Case Numbers: 1600005/2020
& 1600072/2020

EMPLOYMENT TRIBUNALS

Claimants: (1) Prof M Clement
(2) Mr S Poole

Respondent: Swansea University

Heard at: Cardiff **On:** 6, 7, 8, 13, 14, 15, 16, 17 June 2022 and 20 June & 21 June 2022 (in chambers)

Before: Employment Judge S Jenkins

Representation

Claimants: (1) In person
(2) In person

Respondent: Mr J Laddie (One of Her Majesty's Counsel)

RESERVED JUDGMENT

The Claimants' claims of unfair dismissal fail and are dismissed.

REASONS

Background

1. The hearing was to consider the Claimants' claims of unfair dismissal, arising from their dismissals in July and August 2020 respectively. The claims were initially combined with a claim from a third Claimant, Mr Bjorn Rodde, which was withdrawn on the working day before the hearing commenced.

2. On behalf of the Respondent, I received evidence from Ms Diya Sen Gupta QC, independent counsel and Investigating Officer; Mr Bleddyn Phillips, previously a member of the Respondent's Council and currently its Chair, and Chair of the Disciplinary Panel; Prof Martin Stringer, Pro-Vice Chancellor and Chair of the Appeal Panel; and Mrs Sian Cushion, Director of Human Resources.

3. On behalf of the Claimants. I received evidence from the two Claimants themselves, and from Mr Raymond Ciborowski, previously Registrar and Chief Operating Officer; and Prof Richard Davies, previously Vice Chancellor.

4. All evidence was received in the form of written statements and answers to oral questions, with the exception of Prof Davies, who was not cross-examined.

5. I was provided with electronic bundles spanning 12,933 pages, and I considered those to which my attention was drawn. I was also provided with an agreed list of facts, an agreed chronology, and an agreed cast list.

Issues and law

6. The issues I had to consider had been identified at a preliminary hearing on 14 June 2021, set out in eight numbered paragraphs. In the event, only paragraphs 4 to 8 fell to be considered as the first three paragraphs related to Mr Rodde's claim of constructive unfair dismissal which had been withdrawn. Paragraphs 4 to 8 were as follows.

Unfair dismissal

4. Was the reason or the principal reason for the dismissal of the First Claimant and/or Second Claimant a potentially fair reason within s.98(2) ERA 1996?

5. If so, was the dismissal of the First and/or Second Claimant fair within the meaning of s.98(4) ERA 1996?

Remedy for unfair dismissal

6. What basic award is payable to each Claimant, if any?

7. Would it be just and equitable to reduce the basic award because of any conduct of any of the Claimants before the dismissal? If so, to what extent?

8. If there is a compensatory award, how much should it be? The Tribunal will decide:

a. What financial losses has the dismissal caused each Claimant?

b. Has each Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

c. If not, for what period of loss should the Claimant be compensated?

d. Is there a chance that any or all of the Claimants would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

e. If so, should the Claimant's compensation be reduced? By how much?

f. Did the Respondent unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures?

g. If so, is it just and equitable to increase or decrease any award payable to any of the Claimants? By what proportion, up to 25%?

h. Did any or all of the Claimants cause or contribute to their dismissal by blameworthy conduct?

i. If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?

7. The hearing was limited to liability only, and did not therefore address the compensation that might be awarded to the Claimants if their claims were successful. I did however indicate to the parties at the outset of the hearing that issues 8 d. and e. and 8 h. and i., i.e. the question of any "Polkey" or contributory conduct deductions, would be addressed in this hearing. In the event, in light of my decision on liability, the need to adjudicate upon those matters did not arise.

8. With regard to the liability issues, i.e. paragraphs 4 and 5, the first matter for me to consider was whether the Respondent, the burden being on it, could satisfy me that it had dismissed the Claimants for a potentially fair reason, i.e. a reason falling within sections 98(1) or (2) of the Employment Rights Act 1996 ("ERA"). In the case of both Claimants, the Respondent contended that the dismissals were by reason of their conduct, which falls under section 98(2)(b) ERA.

9. In relation to the reason for dismissal, the Court of Appeal made clear, in Abernethy v Mott, Hay and Anderson [1974] ICR 323, that the reason for dismissal is "*… a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee.*"

10. If I was not satisfied that the reason for the dismissals was the Claimants' conduct, the claims would succeed. If I was so satisfied, I would then need to go on to consider whether dismissals for that reason were fair in all the circumstances, within the meaning of section 98(4) ERA. That provides that whether a dismissal is fair or unfair. "*… depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating [the reason] as a sufficient reason for dismissing the employee*".

11. In relation to dismissals by reason of conduct, the approach to be taken by an employment tribunal is underpinned by two touchstone Employment Appeal Tribunal ("EAT") decisions of some forty years vintage; British Home Stores v Burchell [1978] IRLR 379, and Iceland Frozen Foods v Jones [1982] IRLR 439. The guidance provided by those two authorities was combined by the EAT in JJ Food Service Limited v Kefil [2013] IRLR 850, at paragraph 8, as follows:

"*8. In approaching what was a dismissal purportedly for misconduct, the Tribunal took the familiar four stage analysis. Thus it asked whether the employer had a genuine belief in the misconduct, secondly whether it had reached that belief on reasonable grounds, thirdly whether that was following a reasonable investigation and, fourthly whether the dismissal of the Claimant fell within the range of reasonable responses in the light of that misconduct.*"

12. That range of reasonable responses test was also directed to apply in relation to the consideration of the reasonableness of the investigation by the EAT, in Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23.

13. The appellate courts have also made clear, in many cases over many years, that an employment tribunal should take care not to substitute its decision for that of the employer, or to "step into the employer's shoes".

14. Finally, with regard to assessing the fairness of the dismissals, I would also need to be satisfied that appropriate procedural steps had been followed, in particular the relevant provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Findings

15. My findings, reached on the balance of probability where there was any dispute, in relation to the matters relevant to the issues I had to decide, are set out below. I have incorporated the relevant agreed facts within them.

16. I make one preliminary comment, and that is that the Claimants were essentially dismissed for failing to comply with the Respondent's conflict of interest policy in relation to two external projects, known as the Llanelli Wellness Village project and the Kuwait project. The Wellness Village project appears to have played a substantially larger part in the Respondent's decisions, and I heard and read very little evidence in relation to the Kuwait project. The focus of my findings therefore was on the Wellness Village, and I have made only passing reference to the Kuwait project.

Background

17. The Respondent is a chartered university, and both Claimants were employed by it up to their dismissals in 2020. The First Claimant, having previously worked for the Respondent, returned in August 2012. At the time of his suspension and subsequent dismissal, he was the Dean of the Respondent's School of Management. The Second Claimant commenced employment with the Respondent in October 2009, and at the time of his suspension and subsequent dismissal was Head of Innovation, Commercial and Business at the Respondent's School of Management, having taken up that position in December 2017.

18. At all relevant times, the Vice Chancellor of the University was Prof Richard Davies. At relevant times up to March 2018, the Registrar and Chief Operating Officer of the University was Mr Raymond Ciborowski. At relevant times from April 2018 onwards, that role was fulfilled by Mr Andrew Rhodes.

19. The Respondent encouraged its staff to go beyond their traditional academic roles, to be innovative, and to develop links with other organisations and institutions for its financial benefit. The School of Management, headed by the First Claimant, was in the vanguard of those activities.

Policies

20. The Respondent operated policies and procedures on conflicts of interest arising in relation to such commercialisation activities and the exploitation of intellectual property. The Conflict of Interest policy noted as follows:

> "*1.2. By performing external activities, a Staff Member may be placed in a position in which an outside interest may conflict, or appear to conflict, with University duties. Such conflicts arise because of the situation, and even though the Staff Member is acting objectively, neutrally and with professional integrity, it may still appear that his or her decisions are influenced by personal or economic interests.*
>
> *1.3. This Policy does not cast aspersions on Staff Members but provides a mechanism to protect their reputation by establishing an objective set of principles regarding the management of conflicts.*
>
> *1.4. The purposes of this Policy are to:*
>
> *(a) assist Staff Members in identifying Conflicts of Interest that arise in the areas of research consultancy and commercialisation of intellectual property;*
> *(b) provide guidance to those who review and manage Conflicts of Interest; and*
> *(c) incorporate transparency and probity in the management and resolution of Conflicts of Interest.*"

21. "Conflict of Interest" was defined in the policy as, "*an interest that has the potential to compromise or bias the professional judgement or objectivity of the holder of the interest, or has the appearance of having the potential to compromise or bias the professional judgement or the objectivity of the holder of the interest.*"

22. The policy noted, at paragraph 4.1, that a conflict of interest existed "*if a reasonable person (e.g. a manager, a student, a collaborator, a colleague, a member of the public, a research sponsor or a regulator) believes that the actions and judgements of the Staff Member are likely to be influenced by a Financial Interest or an External Appointment*".

23. "Financial Interest" was then defined as "*a financial interest of a Staff*

Member in the form of Payments, Investments, or IP Revenue, or the expectation or possibility of future Payments, Investments or IP Revenue; or a similar financial interest of a Related Party of the Staff Member, which is known by the Staff Member". The policy went on, in section 6, to deal with disclosures of financial interests and external appointments, requiring the Respondent's employees to make annual disclosures and specific disclosures of any financial interest and/or external appointment that were relevant to proposed or ongoing research, consultancy or commercialisation activity.

24. Clause 7 of the policy dealt specifically with commercialisation activities, noting that, "*Commercialisation activities are particularly susceptible to Conflicts of Interest because of the possibility of direct financial benefits accruing to Staff Members coupled with the potential use of public funding being used for improper personal gain*". The section went on to note that staff members were allowed to hold an investment in a university spin-out and to receive payments from the spin-out, but must disclose them, and also that staff members could serve as a director of a spin-out with the consent of the Director, subject to any specific special conditions imposed by the Director, and in compliance with other relevant university policies. The Director for the purposes of the policy was the Director of the Department of Research and Innovation, who at the relevant times was Mr Ceri Jones.

25. Clause 8 of the policy dealt with administrative staff, and noted that an administrative staff member should not hold an investment in, or receive payments from, an external entity established as a result of the administrative staff member's work in the University or which had a contractual relationship with the University related to research, consultancy, or IP commercialisation.

26. Clause 9 of the policy dealt with the management of conflicts, and noted that the Director had primary responsibility for the management of conflicts in research activity, with the staff member having the right to appeal the Director's decisions to a panel composed of a lay member of Council, a representative appointed by the President of the University and College Union ("UCU"), and a Pro-Vice Chancellor. The staff member was also able to request arbitration in the event that they alleged that the Respondent had not complied with the policy and procedures.

27. The Respondent's separate procedures for managing conflicts of interest echoed much of the policy. It also noted that, upon receipt of a specific disclosure, the Director should determine whether any further action was required, and noted that disclosures by themselves were often sufficient to allow the proposed activity to which they related to proceed. The procedures also noted that, unless formally nominated by the University, no administrative staff member should hold an external appointment in an external entity which was in a contractual relationship with the University with respect to commercialisation activities.

28. The Respondent's disciplinary procedures were set out within its Ordinances. They provided, at Stage 3, that where there was prima facie evidence of gross misconduct, then, before any decision was taken to proceed with formal action, the Vice Chancellor or Registrar was to designate another person to review the circumstances of the case, known as an "Investigating Manager". The Investigating Manager could be a member of staff, a lay member of Council or a person external to the University.

