



## EMPLOYMENT TRIBUNALS

**Claimant**

**Mr Abdul Sattar**

**Respondent**

**Wembley Central Masjid**

**V**

### PRELIMINARY HEARING BY TELEPHONE

**Heard at: Watford**

**On: 3 – 11 November, 15 – 16 December 2020**

**Before: Employment Judge Bedeau**

**Appearances:**

**For the Claimant: Mr S Saeed, Solicitor**

**For the Respondents: Ms B Omotosho, Solicitor**

### RESERVED JUDGMENT

The unfair dismissal claim is not well-founded and is dismissed.

### REASONS

1. By a claim form presented to the tribunal on 28 June 2019, the claimant's single claim against the respondent is that he had been unfairly dismissed from his employment as its Imam.
2. In the response presented to the tribunal on 28 August 2019, it is averred that the claimant had failed to follow lawful management instructions and did not engage in the disciplinary process save for the appeal against his dismissal. Dismissal was fair as he was aware that he had to comply with reasonable instructions from the management committee; he was invited to an investigation meeting and disciplinary meeting but failed to attend; the decision to dismiss was based on the evidence before the dismissing officer who held a genuine belief in the claimant's guilt. Dismissal fell within the range of reasonable responses.

### **The issues**

3. What was the reason for the claimant's dismissal? The respondent contends that it was his conduct, whereas the claimant argues that the respondent intended to dismiss him all along and was motivated by some ill-will towards him.
4. Did the respondent hold a genuine belief based on reasonable grounds, in the claimant's misconduct?
5. Had the respondent conducted a reasonable investigation into the claimant's conduct?
6. Was dismissal within the range of reasonable responses?

### **The evidence**

7. On behalf of the respondent, I heard evidence from Mr Mohammed Haroon Akhtar, Trustee; Mr Abdullah Jaan, Trustee; Mr Sheikh Basheer, Vice-Chairman; and Mr Mehboob Bhamani, Trustee.
8. The claimant gave evidence and called the following witnesses: Mr Arif Uddin; Mr Habib Rehman Qaman; Mr Hiffzur Rehman; Mr Leuvon Van Per Leeuw; Mr Mahmood Elshahib; Mr Azizul Islam; Mr Sajid Ahmed Mallal; and Mr Sohail Ahmed.
9. In addition to the oral evidence the parties adduced a joint bundle of documents comprising in excess of 600 pages. Where appropriate, references will be made to the documents as numbered in the bundle, the claimant's and respondent's supplementary bundles. References to the respondent is also to the respondent's management committee and trustees.

### **Findings of fact**

10. The respondent is a registered charity managed by a management committee comprising of between 5 to 11 members, including five officeholders. It has a Chairman, Vice-Chairman, General Secretary, Treasurer and Education Secretary. It was initially called the Muslim Welfare Association, formed in the early 1980s by several elders in the Wembley community. It managed the Central Mosque Wembley. It is a religious organisation with the objective of promoting Muslim living in the London Borough of Brent and surrounding areas. There was a further name change to Wembley Central Masjid. Any references to the Mosque are to the Masjid and vice-versa.
11. The claimant had been working for the respondent since 1999, over 20 years, as Imam and later Lead Imam, prior to his dismissal on 1 February 2019.
12. Although the case is about his dismissal, from the evidence given it revealed that there was in existence a fissure that became apparent three years prior to the claimant's dismissal. Two factions pitted against each other, the management committee and those who worshipped at the Masjid and who were supporters of the claimant in his dispute with the management committee.

13. The respondent's constitution which was amended in 2015, sets out the aims and objects; the different types of membership; its office bearers; subscriptions; funds and assets; and the role and tenure of its trustees, amongst other things. It states that the management committee shall administer speakers' engagement, event hosting, employee contracts, day-to-day administration issues, announcements; and new projects.
14. The constitution provides that the management committee shall consist of between five and 11 members who shall be elected at the annual general meeting. The management committee members shall elect from amongst themselves, the five officeholders by secret ballot. The election shall take place every three years. The management committee members shall meet at least once a month.
15. The management committee has the power to set up sub-committees which would report back to it.
16. Article 5(1)q of the constitution, on general management, states the following:

“The management committee shall be responsible for the administration of Nikah ceremonies. It shall ensure all the paperwork and forms to legal and immigration requirements where applicable. It shall also be responsible for issuing a Nikah certificate and the Official Marriage Certificate if so authorised by the local authority. The management committee jointly with the Imam of the Masjid shall be responsible for setting the fee for the Nikah ceremony and the fee of the Imam to conduct the Nikah ceremony. The management committee shall appoint a member from amongst members or at its discretion appoint the imams to oversee the Nikah ceremony and issuing of the Official Marriage Certificate.” (110 – 120 of the joint bundle)

17. Article 5(2)a, on the powers of the management committee, provides:

“The administration of the Masjid, decision regarding but not limited to the domain of the Madressa, Speaker's Engagement, Event Hosting, Employee Contracts, Ramadan Iftar Planning, Noticeboard Management, day-to-day administration issues, Announcements, New Projects were all to be taken by management committee through setting out in the agenda of Management Committee through setting out in the agenda of Management Committee meeting and asking members opinion regarding that and follow simple voting method if needed.

Then allot it to a subcommittee for execution which finally reports back to management committee.

The Management Committee which shall consist of a maximum of eleven (11) members including the Chairman, Vice-Chairman, General Secretary, Treasurer and Education Secretary.”

18. In the claimant's contract which he signed on 1 January 2011, it sets out his principal duties which included:

“10. Conduct the Nikah (marriage) ceremony when required and issue formal marriage certificates. In addition you will be responsible for maintaining and archiving records under your responsibility.

11. Liaise with the Education Secretary and Events Co-ordinator to arrange lectures once a month or at other times where required on Islamic subjects and Dawah.”

19. He was required to report to the Secretary General or Deputy Secretary General, or in their absence, to the President or Vice President. It states that, "Instructions given by these four must be followed and strictly adhered to."
20. His contract further stated that the management committee, "reserves the right to vary the terms and conditions of employment. You will be given reasonable notice of any such changes to your contractual terms."
21. The contract further stated that all keys to the premises would need to be handed in to the secretary general, President or Vice-President during any periods of annual leave. (67 - 68)
22. The respondent's Speaker Engagement Form is required to be completed whenever someone is going to be invited to speak at the Mosque. It requires details be given of the name, address and contact of the speaker; the association they represent; and affiliations, if any, to other organisations. There must be compliance with the Speakers' policy which requires that all sermons should be in compliance with universal Islamic values; the avoidance of extremist views and hate mongering of any kind. Those speakers who are known to "espouse what may be deemed to be sectarian or inflammatory comments and rhetoric would not be authorised." The policy also requires that the Masjid must carry out and keep a record of the due diligence checks and assessments of new speakers. Before the speaker signs the form he or she accepts that failure to comply with the Speakers' policy may result in the termination of the lecture. Event organisers are also expected to comply with the Mosque's policies and procedures while they are on the premises. (133 – 134)
23. On the Speaker Assessment, the name of the speaker; the event type; and date of the event, are required. A checklist is then completed in relation to the speaker against a number of factors each of which is given a rating. Once the speaker is approved, he or she will be allowed to speak at the Masjid. They are approved by two members of the management committee. (135)
24. There is also an event proposal form which states that "All events are subject to Management Committee approval." (136)

Mrs Farheen Bhamani

25. The claimant had a disagreement with Mrs Farheen Bhamani, Mr Mr Mehbood Bhamani's wife, in or around June 2016. She at the time worked as a volunteer at the Mosque. The claimant said in evidence that it was brought to his attention that Mrs Bhamani had accused him of stealing funds from the sale of CDs and allegedly inviting terrorists to give lectures at the Mosque. The matter was investigated and, according to the claimant, the management committee decided that Mrs Bhamani should cease all her activities as a volunteer at the Mosque. The claimant stated that when Mrs Bhamani stopped working at the Mosque as a volunteer, Mr Bhamani's attitude towards him changed for the worse and he began to find fault in his work which led to subsequent disciplinary hearings and his dismissal.
26. The claimant's account was denied by Mr Bhamani, who at the time of the claimant's dismissal, was a Trustee and the Chairman. He said that his wife stopped working as a volunteer of her own accord by sending an email explaining

why she was leaving and it was not because the management committee decided that she should leave. He also denied saying to Mr Hiffzur Rehman outside of the Mosque, as Mr Rehman alleged in evidence, that he would get at the claimant.

27. I do not accept that Mrs Bhamani left because of an alleged dispute with the claimant, nor for that matter because the management committee had decided that she should leave. I did not see any documentary evidence in the form of minutes of management committee, in support of these assertions.
28. In relation to Mr Bhamani victimising the claimant because his wife was forced to leave, I did not accept. The management committee comprises of 11 individuals, some of whom supported the work of the claimant. I find that it would have been difficult for Mr Bhamani, on his own, to have been allowed by the management committee to target the claimant.

#### Legal dispute

29. In 2015 the claimant was asked in his official capacity as the Imam of the Mosque, to witness a partnership agreement between Mr Hossein Munawar and Mrs Rabia Hussain. According to the claimant, the agreement was for Mr Munawar to purchase a 25% share in Mrs Hussain's restaurant business for £11,000. A dispute arose between the two contracting parties and legal action followed in Luton County Court, during which the claimant was asked by Mr Munawar to provide a witness statement on what he had witnessed. It appeared that Mrs Hussain was denying the partnership agreement. (165)
30. A witness statement from the claimant in connection with the case was provided to the management committee on 18 December 2016. In an email on the same day from two management committee members, they wrote to the claimant acknowledging receipt of his witness statement. They suggested that should anyone approach him to make a witness statement on an agreement, he should not get involved. Were he to be involved the management committee should be informed. (164)
31. The legal dispute was to resurface before the management committee as Mr Munawar later wanted the claimant to give evidence which the claimant was reluctant to do so as he had already provided a witness statement. This issue was one of the reasons why disciplinary proceedings were invoked leading to the claimant's dismissal as the management committee wanted him to resolve the dispute between the parties.

#### The Charity Commission

32. The Charity Commission had continuing concerns about the workings of the Mosque since 2014. It had visited the Mosque in 2014 and 2015 and issued a report which contained regulatory advice and guidance. It then wrote on 2 December 2015, a follow-up report in which it identified areas for improvement. Of relevance were risk assessments and due diligence of speakers; adherence to the respondent's governing document; improving and adhering to the respondent's financial controls; and of creating sound and effective policies, including a safeguarding policy.

33. The letter further stated that on 22 August 2016, the Commission wrote to the respondent requesting an update on the progress the trustees had made in relation to the above concerns. Following the information provided by the respondent, it conducted a review and in its letter gave an account of its position in relation to the above concerns.
34. What is of relevance were the Commission's comments and findings in relation to risk assessments and due diligence of speakers, they wrote:

“The Commission tested several of the speaker risk assessments where the trustees had stated that they had not identified any issues of concern. A number of these tests revealed numerous negative media articles which the trustees have failed to identify or have dismissed them without proper consideration. Some of these speakers including Murtaza Khan, Uthman Lateef, Rasheen McCarthy, Ustadh Evans and Abu Mutasir, all of whom are considered by some to have expressed extremist views regarding various subjects. A basic Internet search of these names revealed articles containing negative stories and views that the trustees have not identified them in their background checks; this concerns the Commission as it suggests that the process followed lacks rigour and sufficient scrutiny.

