meetings conducted during the internal process that led to her dismissal. In the light of Occupational Health reports received and having made adjustments during the claimant's employment, moving her to Salford, putting in place a specially adapted chair, keyboard, footrest and document holder, they should have provided her with appropriate equipment for the disciplinary meetings.

649. The PCP does not seem to be stated by the claimant but the respondent assumes it is in connection with inviting the claimant to attend meetings in respect of the disciplinary process. In submissions the claimant says that is in connection with the claimant being required to attend meetings during the disciplinary process.

650. We have set out above the evidence of the claimant in respect of the individual meetings, and we have also set out the evidence as to the respondent's buildings being generally compliant subject to, for example, the lifts working and allowing those with mobility issues to get to upper floors.

651. In this case it is apparent that the claimant did not raise any issues as to the meeting times or venues or the equipment provided for her use at those meetings. The claimant's trade union representative did not make any representations. The timing and dates of the meetings appear to have been agreed between the parties rather than imposed upon them by the respondent. There does not appear to have been a request for instance for meetings only to take place in the afternoon or on the ground floor.

652. We are satisfied that the respondent made reasonable adjustments for the claimant at her normal place of work.

653. As to attending at the various meetings about the dismissal they seemed to last, in the main, for no more than half a day.

654. Although the claimant has criticised the arrangements made for the various meetings we do not find that she has provided any evidence of the nature and extent of any substantial disadvantage allegedly suffered by her in comparison with persons who are not disabled. In reaching this finding we accept that “substantial” means “more than trivial”.

655. In our judgment we do not find that the claimant was put at a substantial disadvantage when compared with persons who are not disabled in connection with attending the various meetings she was invited to in various different premises of the respondent as a part of the disciplinary process.

656. The allegations under the Equality Act 2010 are therefore dismissed.

Wrongful Dismissal

657. Can the respondent prove on the balance of probabilities that the claimant was guilty of gross misconduct which entitled the respondent to dismiss her without notice?

658. The evidence against the claimant was in the form of a management report. The respondent did not bring the live evidence of SU before the Tribunal.

659. The respondent produced, in addition to the management report, photographs of SU in the claimant's garden but nowhere were they able to produce any photographs showing SU and the claimant together.

660. The claimant gave evidence on her own behalf and was cross examined. She appeared to the Tribunal to be a truthful witness and she was throughout consistent in denying all of the allegations made against her by SU.

661. The claimant produced witness statements and indeed the Tribunal would have heard from at least two further witnesses for the claimant had circumstances not intervened to prevent them from reaching the Tribunal on the day they were due to give their evidence. Their evidence, albeit untested, could in our judgment reasonably be given by the Tribunal the same weight as the evidence of SU which also was not tested by cross-examination.

662. In our judgment the respondent has not satisfied us of any facts from which we could find it more likely than not that the claimant failed to uphold the professional standards and breached the boundaries expected of an offender manager.

663. We do not need to deal with the question of the alleged criminal offence because the respondent did not find that the claimant had potentially committed one.

664. We do not find that the respondent has satisfied us on the evidence that the claimant breached the respondent’s policies including the Code of Conduct, neither can we be satisfied that her actions brought the reputation of the respondent into disrepute.

665. In these circumstances we are not satisfied that the respondent was entitled summarily to dismiss the claimant and so her claim in respect of wrongful dismissal is well founded and succeeds.

Remedy

666. The question of remedy will be considered by the Tribunal on 29 March 2019.

667. The claimant shall write to the respondent to indicate the nature of the remedy that she seeks together with any calculations and supporting documents at least seven days prior to the hearing. The respondent shall use its best endeavours to provide a document responding to the claimant's remedy statement prior to the remedy hearing.

668. The claimant shall be responsible for providing sufficient copies of a bundle for use at the remedy hearing.

Employment Judge Sherratt

15 March 2019

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

15 March 2019
FOR THE TRIBUNAL OFFICE