29. The Ordinances went on to say that the Investigating Manager should undertake such enquiries as he or she deemed to be appropriate with a view to obtaining information and assembling evidence as to the nature and likely causes of the alleged misconduct. He or she should normally interview the member of staff, and should report their findings to the Vice Chancellor or Registrar, who should determine whether or not there were grounds to indicate that an act of misconduct may have occurred. If there were such grounds, the Vice Chancellor or Registrar was to pass the matter to the Director of Human Resources, who was to write to the member of staff and invite them to a formal meeting of the Disciplinary Panel.

30. The Disciplinary Panel was to be made of up to three members, including a senior officer nominated by the Registrar as Chair, and up to two other members nominated by the Chair, who could be members of staff, members of Council or external members.

31. The Ordinances indicated that normally a unanimous decision would be expected to be reached by the Disciplinary Panel following a hearing, but that if unanimous agreement could not be reached, the decision was to be made by majority. The member of staff had the right to appeal against a decision made by the Disciplinary Panel.

32. Any appeal would be considered by a panel of up to three individuals, including a Chair nominated by the Registrar and two other members, nominated by the Chair, who could be members of staff, members of Council or external members.

33. The Ordinances also provided for employees to be suspended during the operation of disciplinary processes. They provided that where there was a prima facie case for action under Stage 3, which was the stage where there was prima facie evidence of gross misconduct, then the member of staff could be suspended on full pay by the Vice Chancellor, Registrar or Director of Human Resources.

<u>City Deal</u>

34. Turning to the factual background of the dismissals in this case, whilst the Claimants, together with Mr Rodde and Prof Davies, were suspended in November 2018, in circumstances arising from an investigation which had commenced a few weeks earlier, the genesis of the circumstances leading to the investigation, the Claimants' suspensions, and their ultimate

dismissals, arose much earlier.

35. In March 2017, as part of the Government's City Deal programme, a City Deal relating to the Swansea Bay region was concluded. It was anticipated that investments of up to £1.3 billion would be realised from the City Deal programme across the Swansea Bay region, made up of the local authority areas of Pembrokeshire, Carmarthenshire, Swansea, and Neath Port Talbot. The programme was to fund and develop a number of projects across the region, each project being led by one of the local authorities. One such project was the development of the Llanelli Wellness Village, falling within the Carmarthenshire County Council ("Carmarthenshire") area.

Llanelli Wellness Village

36. The proposed Wellness Village incorporated developments in the life sciences area, an area which formed part of the First Claimant's areas of academic expertise, and in which he had been active in relation to the development of commercialisation projects for many years.

37. The investment for the project was to come from the UK and Welsh Governments, and from Carmarthenshire, but the majority of funding, some 75%, would need to come from the private sector. Carmarthenshire, as the lead for the project, sought to procure that third party involvement.

38. One company which expressed an interest was Sterling Health ("Sterling"). This was a company, indeed a group or intended group of companies, owned by Mr Franz Dickmann, a life sciences entrepreneur, with whom the First Claimant had previously worked in relation to earlier projects. Indeed, the First Claimant had, for a time, been a director of one of Mr Dickmann's companies, Kent Neurosciences Limited.

39. Discussions ensued between Mr Dickmann and the First Claimant about the Wellness Village project, and the First Claimant assisted Mr Dickmann and the Sterling group in relation to their application to be part of the project. The Second Claimant and Mr Rodde were brought in to assist.

40. The Chair of the Respondent's Council, Sir Roger Jones, was aware of the project, and encouraged the First Claimant's, and the Respondent's, involvement with it as a way of generating income and wealth for the Respondent.

41. On 11 July 2017, Mr Dickmann sent to the First Claimant and Mr Rodde, the first document, in what ultimately was a series in excess of thirty such documents, setting out the corporate structure of a company called Sterling Health Security UK Limited and of various group companies. These included various boards of subsidiary companies and the advisers supporting them. This structure and those that followed, were largely aspirational, in that most of the companies appear never to have been incorporated, and the boards therefore were never formed. The document

contained a page, ostensibly showing the group's "Welsh Board", which had the First Claimant down as Chair, with the Second Claimant and Mr Rodde down as directors.

42. Mr Rodde replied to Mr Dickmann's email attaching the corporate structure, noting that it looked "great" and asking Mr Dickmann to make sure that he did not circulate the slide showing the Welsh board widely, "*for reasons you understand*".

43. There had been an earlier reference to the Wellness Village in December 2016, in the form of a summary business plan which was created by the Second Claimant. That related to a life science, wellness and social impact fund, which was designed to be set up to assist with the development of the Wellness Village, and also to invest in other such villages, which were anticipated to be set up in other parts of the UK in subsequent years.

44. Indeed, discussions with Mr Dickmann about the Wellness Village had taken place throughout 2016. These initially appear to have been undertaken in conjunction with Carmarthenshire, and in particular its Chief Executive, Mr Mark James. Mr Dickmann was supported in that by the Claimants and Mr Rodde, initially on the basis that a commercial agreement would be entered into between the Council on one side and commercial investors on the other. The support of major international companies such as Fujitsu and Siemens was sought, and funding was sought from major banks such as HSBC and Lloyds. Meetings took place with those organisations, principally involving Mr Dickmann, but involving the Claimants as well.

45. By about the middle of 2017 however, presumably on the basis of the size of the project, Carmarthenshire opened up a formal procurement process. On 18 July 2017, Mr Dickmann wrote to the First Claimant, referring to the Council's proposed procurement of the development partner for the Wellness Village having come to his attention. Mr Dickmann noted that Sterling had every intention of bidding, and that the procurement documents suggested that engagement with key local stakeholders was essential. He asked if it would be possible for he and the First Claimant to meet to discuss the University's involvement in the hope that it would like to engage. The email noted that Mr Dickmann realised that the University would have to engage with other potential bidders who might also approach them regarding the project.

46. The email had obviously been created to present a picture to others that Mr Dickmann and the First Claimant/the University were operating at arm's length when they had been working on the project for some time. It subsequently transpired, due to the discovery of a draft of that communication on a USB pen drive in the First Claimant's office during the investigation following his suspension, that the draft of that document had in fact been created by the First Claimant.

47. Sterling was one of several bidders to become the development partner, but ultimately only Sterling was considered qualified to be invited to proceed to the competitive dialogue stage of the procurement process. By that stage, it had become clear that the Respondent was to become involved in the project, albeit not as a funder, but in terms of operating both an Institute of Life Sciences and an Education Centre, which were proposed to be created as part of the Village.

48. The Council noted that the two Claimants were involved in assisting Sterling in the competitive dialogue process. Indeed, they both attended in November 2017, along with Mr Rodde, at a meeting of the evaluation board for the project, which ultimately led to the identification of Sterling as the sole potential partner. Consequently, a protocol was put in place in relation to the project, ensuring that information regarding the procurement process provided to the Respondent would not be provided to the Claimants.

49. Also in November 2017, in a further document produced by Mr Dickmann in relation to the project, for what was described as "The Welsh Project", in a diagram of what was described as the "Shadow Board", the First Claimant was recorded as Executive Chairman, Mr Raymond Ciborowski was recorded as CEO, and Mr Rodde was recorded as CEO (Wales). The Second Claimant was recorded as Finance Director, as was the Finance Director of Carmarthenshire, and as was the Chief Executive of Carmarthenshire, Mr James.

50. By 29 November 2017, a further version of the corporate structure produced by Mr Dickmann noted the intended equity distribution of the main Sterling company. This was split into three categories; Individuals, Companies and Institutions. In the Individuals column, the Second Claimant was stated to be allocated 5% of the equity, with Mr Ciborowski 2% and Mr Rodde 1%. In the Institutions column. Swansea University was specified as holding 7.5% of the equity, with 17.5% being specified to be held by an unspecified Trust. No reference at this stage was made to any equity holding, whether individually or as part of a trust, on the part of the First Claimant. The proposed shadow board again repeated the inclusion of the two Claimants and Mr Ciborowski, their roles all being stated to involve acting "*for and on behalf of Swansea University*".

51. On 12 December 2017, Mr Dickmann wrote to the Second Claimant with an offer of employment. No evidence was available as to how the letter reached the Second Claimant, as it was only discovered as a saved document on the hard drive of his laptop computer. The Second Claimant accepted in his evidence however, that it was likely to have been received by email or by download from a USB drive; he accepted that the document did not appear to be a scanned version of a hard copy.

52. By this stage, the Second Claimant was undertaking communications in relation to the Wellness Village project via a personal, “iCloud”, email address and not via his Swansea University address. He indicated in his

oral evidence that he did so due to the quantity of emails he was receiving in relation to the project and its advanced stage. He only disclosed some 76 emails he had sent from this iCloud account, noting that he had been unable to access that account since July 2019. Ultimately, therefore, the principal documentation available in relation to the Second Claimant's role in the project arose where he was copied in to emails received by other of the Respondent's employees, mainly the First Claimant, who continued to use his University email address throughout.

53. The letter from Mr Dickmann to the Second Claimant was headed "subject to contract". In it, Mr Dickmann noted that he would like to confirm the Second Claimant's appointment as Group Chief Financial Director of Sterling Health Security Holdings Limited. The proposed salary was stated to be £150,000 per annum, with achievement bonuses of 3% of the Company's profits. Benefits were stated to include 5% of the equity of the company and an option to pre-purchase a five bedroom-executive home at £270,000, the commercial value being £430,000. That home would be available as part of some housebuilding which was to be encompassed within or alongside the Wellness Village.

54. There was no evidence of the Second Claimant's response to this offer. His indication in evidence was that, as it seemed to be an unrealistic offer and therefore one which lacked credibility, he ignored it.

55. At very much the same time, the Claimant was appointed to the new role of Head of Innovation, Commercial and Business at the Respondent's School of Management, effective from 15 December 2017. As part of that, his line manager became Mr Peter Mannion, the Associate Head of the School of Management.

56. By late 2017 and early 2018, the Respondent had set up a Strategic Opportunities Programme Board to assess and manage significant projects with which the Respondent was to be involved. It was intended that the Board would look at projects at a relatively early stage, and examine them with a view to them being presented to the Respondent's Finance Committee, and then to its Council, for approval.

57. Mr Rob Brelsford-Smith, the Respondent's Finance Director, was a member of the Board. He became aware of the Wellness Village project in late 2017. A meeting then took place on 11 January 2018 in order for Mr Brelsford-Smith to gain an understanding of the project. Present at the meeting were Mr Brelsford-Smith, Mr Dickmann, Mr Dickmann's wife, Phyllis Holt, who was also an active participant in the project on the Sterling side, and the Second Claimant.

58. Mr Dickmann had with him a file of documents, and on one of them Mr Brelsford-Smith was able to see an equity schedule, in which he recognised the names of Mr Ciborowski and the Second Claimant. During the meeting, Mr Dickmann expressly identified that those two would receive a share in

the equity of the project because of the work they had done in getting the project to that stage. Mr Brelsford-Smith informed Mr Dickmann that University employees could not accept any reward for their efforts.

59. Mr Brelsford-Smith then spoke to Mr Ciborowski on 15 January 2018 about the conversation with Mr Dickmann and the reference to potential equity holdings. Mr Ciborowski denied any knowledge of any offer of a shareholding, and suggested to Mr Brelsford-Smith that he should declare any potential interest. In a subsequent conversation the following day, Mr Brelsford-Smith and Mr Ciborowski discussed that the Second Claimant should similarly prepare his own declaration of interest and provide that to his line manager, the First Claimant. I observed that the First Claimant was not, in fact, the Second Claimant's line manager, but was his line manager's line manager.