It is unclear to the Commission as to whether full and proper assessments are being carried out and whether the decision to approve or reject a speaker has actually been made. A one sentence summary in some instances has been made on the forms which give no indication of the information that the trustees have identified and considered. The trustees should be carrying out thorough checks on potential speakers and recording any articles they find to reinforce their decision to authorise or reject a speaker.

The Commission is concerned that the trustees are acting contrary to clause 8 of the charities speaker policy which states ‘Speakers who are known to espouse what may be deemed to be sectarian and inflammatory comments and rhetoric will not be authorised.’

The Commission was also led to believe by trustees, that it was the Imam of the Mosque who carried out the checks on potential speakers. The Commission has received contradictory information to this. This is concerning to the Commission and again questions how seriously the trustees are taking this issue and who is actually conducting the research and assessments. The trustees are ultimately responsible for ensuring a speaker will not damage the charity's reputation and appropriately vetted. The trustees can ask for the advice of the Imam and include this in their risk assessment that it is the trustees that are ultimately responsible.

The charity looks to have adopted a risk assessment template used by the Indian Muslim Welfare Society as a reference is made to this entity on the form... The trustees should update this to avoid confusion. The trustees should ensure that all parts of the template have been completed when carrying out a risk assessment.....

Overall the Commission can see some progress has been made, however there is still need for further improvements. The Commission has given the trustees regulatory advice and guidance and sufficient time to address the subject and implement the necessary processes, therefore the Commission is particularly critical of the trustees in this regard. The trustees should prioritise this and make the required improvements and abide by what is included in the charity speaker policy. Failure to do so will result in the Commission taking regulatory action against the trustees. In the event that the Commission does take further regulatory action, it will consider all of its previous engagement with the trustees on this and related issues.” (189 – 194)

35. On 9 March 2017, the respondent wrote to the claimant in light of the Commission's report. In relation to Friday speakers, it stated that the Charity Commission had considered five named speakers whom the claimant had invited had expressed extremist views on various subjects and that the trustees should carry out thorough checks and reject the names of those mentioned by the Commission. It stated that management committee had decided to review the speaker policy and procedures and communicate directly with all the guest speakers before they are allowed to give a talk in the Mosque. It asked for the claimant's cooperation and that he should not invite any speakers from outside until it had done all the necessary paperwork. That the claimant and Mr Molana Mubashir would deliver talks. The email further stated that Mr Mubashir's contract had been upgraded and he would be delivering more talks. The claimant was to liaise with Mr Mubashir to assist him in carrying out his new responsibilities. The claimant was instructed to cancel the programme on Sunday, 12 March 2017 with Dr Uthman Lateef immediately. (172 173)
36. Dr Lateef was one of the speakers the Charity Commission found held extremist views.
37. The claimant's response sent on 10 March 2017, was curt and to the point. He wrote:

“It is regrettable that after repeated engagements by the charity commission and all the advice given, you continue to fail in your responsibilities as trustees of this masjid. It is now clear to the charity commission what the rest of us have known for some time that you lack the basic skills needed to carry out your role. For the sake of the community, I advise you to step down and allow those who are competent to run this beautiful masjid.

I respond specifically to the points raised in your email as follows

1. Friday Speakers

While the speakers are invited by me, the responsibility for risk assessment has always been yours. I understand you told the Commission that it was my responsibility – this is yet another lie which you should seek forgiveness.

I have complied fully with your procedures by completing the relevant forms whenever a new event has been arranged or a new speaker is invited. I have always given you sufficient notice to complete the risk assessment and approve the event before proceeding with the marketing. As an example, the event scheduled this Sunday which you have now asked me to cancel was approved by you over five weeks ago stating: “the event you have proposed is quite needful and it was in our to-do list, please go ahead with this sort of community engagement event and let us know if you need any further help or any proactive involvement from our end.”

The charity commission has not said that the five individuals are not allowed to speak at the masjid nor have they ask you to remove them. What they have highlighted is your failure to carry out the risk assessment properly as you have simply stated in your records that you “had not identified any issues of concern” while the basic Internet search suggests otherwise.

If you had carried out the checks correctly, kept a record of what you found along with possible action to mitigate any risk to the reputation of the mosque or the commission, then

there would be no issues in hosting the speakers concerned. Reviewing your procedures will not solve the problem nor will meeting with each speaker.

There will be no change to the Friday speakers and the programme scheduled for this Sunday with Dr Uthman Lateef will continue as planned. I have attached a risk assessment we carried out for Dr Uthman in November 2015 which you may find helpful in understanding what is required.

2. Molana Mubashir

Please note that Molana Mubashir is employed as an administrator of this masjid. I suggest you leave us to carry out our respective roles. I have no plan to ask him to deliver a lecture but should this change, I will of course get in touch with him.

As the Imam of this masjid, I will continue to serve the congregation as I have done for the last 20 years and will not allow any disruption due to your incompetence. Any action taken against the interests of the community, simply to hide your own failures will not be tolerated.” (176 – 177)

38. This response revealed the claimant’s low opinion and lack of respect for those on the management committee and trustees. He was disregarding the instructions given to him.
39. The respondent wrote to the claimant on 13 July 2016 setting out changes to his terms and conditions of employment following legal advice given that the terms should be compliant with current employment law. It was stated that the new contract did not alter any of the claimant’s fundamental terms and conditions of employment but was merely a reflection of his day-to-day work. (174 – 175)
40. The claimant refused to sign the new 2016 contract and on 10 March 2017, the respondent wrote to him stating that the new contract would be implemented without his consent as it took the view it did not alter his terms and conditions of employment. (177)
41. On 18 March 2017, the respondent wrote to him, reminding him that it had the authority to request that certain things be done by him and that any blatant failure to follow instructions may result in formal disciplinary action leading to possible termination for gross misconduct. It hoped that this would not happen given the respect held for the claimant. The email expressed sadness at his lack of faith in the management committee. They asked that he complied with the following: –

“Nikahs

please kindly forward us the following by the end of March 2017 so we can comply with the Nikah Policy and procedure.

- 1.copies of the blank Nikah certificates.
- 2.copies of Nikah certificates from the last five or six Nikah done, some within our Masjid and the few conducted outside premises on behalf of Wembley Central Masjid.
- 3.All the stamps used on Nikah certificate

We need to make sure that we are all up-to-date as per article 5.2(q) of the constitution and fully compliant. We have already started getting enquiries for Nikah services and before we can start booking this service we want to prepare up-to-date certificate in stamps.



Speakers

Due to the recommendation being made by the charity commission (our regulatory body) we insisted that the last Sunday speaker was cancelled and no one invited to deliver talks in June. However we learned that you had failed to adhere to our request.

.....

If you wish to invite any speaker (regardless of which day) apart from that mentioned above, please propose their name and topic at least one week in advance for approval by management committee first. We do not want to bring the masjid into disrepute. As stated before, once approved by the management committee events team we would be happy to have any speakers.

.....

CD issue.

We previously insisted that you stop selling CDs and took down the banners. However you failed to adhere to our request. Please refer to our email sent to you on 6 October 2016, 14:51.

Moving forward we will allocate volunteers to help sell the CDs. CDs will only be sold where we have given prior management approval. All funds collected will be recorded and deposited in their Masjid funds.

If we follow this process nobody will have any opportunities to raise questions of doubts or concerns against an employee or volunteers or money raised.

.....

A failure to follow the above procedure will result in formal action against those who have breached the policy and a new policy that no CD selling will be allowed by anyone at WCM premises.....” (178 – 180)

- 42. The management committee wrote to the claimant on 20<sup>th</sup> and 25<sup>th</sup> of March 2017, requesting that he provide them with a copy of the risk assessment for Dr Lateef which was completed in November 2015. The claimant replied on 25 March 2017 in which he wrote another terse letter in response. He stated:

“The responsibility for carrying out risk assessments is yours; a fact you have often highlighted with great pride. The assessment referred to in my previous email was an informal one to show you how it should be done. However, you rejected it at the time and decided to use your own format. I do not have copies of the formal risk assessments that you carried out as you do not share them with me so I am unable to assist with your request.

When I wrote to you previously, I was prepared to help you in addressing the failures highlighted by the Commission. However, since then you have escalated matters and rake up old issues rather than accept your mistakes and making efforts to put them right. You have also talked about disciplinary action and termination for gross misconduct. This is deeply regrettable.

I will now have no further communication with you and will consider this to be bullying and harassment if it continues.

I will respond formally once discussions with my legal team have been completed. (181 – 182)

43. He sent a detailed reply to the email from management committee dated 18 March 2017, on 12 April 2017. In relation to the new contract of employment, he stated that the management committee had not had either formal or informal discussions with him regarding the fundamental changes to it and that he was being put under unfair pressure resulting in mental and emotional distress. He alleged that the unilateral action by the committee was both morally and legally unacceptable as he was a long and loyal serving Imam over 20 years. He stated that he had taken legal advice on the issue of the job changes.
44. In relation to the Nikah certificates, he wrote that one of his contractual duties was to conduct the Nikah marriage ceremony and issue formal marriage certificates. He was also responsible for maintaining and archiving all related records. Article 5.2q of the governing document, the constitution was not applicable as it conflicted with his terms and conditions of employment drawn up prior to that provision. Further, there had been no consultation or discussion, nor agreement of any sort from him prior to drafting the clause. He was reluctant to share copies of old Nikah certificates due to the lack of adequate controls for data protection purposes and confidentiality. As he had been entrusted with people's personal information he would need assurances that the committee have the storage and appropriate access protocols to meet with the data protection obligations and maintain confidentiality. He then wrote that, "Once robust policies and procedures are in place I am happy to formally share the information with you."
45. In relation to speakers he stated that one of his principal duties was to "Conduct and/or arrange lectures for Friday and ensure these are compliant with Sharia." The carrying out of risk assessments for new speakers was management responsibility. Although the committee had asked that he should give one week's notice to allow time to assess and approve new speakers, he would endeavour to give 2 to 3 weeks' notice to afford more time to complete the assessment process. He challenged the decision to stop all Friday speakers but assessments can be conducted on them reasonably quickly. He was off the view that the appointment of a second Imam to assist him was unnecessary. He also stated that he would work with Mr Mubashir.
46. In relation to CDs, his position was that they were produced for the benefit of the public and all profits were spent on the well-being of the Muslim community. He did not keep one penny of the proceeds for himself. He was prepared to hand over the sale of the CDs to the committee but before doing so he asked for clarification on a number of issues. (198 – 201)
47. On the same day, 12 April 2017, Mr Chris Sladen, of the Charity Commission's Compliance Visits and Inspection Team, wrote to Mr Bhamani, Chairman, stating that the most "pressing" concern was the relationship between the respondent and the claimant with regard to speaker risk assessments. He wrote:

"The Commission remains concerned that this relationship is resulting in inappropriate speakers attending the charity to preach, in breach of the charity's own policy. This is a serious matter.

We now require an update on the steps that the trustees are taking to ensure proper and meaningful risk assessments are being conducted on potential speakers and that they are discharging their duties to protect the charity from harm.

Please clarify when you respond who is currently conducting background checks and who is currently authorising any speakers. Please also confirm the current position with the relationship between the trustees and the Imam and provide a list of all those speakers, and the relevant risk assessments, who have attended the Mosque since 1 March 2017.

A response is required by 21 April 2017.” (202)

48. This email clearly revealed a relationship issue between the management committee, trustees and the claimant, and who should conduct speakers' risk assessments. It is also clear that the Commission still had continuing concerns about the subject matters delivered by the speakers.