60. Mr Brelsford-Smith spoke to the Second Claimant about the issue by telephone on 18 January 2018. The Second Claimant similarly denied accepting any benefits from Mr Dickmann, or agreeing to any future benefits, and confirmed that he was happy to prepare his own declaration to go to the First Claimant.

The Second Claimant's declaration

61. That declaration was produced by the Second Claimant in two forms. One was a letter dated 15 January 2018 to the First Claimant, noting that he had been supporting the Wellness Village for some nine months, and that recently Sterling had approached him, enquiring as to whether or not he might be interested in future employment, which would be rewarded through salary and equity. He confirmed that he had made it clear that he saw his career for the foreseeable future as an employee of the Respondent and that he would not allow such conversations to influence his judgement and would ensure that all times he discharged his duties in the interests of the Respondent.

62. The second method was a formally completed declaration of interest form, into which the Second Claimant had clearly cut and pasted the content of the letter. The Respondent had, in fact, had an online system of declaring interests which had not been operative for some time. However, the Second Claimant had found the form and completed it.

63. He signed and dated the form, 15 January 2018, and it was subsequently countersigned by the First Claimant, who also dated it 15 January 2018. However, the first indication of the document being circulated within the Respondent was an email of 22 January 2018 from a finance assistant at the School of Management to the First Claimant, attaching the declaration of interest. On 24 January 2018, the email was then forwarded by the First Claimant's PA to Mr Brelsford-Smith.

64. Both Claimants contended that the declaration was signed by the Second Claimant, and countersigned by the First Claimant, on 15 January 2018.

The Respondent contended that it had not been signed on that day but had been signed subsequent to the conversation that the Second Claimant had had with Mr Brelsford-Smith on 18 January 2018, but had been dated earlier to try to demonstrate that it had been completed prior to that conversation. The Second Claimant had however, referred, in a written submission he made to the Appeal Panel, which considered his appeal against dismissal, that he had made the declaration following his conversation with Mr Brelsford-Smith.

65. On balance, it seemed likely to me that the declaration had been signed after the conversation on 18 January 2018, i.e. that it had been backdated. I recognised that it was possible that it had been triggered by the meeting on 11 January 2018, and the discussion about equity holdings in that meeting, but I considered that the reference made by the Second Claimant himself in his document submitted to the Appeal Panel indicated that it had been completed after the conversation with Mr Brelsford-Smith on 18 January 2018.

66. The declaration was not forwarded to Mr Mannion, by then the Second Claimant's line manager, but Mr Mannion confirmed, in his interview with the Investigating Manager during the investigation process, that he had been told by the Second Claimant that he had been made an offer by Mr Dickmann, but had not been aware of the details of it. Mr Mannion confirmed that, later in 2018, the Second Claimant's interest in working for Mr Dickmann had "*waned*".

Further communications between Mr Dickmann and the Second Claimant

67. In April 2018, Mr Dickmann and the Second Claimant exchanged emails regarding the preparation of a business plan by the Second Claimant in relation to the Wellness Village. Mr Dickmann sent an email to the Second Claimant on 21 April 2018 noting that he needed the business plan within the next couple of days. He then concluded his email by saying that he had asked the Company's lawyers to state in the Second Claimant's contract of employment that, within two to three years, he would become the CEO of Sterling Health Security Holdings. He referenced that as having been discussed and agreed in a conversation between the two of them and the First Claimant. Mr Dickmann also noted that the role would start with a salary of £250,000 per annum.

68. The Second Claimant responded on 23 April, providing the business plan, but he made no reference to Mr Dickmann's concluding comments about the role of CEO.

69. Mr Dickmann then sent the Second Claimant a further letter on 1 May 2018, updating the letter he had sent to the Second Claimant in December 2017. Similar to that letter, the letter was found as a saved document on the Second Claimant's laptop, with no evidence in existence as to how it came to be there. Again, the Second Claimant accepted that he would either have downloaded it as an attachment to an email or from a USB drive. He

again confirmed that it did not appear to be a scanned version of a hard copy document.

70. The letter was in very similar terms to the December 2017 letter. The only differences being that a question mark was included for the percentage of bonus available referable to profits, and the inclusion of a paragraph referencing that it had been agreed that, after two to three years, when the current CEO retired, the Second Claimant would become the Chief Executive of Sterling Health Security Holdings Limited, with a salary of £250,000 per annum.

71. There was no evidence of the Second Claimant communicating with Mr Dickmann in respect of that revised offer, and nor did the Second Claimant make any further declaration of interest. The Second Claimant's indication in his oral evidence was that, as the offer essentially replicated the offer made in December 2017, and was more unrealistic and lacking in credibility, he did not see a need to provide any further declaration.

Further corporate structures and communications

72. Several further documents were produced by Mr Dickmann in April, May and June 2018, which, in relation to equity distribution, repeated the anticipated allocation of 5% equity to the Second Claimant, 2% to Mr Ciborowski and 1% to Mr Rodde. The Respondent's equity was also recorded as 7.5%, with a significant part of the equity, varying in size, but usually around 50%, being allocated to a "Trust".

73. No indication was given as to any equity entitlement of the First Claimant, until a version of the document produced on 29 May 2018, which showed that the Trust would hold 48.5% of the equity; Mr Dickmann and Mrs Holt being described as holding 24.5%, and the First Claimant being described as holding 24%. Subsequent iterations of the document showed a similar proposed share of equity.

74. The 29 May 2018 document also showed, within a diagram of the Executive Board of the company, that the First Claimant would be its Vice-Chairman and would receive a salary of £85,000 per annum, and that the Second Claimant would be the Group Finance Director with a salary of £150,000 per annum.

75. On 1 May 2018, Mr Dickmann sent to another proposed participant, Mr Steve Westaby, a cardiologist, the proposed corporate structures and equity position of Sterling and the Llanelli Wellness Village project. Mr Westaby replied to Mr Dickmann saying, "*Franz just one question. Do Marc C* [i.e. the First Claimant] *and I have equity in Llanelli? We don't appear to be included in the list. Are we included in the Trust.*".

76. Mr Dickmann replied, saying that the First Claimant was included in the Trust, but that Mr Westaby and his son/daughter would be included in other

projects. Mr Westaby replied saying that that was a "*little disappointing*" because the other project was not on the starting blocks, and he had introduced Mr Dickmann to the First Claimant and the Welsh project in the first place. He pointed out that he had also attended the initial start-up meetings with Carmarthenshire, and that, without all that, Sterling would never have been involved. He concluded by noting that several of the original members had been given equity in Wales, "*but not the guy who kicked it all off.*". Mr Westaby subsequently forwarded that email exchange to the First Claimant, but there was no evidence of any response from him.

77. On 25 May 2018. Mr Dickmann sent an email to the First Claimant and Mr James with a revised corporate structure and equity distribution. In that he stated "*I am delighted that the University is content, as we at Sterling are; we are now truly a partnership which is splendid.*". That document again showed the First Claimant as Vice-Chairman and the Second Claimant as Group Finance Director, albeit without reference to salaries. It also repeated the individual anticipated equity holdings, including 5% for the Second Claimant, and a holding of 53.5% for a Trust, albeit without any reference to the make-up of the entitlements within the Trust. A slightly later version of the structure, circulated by Mr Dickmann on 1 June 2018, noted that it was proposed that 24% of the equity be held in a trust for the First Claimant.

78. On 26 June 2018, the First Claimant and Mr Dickmann exchanged further emails. Mr Dickmann first wrote to the First Claimant, noting that he had spoken to his corporate solicitor to seek his counsel on the following: "*You wrote and stated that the equity you hold within the Sterling Group is in your name, but your stated intention is to employ the benefits and proceeds to benefit the West Carmarthen and West Wales Community.*". He noted that the advice had been that that was entirely possible and could be considered as a "Sincere Intent" or as a "Trust". The First Claimant, then replied, thanking Mr Dickmann for speaking to the lawyer and saying, "*Of course I would like to keep some benefit for my family but also ensure benefit for my home region. The Sincere Intent sounds perfect.*".

79. On 10 July 2018, Mr Dickmann sent an email to a number of people, including the two Claimants, Mr James and two other executives of Carmarthenshire. He noted that he attached what he hoped would be the final version of the boards of the various companies. He also noted that his assistant would forward consent to act as a director forms to those who had not already received a copy, and that an early return of the form would be most appreciated.

80. Soon after, Mr James sent an email to the other three Carmarthenshire executives, copied to the First Claimant, noting that he thought that Mr Dickmann's email was "*a little premature*". He noted that there would be detailed discussions over the appropriate vehicle moving forward, and that it would not be appropriate at that stage for any Council officer to become a director of a private company with whom they were still in discussion as to the final development agreement. With reference to the First Claimant, Mr James noted that he copied him in as he suspected that the University may be in the same position.

81. The First Claimant replied to Mr James only, noting that he had spoken to Mr Dickmann following his email. He said,

"*You and I have been very consistent in our clear instruction to Franz that no University or CCC employees should be Directors of any of the Sterling companies for the time being.*

"As the discussions progress in the weeks to come, this might change as our respective organisations might become stakeholders in emergent structures.

"I was very clear and robust with Franz during the conversation. I know you have been equally adamant on these and related issues and I sincerely hope that he now understands.".

82. On 6 July 2018, Carmarthenshire, Sterling Health Security Holdings Limited and the Respondent entered into a collaboration agreement relating to the development of the Llanelli Wellness and Life Science Village. Amongst other things, the agreement noted, at clause 17, that the parties would work together to agree the formation of the Wellness Company and, once agreed, would enter into such documentation as would be necessary to establish the Wellness Company and its constitution, allocate shareholdings, appoint officers and take all other necessary actions. Clause 18 then noted that all such documentation, and the terms thereof, would be subject to the agreement of the parties.

83. Clause 19 noted that the Council and the University would be entitled to a shareholding, in a proportion to be agreed, of the total issued share capital of the Wellness company, and clause 20 provided that the Council and the University would be entitled to appoint one director of the Wellness company.

84. On 12 August 2018, Acuity Legal Limited, a firm of solicitors, produced an advice note, for and on the instructions of Carmarthenshire, in relation to the establishment of three project companies for the delivery of the Wellness Village project. The note advised that the stakeholders, i.e. Carmarthenshire, the Respondent and Sterling, would establish new corporate vehicles for the project in the form of companies limited by shares; a holding company, a property holding company and an operating company.

85. It was noted that it would not be advisable for Carmarthenshire to receive shares in any existing companies which Sterling may have established because those entities may have historic liabilities which the Council could inadvertently step into by acquiring shares in those entities. It was also noted that, by setting up new companies, they could ensure that the companies were "clean" at the outset, so as to offer the best protection for Carmarthenshire.

86. The note also advised that a shareholders' agreement should be entered into to regulate the internal relationship between shareholders, within which it would be important for the Council to retain a veto on key decisions so that Sterling did not take actions unilaterally.

Governance/due diligence

87. In terms of governance and due diligence of the project, Ken Blackie, Programme Manager for Strategic Development, wrote to the Second Claimant on 23 January 2018, referring to a meeting the previous day. He attached a project initiation form together with some guidance notes. The First Claimant was also copied in on this email.

88. The email went on to say that the next available Strategic Development Programme Board would be on 11 April 2018, and Mr Blackie suggested that they work towards having both of the City Deal projects, i.e. the Wellness Village and Kuwait, tabled at that Board. The Second Claimant was invited to go back with any questions so that the Board could guide him further on what would be expected.

89. Neither project was tabled at the 11 April 2018 meeting or at any subsequent meeting, nor were any further questions asked of Mr Blackie. No presentation of the projects to the Strategic Opportunities Programme Board ever took place.

90. On 2 October 2018, a board meeting of Swansea Innovations Limited ("SIL") took place. That is a company which manages spin outs from the Respondent, and joint ventures with third parties regarding commercialisation of the Respondent's activities. The First Claimant was a director of SIL at the time.

91. The First Claimant presented a paper to the Board regarding the Wellness Village project. He noted the background to it, and the role of the Sterling consortium, and he recommended that the SIL board allow the project team to continue discussions, led by the First Claimant and his team, including on matters relating to financial planning and potential equity ownership. The First Claimant recommended that the SIL board should concurrently report the project to the Respondent's Finance Committee and request guidance regarding the reporting requirements relating to the project as it matured. Finally, the First Claimant recommended that he should report on progress to the SIL board at the next meeting, and should keep the Chairman of the board informed of developments as they occurred. There was reference in the First Claimant's presentation to an equity holding on the part of the Respondent, although no reference to the amount of equity to be held was made. There was no mention of any proposed trust holding of the First Claimant's.

92. The First Claimant's paper, together with another paper on the Kuwait project, was discussed and referred to in the minutes of the SIL board

meeting under a section entitled, "*Matters arising not otherwise on the Agenda*". It was noted that the First Claimant discussed his paper and sought approval to continue talks with relevant involved parties, but that the First Claimant had been asked to attend the Finance Committee to discuss the projects, and to discuss them with the Major Project Approval Committee. The minutes recorded that the First Claimant noted that he required an answer from Finance Committee by 8 November 2018.

93. Following the meeting, Mr Brelsford-Smith wrote to the First Claimant, thanking him for taking the SIL board through the key elements of the two initiatives. He noted that, as discussed, he would like the opportunity to demonstrate that they could provide the necessary assurance to Finance Committee and the Innovations Board in a timely manner so that the initiatives could be progressed. He noted that, to that end, he had discussed the outline proposals with Prof Steve Wilkes, the chair of the Strategic Opportunities Programme Board, and that both were committed to responding quickly but effectively. Mr Brelsford-Smith noted that he would like to arrange a meeting to progress due diligence in accordance with the Respondent's portfolio management approach, to identify key issues for discussion which would help to determine the action plan and arrive at the end game of what needed to be recommended to the Finance Committee, which was due to meet on 8 November 2018.

The First Claimant's declaration

94. Following that meeting, and the email from Mr Brelsford-Smith, the First Claimant sent, on 3 October 2018, a revised declaration of outside interests to Mr Mannion and, separately, to Mr Ceri Jones. In these, he noted that the Respondent's systems had changed and that he was unable to retrieve the current copy of his declaration. He noted therefore that he wrote to Mr Mannion, as Associate Head of College, so that he might make a file note of his email and his appended current declaration. He wrote in similar terms to Mr Jones, who was the person to whom the declaration should have been sent under the terms of the Respondent's policy and procedure.

95. The declaration was recorded as being as at 11 September 2018, and included a number of current and previous interests. The First Claimant's explanation for the delay in circulating the declaration between 11 September and 3 October 2018 was that he had provided it to his PA in order for her to undertake checks to ensure that his various interests, current and previous, were accurately recorded.

96. In relation to the two City Deal projects, the First Claimant reported as follows.

- "Llanelli Wellness Village – emergent corporate structure, potential directorships (representing SU)
- Kuwait initiative – emergent corporate structure, potential directorship (representing SU)."

97. No reference was made to any potential equity interest, whether individually or in Trust. The First Claimant's explanation for that when giving oral evidence was that he had felt the reference to an "emergent corporate structure" at a point where that structure was not fully confirmed, encompassed a reference to possible equity holdings.

Trust references

98. On 11 September 2018, an internal email between the Partner and Senior Associate at the firm of solicitors advising Sterling referred to the fact that, as part of the Wellness Village project, the First Claimant was to receive shares in the holding company, and wanted to settle those shares on a trust for community benefit. It was noted that Mr Dickmann would like a meeting with the First Claimant in London on 4 October 2018 to discuss how any trust might work, but that the Partner was unable to attend. He asked the Senior Associate to attend in his place.

99. On 22 October 2018, an Associate at the solicitors acting for Mr Dickmann and Sterling, wrote to him, attaching a report setting out a summary of her advice. That summary was not before me, but an email was sent by Mr Dickmann to Mr James on 24 October 2018, forwarding the report and stating, "*The attached is good news and meets our needs.*". Mr James then emailed the First Claimant, it was unclear as to whether the First Claimant had been copied into Mr Dickmann's earlier email, noting that he thought he would share a few thoughts on it. Mr James stated as follows.

> "*Under this discretionary Trust, there is no absolute guarantee that you or I would actually ever get the shares, as the Trustees have complete discretion who they give them to. So I suspect it would not provide any assurance for the future.*
>
> *"This might be resolved by a separate document from the Trustees (Franz and Phylis) creating in essence a Secret Trust in favour of us. Or a self declared Trust eg that they hold in favour of us and all we have to do is to take up the positions of Chair/CEO within a set period.*
>
> *"This is what one might term the second-best legal option.*
>
> *"Alternatively we can go back to the solicitor for further advice on how to ensure legally that the intended shares do come to us as soon as we crystallise a particular requirement eg taking up the posts.*"

No evidence of the First Claimant's response was before me.

100. Also on 22 October 2018, Mr Dickmann sent to the First Claimant and Mr James, a revised document which he entitled "A*greed Corporate Structure*", including what he referred to as, "*…the stated personalities whom we have agreed will run and manage our business, under the supervision of the Holding Company to whom they all report*". He went on to state that it had been agreed to incorporate the new companies by October/November 2018, including the registration of all directorships in all companies.

101. The structure continued to refer to the First Claimant as Vice-Chair representing Swansea University, and also included Mr James as Vice-Chair representing Carmarthenshire. The Second Claimant was recorded as a non-executive director representing Swansea University, with Carmarthenshire's finance director also recorded as a non-executive director.

102. In terms of proposed equity distribution, the Second Respondent's proposed share had reduced to 4.5%. Only a total Trust equity holding of 52% was given, which was subdivided as to 17.4% for a "*Dickmann Trust*", and as to 34.6% for "*Executive provision*". A very similar document, containing the same positions and equity information was produced by Mr Dickmann on 2 November 2018.

103. Also before me from this period was a handwritten note from the First Claimant's notebook, which indicated that it had been made on 7 November 2018 whilst the First Claimant was at Kuwait airport. It briefly recorded the corporate structure as outlined by Mr Dickmann in his various documents, with "SL-S", referencing Sterling Life Sciences as a holding company of three subsidiaries.

104. It was noted that the shareholdings in SL-S would be split into three, with one third being held by each of Carmarthenshire and the Respondent and with the final third being split into four parts, between: individual shareholders, funding investors, "F/PH", which the First Claimant in his evidence accepted was likely to have referred to the Dickmann/Holt family trust, and with the final section entitled "T", referencing a Trust.

<u>The trigger for the disciplinary investigations</u>

105. In October 2018, the Respondent underwent its regular annual audit procedure, conducted by PriceWaterhouseCoopers ("PWC"). During that procedure, PWC identified what was felt to have been an irregular payment made in connection with a settlement agreement between Mr Ciborowski and the Respondent, which had been entered into in September 2017 in relation to his retirement from the Respondent, in circumstances where he was immediately to take up a part-time advisory role.

106. During its investigation into that issue, the Respondent became aware that Mr Ciborowski had sent, just before his employment ended, a number of emails from his University email address to a personal address. Amongst these was a communication between Mr Ciborowski and Mr Dickmann regarding a job offer and equity share for Mr Ciborowski in Sterling. Further investigations then led to the discovery of other email communications between Mr Dickmann and the two Claimants and Mr Rodde.

107. As a result of that, the Respondent engaged Allen & Overy LLP, a London-based firm of solicitors, to conduct a privileged investigation, in relation to which privilege was not waived, and therefore any report arising from that

investigation was not before me. The Respondent undertook electronic searches of accounts relating to several employees and former employees, and over 1.4 million unique documents were identified as being potentially relevant. In order to make their investigation more proportionate, Allen & Overy undertook a number of searches, using a range of search terms over a number of stages. That led to Allen & Overy reviewing approximately 23,000 documents.

108. As a result of its investigation, Allen & Overy reported matters to the Serious Fraud Office ("SFO") on 16 November 2018 as a potentially serious fraud and corruption matter. In the event, the SFO did not consider that it should investigate matters, but that instead the issue should be investigated by an appropriate local force.

Suspension

109. Mr Rhodes, as the Registrar and Chief Operating Officer, had been keeping some five or six members of the Respondent's Council aware of the issues that had arisen and which were being investigated by Allen & Overy. By late November 2018, this group, having been advised by Mr Rhodes, who in turn had been guided by the SFO, reached a position where it was decided that it would be appropriate to suspend the individuals involved. Meetings then took place with both Claimants, Mr Rodde and Prof Davies, separately on Friday, 23 November 2018, attended in all cases by Mr Rhodes, supported from an HR perspective by Mrs Cushion. Both Claimants were told that matters relating to them were to be investigated under the University's Ordinance relating to conduct and discipline.

110. Both Claimants were told that the investigation would consider if there was any evidence that:

(i) "*a serious breach of the University's codes of conduct, regulations, rules, policies and ordinances constituting gross misconduct has taken place; and/or*

(ii) *a fundamental breach in the relationship of trust and confidence constituting gross misconduct has taken place*."

111. They were advised that Mr Rhodes was of the view that the matter fell within stage 3 of the conduct and disciplinary procedures, i.e. that it related to matters which may amount to gross misconduct, and that a finding of gross misconduct could result in a sanction up to and including termination of employment being imposed.

112. In each case, Mr Rhodes summarised some of the core information which suggested that misconduct had occurred, and the Claimants were invited to comment. Both strenuously denied any wrongdoing. The First Claimant stated that he had no equity or promise of equity in relation to the Wellness Village. When shown a chart with a reference to "*24%*" equity against his name, the First Claimant noted that he had no editorial control over the documents produced by Mr Dickmann. When shown his email to Mr Dickmann, stating that he would like to keep "*some benefit"* for his family,

the First Claimant stated that he had not sent that response.

113. Both Claimants were then suspended on full pay and were required to return any equipment, such as laptops and mobile phones, which had been provided to them by the Respondent for their work. Both did so, although the First Claimant had not been provided with a mobile phone by the Respondent and he therefore retained his phone.

114. Whilst the Second Claimant provided his phone, he confirmed in his evidence that, recognising that his phone would be examined and that it contained a great deal of personal information, including family photographs and personal messages, he took the decision to return the phone to its factory settings, i.e. effectively to wipe it. He did that a few days after the suspension. He did not inform anyone at the Respondent that he had done so, not even when subsequently asked to provide the PIN or password to enable the phone to be accessed, only replying that he had forgotten it. The return of the phone to its factory settings only became apparent when the police later forensically examined it.