#### First disciplinary

49. On 11 April 2017, the claimant was invited to attend an investigation and meeting into his failure to provide the Nikah documents; not providing a list of Friday speakers; allowing unauthorised speakers to give speeches; actively selling CDs; funds unaccounted for; and refusal to sign the new employment contract, amongst other things. He was advised that it was not a disciplinary matter but was expected to give responses to the matters under investigation. (195 – 196)
50. He submitted a reply referring to his response on 12 April 2017. (204)
51. He also requested further information on the allegations against him to enable him to prepare a response. He was informed that a detailed response was not necessary as the investigation would be a question and answer session. (207, 210)
52. As he was not provided with the information requested he initially wrote that he would not attend the investigation meeting on the 1 May 2017 but was later to changed his mind “in the interests of finding a resolution.” (215)
53. Mr Mohammed Waseem, a member of the management committee, conducted the investigation meeting and hand-delivered a copy of the minutes to the claimant on 4 May 2017, for him to check. The notes were later amended by the claimant on 9 May 2017. (217 -227, 230 - 235)
54. On 10 May 2017, the claimant wrote to Mr Sladen, Charity Commission, responding to the response given by Mr Bhamani on 9 May 2017. He wrote that Mr Sladen had been provided with a false narrative which he found disturbing but not entirely surprising. The failures identified by Mr Sladen were not the fault of the breakdown in relationship between the trustees and him, the claimant, but the incompetence of the trustees who had repeatedly deflected blame on others for their own shortcomings. As the Imam of the Mosque, one of his principal duties was to invite speakers which he had done diligently for over 20 years, and had complied with the policies and procedures regarding new speakers. The carrying out of risk assessments had always been the role of the management committee. He stated that in November 2015, a former committee member had prepared a

risk assessment on Dr Uthman Lateef to assist the committee as it had never prepared one before but the assessment was not adopted. The committee's request to stop all external speakers was not only unnecessary and disingenuous it was also detrimental to the congregation of the Mosque. He further stated that the minutes of the investigation meeting into the allegations contained many omissions and inaccuracies but the committee stated that its version would be placed on the record. He had audio recorded the meeting. In his final paragraph he wrote:

“In closing, I would say that the current management committee clearly lacks the requisite skills to carry out their duties and have failed to follow your guidance on several engagements and the advice from me and the congregation at large. The need for a change of trustees is overdue. An election should be held this year and I'm confident more suitable candidates will come forward but I'm not confident that it will be a free and fair election. Any help in this regard would be much appreciated....” (239 – 240)

55. In an email dated 15 May 2017, he was invited to a disciplinary hearing scheduled to take place on 17 May 2017, to be chaired by Mr Basheer Sheik, Trustee and Vice-Chairman. He was informed of his right to be accompanied and that one possible outcome may be his dismissal. He was sent copies of documents the respondent would be relying on at the hearing. (243)
56. The allegations the claimant faced were, in summary,
1. Nikah service - failure to follow an instruction given in the email dated 18 March 2017 asking for copies of blank Nikah certificates and copies of the last five or six Nikah certificates; and all stamps used on the Nikah certificates.
  2. Friday speakers – invitation to new speakers must be disclosed to the management committee with their proposed name and topic, at least one week in advance of the date of their speech. There was evidence of another speaker for Friday prayers.
  3. Leading salah/prayers – some salah prayers were conducted in the claimant's absence.
  4. CD sales – failure to follow management instruction requesting that he recorded and deposit all funds from CD sales into the Masjid account.
  5. Secret signatures – approaching trustees to sign a document which management asked him to confirm the nature of the document.
  6. Legal contract – failure to sign a copy of his contract of employment without a valid reason.
57. Under each allegation references were made to the supporting evidence. (244 – 247)
58. On 28 June 2017, he was sent the disciplinary outcome in which it stated that all allegations were proved. He was issued with a first and final written warning and informed that it would last for 12 months. He was instructed to hand over the

stamps for the Nikah certificates within three working days from the date of the letter, and to inform management committee 2 to 3 weeks in advance of all Nikah ceremonies. He was also instructed to apply the correct fees and monies paid into the Masjid account. In relation to Friday speakers, he was instructed to allow two days for Mr Molana Bashir to give talks and the other two Fridays guest speakers have to be vetted in advance by the management committee. (268A – 268L)

59. On or around 2 July 2017, he appealed against the disciplinary outcome alleging that in the process new allegations were included without his account being given, and that the respondent had neglected its legal obligation and was enforcing changes to his employment contract. (269)
60. On 16 July 2017 he also lodged a grievance raising concerns about the appointment of another Imam who appeared to be taking over much of his responsibilities; that false allegations were being made about him; that unilateral changes were made to his contract of employment without prior discussion or consultation and forcing him to sign the new contract; and defaming his character by the spreading of rumours that he had taken money belonging to the Mosque. (275 – 276)
61. The appeal against a final written warning was held on 18 July 2017 at which he did not attend because he objected to Mr Ibrahim Chalan, of the management committee, chairing the meeting as he had brought the unjustified allegations against him. Further, his grievance had not been listed for a hearing. (277 – 278)
62. In a later letter dated 22 July 2017, when he had been told that there would be a meeting to hear his grievance, he wrote that he would not be attending for the same reasons he gave for not attending his disciplinary appeal hearing. (278)
63. In the outcome letter sent to him by Mr Bhamani dated 21 July 2017, his appeal was dismissed. (279 – 280)
64. Mr Bhamani later wrote to him on 24 July 2017, stating that Mr Chalan would hear his grievance. (281)

#### Meeting on 5 August 2017

65. Article 10 of the constitution provides for the resolution of a dispute between the Masjid and any member to be resolved by adjudication through the assistance of either a barrister or solicitor.
66. After the appeal outcome, the claimant received a call from the Imam of Monks Park Mosque, Harrow Road, Imam Abdullah, who offered to mediate in his dispute with the management committee. A meeting was held in the claimant's office on 5 August 2017, attended by Imam Abdullah, the claimant, Mr Bhamani, Mr Mahmoud Elshahib, and Mr Habib Qamar. The outcome was discussed at the management committee meeting held on 18 August 2017 and recorded. It was stated that the Nikah administration fee would be charged at £25. New receipts would be printed out with Nikah stamps given to the claimant. Mr Molana Mubashir would give Friday talks following consultation with the claimant. The remaining balance from CD sales would be spent by the claimant as he wished but was required to provide supporting documents to the management committee. The

claimant stated that he no longer wanted to carry out any CD sales within the respondent's premises. He agreed to send a list at least two weeks in advance of the speakers engagement to the management committee for approval. Any changes to be agreed between him and the management committee.(Claimant supplementary bundle pages 21 – 23)

67. The claimant, in evidence, gave a different account of the meeting. He agreed that the Nikah administration fee would be £25 for each Nikah ceremony. However, all other matters, he stated, it was agreed, would remain unchanged. There would be no change in Nikah procedure or the certificates issued.. He would still be allowed to invite external speakers for Friday sermons. He would decide who leads communal prayers in his absence. His 2011 contract of employment would continue to apply and not the new 2016 contract. He stated that at the meeting Mr Bhamani quickly agreed to his proposals.
68. The claimant's account was challenged by Mr Bhamani, who relied on the management committee's record.
69. Mr Bhamani was cross-examined by Mr Saeed, Solicitor on behalf of the claimant, on the provisions in the 2011 contract and 2016 contract. He acknowledged that in the 2016 contract the claimant is referred to as the Lead Imam, whereas in the 2011 contract he is referred to as the Imam; in the 2016 contract he was entitled to 28 days holiday, in the 2011 contract his entitlement was 30 days; the 2016 contract refers to disciplinary appeal procedure which is absent in the 2011 contract; the grievance provisions in the 2016 contract refer to it being raised with management committee, in the 2011 contract the grievance would be raised with the individuals; the 2016 contract refers to payment in lieu of notice which was absent in the 2011 contract; and garden leave and a clause in relation to confidentiality, were in the 2016 contract but not in the 2011 contract. Mr Bhamani stated that it was agreed by management committee that the 2011 contract and not the 2016 contract would continue to apply to the claimant.
70. I find that following the meeting on 5 August 2017, the claimant was allowed to follow the provisions in his 2011 contract of employment but it did not mean that he was exempt from management committee oversight.
71. The claimant continued to believe that he was the sole guardian of the Nikah certificates as he wanted to keep them for reasons of confidentiality.
72. On 22 May 2018, Mr Asif Uddin, was prevented by the management committee, from giving any further speeches because the speech he gave on Friday 20<sup>th</sup> April and 18 May 2018, were in breach of the speaker's engagement policy, in that, it was political and politically influenced, and perceived as hate mongering. Such speeches were forbidden by the management committee in line with the guidance given by the Charity Commission. As he had signed this speaker engagement form on 17 December 2017, management committee agreed that he should be given formal notice that he would not be allowed to deliver any talks, speeches or sermons on the premises. Mr Uddin challenged the basis of the decision in several email correspondence. (299, 298, 306, 313, 314, 317, 325 -326)
73. Management committee wrote to the claimant on 3 June 2018, expressing concern that he had allowed Mr Uddin to give a talk contrary to its speaker policy

and without prior approval from the trustees. He was instructed to not allow Mr Uddin to give any further talks or to carry out any programmes on its premises without further notice. (304)

Second disciplinary

74. At the management committee meeting held on 27 July 2018, it was reported that the claimant was in breach of his employment contract and of the constitution and that the matter needed to be investigated. It was agreed that Mr Mohammad Shaikh would lead the investigation assisted by Mr Abdullah Jaan. (327 -334)
75. The claimant was written to on 9 August 2018 by Mr Shaikh, who invited him to an investigation meeting on 11 August, to discuss issues related to the Nikah services; drafted a witness statement in relation to a personal matter using the stamp of the Masjid and on Masjid letterhead without the authority of the trustees; election manipulation and unauthorised interference; and inviting speakers without obtaining management committee's prior consent. He was informed that the meeting did not constitute disciplinary proceedings. (336)
76. He challenged the allegations in his email dated 10 August 2018, in which he stated that he did not normally issue Nikah certificates before they are signed by the bride and groom; that as an Imam, he witnessed many documents and have been using the Masjid letterhead over 20 years; that the fraudulent election was organised by members of the management committee; and that Mr Uddin had not breached the speaker's policy. (341)
77. The claimant did not attend any of the two scheduled investigation meetings and the matter was reported to management committee on 28 August 2018 by Mr Shaikh who recommended disciplinary action to which those present agreed. (352 -355)
78. Mr Huzaifa Sayed, a member of the management committee, wrote to the claimant on 29 August 2018, inviting him to a disciplinary hearing scheduled to take place on 1 September 2018. He stated the following: –

“You are instructed to attend a disciplinary hearing at 11.00am on 1 September 2018 (Saturday) at Wembley Central Masjid office to address the following allegations:

1. Alleged, repeatedly inviting speakers without the official consent of the management committee for example on Friday 1<sup>st</sup> June and Friday 15 June 2018 you invited Ustad Asif Uddin for a sermon despite previously being informed that the management committee as referred to his permission to give talks on WCM premises.
2. Alleged related to “Nikah” services performed by you, namely that you have signed, stamped and issued a certificate with the name of the mosque despite it not having the signature of the bride and groom.
3. Alleged relating to witness statements provided by you and its authenticity, namely that you witnessed the signing of deed on a personal matter but did so using the stamp of the Masjid and Masjid letterhead without the authority of the Trustees.
4. Alleged that you misused your position as an Imam with election manipulation and unauthorised interference in year 2018 and tried to influence the general members namely

that you sent text messages to WCM members advising them that “We are not taking part in the masjid election as it was unfair””(356)