115. Following the suspensions, on Monday 26 November 2018, the entire Council was informed of the steps that had been taken with regard to investigation and suspension. An internal announcement was also made to the Respondent's staff, noting that the Vice Chancellor and Dean of the School of Management, i.e. the First Claimant, had been suspended, as had two other members of staff at the School of Management, although they were not named. The announcement, from Mr Rhodes, noted that, as set out in University Ordinances, he would carry out the functions of the Vice Chancellor in the short term. At this time, the Respondent had already taken steps to implement a recruitment process for a new Vice Chancellor, on the understanding that the existing Vice Chancellor, Prof Davies, would be retiring in the near future.

Formal investigation

116. In December 2018, the Respondent appointed, via Allen & Overy, Ms Diya Sen Gupta, QC, an external and independent barrister, as Investigating Manager to investigate the Claimants' conduct. She was also appointed to a investigate the conduct allegations in relation to the two other suspended employees, and to investigate a grievance brought by the First Claimant. She attended a briefing meeting on 5 December 2018, with Mr Rhodes and Ms Ceri Bird, the University's Head of Legal Services, and was provided with finalised terms of reference in late January 2019. In relation to the two Claimants, she was tasked with investigating the allegations referred to in paragraph 110 above, and to provide a recommendation as to whether a Disciplinary Panel should be convened in order to consider any such misconduct or gross misconduct.

117. The Respondent's disciplinary procedure envisaged that the Investigating Manager would first meet the employee under investigation. However, both

Claimants notified the Respondent, in November and December 2018, that they were medically unfit for work and were too unwell to attend meetings scheduled for December 2018.

118. On 19 December 2018, the SFO informed the Respondent that, whilst its referral indicated that there may have been offences under the Fraud Act 2006, as well as the Bribery Act 2010, and possibly other offences, it had determined that the matter did not fall within its Director's statement of principle of the cases to be investigated by the SFO. Instead, the matter was passed to local police forces to investigate, South Wales Police and Dyfed Powys Police, with the former ultimately undertaking the investigation.

119. Ms Sen Gupta met both Claimants in person on two occasions, as, in relation to both of them, there was insufficient time to cover the matters to be investigated in one meeting. Both Claimants were accompanied by UCU representatives to both meetings. All meetings, whether those with the Claimants or any other individuals, were contemporaneously transcribed.

120. Ms Sen Gupta did not provide any documents to the Claimants prior to meeting with them, but had a set of the documents provided to her by Allen & Overy with her in each meeting in order to bring them to the attention of the person being interviewed.

121. One specific email which Ms Sen Gupta had originally intended to include amongst the documentation, and to raise with the First Claimant, was the email from Mr James to the First Claimant on 24 October 2018, referred to at paragraph 99 above. That was on the direction of the police, who were planning to arrest a number of individuals, including the First Claimant and Mr James, and to seize documents from them. The police were concerned that if the Claimants were made aware that the Respondent was in possession of the particular email, then Mr James could be "tipped off" that the police were planning on taking action against him.

122. Both Claimants referred to documents in their possession during their meetings with Ms Sen Gupta. She subsequently asked for those documents to be produced and both Claimants produced documents for her attention. In the Second Claimant's case, he confirmed that many emails relating to the Wellness Village project had been sent from his personal iCloud email address. In response to a request from the Respondent for the emails to be produced, the Second Claimant provided 76 emails which were passed to Ms Sen Gupta. However, Allen & Overy identified more than 800 emails as having been sent to the Second Claimant's personal email account which had been discovered because other University employees had been included in those email communications by use of their University email addresses.

123. Ms Sen Gupta confirmed in her witness statement that she inferred that the

Second Claimant had withheld a substantial number of emails and documents that would be relevant to the investigation because they were damaging to his position or the position of others. In my view, bearing in mind the quantity of emails sent to the Second Claimant's personal email address, a reasonable number of which would have been likely to have been responded to by him, it was reasonable for Ms Sen Gupta to draw that inference.

124. In relation to the First Claimant, Ms Sen Gupta was unable to conclude her investigation across the two meetings that took place, and she therefore wrote to him with her outstanding questions on 19 March 2019. The First Claimant provided his responses to those questions, via solicitors he had then instructed, on 26 March 2019.

125. The interviews with the First Claimant took place on 29 January and 7 March 2019, and the interviews with the Second Claimant took place on 30 January and 14 March 2019. In addition to meeting the two Claimants and the two other employees under investigation at the time, Ms Sen Gupta also met with seven other individuals over the course of January and February 2019.

126. Ms Sen Gupta then compiled her reports in respect of each of the Claimants and issued those reports on the same day, 9 May 2019. In relation to both Claimants, Ms Sen Gupta concluded that there was evidence that the Claimants had failed to disclose certain substantial conflicts of interest in breach of the Respondent's policy, which she considered to be gross misconduct, and had acted in fundamental breach of the relationship of trust and confidence, which she also considered to be gross misconduct. She recommended that the allegations against both Claimants be considered by a Disciplinary Panel.

127. Subsequent to the production of those reports, Ms Sen Gupta prepared a confidential addendum, on 20 May 2019, relating to the email from Mr James to the First Claimant in October 2018. In this, she referred to the instruction she had received not to refer to the email during her meetings with the individuals under investigation, and that whilst she had taken account of the email in her consideration of the disciplinary allegations, those matters had not been referred to in her reports.

128. She confirmed that her view was that the email strongly suggested that the First Claimant regarded Mr Dickmann's proposals about future roles and equity as genuine, as did Mr James, and they took them seriously. She contrasted that email to the email exchange between the First Claimant and Mr James on 10 July 2018 in which they appeared to be trying to distance themselves from any arrangement which would be regarded as improper for a Carmarthenshire or University employee to enter into, and which she noted she considered to be "self-serving".

129. Ultimately, the addendum did not form part of the disciplinary hearing in

relation to either Claimant, as the police arrests and execution of warrants did not take place until after the disciplinary hearings took place. It was however considered at the appeal stage.

Disciplinary Panel

130. Following the receipt of Ms Sen Gupta's investigation reports, Mr Rhodes wrote to both Claimants, on 13 May 2019, noting that he had considered the reports and agreed that that there were grounds to indicate that an act or acts of gross misconduct may have occurred. He confirmed that he had nominated Mr Bleddyn Phillips to be the Chair of the Disciplinary Panel which would consider the disciplinary allegations, and that Mr Phillips would nominate up to two other members of the Panel. The letters confirmed that a finding of gross misconduct could result in an outcome up to and including termination of employment.

131. Mr Phillips, a lay member of the Respondent's Council, who had joined the Council in May 2017, had in fact been approached by Mr Rhodes at the end of April 2019 to ask whether, if Ms Sen Gupta recommended that the Disciplinary Panel be convened, he would be willing to chair it. Mr Rhodes explained to Mr Phillips that it had been decided to appoint a single Disciplinary Panel to consider the allegations against all employees under investigation due to the crossover between the cases and the amount of common material.

132. Mr Phillips then received letters from Mr Rhodes dated 30 May 2019, confirming his appointment as the Chair of the Disciplinary Panel in relation to both Claimants. Mr Phillips accepted that appointment by email. The following day, Mr Rhodes and Mr Phillips then discussed the formation of the Disciplinary Panel, with Mr Phillips informing Mr Rhodes that he was of the view that the two other members should be independent of the University and that it was important that at least one member of the Panel had relevant higher education experience. Mr Rhodes commented that he had sought advice from the Higher Education Funding Council for Wales as to the appointment of possible panel members.

133. That led to the appointment of Ms Paula Carter, who had past experience of working on high-profile investigations and who sat as a senior magistrate, and Mr David Holmes, the former Registrar of the Universities of Oxford and Birmingham. Both were then invited to join the panel on 23rd May 2019, and both confirmed on the following day that they were prepared to join the Panel. Mr Rhodes sent Mr Phillips the terms of reference for the Disciplinary Panel on 23 May 2019, together with the Respondent's Ordinance relating to conduct and disciplinary proceedings.

134. Mr Phillips then discussed further arrangements regarding the logistics of the Disciplinary Panel process with Mr Rhodes. Mr Phillips felt that it would be necessary for verbatim notes to be taken of all meetings, and a transcription service was arranged. Mr Phillips also suggested that it would be inappropriate for the disciplinary meetings to be held on the Respondent's campus, and it was suggested that a local hotel be used for

that purpose. Mr Phillips also indicated that he wanted the Panel to meet with Ms Sen Gupta first to discuss her reports before meeting with the two Claimants.

135. On 24 May 2019, Mr Phillips wrote to the First Claimant, asking him to attend a formal meeting with the Disciplinary Panel on 12 June 2019. He also wrote to the Second Claimant on 28 May 2019, inviting him to attend a formal meeting with the Disciplinary Panel on 18 June 2019. In both letters Mr Phillips noted that, given the nature and potential seriousness of the disciplinary allegations, the meetings could result in an outcome up to and including termination of employment. The Claimants were also advised of their right to be accompanied by a trade union representative or work colleague.

136. The letters noted that the Panel would be interviewing relevant individuals, including Mr Rhodes and Ms Sen Gupta, as part of the process, and asked that the two Claimants, if they would like the Panel to consider speaking to any other individuals, to let them know the names, and the areas in which they considered those individuals would have relevant evidence, by 31 May 2019. Mr Phillips also noted that the Panel would be reviewing relevant documentation ahead of the meeting and asked for any written representations to be made in advance.

137. On 31 May 2019, the First Claimant's then solicitors wrote to Allen & Overy, requesting that the Panel meet with seven individuals, and noting that they would provide more names in due course. Three of those named had been interviewed by Ms Sen Gupta as part of her investigation. Further correspondence ensued between the First Claimant's then solicitors and Allen & Overy in early June, with the First Claimant's solicitors maintaining that he could not attend the arranged meeting on 12 June 2019, for a variety of reasons.

138. The Disciplinary Panel resolved that that the meeting should go ahead, and the First Claimant's solicitors responded by saying that, given the threat to make a decision in the absence of the Second Claimant, he had been left with no choice but to attend. Subsequently, however, on 10 June 2019, the First Claimant's solicitors wrote to Allen & Overy, with a fit note, noting that the Claimant was unfit. The meeting scheduled for 12 June 2019, was therefore postponed.

139. The Second Claimant wrote to Mr Phillips on 10 June 2019, seeking a postponement of his meeting with the Panel on the basis that it was taking time to obtain evidence. Mr Phillips replied, on 13 June 2019, with the Disciplinary Panel's response, which was that the hearing would proceed as scheduled on 18 June 2019. However, the Second Claimant subsequently provided a fit note from his GP. In the circumstances, the Disciplinary Panel considered that the hearing could not proceed on 18 June 2019 and it was therefore postponed.

140. Although the meetings with the two Claimants were postponed, the Disciplinary Panel continued its work. They met with Ms Sen Gupta, Mr Rhodes and Sir Roger Jones, and requested written submissions from other individuals.

141. In relation to Ms Sen Gupta, in addition to meeting with her, the Panel submitted written questions to her. One point that was raised was a matter that had been raised by the First Claimant's solicitors, which was that Ms Sen Gupta's conclusion that the Second Claimant had not provided his declaration of interest to Mr Jones, as required, was incorrect, as an email existed to confirm that the First Claimant had sent his declaration of interest to Mr Jones on 3 October 2018.

142. Ms Sen Gupta replied, confirming that she had made an error and that she had been provided with the relevant email doing the course of her investigation by Allen & Overy, but that, as it was the same document as the Second Claimant had sent by email to Mr Mannion, she had overlooked it and had not referred to it. She subsequently provided an amended version of her report in relation to the First Claimant, correcting the error she had made, but confirming that it did not have any material impact on her overall conclusions. Ms Sen Gupta reiterated that point in her evidence before me, and I saw no reason not to accept it.

143. The meeting with Mr Rhodes largely related to the grievance that had been raised by the First Claimant, which had been rejected by Ms Sen Gupta, but which had been appealed against by the First Claimant, and which the Disciplinary Panel had been charged with considering by way of appeal.

144. The meeting with Sir Roger Jones took place on 12 June 2019, in order for the Panel to discuss with him the extent of his knowledge of the First Claimant's actions in relation to both the Llanelli and Kuwait projects. During the meetings, Sir Roger stated that, whilst he had been aware of the projects, neither project had ever formally been brought to the Council for approval.

145. The Disciplinary Panel also checked with Allen & Overy regarding the investigation they had undertaken, particularly the search terms they had used to find evidence, which the First Claimant, via his solicitors, had complained had been insufficient. The Panel also posed written questions to other individuals, Mr Ceri Jones, Mrs Cushion, Ms Bird and Mr Mannion. The First Claimant had in fact provided names of other individuals that he thought should be spoken to by the Panel. The Panel formed the view that some of those would not be in a position to provide relevant evidence and that others had already been spoken to by Ms Sen Gupta.

146. The Disciplinary Panel also entered into correspondence with the First Claimant and his solicitors, and with the Second Claimant, in relation to a number of matters before the disciplinary hearings with the Claimants took place.

147. The disciplinary hearing with the First Claimant took place on 22 July 2019, with the First Claimant being accompanied by his UCU representative, Prof David Blackaby. The disciplinary hearing with the Second Claimant took place on 23 July 2019, with the Second Claimant being accompanied by his UCU representative, Mr Howard Moss.

148. In relation to the First Claimant, the Panel concluded that the allegations were made out, and that there had been serious breaches of the University's code of conduct, regulatory rules, policies and ordinance, constituting gross negligence and gross misconduct; and that a fundamental breach in the relationship of trust and confidence had arisen constituting gross misconduct.

149. The disciplinary panel produced a lengthy letter on 26 July 2019 confirming its decision. In addition to setting out the allegations and the basis for them, the letter summarised the process undertaken by the Panel, addressed various procedural complaints that had been brought on the First Claimant's behalf, and outlined its findings in eight areas. These were; “Sterling Presentations”, “Procurement Process”, “Trust Arrangement”, “Declarations of Interest”, “Breaches of COI Policy”, “Governance Process”, “Kuwait Project”, and “Other concerns”. In relation to the last point, that addressed other concerns that had come to light during the investigation regarding discrepancies in the First Claimant's declaration of interest regarding other shareholdings. Mr Phillips confirmed in evidence before me, which I accepted, that that had been a peripheral conclusion and had not impacted materially on the Panel's conclusions. The panel concluded that the First Claimant should be dismissed summarily, and reminded him of his ability to appeal their decision.

150. In relation to the Second Claimant, the Disciplinary Panel unanimously concluded that he had seriously and materially breached the conflict of interest policy in relation to the Wellness Village project. There was a difference of view within the Panel however, about whether the Second Claimant's conduct in seriously materially breaching the conflict of interest policy amounted to gross misconduct, and whether his conduct had breached the relationship of trust and confidence. That was on the basis that one panel member considered that the First Claimant, being in a line management role in relation to the Second Claimant, had had full visibility of the offers made to him in relation to the Wellness Village project. The two other members, however, were of the view that the submission of the declaration to the First Claimant was not sufficient mitigation, and considered that the Second Claimant's actions did amount to gross misconduct and had breached the relationship of trust and confidence.

151. The Panel could have come to a majority decision, but wanted to try to reach a unanimous decision if possible. The Panel therefore wrote to Mr Rhodes on 1 August 2019, noting the two disciplinary allegations that the Second Claimant faced. They noted that they had had sufficient evidence in relation to the first allegation, and that, in relation to the second allegation, they would like to understand the University's position on whether it believed that, as a result of the findings made about the Second

Claimant's failures in relation to the University's codes of conduct and policies, and given his position and seniority, there had been a fundamental breakdown in the relationship of trust and confidence and, if there had, whether it could be restored for the Panel to make a finding that the misconduct fell short of dismissal.

152. The Second Claimant contended before me that the enquiry should not have been made of Mr Rhodes, but should have been made of his line manager, Mr Mannion. However, in the context of assessing the impact of the Second Claimant's conduct on the relationship of trust and confidence between himself and his employer, I did not consider that it was unreasonable for the Panel to raise the issue with the Registrar and Chief Operating Officer, and indeed at the time, the acting Vice Chancellor, in order to obtain an overarching view, from the Respondent's corporate perspective, as opposed to the view of the Second Claimant's individual line manager.

153. Mr Rhodes replied the following day, noting that the Second Claimant, as a Grade 10 employee, was in a senior leadership role, and that the Respondent had the right to expect all of its employees, but especially senior ones, to be credible and to act in accordance with established policies and procedures and to be open and cooperative, which had been found not to be true of the Second Claimant. Mr Rhodes also made reference to the nature of the Claimant's role as someone who would be required to represent the Respondent with stakeholders, the fact that he was under a criminal investigation, and that he had wiped his mobile phone on the way to the suspension meeting. I observed that that last comment was incorrect, in that the wiping of the mobile phone, by its restoration to its factory settings, took place a few days after the suspension meeting rather than before. Mr Rhodes also referenced the lack of understanding that the Second Claimant had shown in relation to the allegations against him. He indicated that those points all impacted on the trust and confidence between the two parties.

154. Mr Rhodes commented that the findings of the Panel in relation to conduct would alone have given rise to a reasonable belief that the trust and confidence in the Second Claimant's ability to carry out his duties had broken down. He commented that, even if the Second Claimant was not arrested or charged by the police, and I observed that the Second Claimant was ultimately not charged, it was difficult to conceive of a role he could fulfil. He commented that it could be regarded that any one of the other elements raised in relation to the Second Claimant would also have created a fundamental breach of trust and confidence, but that the combination of them, along with the conduct findings, created a situation where it was inconceivable that the Respondent could have trust and confidence in the Second Claimant to carry out his duties, especially at the senior level he occupied.

155. Mr Rhodes' letter was then considered by the Disciplinary Panel, and the minority member considered it appropriate to agree with the majority that

the Claimant's actions in breaching the conflict of interest policy had amounted to gross misconduct and that there had been a fundamental breach of trust and confidence.

156. The panel's decision was communicated to the Second Claimant by letter dated 7 August 2019. As had been the case with the First Claimant, the letter summarised the allegations against the Second Claimant, set out the process followed by the panel, and addressed various procedural matters that had been raised by the Second Claimant. The Panel then confirmed its findings under the following headings: “Offers of employment and equity”, “Declaration of interest”, “Sterling Health Presentations”, “Use of personal emails”, and “Kuwait Project”.

157. The letter then set out the Panel's conclusions that there had been serious breaches of the University's codes of conduct, regulatory rules, policies and ordinances constituting gross negligence and gross misconduct; and that a fundamental breach in the relationship of trust and confidence had taken place, constituting gross misconduct and rendering the Second Claimant's position with the Respondent untenable. Its decision therefore was that the Second Claimant's employment should be terminated with immediate effect. He was notified of his ability to appeal that decision.

Appeal Panel

158. Both Claimants appealed against the decisions that they be dismissed. The Second Claimant did so by letter dated 21 August 2019, and the First Claimant did so by letter dated 23 August 2019. Mr Rhodes had, in fact, prior to the receipt of the appeal letters, approached Prof Stringer, on 20 August 2019, to enquire as to whether he would be willing to sit as the Chair of any Appeal Panel. By that stage, the First Claimant had sought an extension to the deadline for the submission of his appeal, which had been granted, and it therefore seemed likely that an appeal would be submitted. Prof Stringer replied, confirming his willingness to act as the Chair of any Appeal Panel if needed.

159. Following the receipt of the appeals, Mr Rhodes emailed Prof Stringer, on 13 September 2019, to confirm his appointment as Chair of the Appeal Panel. Mr Rhodes referred to the need for a Panel to be formed of at least three people, and that he and Prof Stringer had agreed, as Mr Rhodes would have better knowledge of individuals who may be conflicted, that Mr Rhodes would source the other two Panel members and recommend them to Prof Stringer. He then did that, and recommended Ms Kerry Beynon, a member of the Respondent's Council, and Mr Michael Draper, an academic in the Respondent’s School of Law, and also a member of Council, to serve on the Panel. Prof Stringer replied approving those appointments.

160. Letters were sent to the Claimants, on 24 September 2019, noting the appointment of the Panel and confirming that the Appeal Panel meetings would take place on 15 October 2019 for the Second Claimant and 16 October 2019 for the First Claimant. The letters confirmed that the

meetings would be transcribed and that the Claimants would be entitled to be accompanied by either a work colleague or a trade union representative. The Claimants were also provided with the documents which had been provided to the Appeal Panel. These included the addendum that Ms Sen Gupta had prepared to deal with the October 2018 email between Mr James and the First Claimant.

161. The Panel arranged to meet with Mr Phillips, as Chair of the Disciplinary Panels, prior to those meetings, on 14 October 2019. Prior to the appeal meetings however, the Panel received communications from the two Claimants confirming that they would not attend the appeal hearings.

162. The First Claimant's solicitors wrote to Allen & Overy on 4 October 2019, noting that, in view of the fact that the Claimant was now under police investigation and his answers to the appeal panel could be referred to the police, it was entirely untenable for him to attend the Appeal Panel in person to answer questions. It was confirmed that the First Claimant did wish to continue to participate in the appeal process and intended to provide written submissions in advance of the scheduled meeting.

163. On the same day, the Second Claimant sent an email to Prof Stringer again referring to the prospect of information from interviews being shared with the police and confirming that he would make a written submission. Those submissions were received and were then considered by the Appeal Panel.

164. The Appeal Panel considered it appropriate, in addition to meeting with Mr Phillips, to meet with a representative of Allen & Overy, Mrs Cushion, and with the two UCU colleagues who had accompanied the two Claimants to the Disciplinary Panel meetings. They also posed written questions to four other individuals to whom the Second Claimant had indicated he had made oral declarations of interest.

165. The Appeal Panel met with Mr Phillips as arranged, and subsequently posed some additional questions to him, to which he responded. Following a telephone meeting, Allen & Overy provided a letter explaining the rationale behind the search criteria they had used in their investigation and how they had conducted the process. The Panel noted that the searches had not included the terms "shares" and "sharehold*" and only used the term "equity", and considered that those search terms could potentially provide relevant material. They therefore asked Allen & Overy to produce documents revealed by those search terms. In the event, 118 additional unique documents were discovered but they did not contain any material new evidence.

166. The Appeal Panel discussed with Mrs Cushion the support provided to the Claimants throughout the process, particularly in light of their statements of ill health.

167. With regard to the two UCU representatives, they had provided an unsolicited statement to Prof Stringer on 9 October 2019, in their roles as UCU case officers at the University, and the Appeal Panel considered it would be appropriate to meet with them to understand why they had sent the letter, and to afford them an opportunity to expand on any of their points. They were therefore invited to a meeting which took place on 28 October 2019.