76. The letter gave a list of the evidence in support of the allegations and the claimant was advised of his right to be accompanied. He was warned that a potential outcome could include formal action under the respondent’s disciplinary procedure. (356 – 357)
77. The claimant replied on 1 September 2018, stating that he had clarified his position in an email sent to Mr Sayed but had been ignored and instead matters moved from an informal discussion to formal action. The claimant further stated that the disciplinary hearing had been arranged at short notice and was “impractical and unfair”. He suggested a goodwill meeting and that he would write to Mr Sayed within 10 days to advise of a suitable date. (362)
78. Mr Sayed informed the claimant that a disciplinary hearing would take place on the rescheduled date, 10 September 2018. He repeated the allegations and the matters contained in earlier correspondence on 29 August 2018. (363 – 364)
79. By the date of the management committee meeting on 11 September 2018, the claimant had not attended two investigation meetings and two disciplinary hearings. The meeting recorded the presence of protesters on the premises who were engaging in violent arguments and altercations with the worshippers, and that firm action needed to be taken to stop the “unnecessary disturbance”. The committee would be looking into the claimant’s role in the ongoing protests. CCTV recordings showed that men and women entered his office which led the management committee members to believe that he was fueling or encouraging the protests. A member believed that he was involved in the ongoing unauthorised protests within the premises and in leafleting people outside of the premises. When a police officer arrived no one was arrested as the officer considered the matter to be civil, as it involved trespassing. It was agreed that the committee would write to the individuals identified in the protests to inform them that they were trespassing and instruct them to abstain.
80. It was recorded that as the claimant did not engage in the investigation and disciplinary process, Mr Sayed had made the decision to give him a first and final written warning based on the evidence in his possession. It was also agreed that Mr Basheer Sheik would conduct the appeal assisted by Mr Iqbal Mahmoud. Mr Basheer Sheik, is also referred to Sheik Jaffer Sheik Basheer or Sheik Basheer. (365 – 369)
81. It was evident that a section of the Masjid’s worshippers and of the local community, had aligned themselves on the side of the claimant against management committee. This led to demonstrations outside of the Mosque during which the police became involved but took no action. It was a serious breakdown in the relationship between management committee and the claimant as the Imam.
82. Mr Sayed wrote his disciplinary outcome letter to the claimant on 13 September 2018, setting out his reasons why all of the allegations against the claimant were proved and constituted serious misconduct. His decision was to issue a first and final written warning to remain on the claimant’s file for 12 months, expiring on 11



September 2019. It was a detailed account of the evidence, his reasoning and conclusions. (372 – 379).

83. The claimant's response was in an email on 18 September, to Mr Sayed, in which he wrote that the disciplinary outcome was full of "baseless accusations, speculation and suspicion with references to an old employment contract. The scope of the document is also much wider than the initial allegations and the clarifications I provided have been ignored despite your claims otherwise. The whole process from the outset has been flawed and your rejection of a goodwill meeting clearly demonstrates your unwillingness to resolve the matter. I can therefore have no confidence in the appeal process. I am currently seeking legal advice and will respond in due course." (380)
84. On 20 September 2018, the management committee asked him to send to it the last 10 Nikah certificates he had issued; should he continue to invite speakers, he must provide their names topics/themes for approval. Likewise in respect of the Sunday and Wednesday speakers. He was warned not to invite or ask any speaker to give talks until he received approval from the management trustees. (382)
85. The claimant changed his mind and on 20 September 2018, he informed the management committee that he would like to appeal the disciplinary outcome and asked that he be given 10 working days' notice to arrange for someone to accompany him. As he did not have either a work colleague or union representative, he would be accompanied by a friend. He asked for the names of those who would be present at the appeal hearing. (382)
86. He was informed by Mr Basheer Sheik, on 24 September 2018, that the appeal hearing against the first written warning would be on 27 September 2018. The claimant could not attend because Mr Sheik had not confirmed if the disciplinary outcome was supported by the whole committee and that he would need 10 days' notice of the appeal hearing. Further, his request to be accompanied by a friend had been denied. He stated that if Mr Sheik was genuinely serious about seeking a resolution rather than a constructive dismissal, he should reconsider his decision and allow a friend to accompany him. (386, 388)

#### Mr Sajid Mallal

87. There then followed a series of correspondence in relation to the claimant's grounds of appeal; the role of Mr Sajid Mallal; and the claimant's role in the protests, plus the position of his friend to accompany him at the appeal, Mr Habib Qamar. Management believed that the claimant was actively involved in supporting the protesters and in distributing leaflets discouraging people from giving donations to the Masjid resulting in a significant reduction in funds. The claimant was requested by Mr Basheer Sheik, to work towards ending the protests as it was damaging the reputation of the Masjid. In addition, the committee believed that Mr Mallal had been also involved in the protests and that he had been found in the claimant's office after the premises were closed and when the claimant was not present. Upon being questioned, Mr Mallal said that he worked for the claimant; he did whatever the claimant asked of him; he was in possession of the keys to the office given to him by the claimant; he had been doing the claimant's administration work for eight years; and he stayed in the claimant's office for several hours in the night by himself. The respondent was aware that Mr

Bilal had in his possession the keys to the claimant's office and had been seen entering the office when the claimant was not present.

88. The claimant was instructed by the management committee to retrieve the office keys from Mr Mallal; to install new locks to his office door and that he should inform management committee of a convenient day and time when it could arrange a locksmith to perform the task; he was told that the keys to his office should not be handed over to anyone without the authorisation of the management trustees; no one would be allowed access to his office in his absence without being authorised by the management trustees; and that one set of keys to his office should be kept safely in the management trustees' office. The claimant was warned that not following the instructions would escalate matters "drastically" as he was on a final written warning. (392 – 393)
89. Mr Mallal told the tribunal that he is a retired teacher who was a worshipper at the Masjid. He knew Mr Bhamani very well as sometimes after morning prayers, they would go to the local Harrow Leisure Centre to play table tennis. At the Masjid he helped out filing paperwork; he entered data on to the computer; he co-ordinated events; was present with the claimant at marriage ceremonies; and maintained the forecourt and plants. He worked on the computer but said he was neither given his own password, nor did the claimant gave him his password to access the computer. He was not an employee and assisted the claimant on an irregular and infrequent basis. He was involved in the protests against the management committee and believed that on 28 September 2018, when the claimant was temporarily absent from the Masjid, Mr Bhamani deliberately entered the office with seven other individuals, who were taking pictures on their mobile phones. Mr Bhamani told him that he was not authorised to be in the office and was instructed to leave. The police were called but took no action because when the claimant returned he confirmed that Mr Mallal assisted him and was not a trespasser.
90. I do not accept that the management committee members were unaware that Mr Mallal role in claimant. His presence was visible for all the worshippers and management committee members and Trustees to see as he worked in the claimant's office; he knew Mr Bhamani; was involved in social events; he looked after the plants on site; and maintained the forecourt; and had been assisting the claimant for many years. Anyone entering the claimant's office would have, on occasions, seen him in there over the years he said that he was engaged in administration work.
91. I do not, however, accept that he did not have access to claimant's password to the computer because he had been seen in the office using the computer when the claimant was not present. He was trusted by the claimant and worked, sometimes, into the early hours of the morning. He worked with the claimant for many years. There was no documentary evidence to confirm that he was employed either by the claimant or by the Masjid. I do find that by late September 2018, his presence in the office was untenable as his was involved in the protests against the management committee calling for "fair and free" election, and had access to sensitive and confidential information.
92. In response to Mr Basheer Sheik's request for the claimant to give his grounds of appeal, the claimant replied on 8 October 2018, stating that they were that "1. The outcome document is full of baseless accusations, speculation and suspicion with references to an

old employment contract. 2. The clarifications I provided have been ignored. 3. The scope of the document is much wider than the initial allegations.” (397)

93. In relation to Mr Qamar, the respondent’s position, as expressed by Mr Basheer Sheik, was that he was not an employee. The claimant’s position was that as Mr Qamar was helping at the Mosque voluntarily, he should be allowed to accompany him to take notes and to act as a witness. Mr Basheer Sheik repeated the respondent’s position. (400)
94. The claimant, defiantly, attended the rescheduled appeal meeting on 9 October 2018, in the company of Mr Qamar, whose presence was objected to by Mr Basheer Sheik. The claimant did not agree with the decision that Mr Qamar should not be present and together they left the meeting. Mr Basheer Sheik wrote to the claimant on the same day setting out his outcome decision. The salient paragraphs are as follows: –

“You attended this this appeal hearing with Habib Qamar despite previously being advised on more than one occasion that he was not welcome at the meeting. He is not an employee or a trade union representative; furthermore, I had concerns that he would be a disruptive influence in the meeting and did not feel it would be appropriate if he attended. You are given the option to attend on your own or bring a colleague/trade union representative to the meeting. I also advise that you could record the meeting so that you did not have to take notes.

I kindly requested that the meeting proceed without the presence of Habib Qamar. Unfortunately, you raised your voice and trying to argue with me; I made it clear that Habib Qamar was required to leave the room to which you stated that you would not continue with the meeting without his presence. You refused to cooperate and subsequently left the room.

As you failed to proceed with the appeal hearing the company considers that you have withdrawn your appeal. I can confirm that the original decision made by Huzaifa Sayed (Trustee) will stand and you will retain the final written warning originally issued, on your file for a period of 12 months. This decision is final and you have now exhausted the company’s appeal procedures.” (399)

95. The claimant raised concerns in his email dated 9 October, about the conduct of the brief appeal hearing and questioned whether Mr Basheer Sheik was serious about resolving matters. (405)
96. He denied being involved in the protests and stated that the fact that it had been started by someone close to him did not mean that he had instructed him to do it. The protests were damaging the reputation of the Masjid and a bad impression was being created in the local community. They were against the actions of management committee, therefore, management committee bore the responsibility for damage and should, therefore, put it right. He accused the committee of not following the constitution and not seeking to resolve the dispute by arbitration in accordance with article 10 of the constitution. The security of his office had not been compromised, therefore, there was no need to change the locks as it would be a waste of money. (406 – 407, 419 - 420)

Events leading to the claimant's dismissal

97. At the management committee meeting held on 27 October 2018, it was recorded that the claimant was still failing to comply with management instructions and that there should be a further investigation into his conduct. It was also noted that people were still protesting outside of the Masjid. It was agreed that Mr Jaan should conduct an investigation assisted by Mr Mohammed Talha Meman, also a member of the management committee. (418A – 418R)
98. Mr Jaan wrote to the claimant on 15 November 2018, inviting the claimant to an investigation meeting on 24 November. The matters under investigation were:

**“We wrote to you on Wednesday 31 October 2018 all 09:47 in our first reminder requesting you to forward us the copies of the Nikah certificate for which you have already provided receipts of £25 each, but you have failed to cooperate.**

**WCM Constitution – 5.2(q) states as below:**

*The management committee shall be responsible for the administration of Nikah ceremony. It shall also ensure all paperwork conforms to legal and immigration requirements where applicable. It shall also be responsible for issuing of the Nikah certificate and the official marriage certificate if so authorised by local authority. The committee jointly with the Imam of the management Masjid shall be responsible for setting the fee for the Nikah ceremony and fee of the Imam to conduct the Nikah ceremony. The management committee shall appoint a member from amongst its members or at its discretion appoint the Imam to oversee the Nikah ceremony and issuing of official marriage certificate.*

**We wrote to you on Wednesday, 31 October 2018 at 09:47 in our first reminder requesting you to forward us the required information about Friday, Wednesday and Sunday Speakers’ names and topic of theme for management’s approval in order to continue serving the congregations efficiently, but you have failed to cooperate.**

**WCM Constitution – 5.2(a) states as below:**

*The administration of the Masjid, decision regarding but not limited to the domain of Madressa, Speaker’s Engagement, Event Hosting, Employee Contracts, Ramadan Iftar Planning, Notice Board Management, day-to-day administration issues, announcements, new projects were all to be taken by Management Committee through setting out of the agenda of the Management Committee meeting and asking members opinion regarding that and follow simple voting method if needed.*

**Your employment contract states as follows below:**

*You will inform, consultant agree with the President/Secretary-General or any two office bearers first, about the themes/topics of Khutba based on a current affairs and a lesson for the public to take back with them.*

**We wrote to you on Wednesday, 31 October 2018 at 09:47 in our first reminder requesting you to resolve the disputed legal matter with Hussain Munwar where you used WCM letterhead to provide witness statement in your personal capacity but you have failed to cooperate.**

**We wrote to you on Wednesday 5 October 2018 20:12 and subsequently on 23 October 2018 09:56 in our first reminder requesting you to allow us to change the locks of your office as it was being accessed by an authorised person in your absence and the confidentiality of many important documents were compromised.**

Unfortunately you have blatantly refused to follow reasonable management instructions and failed to cooperate for all of the above mentioned. ....