168. The Appeal Panel also then received answers from four individuals to a question raised of them, which was whether the Second Claimant had made any oral declaration to them about the Llanelli project. Three confirmed that they were not aware of any such declaration, whilst the fourth noted that he had arranged a meeting with the Second Claimant, on the agenda of which was stated to be an item of "*Shares in Sterling*".

169. The individual confirmed that the meeting had been a handover to him as he was taking over the Second Claimant's previous role as Finance Manager for the School of Management, and that the agenda item had arisen from the reference in the meeting with Rob Brelsford-Smith and Mr Dickmann in January 2018, and the reference to the Second Claimant having been offered shares in Sterling. The Appeal Panel noted that the meeting had taken place on 30 January 2018, i.e. after the Claimant had submitted his declaration of interest, and did not consider that it was material.

170. The Appeal Panel was mindful that it needed to share the information it had received from third parties with the Claimants, to give them an opportunity to respond before reaching their conclusions, and therefore wrote to them, on 10 December 2019, asking for comments to be received by 17 December 2019. Both provided their responses on that date. Due to the proximity of Christmas and New Year, a communication was sent to the two Claimants, noting that the outcome of the appeal would not be delivered until the New Year.

171. A further delay arose due to the health of Prof Davies, who had also been dismissed and who had also appealed against his dismissal, which had delayed his provision of written submissions, with the Appeal Panel wishing to respond to all appeals in one go. In the event, due to the amount of time being taken, the Appeal Panel moved to consider the appeals of the two Claimants and to provide its decision in respect of them.

172. The Panel considered that the decisions to dismiss both Claimants had been reasonable, that the processes undertaken had been fair, and that there was no new evidence which materially impacted on the dismissal decisions. They also concluded that the decision to dismiss the Second Claimant had been an appropriate sanction, noting their conclusion that the Second Claimant was sufficiently senior to understand his responsibilities under the Respondent's policies and his employment contract. Letters confirming those decisions were sent to the two Claimants on 4 February

2020.

Police investigation

173. Whilst the Claimants brought employment tribunal claims in January 2020, those were stayed pending the completion of the police investigation. On 4 March 2021, the South Wales Police Regional Organised Crime Unit wrote to the Claimants' criminal solicitors, noting that, following a review of material, a report had been submitted to the Crown Prosecution Service, which, following a detailed review, had advised that it was "*not in the public interest*" to proceed with the investigation.

174. A South Wales Police press statement was issued following that decision, which led to press reports on 5 March 2021 that the investigation had found "*no evidence of criminal offending*". However, the Police subsequently issued a revised statement, which led to press reports a week later, on 12 March 2021, noting that, whilst there had been no evidence of criminal offending in relation to Carmarthenshire's procurement process for the Wellness Village project, there was evidence of "*potential criminal offending*" relating to individuals and companies, but that the Crown Prosecution Service had decided that it was not in the public interest to proceed with any prosecutions.

Conclusions

175. Applying my findings and the applicable legal principles to the issues, my conclusions were as follows.

Issue 4: Was the reason or principal reason for the dismissal of the First Claimant and/or Second Claimant a potentially fair reason within section 98(2) ERA 1996?

176. I was satisfied that the reason for the dismissals of both Claimants was their conduct, which was indeed a potentially fair reason falling within section 98(2)(b) ERA.

177. Whilst the Claimants did not openly accept, despite Mr Laddie's invitation for them to do so, that conduct was the reason for dismissal, there was no evidence before me which led me to conclude that it was not.

178. The Claimants, particularly the First Claimant via his grievance, had complained that the suspensions and investigations, and indeed the referral to the Police, had been motivated by Mr Rhodes' animosity towards him, and jealousy of him. Both Claimants then made reference to that in their witness statements. The Second Claimant, whilst noting that what he described as the "malign intent" of Mr Rhodes had been primarily directed at the First Claimant, commented that inevitably it had been directed at himself as well, noting Mr Rhodes' response to the Disciplinary Panel's enquiry over the trust and confidence issue.

179. However, I did not consider that it would be correct to describe the

dismissals as having arisen from some form of Machiavellian intrigue on the part of Mr Rhodes. He had been in post for only some six months before the investigations were commenced and had had limited contact with either Claimant during that period. Also, whilst no direct evidence was put before me on this point, Mr Laddie raised with the First Claimant the prospect that, whilst Mr Rhodes had temporarily taken on the role of Vice Chancellor, he had never been a realistic candidate for it on a permanent basis, and had not in fact applied for it when it had become vacant. The First Claimant did not take issue with that assertion.

180. I noted that the First Claimant, in answer to questions from Mr Laddie under cross-examination had referred to the steps that he had anticipated would have been taken by the previous Registrar, Mr Ciborowski, had a concern over conflicts of interest arisen in relation to possible job offers and equity offers. That was that those involved would have been asked about the issue, and that when clarificatory answers had been provided the matter would have been closed.

181. Setting aside the point that Mr Ciborowski was himself caught up in the conflict of interest issue, had he been entirely independent and had he acted in the way that the First Claimant anticipated he would, that did not, in my view, mean that Mr Rhodes was, in any sense, unfair or unreasonable in looking to implement investigative processes when that information came to him as Registrar.

182. Mr Rhodes did not give evidence before me, so his motivation for commencing the investigative process was not examined. Even if, however, Mr Rhodes had a desire to make an impression on his arrival, and to demonstrate that he was something of a "new broom", taking a particularly rigid approach to procedural and compliance matters, I did not consider that it was unreasonable for him to address the issues that had arisen in the way that he did. They had been brought to his attention arising out of PWC's usual audit process, and, in my view, it was appropriate that issues which, following an initial investigation appeared to suggest misconduct on the part of several employees, should be investigated.

183. In addition to that, any influence that Mr Rhodes may have had on disciplinary matters was confined to their implementation. The initial investigation into the issues that had arisen was carried out by Allen & Overy, which had no prior working relationship with the Respondent or with Mr Rhodes individually. Then, when the University's formal processes were implemented, Ms Sen Gupta, an employment barrister with no prior connection to the Respondent or to Mr Rhodes, undertook detailed investigations in relation to the individuals concerned.

184. Then, matters were progressed formally by a Disciplinary Panel, chaired by Mr Phillips, a retired lawyer with over 40 years' experience, who chaired a Panel comprising a senior magistrate and an experienced university administrator, both of whom were independent of the Respondent.

185. In relation to the appeal, whilst the Appeal Panel was comprised of internal individuals, led by Prof Stringer, but also comprising two members of the Respondent's Council, Ms Beynon and Prof Draper, all three had had no prior involvement in the matters relating to the Claimants.

186. Mr Rhodes had a role to play in the formation of those Panels, making approaches to Mr Phillips and Prof Stringer to chair them, and also recommending members to be appointed by the two of them. However, both Chairs were very experienced individuals who gave no impression in their evidence that they had been influenced by Mr Rhodes or that they would have been susceptible to any attempted influence on his part.

187. Overall therefore, I was satisfied that the Claimants' conduct had been the reason for their dismissal.

Issue 5 If so, was the dismissal of the First and/or Second Claimant fair within the meaning of section 98(4) ERA 1996?

188. I approached this by first considering the "familiar four stage analysis" referred to by the EAT in the Kefil case, although I did that slightly out of order, adopting a more chronological approach of considering first the investigation, then the grounds, then the belief, and then whether the dismissals fell within the range of reasonable responses.

Investigation

189. In this regard, I was mindful, as I noted at paragraphs 12 and 13 above, that I was not judging the Respondent's approach from the perspective of whether I considered that what it did was right or wrong, or was something that I would or would not have done. It was not my place to substitute my view for that of the Respondent. I was also conscious that I needed to assess the reasonableness of the investigative steps undertaken by the Respondent from the perspective of the range of responses open to a reasonable employer acting reasonably in the circumstances.

190. In this case, the Respondent's own internal requirements under its Ordinances specified that an Investigating Manager needed to be appointed to undertake the disciplinary investigation. Prior to that however, the Respondent had engaged Allen & Overy to undertake a preliminary investigation.

191. The main area of criticism raised by the Claimants, particularly the First Claimant, about the procedures undertaken by the Respondent in relation to investigation, was the searches undertaken by Allen & Overy in order to narrow down the material to be considered to a relatively manageable size. I noted that the Respondent's own electronic searches had revealed some 1.4 million unique documents which could potentially have had a bearing on the issues under consideration.

192. Allen & Overy undertook a number of searches, applying various criteria to

narrow down the documents ultimately to be considered to some 23,000. The First Claimant contended, via the solicitors he had then engaged, that those search terms were insufficient and that he should be allowed to undertake his own searches of the Respondent's systems on a supervised basis. That request was refused, on the basis that the searches undertaken had been proportionate and reasonable, and had been sufficiently broad to have encompassed the vast majority of relevant documents. The First Claimant contended that he felt that he was significantly disadvantaged by not being allowed to undertake his own searches, and referred to hundreds of documents and thousands of pages of relevant evidence having come to his attention during the Tribunal disclosure process.

193. I noted that the Respondent had made it clear to the First Claimant, during the investigative process, that if he felt that there were any additional documents that had a bearing on the matters under investigation, then he should specify them and they would be looked for.

194. During his closing submissions, the First Claimant made the reference to hundreds of documents and thousands of pages of relevant evidence having come to his attention through the Tribunal disclosure process. I asked him whether the disclosure process had discovered all material that he considered to be relevant, and he confirmed that it had.

195. In my view, there did not seem to be any material documents which had not been uncovered during the investigative process which could have had a bearing on its outcome. Whilst I did not look at every document in the hearing bundles, I had no doubt that had the First Claimant, and indeed the Second Claimant, considered that there were documents which supported their cases then they would have referred me to them. However, other than a limited number of documents, which, in my view, did not materially impact on the matters under consideration, they did not do so.

196. In my view, the electronic searches undertaken by the Respondent were reasonable ones, they certainly did not fall outside the range of reasonable steps that could have been taken in the circumstances.

197. The Allen & Overy investigation was however, only a preliminary one. The principal investigation was undertaken by Ms Sen Gupta. She considered the material provided to her, both by Allen & Overy and by the Claimants, met with both Claimants at some length, and also met with, or received written answers from, four other individuals. Whilst it is almost universally the case that some form of criticism can be raised in relation to any investigation that the investigator should have spoken to, or asked questions, of other witnesses, I saw nothing unreasonable in the approach taken by Ms Sen Gupta.

198. However, in terms of the investigative process undertaken by the Respondent overall, matters did not rest with Ms Sen Gupta. The Disciplinary Panel, in addition to meeting the Claimants themselves, also

met others, and raised written questions of others again, who might have had relevant evidence for them. They did not in any sense "rubber stamp" Ms Sen Gupta's report, as they were happy to raise with her the point, raised by the First Claimant's solicitors, that he had, contrary to Ms Sen Gupta's initial conclusion, provided his declaration of interest to Mr Jones.

199. Even at the appeal stage, some further investigative steps were undertaken, as the Appeal Panel asked for further searches to be undertaken to cover references in documents to “shares” or derivations of that as opposed to “equity”, which had been the term initially used. The Appeal Panel also therefore had not “rubber stamped” the earlier steps taken, but had considered whether further investigative steps needed to be undertaken.

200. Taken overall, I could see nothing to suggest that the investigative steps taken by the Respondent fell outside the range of reasonable responses.