You should be aware this investigation meeting is to consider your explanation for the above concerns and you should attend prepared to explain these matters. Please note that this meeting does ***not*** constitute disciplinary proceedings, nor does it in any way suggest that you are guilty of any offence. However, should we not be satisfied with your explanation, this may lead to formal disciplinary action.” (429 – 431)

99. The claimant wrote on 17 November 2018 that he had previously commented on the matters raised in Mr Jaan’s letter and that he had not received an apology for the mistakes management committee had made about his conduct. As he had already dealt with the matters raised previously, he would not be responding to Mr Jaan’s letter. (435)
100. Mr Jaan reminded the claimant that he was an employee of the Masjid and it was a reasonable management instruction to attend the investigation meeting. He noted that while the claimant had commented on some of the matters raised, by refusing to attend he was not allowing himself the opportunity to put forward his case and should he fail to attend, a decision would be made on the information available which could mean that he would be invited to a disciplinary hearing. Given that he was already on a final written warning, one possible outcome may be his dismissal. (439)
100. The claimant did not attend the investigation meeting and Mr Jaan reported to the management committee on 4 December 2018. He stated that the claimant had two opportunities to attend an investigation meeting but had failed to do so. He was disappointed in the claimant’s attitude and felt that he had no other choice but to consider disciplinary proceedings. It was agreed that Mr Hafiz Mohammed Haroon Akhtar, a member of the management committee, would conduct the disciplinary hearing. (443A - 443D)
101. I was satisfied that Article 5(2)(a) of the respondent’s constitution is so wide that it includes management committee having the power to deal with employment issues. This can also fall within the power to deal with “day to day administration issues”. In any event, management committee having the power to employ staff, also has the commensurate power to conduct an investigation with a view to taking disciplinary action possibly resulting in dismissal. (114)
102. There then followed protracted correspondence between Mr Akhtar and the claimant in relation to arranging a disciplinary hearing. The first disciplinary hearing was scheduled to take place on Monday 17 December 2018 at the respondents administration office. The allegations were the same as set out in Mr Jaan’s letter inviting the claimant to an investigation meeting. In addition, Mr Akhtar referred to those matters set out in the management committee’s email to the claimant dated 20 September 2018. The disciplinary hearing was later changed to 18 December 2018. The claimant responded on 18 December stating that he had written to the committee on 17<sup>th</sup> November by referring to his email of 31<sup>st</sup> of October asking a number of questions to which the management committee failed to give a response. He repeated that as he had also not received an apology, he would not be attending the hearing, nor would he respond to the allegations.

103. Again he was reminded that the reasons given for failing to attend were not sufficient and that it was a reasonable management instruction to attend the meeting. Mr Akhtar again, on 20<sup>th</sup> December, rescheduled it for Thursday 3 January 2019, and wrote to the claimant on 2 January, again requesting that he should attend the hearing.
104. On 3 January 2019 the claimant wrote to the management committee stating that over the previous years he had tried to cooperate with “unreasonable and unnecessary requests”. As they have not responded to the questions he had asked, they were not interested in a resolution and was intent on creating a hostile work environment in the hope that he would resign. He reiterated that he would not be attending any further hearings until management committee could demonstrate a sincere desire to find a resolution. He stated that the issues raised were not new and had been discussed many times in the past at various hearings and in conversations. (446 – 462)
105. At the management committee meeting held on 11 January 2019, Mr Akhtar informed those present of his attempts at trying to arrange a disciplinary meeting with the claimant and of his decision. It is recorded that he said:

“I have considered all the facts before making my decision. It is appalling to see Imam Abdul Sattar constantly refusing to cooperate. It has not allowed me the opportunity to have any feedback from him. I already informed him about his final written warning which was issued to him prior to this recent investigation and disciplinary hearings. I am really bothered about his behaviour in this sensitive matter. After carefully analysing all the evidence available at my disposal, I have decided to dismiss Imam Abdul Sattar with 12 weeks’ notice.”

106. What followed was a discussion about approaching the respondent’s legal advisers, Citation, before informing the claimant of his dismissal and his termination payment, as well as the recovery of the balance of a £10,000 loan he was paying off at the rate of £50 a month. In addition, that there should be security on the premises to avoid any “unnecessary dispute and any potential altercation” and that steps should be taken to ensure the security of the premises once he leaves. The meeting was quorate with no record of any dissent from any of the management committee members present. (469 – 478)
107. Mr Akhtar prepared and signed the dismissal letter dated 31 January 2019. It is a very detailed document covering the allegations and the evidence in support of his findings. He wrote:

“Dear Imam Sattar

Further to the rescheduled disciplinary hearing held on 03/01/2019, which you chose not to attend, I am writing to give you my decision, which I have therefore had to make based on the information and evidence available to me. You were warned in my letter of 20<sup>th</sup> December that the meeting would go ahead in your absence and it was therefore in your best interests to attend; however you chose not to do so.

The hearing was convened to discuss the following allegations which I have addressed in details:

1. ***Alleged breach of WC M's constitution, policies and procedures, it is alleged that in spite of repeated requests, specifically on Tuesday, 20 September 2018 and on Wednesday, 31 October 2018, you have failed to submit copies of the Certificates to management committees office.***

You have refused to attend two investigation into disciplinary hearings to provide explanations for the above-mentioned alleged incidents. Although, I have considered the points raised by you in an email dated 18 December 2018 and on email dated 03 January 2019, but your constant refusal to cooperate has left me with no choice but to conclude without any input from you.

***I consider your action to be in clear breach of WC and constitution, 5.2(q), states: The management committee shall be responsible for the administration of Nikah ceremony. It shall also ensure all paperwork conforms to legal and immigration requirements where applicable. It shall also be responsible for issuing of a Nikah certificate and the official marriage certificate if so authorised by the local authority. The committee jointly with the Imam of the management Masjid shall be responsible for setting the fee for the Nikah ceremony and fee of the Imam to conduct the Nikah ceremony. The management committee shall appoint a member from amongst its members or at its discretion appoint an Imam to oversee the Nikah ceremony and issuing of the official marriage certificate. (480 – 488)***

I also believe you have failed to follow instructions issued to you after your previous disciplinary hearing, which led you to receive first and final written warning. Management committee instructed you as below:

- You will have to inform the management committee of any Nikah ceremonies 2 weeks in advance to ensure two trustees are present to overlook the Nikah ceremony
- You are not allowed to issue any Nikah certificates unless it is signed and verified by two management trustees
- You are only allowed to perform the Nikah if council registration has already done and the registration certificate is presented before Nikah
- You are only allowed to use new Nikah certificates and stamps which are already given to you
- £25.00 fees should be applied to every Nikah performed
- Receipt should be issued and submitted to the management office within seven days
- Copy of every Nikah certificate issued, must be submitted to management office within seven days to keep an up-to-date record.

Despite numerous requests from management committee, you have failed to cooperate without any valid reason. This led me to believe many possible reasons stated below why you are not willing to have management trustees' presence at the time of conducting the Nikah ceremonies and are not willing to submit copies of Nikah certificates to management committee.

- I believe that Nikah Certificates you are issuing are not compliant
- I believe process for conducting the car ceremonies are not compliant
- I believe the witness signatures at the time of performing in the Nikah ceremonies are flawed
- I believe signatures of Vakil at the time of performing in the Nikah ceremonies are flawed
- I believe you are performing in Nikah ceremony without the presence and formal approval of both Bride and Groom

- I believe many beneficiaries of Nikah ceremonies never had valid immigration status, which is one of the basic requirements to conduct Nikah within WCM
- I believe many beneficiaries of Nikah ceremonies never had their marriage registration done with councils, which is one of the condition to have their Nikah ceremony conducted WCM
- I believe your motive is to hide the financial gains from conducting Nikah ceremonies as you have never submitted any receipts
- I believe your actions are damaging WCM reputation significantly as a registered charity and a religious organisation

**I believe that you meet the allegations mentioned above as you blatantly refused to follow reasonable management instructions and you are in clear breach of WCM constitution**

2. *Alleged breach of WCM's constitution and your employment contract, it is alleged that in spite of repeated requests, specifically on Tuesday 20 September 2018 and on Wednesday 31 October 2018, you have failed to provide the required information such as Friday, Wednesday and Sunday speakers' names and topics or theme of their talk for management's approval.*

**WC and constitution – 5.2(a) states as below:**

*The administration of the Masjid, decision regarding but not limited to the domain of Madressa, Speaker's Engagement, Event Hosting, Employee Contracts, Ramadan Iftar Planning, Notice Board Management, day-to-day administration issues, announcements, New Projects were all to be taken by Management Committee through setting out in the agenda of Management Committee meeting and asking members opinion regarding that and follow simple voting method if needed.*

**Your employment contract states as below:**

*You will inform, consult and agree with the President/Secretary General or any 2 office bearers first, about the themes/topics that the Khutba based on a current affairs and a lesson for the public to take back with them.*

Your actions are clearly against the WCM Constitution and against your employment contract. I also believe you have failed to follow instructions issued to you after your previous disciplinary hearing, which led you to receive first and final written warning. Management Committee instructed you as below:

- You must inform that the management committee of the details of the speakers you intend to invite for sermons at least two weeks in advance
- You must inform the management committee of the theme/topic of the lecture at least two week in advance
- You must only invite speakers approved by the management committee
- Invited speakers are only authorised to speak on theme/topic agreed by the management committee in advance
- You must not invite any speakers who are not authorised or have been refused by the management committee this process should be followed for all other events taking place within WCM premises and for Friday speakers too.

You have blatantly refused to follow your employment contract and their reasonable management instructions. You are also in clear breach of WCM constitution despite numerous requests from management committee. Your consistent refusal to cooperate with the management committee on this issue has brought tremendous stress and reputational damage for WCM charity.



**I believe that you meet the allegations mentioned above as you blatantly refused to follow reasonable management instruction. You are in clear breach of WCM constitution and your employment contract**

3. *Alleged unauthorised use of WCM letterhead and stamp, it is alleged that you have used WCM letterhead and stamp, specifically on 21 November 2015, without authorisation of WCM management committee to provide witness statement in your personal capacity to Mr Hussain Munwar and now you are refusing to resolve the disputed matter*

Although you declared, that it is your own personal matter, your use of WCM letterhead without management consent raises many concerns. Management committee has instructed you to explain your reasons for using WCM letterhead for issuing witness statement in your previous disciplinary. During the course of this investigation, WCM requested you to resolve this disputed legal matter cooperating with Mr Hussain Munwar by providing him with a legal statement. But despite numerous reminders, you have failed to resolve this issue without any reasonable explanation. This led me to believe many of the following reasons:

- I believe the witness statement you provided is fraudulent
- I believe you provided the statement without the presence of both the parties
- I believe you had financial gains for providing this statement
- I believe you are refusing to resolve this matter as you have something to hide which will damage your reputation and question your honesty
- I believe your constant refusal to resolve this matter will bring serious legal troubles for WCM charity
- I believe not resolving this matter will bring serious reputational damages to WCM charity

I also believe you have failed to follow instructions issued to you after your previous disciplinary hearing, which led you to receive first and final written warning. Management committee instructed you as below:

- We require you to help Mr Hossain Munawar with best of your ability, if needed, attend the court to provide your statement

I firmly believe your refusal to resolve this matter clearly indicates that you have something to hide. We gave you four opportunities to come and provide clarifications but you chose not to attend any of the hearings.

**I therefore reasonably believe that you meet the allegations above as you blatantly refused to follow reasonable management instruction**

4. *We wrote to you on Wednesday 5 October 2018 20:12 and subsequently on 23 October 2018 09:56 in our first reminder requesting you to allow us to change the locks of your office as it was being accessed by an authorised person in your absence and the confidentiality of many important documents were compromised.*

In the email dated 23 October 2018, the management committee wrote as follows:

- Why have you given him the keys to your office?
- Why does he spend hours and sometimes whole night in your office in your absence?
- After the incident when we caught him red-handed and instructed you to take the keys back from him, we have still seen him entering and leaving your office with keys with you and also in your absence. Please explain why?

- Sajid Mallal said he works for you and does whatever you ask him to do. Please explain what works he is doing?

Your response to the above, in the email dated 31 October 2018, was as follows:

- Sajid Mallal assists me in my duties and I give him a key to my office if he needs access when I am absent.

***Your Employment contract states:***

7. ***Duties:*** you will lead all the five times daily prayers..... advise and assist the committee in propagation of the advancement of the Religion of Islam, campaign to collect funds, arranging lectures from time to time on important Islamic events, solemnise marriages, deliver Khutba as per the sacred months.....bring brotherhood among the community, organise durse of Qur'aan and any other events needed by the Community.

Your employment contract provides detailed guidelines of your duties as Iman of Wembley Central Masjid. Your contract doesn't allow you to employ someone as your deputy or assistant directly without the consent of the Management committee. As you stated in your email dated 31 October 2018 that "Sajid Mallal assist me in my duties and I give him a key to my office if he needs access when I am absent." I would again like to draw your attention to your employment contract which states: 8. *You will be directly responsible to the Secretary General and the President, in their absence, the Finance Secretary and the Joint Secretary.*

As per the above mentioned, we did not receive any communication from you with regards to Sajid Mallal assisting you in your duties. As management, we must have been informed if you needed assistant to perform duties assigned to you in your employment contract before getting an assistant on your own. There are some critical issues to this matter, as stated below:

- Anyone part of WCM either as Management Trustees or Employee must have their CRB checks cleared
- Allowing office access to Sajid Mallal means he is able to access personal details of public which you hold in the form of Nikah certificates, charity applications, donations receipts, witness statements and he is also able to access cash and cheques received by you as donations
- Allowing office access to Sajid Mallal clearly breached GDPR rule as he is not an employee of WCM and not legally authorised to access this information
- It is possible that you have hired him to support you in your counterfeit activities such as signing Nikah certificates as witness and Wakil.

Sighting above-mentioned I believe you have exposed sensitive public data to an unauthorised person. I also believe you have put WCM security at great risk by allowing him the unauthorised access to your office.

**I therefore reasonably believe that you meet the allegations above as you blatantly refused to follow reasonable management instructions**

As the outcome of your previous disciplinary hearing which led you to have first and final written warning, we very clearly informed you that *"If there is any repeat of this conduct or indeed any other misconduct in general within the next 12 months you may face further disciplinary action and as you now have a final written warning on your file, please be aware that further disciplinary action could lead to your dismissal."*

As you have a current final written warning on your file, you have now exhausted WCM's disciplinary procedure and you are therefore being dismissed with notice. Due to your length of service, you are entitled to 12 weeks' notice. You are not required to work and a payment in lieu will be made to you; *and therefore your last working day will be 01/02/2019*. Your final pay will be processed on 01/02/2019 and you will receive pay for any holiday accrued but not taken. Your P 45 will follow under a separate cover.

You have the right to appeal against your dismissal and if you decide to do so please write to Mr Mehboob Bhamani – Chairman, WCM, clearly stating your grounds of appeal within five working days of receiving this letter.

Despite the circumstances of the termination of your employment, you are of course still welcome to attend the Masjid as a worshipper. You will still be very much welcomed as a worshipper and you are free to attend prayers; however it will not be in the capacity of Imam." (483 – 488)

108. Although the letter clearly sets out the reasons for the claimant's dismissal, Mr Akhtar, in the absence of the claimant's responses to the allegations, made a number of assumptions about the claimant, such as, he had something to hide by not helping Mr Munawar; and that the witness statement he gave was "fraudulent" and that he had gained financially; that it was possible Mr Mallal was assisting him in his "counterfeit activities" in signing Nikah certificates as a witness.
109. On 1 February 2019, in the company of the General Secretary, Mr Akhtar informed the claimant that he was dismissed on notice and tried to hand him a copy of the dismissal letter but was ignored. He was told that he was welcome to attend the Masjid as a worshipper. The following day, he was approached again when Mr Akhtar attempted to hand him a folder containing the dismissal letter but it was not accepted. The folder also included a letter from the General Secretary, dated 1 February 2019, stating that, "WCM Management Trustees have decided to terminate your employment as Imam and we do not require your services as an imam from 2 February 2019." He was then told that he was not to conduct any religious prayers. (480 – 491)

#### The appeal against dismissal

110. On 6 February 2019, the claimant appealed against his dismissal stating that he had acted within the provisions of his contract of employment; that the respondent relied on obligations not within his contract; the disciplinary outcome contained many more allegations than the four the respondent had previously mentioned; some of the findings were made based on suspicion and conjecture; some of the allegations had previously been addressed at previous hearings; the Nikah provisions were drawn up after his contract of employment and were implemented without prior discussions or consultations with him; the lectures on Fridays, Sundays and Wednesdays were delivered by approved speakers and not new speakers who would require prior approval; he had routinely provided witness statements for over 21 years without prior authorisation from management committee; he was under no obligation to accede to Mr Munawar's request to attend court; and that his office was not accessed by an unauthorised person. (499)
111. Having regard to the nature of the dispute between him and management committee resulting in his dismissal, arrangements were made for him to collect

his medication and personal belongings with the assistance of the police. (494 – 499)

112. Mr Bhamani was due to conduct the appeal but the claimant objected due to his belief that he was involved in the decision to dismiss him and was not impartial. Mr Saeed, his legal representative, raised similar concerns in his email dated 7 March 2019 adding that no member of the management committee should conduct the appeal as they had been involved in disciplinary decisions including the claimant's dismissal. (Respondent's bundle, 25 - 26, "R26 - 27")
113. Mr Saeed on 8 April 2019, supplemented the claimant's grounds of appeal by adding more detailed grounds. (R30 – 38)
114. The appeal was conducted by Mr Paul Quinn, of Citation, on 9 April 2019. He had copies of the management committee minutes dated: 20 September 2018; 5 October 2018; 23 October 2018; and 31 October 2018. In addition, he had the disciplinary invite letter dated 6 December 2018; the rescheduled disciplinary invite letter dated 20 December 2018; the dismissal letter; the claimant's grounds of appeal; the claimant's contract of employment dated 1 January 2011; statement from the claimant dated 8 April 2019; and his solicitors letter dated 8 April 2019. The claimant was accompanied by Mr Russ Ball, Regional Officer, Unite. Neither Mr Quinn nor Mr Ball gave evidence before me. Mr Mohammed Iqbal was the notetaker. Both the claimant and Mr Ball made oral representations during the appeal.
115. In his confidential report to the management committee, Mr Quinn stated that he had had no previous involvement in matters relating to the claimant and the disciplinary proceedings against him. In relation to the first allegation, it was noted that the claimant had accepted that the management committee had made requests as set out in the allegation and that he had not complied with them. He was asked to provide Nikah certificates for which management committee had already received the receipts for £25. The claimant's case was that he did not breach the terms of his contract especially number 10 of his principal duties; the nine reasons given by the management committee for non-compliance did not have any supporting evidence and was in breach of natural justice; and that it was not a reasonable management instruction to submit copies of the certificates to the management committee because as the Imam he was responsible for ensuring confidentiality and guardianship of the certificates.
116. Mr Quinn found that although the claimant's contract does state that he was required to conduct the Nikah ceremonies and to issue formal marriage certificates, as well as maintaining and archiving records, that express contractual term did not prevent management committee from requesting sight of the certificates.
117. He agreed that the nine reasons given by management committee for the non-compliance did not have supporting evidence and that it could be construed as a breach of natural justice as the allegations were not put to him for a response. Mr Quinn, however, was of the view that the claimant had failed to comply with the requests. Concerns had been raised about the veracity of the marriage certificates, and the Trustees and management committee were not acting unreasonably in requesting that copies of the certificates should be disclosed to

them and that such disclosure would not be a breach of confidentiality or of the guardianship of the certificates.

118. In relation to the second allegation concerning required information on Friday, Wednesday and Sunday speakers, names, topics or themes of their talks for management committee's approval, it is recorded that the claimant accepted that management committee had made the requests and that he had not complied. He submitted that he had not been in breach as he was acting in accordance with number 11 of his principal duties; the six reasons given by management committee for non-compliance did not have supporting evidence and was in breach of natural justice; that he had responsibility for determining who was a suitable speaker; and that although management committee were responsible for matters of safety, only new speakers had to be risk assessed.
119. Mr Quinn concluded that number 11 of the claimant's principal duties states that he should liaise with the Education Secretary and Events Coordinator to arrange lectures once a month or at times when required. While his contract expressly stated that he would be responsible for arranging lectures, such an express provision do not prevent management committee, responsible for safety, from requesting confirmation of the speaker's name, topic and theme of their talk. Challenging the six reasons given by management committee for non-compliance, was only raised after finding that he had failed to comply. Although he had responsibility for determining who was a suitable speaker, management committee's responsibility for safety, did not prevent it from requesting confirmation of the speaker's name, topic and theme of their talk, and that all speakers should be subject to undergoing risk assessments.
120. In relation to the third allegation, the unauthorised use of letterhead and stamp, the claimant submitted that he had used the letterhead and stamp in his capacity as the Imam of the Mosque; that his use of them, he described, was personal; the six reasons given by the management committee for non-compliance were not supported by evidence and were in breach of natural justice; and management committee had no authority to compel him to resolve the disputed legal matter.
121. Mr Quinn found that no evidence had been produced to show that the claimant had used the letterhead and stamp in his personal capacity and not as Imam of the Mosque. The issue had been addressed as part of the earlier disciplinary process resulting in the management committee issuing a first and final written warning in the letter dated 12 September 2019. Although the allegation of breach of natural justice was raised after the finding of having failed to comply, he agreed that management committee had no authority to compel the claimant to resolve the legal dispute.
122. As regards the fourth allegation, that the claimant refused to allow management committee access to change the locks in his office as it was being accessed by an unauthorised person during his absence giving rise to confidentiality issues, it is recorded that the claimant had accepted that such a request was made but he failed to comply with it. He submitted that he had been assisted by Mr Sajid Mallal for many years and that he had used a key to access the premises for 4 to 5 years without him being present; no confidential documents were accessible in

the office; and he had never been told that Mr Mallal was not authorised to be there.