Grounds

201. The core conclusion of the Disciplinary Panel, supported by the Appeal Panel, and indeed it was the conclusion drawn by Ms Sen Gupta at the investigative stage, was that both Claimants had misconducted themselves by not complying with the Respondent's policies, specifically the policy relating to declarations of conflicts of interest. In essence, the concern was that both Claimants were in line to be offered equity in the Wellness Village holding company, and indeed were to receive employment offers from that company, certainly an employment offer in the case of the Second Claimant, although more probably a paid non-executive position in the case of the First Claimant, which neither declared sufficiently or sufficiently promptly.

202. The Claimants’ cases were that all references to equity holdings, job offers, or other payments, on the part of Mr Dickmann, as the controlling mind behind Sterling, were fantastical and lacked credibility. They further contended that the declarations that they made were sufficient to satisfy any duty they may have been under.

203. Ms Sen Gupta, at the investigative stage, and, more importantly for my purposes, the Disciplinary Panel and the Appeal Panel, disagreed with the Claimants, concluding that the interests and offers were more than illusory, or certainly were considered by the Claimants as being more than illusory, should then have led to an earlier and more complete declaration, and that, in failing to submit declarations of sufficient breadth and with sufficient speed, they seriously breached the Respondent's policy and fundamentally breached the implied duty of trust and confidence. The Respondent contended that it had many grounds to support those conclusions.

204. It was noted that the Second Claimant’s communications in relation to the project were, for a significant period, undertaken via his personal email address as opposed to his Swansea University address. That meant that

many emails with potential relevance to the issues under investigation were unable to be located. Furthermore, Ms Sen Gupta noted that the Claimant only provided some 76 emails that he had sent using his personal email address, whereas the Respondent's investigations had discovered over 800 emails that had been sent to that personal email address by other parties. I have already noted that I found nothing unreasonable in Ms Sen Gupta drawing an adverse inference from that.

205. It was also noted that the Second Claimant restored his phone to factory settings soon after he was suspended, his reason for doing so being that his phone contained personal information, including photographs of his family, which he did not wish others to access. Whilst I had some sympathy with the Second Claimant's position in that regard, there were other ways for him to have addressed his concerns over privacy, which could have retained the material relating to his duties for the Respondent. In my view it was certainly not unreasonable for the Respondent to view the Claimant's actions in that regard with a degree of suspicion.

206. Looking at the references made to the Claimants benefitting financially from Sterling in more detail, Mr Rodde, as far back as July 2017, whilst endorsing the corporate structure put forward by Mr Dickmann, asked him to "*exercise caution*" in relation to the slide recording where he and the two Claimants were recorded as being due to hold posts in the new company. There were therefore grounds for the Respondent to conclude that, from as far back as the middle of 2017, the prospect of the two Claimants benefiting from the Wellness Village project was apparent.

207. That was supported by the procurement process run by Carmarthenshire, which, whilst it did not reference any specific interests or potential interests in relation to either Claimant, noted that they were working closely with Sterling, such that a protocol was put in place in November 2017 to ensure that the two of them did not receive the information provided to the Respondent in relation to the procurement process.

208. With regard to the Second Claimant specifically, the investigation also discovered, purely because it had been saved to the Second Claimant's laptop, that he had been made an offer of employment in December 2017. Whilst the Second Claimant maintained that he never accepted that offer, and there is no evidence that he did, but instead ignored it, there was equally no evidence to show that he rejected it. In my view, had the Second Claimant been clearly of the view that the offer was fantastical or illusory then he would have said so, and the fact that he did not reasonably contributed to the Respondent's view of his guilt of the disciplinary allegations.

209. That would also have been the case with regard to the large number of corporate structure documents that were produced by Mr Dickmann over a period in excess of 12 months. Virtually all of them referred to the Second Claimant taking up a position in the Wellness Village holding company as

Group Finance Director or something similar, and virtually all referred to the Second Claimant as being entitled to an equity holding in that company. Again however, no written communication was ever made by the Second Claimant to Mr Dickmann to point out that he was making promises that he could not fulfil. The Second Claimant's position was that he had spoken to Mr Dickmann about his concerns, but, had he done so, then Mr Dickmann would have been likely to have modified his assertions.

210. Mr Dickmann did not give evidence before me, and therefore it was difficult for me to ascribe a motivation to him in relation to his structures and his job offers. He may have been something of a fantasist or, perhaps more likely, someone who was wishing to present the project in the most positive way possible, suggesting that individuals were involved and were going to take financial stakes in the companies involved in the project, when in fact that was not the case. However, the lack of evidence of any correction of Mr Dickmann's assertions on the part of the Second Claimant, in my view, gave grounds to the Respondent to conclude that the concerns about his conduct were well founded.

211. Also in relation to the Second Claimant, there was evidence before the Respondent that the declaration the Second Claimant made in January 2018 was triggered by the meeting, attended by the Second Claimant, Mr Brelsford-Smith, Mr Dickmann and Mrs Holt. There was also a reasonable ground for the Respondent to conclude that the declaration had been backdated to pre-date the Second Claimant's discussion with Mr Brelsford-Smith, all of which, in my view, gave reasonable grounds for the Respondent to conclude that misconduct had occurred.

212. Turning to the First Claimant, the Respondent had similar grounds for concluding that misconduct had occurred from the corporate structures produced by Mr Dickmann. Whilst only a small number of the presentations referred to the First Claimant as having an entitlement to equity in relation to the "Trust" element of the shareholdings, it did nevertheless arise on certain occasions. There was also evidence to support the Respondent's conclusion that that element of equity was potentially credible.

213. By the Summer of 2018, the First Claimant's name appeared as a potential beneficiary of the Trust. In his initial response to Mr Rhodes when suspended, the First Claimant contended that he had never been made any offer of any equity holding in the holding company in relation to the Wellness Village project. He subsequently changed that position, saying that he was to hold any shares on trust for the benefit of the community. However, there was documentary evidence which undermined that suggestion.

214. One of those documents was the First Claimant's own email in which he noted that he wished to retain some benefit for his family, notwithstanding that a trust for the benefit of the community was to be created. There was also the evidence in the form of the email from Prof Westaby to Mr

Dickmann in May 2018, complaining that he was not going to be entitled to any equity when he had introduced Mr Dickmann to the First Claimant, whereas the First Claimant was. The First Claimant was aware of that email, as it was forwarded to him, but did not comment on it. Had there been no possible personal benefit for him, he could easily have informed Prof Westaby that any shares were going to be held on trust for the benefit of the community.

215. There was also evidence in the form of Mr James' email to the First Claimant in October 2018, when Mr James indicated that he was concerned that the trust provisions did not sufficiently protect him. There was no evidence to confirm that the First Claimant was of a similar view, but equally there was no evidence to indicate that he was of the opposite view.

216. In my view, all those documents provided support for the Respondent's conclusion that the First Claimant was to gain an entitlement to an equity share in the holding company, which he did not then disclose.

217. Much was made by the Claimants in the hearing, particularly the First Claimant about the contention that any concerns that may have existed about equity in companies controlled by Mr Dickmann were removed following the Acuity Legal advice in August 2018, that new and "clean" companies were to be set up. However, the corporate structures showing equity entitlements of the two Claimants continued to be produced after that time, and indeed the First Claimant attended a meeting with Mr Dickmann's lawyers in October 2018 to discuss the formation of the trust in more detail. Again, in my view that gave support to the Respondent's conclusion that the First Claimant was potentially to benefit from the Wellness Village project.

218. With regard to the First Claimant's declaration of interest, he did not produce this until October 2018. He attempted to make much of the fact that the Respondent's online declaration system was not functioning at that time, but he remained aware of the need to declare interests and ultimately did so. However, that declaration simply referred to a directorship. It referred to an “emergent corporate structure” of which he was to become a director on behalf of the Respondent.

219. In his closing submissions, the First Claimant confirmed that he intended the reference to “emergent corporate structure” to cover potential shareholdings, but I found it difficult to accept that. He made specific reference to a potential directorship, and could therefore have made specific reference to a potential shareholding, whether held directly or on trust for the benefit of the community. Indeed, had his intention been that he would settle any shares he would receive on trust for the benefit of the community, then that would have been something to have been proud about, rather than to keep hidden.

220. In terms of the Respondent's governance processes, it was clear that only informal discussions took place until October 2018. Whilst the First

Claimant did discuss matters in broad terms with the Chair of the Respondent's Council, Sir Roger Jones, even from the Claimant's own evidence that did not seem to get beyond a broad discussion of the project and a broad encouragement from Sir Roger that it would be a project that would benefit the Respondent. There was nothing to indicate that the First Claimant had disclosed any details of how he individually might benefit from the project.

221. It was only after the SIL board meeting on 2 October 2018, when it was made clear to the First Claimant that he needed to go through University processes, first to the Finance Committee and then to Council, that any steps were taken to implement formal governance and due diligence processes in relation to the project. However, that was at a stage when, from the Claimants' own perspectives, the project was well advanced.

222. Overall, therefore I considered that there were reasonable grounds for the Respondent's belief that the Claimants had committed acts of misconduct.

Genuine belief

223. I could address this point quite briefly, as it was largely encapsulated within my conclusions regarding the reason for dismissal above. Once we got beyond the asserted malign influence of Mr Rhodes, which I considered it would be appropriate to do, we were left with the Disciplinary Panel, endorsed by the Appeal Panel, forming a belief that misconduct had taken place in light of the grounds uncovered by the investigations undertaken. There was nothing to suggest that that belief that misconduct had taken place was in any sense false or motivated by any malign intent. In my view therefore, the Respondent clearly had a genuine belief that the misconduct had taken place.

Was dismissal within the range of reasonable responses?

224. I considered closely the fact that the Disciplinary Panel initially itself was split on the sanction to be imposed on the Second Claimant. However, I noted that the majority was always of the view that the breach of the conflict of interest policy amounted to gross misconduct, and that a breach of the implied term of trust and confidence had also arisen. I further noted that, following Mr Rhodes' comments, that had ultimately been the unanimous view.

225. I noted that Mr Rhodes' comments were, in one area, mistaken, as he said that it was understood that the Second Claimant had wiped his phone before being suspended, when in fact it took place slightly after. I also noted that he had strayed into an area which he probably should not have, i.e. the impact of the police investigation, which had a degree of circularity about it as it was the Respondent itself which had referred matters to police. However, notwithstanding those matters, which, in my view, were relatively minor, I considered that it was not unreasonable for the Respondent to conclude that trust and confidence had been breached, or that the breach of the conflict of interest policy was serious and amounted to gross misconduct.

226. Whilst the Second Claimant was not in the upper echelons of the Respondent's managerial structure, he was nevertheless a relatively senior employee who managed several other employees. In my view, notwithstanding his previous good record, it was not outside the range of reasonable responses for the Respondent to reach the decision that it did, which was to dismiss the Second Claimant summarily.

227. The First Claimant was of significantly greater seniority, and therefore the imposition of the sanction of summary dismissal fell even more squarely within the range of reasonable responses in his case.

Procedures

228. I finally considered procedural matters. I noted the specific terms of the Respondent's Ordinances, and that they had been followed in all material matters at all times. I also noted that the internal processes went some way beyond the ACAS Code. I therefore concluded that there was nothing to indicate that there had been any procedural deficiencies in the way that the Respondent had managed the disciplinary processes in relation to the two Claimants.

229. Overall, therefore, I concluded that the dismissals of the two Claimants had been fair, and that their claims of unfair dismissal should be dismissed.

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Employment Judge S Jenkins

Date: 24 June 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 27 June 2022

FOR EMPLOYMENT TRIBUNALS Mr N Roche