123. Mr Quinn found that as Mr Mallal was not registered as a volunteer, he would only be assisting the claimant personally. The management committee could not verify how long the volunteer had access the Mosque by use of a key without the claimant being present. Although it was assumed that confidential documents were accessible and compromised in the office, there was no evidence in support of this assertion. The claimant had been informed by email dated 5 October 2018, that Mr Mallal was no longer authorised to enter his office. As management committee had overall responsibility for the safety and security of the Mosque, it had the authority to prevent a volunteer from entry. Further, it had overall responsibility for the safety and security of the Mosque. As such, it was not unreasonable for it to request that the locks be changed.
124. In relation to matters pertaining to mitigation, Mr Quinn came to the conclusion that there were none. He recommended the following: –

“Recommendations

Having given full and thorough consideration to all the information presented based on the above findings, whilst there are valid points to the appeal, it has to be recommended that Imam Abdul Sattar appeal be denied and that the decision made by Hafeez Haroun Akhtar to dismiss Imam Abdul Sattar stands.

It is recommended that a copy of this report should be provided in its entirety to Imam Abdul Sattar.

It is understand that management committee’s decision in this matter will be final and that Imam Abdul Sattar will then have exhausted the appeal procedures.” (510 - 515)

125. Mr Bhamani wrote to the claimant on 20 April 2019, giving the appeal outcome. He stated:

“I write further to the appeal hearing held on Tuesday 09 April 2019. This was chaired by Paul Quinn an impartial consultant from Citation Ltd, who following the hearing provided me with a report containing various recommendations. Iqbal Mahmood (Treasurer-WCM Management Committee) was also present as the notetaker. I enclose a copy of this report for your information.

I have carefully reviewed this report and the minutes of the hearing. I have fully considered the submissions you made at this hearing and the findings and recommendations of Paul Quinn.

I agree with these findings and recommendations and for the reasons set out in the attached report have decided to deny your appeal. Therefore, the decision made by Hafiz Mohammed Haroon Akhtar (Management Trustee, WCM Management Committee) to dismiss you stands. This decision is final, and you have now exhausted the Wembley Central Masjid charity organisations appeal procedures.” (518)

Tablighi Jamaat

126. Much had been said about a religious sect called Tablighi Jamaat. Some people who attended the Mosque at the time of the claimant’s employment were

followers of that sect, including a few on the management committee. The claimant alleged that as he was sympathetic to the sect's followers, he did not subscribe to that belief. As most members of the management committee and the trustees were followers of the sect, they decided to target and victimise him in the hope that he would leave.

127. Questions were put to those who were on the management committee about whether they were followers of Tablighi Jamaat, and only a few said they were. They did not constitute a majority. Further, from reading the minutes of the committee meetings, this issue that the claimant was being persecuted by those who followed the sect, could not be found. If this was an issue those who followed the sect did not raise it at management committee meetings. Moreover, this assertion was not in the claimant's claim form and was raised for the first time in his and his witnesses' statements produced for the purposes of these proceedings.
128. I, therefore, find that the management committee was not motivated in their dealings with the claimant because he was not a follower of Tablighi Jamaat.

Mr Asif Uddin

129. Management committee, on 19 May 2018, decided that Mr Asif Uddin would no longer be allowed to deliver talks, speeches or sermons at the Masjid. He was sent an email stating that he had breached the speaker engagement policy, in that, his speeches may be viewed as politically inflammatory or inciting violence. (293 – 294)
130. Mr Uddin was resolute in his response. He stated that he had not breached the terms of the speaker's engagement policy. He replied to the management committee that as long as the claimant invited him to speak he would continue to do so. (296)
131. The claimant had been informed that Mr Uddin should no longer give talks, sermons or lectures at the Masjid, however, he permitted him to give a talk on 1 June 2018, which a member heard and complained about. (295)
132. Indeed, according to the respondent, Mr Uddin's continued to give talks in spite of being prohibited from doing so by the management committee.
133. He gave evidence and said that he had been attending the Mosque for seven years and delivered lectures at the request of the claimant since September 2014. He was also a worshipper at the Mosque. He began giving Friday sermons in September 2014 and became a regular speaker. He had to sign the speakers' engagement form and would check with the claimant two weeks prior to the event, the topics he would be speaking on. Even two days prior to his engagement he would have a further discussion with the claimant to ensure that the topics were not controversial. He also ran weekly Wednesday classes. He participated in inviting host speakers once a month to speak either on a Friday or Saturday evening. He stated that management committee was aware of his engagements and invited the Islamic Channel, a television channel, to film him delivering the Friday sermon on 20 April 2018 which was well received. He asserted that the speakers' engagement policy was not fit for purpose as the

management committee and the claimant were involved in the process, but the policy made no allowance for the resolution of any disputes between them.

134. He also believed that the claimant had been targeted by those who followed Tablighi Jamaat.
135. Defiantly, he said that if members of the management committee were of the view he could not engage in any lectures, they would have to prove it. He acknowledged that the management committee did instruct him not to speak at the Masjid, but maintained that if the claimant invited him to speak he was going to continue to do so. He also said that the management committee members were running the Mosque as a dictatorship.
136. I formed the view that he was a supporter of the claimant's position vis-à-vis the management committee and was very critical, even disrespectful, of the committee members and their role in the management of the Masjid.

#### The Charity Commission

137. As can be seen from the above findings, the Charity Commission had been involved in providing regulatory advice and guidance to the management committee. Mr Chris Sladen, Commission's Compliance, Visits, and Inspections Team, wrote to the committee on 20 March 2019, following his visit on 25 October 2018. He stated that the Commission had received a large amount of correspondence from members of the Masjid criticising its decision-making. He also received a smaller amount of correspondence from members of the Masjid who were in support of the trustees. The Commission's view was that it did not have the "discretion to overrule a charity's decision, validly taken within its powers, on the grounds that others take a different view, however strongly held." It would not become involved in respondent's internal disputes. Mr Sladen acknowledged that there had been improvements in the respondent's processes including speaker engagements and risk assessments, but questioned why Dr Lateef was considered a suitable speaker given the controversy connected with his speeches.
138. In relation to the election of trustees carried out on 18 March 2018, although not on time, "...the Commission has seen nothing that gives it particular cause for concern that a proper process was not carried out."
139. In relation to the respondent's Article 10 of the constitution that allows for disputes to be adjudicated by way of arbitration, it recommended that such a course of action should be considered first before legal proceedings. It was aware of an Order of the High Court in relation to dispute between the respondent and some worshippers and violence at the Masjid, and as it constituted "charity proceedings" consent from the Commission must be obtained before issuing proceedings.
140. Mr Sladen concluded by stating that the Commission was closing its engagement with the respondent on the basis that the predominant remaining regulatory concern was the internal dispute which it would not become involved. As the respondent has a clear provision for resolving disputes, it expects Article 10 to be followed. (504 – 509)



Nikah certificates

141. Under its constitution the management committee is responsible for the administration of Nikah ceremonies and must ensure that all the paperwork conforms to legal and immigration requirements, where applicable. Jointly with the Imam fees for the Nikah ceremony and the fee for the Imam would be set. Management committee retained the power to appoint a member to oversee the Nikah ceremony. (113, 115A)
142. I find that the Nikah ceremony, though religious, is not a legal marriage ceremony in this country.
143. One of the concerns expressed by the respondent during the hearing and at the time of the disciplinary hearings, was whether the claimant was complying with the Nikah requirements.
144. Mr Leuvon Van Per Leeuw gave evidence and said that he had arranged with the claimant in August 2017, a Nikah ceremony for Thursday 21 September 2017. It took place at 3pm on the agreed date. He and his wife supplied proof of identification and address, and the dowry was agreed. The certificate was not given after the ceremony, and on 20 November 2017, he sent the claimant a message for it to be posted to his address. He said that the claimant replied stating that he was out of the country and would return on 4 February 2018. On 20 February 2018, he was in the Wembley area and visited the Masjid to collect the certificate but it was not ready. He was told by someone attending to him at the time, that while putting the certificates through the printer one of the copies got damaged so the claimant printed a new copy which he signed and stamped and posted it to Mr Van Per Leeuw, on 5 March 2018 for he and his wife to sign and keep. The certificate did not arrive and upon enquiry with Royal Mail, Mr Van Per Leeuw was told that the letter was incorrectly addressed and returned. The claimant then prepared a new copy which Mr Van Per Leeuw collected in person in April 2018. He did not register the Nikah marriage with the local council. (344)
145. He was cross examined in relation to the certificate in the joint bundle dated 21 September 2017, which do not show his signature or that of his bride. The Wakeel is supposed to be a guardian present at the ceremony who then signs the certificate. Mr Mallal signed as the Wakeel for the bride describing his relationship with her as a “friend” but he did not know her. Mr Abdullah Abow was down as a witness for Mr Van Per Leeuw but he was not known to him. It was unclear to me why Mr Van Per Leeuw could not wait for a copy when he said he visited the premises on 20 February 2018.
146. A certificate purporting to be the original signed on the day of the ceremony, has Mr Van Per Leeuw’s signature, but I find that it is different from his signature on his witness statement. It also purports to show the genuine signature of Mr Mallal but the surname was spelt incorrectly, “MaLat”. (Claimant’s Supplementary Bundle)
147. Mr Van Per Leeuw said that he only became aware that the Nikah certificate was in issue when he was contacted by the claimant on 17 April 2019 and was told that his certificate was relied upon by the respondent as evidence against him.

Information about the certificate was also on social media and breached his right to confidentiality.

148. I found Mr Van Per Leeuw's evidence difficult to accept. He seems to have been the victim of an unfortunate series of mishaps. There are two certificates which, upon comparative analysis, raises questions about their authenticity and compliance with the Nikah requirements. Members of the management committee had reasonable grounds for believing that in some cases the Nikah ceremony requirements were not being followed.
149. From the evidence given, I do find that the certificate enables the bride and groom to use it for immigration purposes and where there are immigration restrictions they may be unable to register their marriage with their local council. They are important to a couple otherwise they would not incur the cost and time on going through a Nikah ceremony. The respondent required the checks carried out prior to the ceremony including the presence of the parties, and identification checks, and needed to know about the ceremony with its requirements and that there was proper oversight, Article 5.2(q).

### **Submissions**

150. On the last day of the hearing, there was insufficient time to hear submissions. It was agreed and ordered that submissions would be in writing and sent by 24 December 2020.
151. The parties complied with the order and produced very detailed, well-reasoned submissions supported by authorities.
152. I do not propose to repeat their submissions herein having regard to rule 62(5) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended. I have, however, taken their submissions into account in my conclusions.

### **The law**

153. Section 98(1) Employment Rights Act 1996 ("ERA"), provides that it is for the employer to show what was the reason for dismissing the employee. Dismissal on grounds of conduct is a potentially fair reason, s.98(2)(b). Whether the dismissal is fair or unfair having regard to the reason shown by the employer, the tribunal must have regard to the provisions of s.98(4) which provides:

"Where the employer has fulfilled the requirements of subsection (1), and 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 employees 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."

154. In the case of British Homes Stores v Burchell [1980] ICR 303, the EAT's judgment was approved in the Court of Appeal case of Weddel & Co Ltd v Tepper [1980] ICR 286. The following has to be established:
- a. First, whether the respondent had a genuine belief that the misconduct that each employee was alleged to have committed had occurred and had been perpetrated by that employee,
  - b. Second whether that genuine belief was based on reasonable grounds,
  - c. Third, whether a reasonable investigation had been carried out,
155. Finally, in the event that the above are established, was the decision to dismiss reasonable in all the circumstances of the case. Was the decision to dismiss within the band of reasonable responses?
156. The charge against the employee must be precisely framed Strouthos v London Underground [2004] IRLR 636.
157. Even if gross misconduct is found, summary dismissal does not automatically follow. The employer must consider the question of what is a reasonable sanction in the circumstances Brito-Babapulle v Ealing Hospital NHS Trust [2013] IRLR 854.
158. The Tribunal must consider whether the employer had acted in a manner a reasonable employer might have acted, Iceland Frozen Foods Ltd v Jones [1982] IRLR 439 EAT. The assessment of reasonableness under section 98(4) is thus a matter in respect of which there is no formal burden of proof. It is a matter of assessment for the Tribunal.
159. It is not the role of the Tribunal to put itself in the position of the reasonable employer, Sheffield Health and Social Care NHS Trust v Crabtree UKEAT/0331/09/ZT, and London Ambulance Service NHS Trust v Small 2009 EWCA Civ 220. In the Crabtree case, His Honour Judge Peter Clark, held that the question "Did the employer have a genuine belief in the misconduct alleged?" goes to the reason for the dismissal and that the burden of showing a potentially fair reason rests with the employer. Reasonable grounds for the belief based on a reasonable investigation, go to the question of reasonableness under s.98(4) ERA 1996. See also Secretary of State v Lown [2016] IRLR 22, a judgment of the EAT.
160. The range of reasonable responses test applies to the investigation as it does to the decision to dismiss for misconduct, Sainsbury's supermarket Ltd v Hitt [2003] ICR 111 CA.
161. In the case of Taylor v OCS Group Ltd [2006] ICR 1602 CA, it was held that what matters is not whether the appeal was by way of a rehearing or review but whether the disciplinary process was overall fair.
162. The seriousness of the conduct is a matter for the employer, Tayeh v Barchester Healthcare Ltd [2013] IRLR 387 CA.

163. The Court of Appeal acknowledged that employment tribunals are entitled to find whether dismissal was outside the range of reasonable responses without being accused of placing itself in the position of being the reasonable employer or of adopting a substitution mindset. In Bowater-v-Northwest London Hospitals NHS Trust [2011] IRLR 331, a case where the claimant, a senior staff nurse who assisted in restraining a patient who was suffering from an epileptic seizure by sitting astride him to enable the doctor to administer an injection, had said, “It’s been a few months since I have been in this position with a man underneath me” was the subject of disciplinary proceedings six weeks later. She was dismissed for, firstly, using an inappropriate and unacceptable method or restraint and, secondly, for the comment made. The employment tribunal found, by a majority, that her dismissal was unfair. The EAT disagreed. The Court of Appeal, overturned the EAT judgment, see the judgment of Stanley Burnton LJ, paragraph 13. See also Newbound v Thames Water Utilities Ltd [2015] EWCA Civ 677, in which the Court of Appeal held that the tribunal is required to consider section 98(4) ERA 1996, when considering the fairness of the dismissal.
164. The level of inquiry the employer is required to conduct into the employee’s alleged misconduct will depend on the particular circumstances including the nature and gravity of the case, the state of the evidence and the potential consequences of an adverse finding to the employee. “At the one extreme there will be cases where the employee is virtually caught in the act and at the other there will be situations where the issue is one of pure inference. As the scale moves towards the latter end, so the amount of inquiry and investigation which may be required, including the questioning of the employee, is likely to increase.”, Wood J, President of the EAT, ILEA v Gravett [1988] IRLR 497.
165. In addition, I have taken into account the cases of Ford v Libra Fair Trade [2018] UKEAT/0077/08/MAA; R Farnborough v The Governors of Edinburgh College of Art [1974] IRLR 245.
166. I have also taken into account the cases referred to by Mr Saeed.

## Conclusion

167. What was the reason for the claimant’s dismissal, British Home Stores? Having regard to the dismissal outcome letter sent to the claimant by Mr Akhtar, I was satisfied that the reason for his dismissal was conduct, in that, he failed to provide the Nikah certificates as requested by management committee; failed to provide the required information for Friday, Wednesday and Sunday speakers; used the respondent’s letterhead and stamp without authorisation, in his personal capacity, and refusing to resolve the legal dispute; and he refused to allow access to change the locks on the door to his office and allowing it to be accessed by an unauthorised person.
168. Had the respondent conducted a reasonable investigation into the above matters, British Home Stores? The claimant was invited to meet with Mr Jaan as part of his investigation into the allegations but failed to do so. In addition, he failed to attend the scheduled and rescheduled disciplinary hearings with Mr Akhtar. In all of this he wanted management committee to apologise to him and stated that he had already addressed the allegations in previous

correspondence. The claimant was given various opportunities to respond to the allegations but refused to turn up for the meetings.

169. I have to consider the evidence in possession of the respondent at the time the decision was taken to dismiss the claimant and were there reasonable grounds for believing in the claimant's guilt? The claimant called several witnesses to give evidence on his behalf during the hearing before me that they did not give evidence to either Mr Jaan, Mr Akhtar, or to Mr Quinn.
170. I was satisfied from the correspondence between the management committee and the claimant, that requests were made to the claimant to provide certificates; speakers information; the use of letterhead and stamp and to resolve the legal dispute; and to allow access to change the locks and not permitting Mr Mallal to use his office.
171. In relation to the Nikah certificates, it was a reasonable request that the claimant should forward the certificates to management committee as it was exercising its powers under Article 5.2(q) of the Constitution. In relation to Mr Van Per Leeuw's ceremony, management committee had concerns about the claimant's compliance with the Nikah requirements. The claimant was contractually required to follow reasonable management instructions.
172. In relation to the speakers' engagements and health and safety assessments, the claimant saw the first as his responsibility with the latter being the management committee's function. He did not believe that the management committee members were competent to carry out this function. He failed to comply with the instruction, and this had been his position even prior to the start of the disciplinary proceedings.
173. As regards the letterhead, stamp and legal issues, Mr Akhtar relied on what the claimant had stated, namely that it was his own personal matter but had used the letterhead and stamp in doing so. He was instructed to resolve the legal dispute by providing Mr Munawar with a witness statement but did not do so and relied on an earlier witness statement he had given.
174. There was no basis for Mr Akhtar finding that the witness statement was fraudulent that the claimant was going to benefit financially; and that he had something to hide.
175. In relation to allowing access to change the locks and not allowing Mr Mallal access to his office, the claimant failed to comply. Mr Akhtar concluded that anyone employed needed to be CRB checked and that Mr Mallal's access to personal information would be in breach of the data protection regulations. Mr Mallal participated in the protests outside the Masjid. This put management committee in a difficult situation as he had access to the office and to confidential information.
176. In the absence of the claimant's responses, Mr Akhtar had to rely on the information before him. He concluded that all the allegations have been substantiated. He considered the claimant's length of service, 20 years, but having regard to his first and final written warning on file which was still live, he came to the conclusion that his employment should be terminated and that he

should be paid 12 weeks' notice. The seriousness of the failures is a matter for the employer, Tayeh v Barchester Healthcare Ltd.

177. I was further satisfied that Mr Akhtar genuinely believed that the claimant was guilty of the allegations, and was not motivated by any extraneous factors, such as, the claimant not being a follower of Tablighi Jamaat, or the alleged breakdown in the relationship between Mr Bhamani, Trustee and Chairman, and the claimant. I do not accept that there was the evidential basis for taking the view that the claimant had something to hide and that he had engaged in counterfeit activities.
178. At the appeal stage, the claimant's solicitors having raised the issue of impartiality, the respondent decided to engage the services of Mr Paul Quinn, who had not previously been involved in the investigation and disciplinary proceedings involving the claimant. The claimant was represented by a senior member of Unite. Both made representations and Mr Quinn subsequently prepared his report. He recorded that the claimant made admissions to having failed to comply with management instructions. He concluded that three out of the four allegations should remain undisturbed but the allegation in respect of the letterhead, stamp, and resolving the legal dispute, should be allowed. He recommended that the grounds of appeal should be dismissed.
179. I do not find that Mr Quinn was in anyway influenced by any external factors only by the evidence and representation made during the course of the appeal hearing.
180. The same applies to the decision taken by Mr Bhamani, that the appeal should be dismissed.
181. If there were any procedural errors at the disciplinary stage they were resolved at the claimant's appeal, in that what he and his union representative had to say were considered in Mr Quinn's findings and conclusions. Overall, the disciplinary process was fair, Taylor v OCS Group Ltd.
182. Was dismissal within the range of reasonable responses? It is not my role to substitute my views for those of the respondent Sheffield Health and Social Care NHS Trust v Crabtree. I bear in mind that the respondent was seeking to comply with the obligations placed upon it as a charity following the regulatory guidance given by the Charity commission. It had to address the issue of speaker engagements and risk assessments as well as the process involved in obtaining valid Nikah certificates, amongst other matters. Mr Akhtar considered what would be a reasonable sanction and it was dismissal, Brito-Babapulle v Ealing Hospital NHS Trust.
183. As the claimant had been a long-standing employee and management committee members and trustees are up for regular elections, over time he felt that there should be minimal control over his work. The instructions given to him were reasonable management instructions consistent with management committee's duties and responsibilities. He was warned that failure to comply would lead to disciplinary action with the possibility of dismissal. He was emboldened by the fact that he was supported by a sizeable number of worshippers and some on the management committee. Having been warned of the possibility of dismissal

and having continued to fail to comply, taking into account the three matters undisturbed at the appeal stage and the fact that he was dismissed with pay in lieu of notice, it cannot be said that a reasonable employer possessed of the same evidence before it, would not have dismissed the claimant. Dismissal fell within the range of reasonable responses Newbound v Thames Water Utilities Ltd.

184. The effective date of dismissal was 1 February 2019.
185. It must be borne in mind that the situation in 2018 and 2019 was getting beyond control. There were regular protests outside of the Masjid involving the police. The Masjid was split between those who followed the claimant and those who supported management committee. Based on the evidence before me there was also a serious breakdown in the employee employer relationship which seemed to be irretrievable. Under those circumstances, it is difficult to see a way forward as attempts at trying to resolve matters informally had been rejected. At the end of the day management committee had to manage the Masjid. Even if the three reasons found at the appeal stage in support of the claimant's dismissal, did not apply, the apparent irretrievable breakdown in the relationship between the claimant and the management committee, would inevitably have necessitated the claimant's dismissal.
186. Accordingly, I have come to the that the claimant's unfair dismissal claim is not well-founded and is dismissed. Any hearing listed remedy is hereby vacated.

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**Employment Judge Bedeau**

19 March 2021

Sent to the parties on:

19 March 2021

For the Tribunal: