



EMPLOYMENT TRIBUNALS

Claimant: Mr M Bond

Respondent: (1) Welshpool Town Council
(2) Mr R Robinson

Heard at: Cardiff, by video On: 6, 7, 8, 9 and 10 December 2021, 10 & 11 February 2022.

Tribunal in chambers on 17 & 18 March 2022 and 6 April 2022.

Before: Employment Judge R Harfield
Members Ms T Lovell
Mr P Collier

Representation:

Claimant: Mr Bond represented himself

First Respondent:

Second Respondent: Mr Barrow (Counsel)

Mr Thorndike (retired Counsel)

RESERVED JUDGMENT

It is the unanimous decision of the Tribunal that:

- (a) The Claimant made a protected disclosure on 23 April 2019;
- (b) The Second Respondent subjected the Claimant to detriment by his acts in getting Councillor Kaye to authorise making the Claimant an offer to resign, in making that offer, and inducing the Claimant to accept it by incorrectly saying councillors had authorised it, done on the ground that the Claimant made a protected disclosure;
- (c) The Second Respondent subjected the Claimant to detriment by his acts in trying to secure the dismissal of the Claimant in his discussions with Councillor Kaye in advance of the probation review meeting and then at the probation review meeting, done on the ground that the Claimant made a protected disclosure;
- (d) The Claimant made a protected disclosure on 3 May 2019;

- (e) The Claimant made a protected disclosure on 9 May 2019;
- (f) The First Respondent subjected the Claimant to detriment by his acts in trying to secure the speedy dismissal of the Claimant and shortcut the extended probation review process, by taking Ms Moore and Mr McGrath to meet with Councillor Pritchard, and by exaggerating the picture of staff unrest he told to Councillor Kaye, done on the ground that the Claimant made protected disclosures;
- (g) The Second Respondent subjected the Claimant to detriment by his acts in influencing and inducing Councillor Kaye to decide to dismiss the Claimant, done on the ground that the Claimant made protected disclosures;
- (h) The First Respondent is vicariously liable for the acts of the Second Respondent in addition to the Second Respondent's own liability;
- (i) The Claimant's other complaints of detriment done on the ground that he made protected disclosures against the First Respondent and Second Respondent are not well founded and are dismissed;
- (j) The First Respondent subjected the Claimant to detriment by the acts of the Second Respondent in getting Councillor Kaye to authorise making the Claimant an offer to resign, in making that offer, and inducing the Claimant to accept it by incorrectly saying councillors had authorised it, done on the ground that the Claimant was carrying out activities in connection with preventing or reducing risks to health and safety at work;
- (k) The First Respondent subjected the Claimant to detriment by the acts of the Second Respondent in trying to secure the dismissal of the Claimant in his discussions with Councillor Kaye in advance of the probation review meeting and then at the probation review meeting, done on the ground that the Claimant was carrying out activities in connection with preventing or reducing risks to health and safety at work;
- (l) The First Respondent subjected the Claimant to detriment by the acts of the Second Respondent in trying to secure the speedy dismissal of the Claimant and shortcut the extended probation review process, by taking Ms Moore and Mr McGrath to meet with Councillor Pritchard, and by exaggerating the picture of staff unrest he told to Councillor Kaye, done on the ground that the Claimant was carrying out activities in connection with preventing or reducing risks to health and safety at work;
- (m) The First Respondent subjected the Claimant to detriment by the acts of the Second Respondent in influencing and inducing Councillor Kaye to decide to dismiss the Claimant, done on the ground that the Claimant was carrying out activities in connection with preventing or reducing risks to health and safety at work;
- (n) The Claimant's other complaints of detriment done on the ground that he was carrying out activities in connection with preventing or reducing risks to health and safety at work are not well founded and are dismissed;

- (o) The complaint that the Claimant was unfairly dismissed on the basis that the reason or principal reason for the dismissal is that the Claimant made a protected disclosure is not well founded and is dismissed;
- (p) The complaint that the Claimant was unfairly dismissed on the basis that the reason or principal reason for dismissal is that the claimant having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work and carried out such activities is not well founded and is dismissed;
- (q) The complaint of breach of section 10 Employment Rights Act 1999 is not well founded and is dismissed.
- (r) The parties will be sent a case management order to prepare for a remedy hearing.

REASONS

Introduction

1. The claimant was employed by the first respondent (“1R”), as deputy town clerk. The second respondent (“2R”) was at the relevant time the town clerk. The claimant presented his claim form on 9 October 2019 bringing complaints of protected disclosure detriment and dismissal, detriment and dismissal under sections 44 and 100 of the Employment Rights Act 1996 (health and safety) and breach of the right to be accompanied under section 10 of the Employment Relations Act 1996. The respondents dispute the complaints.
2. The case has been extensively case managed. It came before EJ Jenkins on 13 January 2020 [61- 70], who listed the case for a 5 day hearing, issued case management orders, and prepared a list of issues to be determined at the final hearing. It then came before EJ Frazer on 16 November 2020 [74-75] who relisted the case management hearing to allow the claimant time to obtain legal advice. The case came back before EJ Howden-Evans on 14 December 2020 [76-81]. The claimant was given permission to amend his claim as per box 2.2. of the claimant’s preliminary hearing agenda. EJ Howden-Evans also noted that the claimant had provided further information about the detriments the claimant was relying upon. There appears to have been no objections to that and the respondents were directed to provide amended grounds of resistance if so advised. 2R was ordered to provide some further information. The case management order also records 2R’s then solicitor stating that 2R did not hold any documents. EJ Howden-Evans provided, in effect, an addendum to EJ Jenkins’ List of Issues to reflect the amendment that was permitted.
3. The case then came before EJ Harfield on 28 May 2021 [82-86]. Much of the hearing was taken up with the claimant’s application for disclosure, some was granted and an order made. It came before EJ Harfield again on 18 October 2021 [87-91] again due to a dispute about disclosure of documents. As recorded in the case management order, at that hearing 2R said that he had in his possession a letter he had been sent by 1R inviting him to a disciplinary investigation meeting, a statement he provided for the purposes of that investigation meeting, and his own resignation letter he said he had tendered before he was suspended. Again, as recorded in that case management

order 2R “said he was going to be taking a trip into Welshpool and offered to deliver a copy of the letter and his own letter/ statement to the first respondent’s solicitors.” A direction was made for him to do so. Other case management orders were also made.

4. We had before us a core hearing bundle extending to 793 pages. References in brackets [] are references to those page numbers. We had a supplemental bundle extending to 539 pages. Those documents are referenced by “[SB].” We had written statements from, and heard oral evidence, from Councillors Kaye, Davies, and Church for 1R. We also had written statements from, and heard oral evidence from, (using their job descriptions at the relevant time) Mr Rollinson (Senior Facilities Officer), Mr McGrath (Operations Manager), Ms Moore (PA to the Town Clerk), and Ms Wilson (Town Clerk, after 2R) again for 1R. We had a written witness statement from 2R and heard oral evidence from him. There is within the witness statement bundle also an opening statement from 2R. Mr Thorndike confirmed it was the separate witness statement that stood as 2R’s evidence in the case, and it was that which he confirmed under oath. For the claimant we had written statements from, and heard oral evidence from the claimant, Councillors Pritchard and Bleivas, and Ms Averis and Ms Bunce (market traders).
5. For a variety of reasons the evidence did not complete in the allocated 5 days and the case was relisted for 10 and 11 February 2022. On conclusion of the evidence all parties were in support of closing submissions being provided in writing. The claimant was intending to reflect on whether he was intending to reduce the schedule of detriments being relied upon. An order was made in this regard and a case management order issued on 11 February 2022. Within that case management order the parties were reminded of the need to address the List of Issues in the case and directed as to where they could be found in the bundle. They were also directed to the case law in Royal Mail Group Ltd v Jhuti [2019] UKSC 55 and Timis & Anor v Osipov & Anor [2018] EWCA Civ 2321. The claimant did duly submit an edited list of detriments relied upon. These are reflected in the List of Issues below. All parties filed and exchanged written submissions. As these were written submissions they have not been summarised below, save where a particular submission is referred to. We did, however, take all submissions into account in our decision making. The tribunal panel met in chambers for deliberations over 3 days.

List of Issues

6. The resulting liability issues for us to decide in this case were ultimately as follows:

Public interest disclosure (PID)/ “whistleblowing”

(a) Did the Claimant made one or more protected disclosures (Sections 43B ERA) as set out below?

(b) The Claimant relies on subsections (a) (b) (d) and (f) of Section 43B(1)(a-f):

(a) a criminal offence had been, was being or was likely to be committed;

(b) A person (1R) had failed to comply with a legal obligation to which it was subject (securing health and safety of employees working in, and visitors to, its town hall);

- (d) *The health and safety of any individual had been put at risk (in a similar manner);*
- (f) *information tending to show any of these things had been, was being or was likely to be deliberately concealed.*
- (c) *Did the Claimant reasonably believe that the disclosures were made in the public interest?*
- (d) *The disclosures were made to 2R in his capacity as 1R's Town Clerk.*
- (e) *Was the principal reason the Claimant was dismissed by 1R the fact that he had made a protected disclosure or disclosures?*
- (f) *Did either or both of the Respondents subject the Claimant to any detriments, as set out below?*
- (g) *If so was this done on the ground that he made one or more protected disclosures?*
- (h) *The alleged disclosures the Claimant relies on are as follows:*
- a. *On 23 April 2019 that the fire alarm system in the Town Hall was not working and that fire alarm tests could not be carried out.*
 - b. *On 3 May 2019 that the fire alarm system should be made fully operational immediately.*
 - c. *On 9 May 2019 that remedial work on the fire alarm system recommended in investigation reports had not been carried out.*
- (i) *The alleged detriments the Claimant relies on are as follows:*

1R Detriments

- a. *Has not responded to Claimant's requests for a reference;*
- b. *Did not follow its own, Acas's or other fair procedures in Claimant's dismissal;*
- c. *1R Chairman Cllr S Kaye breached 1R procedures by not seeking or gaining Full Council and/or Appointment/ Review Panel approval to his and/or 2R's actions including the instruction to the Claimant he resign, and when this failed by terminating the Claimant's employment without Full Council and/or Appointment/ Review Panel knowledge and/or agreement;*
- d. *1R's Chairman claimed Claimant's pay rise was an administrative error;*
- e. *1R failed to adequately manage the 2R leaving him to operate largely without oversight or adequate checks and balances to the detriment of the Claimant. The 1R effectively enabled 2R to act as he saw fit which led to*

issues such as unsatisfactory Town Hall fire alarm, Claimant's dismissal and other significant areas of concern;

- f. Failed to investigate the Claimant's concerns about the 2Rs' behaviour when this was raised by the Claimant with 1R between early April 2019 and his dismissal;*
- g. Claimant believes 1R Chairman S Kaye may have had some knowledge of Town Hall fire alarm faults;*
- h. Vicarious Detriments. The Claimant holds 1R vicariously liable for all detriments listed under heading Second Respondent Detriments, including that as the 2R was party to the decision to dismiss, he subjected the Claimant to the detriment of dismissal.*

2R Detriments

- i. The 2R was party to the decision to dismiss and subjected the Claimant to the detriment of dismissal;*
- j. 2R made an offer to Claimant to leave on 26.04.2019 which only 1R Chairman S Kaye knew about. Claimant was told other Councillors knew of the offer and that they supported it which was subsequently confirmed as not true by the other named Councillors. Councillors only learnt of the resignation offer because the Claimant informed a Councillor on 29.04.2020;*
- k. 2R was approached informally by Café operator which 2R escalated to a formal written complaint;*
- l. Claimant was excluded from meetings 2R held with the Café operator;*
- m. Claimant was excluded from the start of two staff meetings by 2R;*
- n. Claimant was blocked from or given limited access to information and resources;*
- o. 2R displayed on occasions bullying behaviour toward the Claimant;*
- p. Claimant was given responsibility for Town Hall operations, its fire alarm and H&S, but was not informed of the historical and ongoing fire alarm failures which had not been addressed by 2R;*
- q. False documentation has been created by 2R including a written record of verbal warning on claimant's personnel file dated 29.04.2019 which did not happen and is confirmed as false by Councillor;*
- r. Claimant was victimised by 2R for making protected disclosures which would have been damaging to 1R had Councillors learnt of the facts;*

- s. *2R took decision to hide fire alarm faults from councillors and claimant and acted to remove Claimant before councillors became aware of same;*
- t. *2R undermined Claimant's position with Councillors, staff and Market Traders;*
- u. *2R was not truthful in his reporting of the Town Hall fire alarm issues to Councillors following the Claimant's dismissal.*

Detriments in the original case management order of EJ Jenkins (both respondents)

- v. *By raising and/or instigating false, or at least unjustified, concerns regarding the Claimant's performance which led to his dismissal;*
- w. *By denying him the ability to respond to the allegations against him and/or by denying him the right of appeal against his dismissal*

Health and Safety Activities

- (j) *Was the Claimant designated by 1R to carry out activities in connection with preventing or reducing risks to health and safety at work?*
- (k) *If so, did the Claimant carry out (or propose to carry out) any such activities?*
- (l) *Was the principal reason the Claimant was dismissed by 1R the fact that he had been designated by 1R to carry out activities in connection with preventing or reducing risks to health and safety at work and had carried out (or proposed to carry out) any such activities?*
- (m) *Did 1R subject the Claimant to any detriments, as set out below?*
- (n) *If so was this done on the ground that he had been designated by 1R to carry out activities in connection with preventing or reducing risks to health and safety at work and had carried out (or proposed to carry out) any such activities?*
- (o) *If so was this done on the ground that he had been designated by 1R to carry out activities in connection with preventing or reducing risks to health and safety at work and had carried out (or proposed to carry out) any such activities?*
- (p) *The alleged detriments the Claimant relies on are as follows:*

1R Detriments

- a. *Has not responded to Claimant's requests for a reference;*
- b. *Did not follow its own, Acas's or other fair procedures in Claimant's dismissal;*
- c. *1R Chairman Cllr S Kaye breached 1R procedures by not seeking or gaining Full Council and/or Appointment/ Review Panel approval to his*

and/or 2R's actions including the instruction to the Claimant he resign, and when this failed by terminating the Claimant's employment without Full Council and/or Appointment/ Review Panel knowledge and/or agreement;

- d. 1R's Chairman claimed Claimant's pay rise was an administrative error;*
- e. 1R failed to adequately manage the 2R leaving him to operate largely without oversight or adequate checks and balances to the detriment of the Claimant. The 1R effectively enabled 2R to act as he saw fit which led to issues such as unsatisfactory Town Hall fire alarm, Claimant's dismissal and other significant areas of concern;*
- f. Failed to investigate the Claimant's concerns about the 2Rs' behaviour when this was raised by the Claimant with 1R between early April 2019 and his dismissal;*
- g. Claimant believes 1R Chairman S Kaye may have had some knowledge of Town Hall fire alarm faults;*
- h. Vicarious Detriments. The Claimant holds 1R vicariously liable for all detriments listed under heading Second Respondent Detriments, including that as the 2R was party to the decision to dismiss, he subjected the Claimant to the detriment of dismissal.*

2R Detriments

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- j. 2R made an offer to Claimant to leave on 26.04.2019 which only 1R Chairman S Kaye knew about. Claimant was told other Councillors knew of the offer and that they supported it which was subsequently confirmed as not true by the other named Councillors. Councillors only learnt of the resignation offer because the Claimant informed a Councillor on 29.04.2020;*
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Detriments in the original case management order of EJ Jenkins

- v. *By raising and/or instigating false, or at least unjustified, concerns regarding the Claimant's performance which led to his dismissal;*
- w. *By denying him the ability to respond to the allegations against him and/or by denying him the right of appeal against his dismissal*

Right to be accompanied

- (q) *Did 1R deny the Claimant the right to be accompanied at a disciplinary hearing (section 10 Employment Relations Act 1999)?*

The legal principles

Protected Disclosure

- 7. Under section 43A Employment Rights Act 1996 ("ERA"), a worker makes a protected disclosure in certain circumstances. To be a protected disclosure, it must be a qualifying disclosure. A qualifying disclosure must fall within section 43B ERA and also must be made in accordance with any of sections 43C to 43H. Section 43B says:

“(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,*
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*

(d) that the health or safety of any individual has been, is being or is likely to be endangered,
(e) that the environment has been, is being or is likely to be damaged, or
(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.”

8. Section 43C provides:

“Disclosure to employer or other responsible person

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure

(a) to his employer.

9. There are therefore a number of requirements before a disclosure is a qualifying disclosure. First, the disclosure must be of information capable of tending to show one or more of the types of wrongdoing set out at Section 43B. In order to be such a disclosure *“It has to have sufficient factual content and specificity such that it is capable of tending to show one of the matters in subsection (1)”* (Kilraine v London Borough of Wandsworth [2018] ICR 185). Determining that is a matter for evaluative judgment by the Tribunal in light of all of the facts of the case. The question is whether, taking into account the evidence as to context, the information is “capable” of satisfying the other requirements of the section i.e., could a worker reasonably believe that it tended to show one of the specified matters (Twist v DX Limited UKEAT0030/20).
10. Second, the worker must believe the disclosure tends to show one of more of the listed wrongdoings. Third, if the worker does hold such a belief it must be reasonably held. Here, the worker does not have to show that the information did in fact disclose wrongdoing of the particular kind relied upon. It is enough if the worker reasonably believes that the information tends to show this to be the case. A belief may be reasonable even if it is ultimately wrong. It was said in Kilraine that this assessment is closely aligned with the first condition and that: *“if the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable to tending to show that listed matter, it is likely that his belief will be a reasonable belief.”*
11. Fourth the worker must believe that the disclosure is made in the public interest. Fifth, if the worker does hold such a belief, it must be reasonably held. The focus is on whether the worker believes the disclosure is in the public interest (not the reasons why the worker believes that to be so). The worker must have a genuine and reasonable belief that the disclosure is in the public interest but that does not have to be the worker’s predominant motive for making disclosures: Chesterton Global Ltd v Nuromammed [2018] ICR 731. In particular it was said *“I am inclined to think that the belief does not in fact have to form any part of the worker’s motivation – the phrase “in the belief” is not the same as “motivated by the belief”; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.”*

12. In Chesterton it was also said that there was no value in seeking to provide a general gloss on the phrase “in the public interest” but that the legislative history behind the introduction of the condition establishes that the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest. The question is to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but relevant factors may include:
- (a) the numbers in the group whose interests the disclosure served
 - (b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed;
 - (c) the nature of the wrongdoing disclosed;
 - (d) the identity of the alleged wrongdoer.
13. It was said in Dobbie v Paula Felton t/a Feltons Solicitors UKEAT/0130/20/00 that “*Generally, workers blow the whistle to draw attention to wrongdoing. That is often an important component of why in making the disclosure they are acting in the public interest.*” In Simpson v Cantor Fitzgerald Europe [2020] EWCA Civ 1601 Bean LJ drew a distinction between the claimant making disclosures about being deprived of commission he thought was rightfully his (not a protected disclosure) as opposed to making a disclosure about commission containing information which in the individual’s actual and reasonable belief tended to show malpractice such as the commission of a regulatory offence (which if established was likely to have met the public interest test).
14. The Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. The Tribunal must recognise that there may be more than one reasonable view as to whether a particular disclosure was in the public interest. Sixth, the disclosure has to be made to an appropriate person.

Whistleblowing/ Protected Disclosure detriment

15. Under Section 47B(1) a worker has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
16. Under Section 47B(1A) a worker has the right not to be subject to any detriment by an act, or deliberate failure to act, done (a) by another worker of the employer in the course of that other worker’s employment, or (b) by an agent of the employer with the employer’s authority, on the ground the worker has made a protected disclosure. Under Section 47B(1B) where a worker is subjected to detriment by anything done in accordance with 47B(1A), that thing is treated as also done by the worker’s employer. 47B(1C) states that for the purposes of 1B it is immaterial whether the thing is done with the knowledge or approval of the employer. Under section 47B(1D), in a claim under 47(1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker from doing that thing, or from doing anything of that description.

17. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment (see Jesudason v Alder Hey Children’s NHS Foundation Trust [2020] EWCA Civ 713 applying Derbyshire v St Helens MBC [2007] UKHL 16 and Shamoon v Chief Constable of Ulster Constabulary [2003] ICR 33.)
18. Under section 47B(2) the section does not apply where the detriment in question amounts to a dismissal within the meaning of Part X (because dismissals are governed by Section 103A within Part X ERA). However, in Timis and anor v Osipov and anor [2018] EWCA Civ 2321 it was held that a claim can be brought against a co-worker for the detriment of dismissal. Further, an employer can then be vicariously liable for that detriment of dismissal.
19. Section 47B requires that the act should be “on the ground that” the worker has made the protected disclosure. In Manchester NHS Trust v Fecitt [2011] EWCA 1190 it was said that “*section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer’s treatment of the whistle-blower.*” This is a “reason why” test. The Tribunal has to look at why (consciously or unconsciously) the decision maker acted as he or she did. It was said in Jesudason that:

“Liability is not, therefore, established by the claimant showing that but for the protected disclosure, the employer would not have committed the relevant act which gives rise to a detriment. If the employer can show that the reason he took the action which caused the detriment had nothing to do with the making of the protected disclosures, or that this was only a trivial factor in his reasoning, he will not be liable under Section 47B.”
20. Under section 48 it is for the employer to show the ground on which any act, or deliberate failure to act was done. Where a claimant has established that there has been a protected disclosure and he has suffered a detriment, it is for the employer to show that the detriment was not because of the disclosure; that is, that the disclosure did not materially influence - in the sense of being more than a trivial influence - the employer's treatment of the Claimant (see Fecitt).

Whistleblowing/ Protected Disclosure – Dismissal by employer

21. Section 103A ERA provides:

“An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.”
22. If that test is satisfied the claimant will have been “automatically” unfairly dismissed. The claimant otherwise did not have sufficient qualifying service to bring an “ordinary” unfair dismissal claim.
23. When considering a section 103A claim, generally the “reason” for dismissal connotes the factor or factors operating on the mind of the decision maker which causes them to take the decision to dismiss. However, in The Co-Operative Group Limited v Baddeley [2014] EWCA Civ 658 Underhill LJ was prepared to

contemplate that the net might be cast wider where the facts known to, or beliefs held by, the actual decision-maker “*have been manipulated by some other person involved in the disciplinary process who has an inadmissible motivation ... at least where he was a manager with some responsibility for the investigation.*”

24. In Royal Mail Limited v Jhuti [2020] ICR 731 the Supreme Court again considered the situation where a decision maker may have been manipulated by some other person involved in the disciplinary process who held an inadmissible motivation for their actions. The Supreme Court acknowledged that the facts of that particular case were extreme, as it involved a line manager deliberately creating a false picture of inadequate performance, put before a dismissing officer who did not perceive there was a false picture before them. It was said “*Instances of decisions to dismiss taken in good faith, not just for a wrong reason but for a reason which the employee’s line manager has dishonestly constructed, will not be common.*” Lord Wilson JSC then said:

“In searching for the reason for a dismissal for the purposes of section 103A of the Act, and indeed of other sections in Part X, courts need generally look no further than at the reasons given by the appointed decision-maker. Unlike Ms Jhuti, most employees will contribute to the decision-maker’s inquiry. The employer will advance a reason for the potential dismissal. The employee may well dispute it and may also suggest another reason for the employer’s stance. The decision-maker will generally address all rival versions of what has prompted the employer to seek to dismiss the employee and, if reaching a decision to do so, will identify the reason for it. In the present case, however, the reason for the dismissal given in good faith by Ms Vickers turns out to have been bogus. If a person in the hierarchy of responsibility above the employee (here Mr Widmer as Ms Jhuti’s line manager) determines that, for reason A (here the making of protected disclosures), the employee should be dismissed but that reason A should be hidden behind an invented reason B which the decision-maker adopts (here inadequate performance), it is the court’s duty to penetrate through the invention rather than to allow it also to infect its own determination. If limited to a person placed by the employer in the hierarchy of responsibility above the employee, there is no conceptual difficulty about attributing to the employer that person’s state of mind rather than that of the deceived decision-maker.”

25. In Kong v Gulf International Bank (UK) Limited EA-2020-000357-JOJ the Employment Appeal Tribunal (currently on appeal to the Court of Appeal) said:

“I note the following points. First, the general rule that the motivation that can be ascribed to the employer is only that of the decision-maker(s) continues to apply. Secondly, there is no warrant to extend the exceptions beyond the scenario described by Underhill LJ, which will itself be a relatively rare occurrence, and the surely highly unusual variation encountered in Jhuti. Thirdly, whether in the scenario contemplated by Underhill LJ, or in the variation described by Lord Wilson, two common features are that (a) the person whose motivation is attributed to the employer sought to procure the employee’s dismissal for the proscribed reason; and (b) the decision-maker was peculiarly dependent upon that person as the source for the underlying facts and information concerning the case. A third essential feature is that their role or position be of the particular kind described in

either scenario, so as to make it appropriate for their motivation to be attributed to the employer.”

26. In Ross v Eddie Stobbart Limited UAEAT/0068/13/RN the Employment Appeal Tribunal held that where an employee does not have sufficient qualifying service to bring an ordinary unfair dismissal claim, the burden of proof rests with the employee to establish, on the balance of probabilities, that the reason or principal reason for dismissal was because of the disclosure(s) made. The Employment Appeal Tribunal distinguished that position from that set out in Kuzel v Roche Products Limited which applies where the employee does have sufficient qualifying service. That said, the Employment Appeal Tribunal also endorsed the proposition that in practice in many cases the Tribunal can make findings of fact about what was operating in the mind of the decision makers and therefore, in practice, only a small number of cases will turn upon a burden of proof analysis.

Health and safety detriment

27. Section 44(1) ERA gives an employee the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that –
- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities.*
28. Under section 44(4) the section does not apply where the worker is an employee and the detriment in question amounts to dismissal within the meaning of Part X.
29. Pursuant to section 48(2) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
30. In Fecitt the Court of Appeal was concerned with the whistleblowing provisions as originally enacted, and which at the time followed a very similar structure to section 44. The Court of Appeal there held (again pre-amendment to the whistleblowing provisions) that *“the worker is protected only against acts or omissions by his employer. There is no separate protection afforded to acts of victimisation perpetrated by fellow workers.”* Section 44 has *not* been amended in the same way that section 47B has to provide specific protection for victimisation by a co-worker.

Health and safety dismissal

31. Under section 100(1) ERA an employee who is dismissed shall be regarded as unfairly dismissed if the reason, or if more than one, the principal reason, for the dismissal is that –
- (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities.*

Section 10 Employment Relations Act 1999

32. Section 10 of the Employment Relations Act 1999 says:

(1) *This section applies where a worker –*

- (a) *Is required or invited by his employer to attend a disciplinary or grievance hearing, and*
- (b) *Reasonably requests to be accompanied at the hearing.*

(2) *Where this section applies, the employer must permit the worker to be accompanied at the hearing by one companion who –*

- (a) *Is chosen by the worker; and*
- (b) *Is within subsection (3).*

Findings of fact

33. In Hovis Ltd v Louton EA-2020-000973-LA the Employment Appeal Tribunal made some observations about Tribunals making findings of fact. It is important to bear in mind such observations were made in the context of a wrongful dismissal (i.e. breach of contract claim) which fell to be determined on the usual civil burden of proof, and not in the context of a particular statutory provision establishing a particular standard of proof for a certain type of statutory claim. Nonetheless the observations are worthy of note. HHJ Auerbach said:

“In a civil claim, including in the employment tribunal, the burden of proving a factual allegation generally lies on the party making it. The standard of proof is balance of probabilities.

Where, in a given case, the alleged fact asserted by one party is not agreed or admitted by the other, and the judge, having assessed the relevant evidence, considers that the evidence pointing in either direction is evenly matched, and there is no way to choose or decide, then the burden of proof is, as it were, the tie breaker. The party asserting the factual proposition in question will not have shown it probably to be the case, and so the party who bore the burden in respect of the matter will lose...”

34. The Court of Appeal in Morris v London Iron and Steel Co. Ltd [1997] 1QB 493 (CA) was cited with approval in saying:

“A judge or a tribunal of fact should make findings of fact in relation to a matter before it if they can. In most cases, although in some it may be difficult, they can do just that. Having made them, the tribunal is entitled to draw inferences from the findings of primary fact where appropriate. In the exceptional case, however, a judge conscientiously seeking to decide the matter before him may be forced to say “I just do not know”: indeed to say anything else might be in breach of his judicial duty. In this connection, however, I would say this. Speaking from my own experience some people find it easier to make up their minds than others and it should not be thought that a swift reliance upon where the burden of proof lies and a failure to decide issues of fact in the case, ought in any way to be considered an

easy or convenient refuge for anybody who does find it difficult to make up his mind in a particular case. Judges should, so far as is practicable and so far as it is in accordance with their conscientious duty, make findings of fact. But it is in the exceptional case that they may be forced to reach the conclusion that they do not know which side of the line the decision ought to be. In any event, where the ultimate decision can only be between two alternatives, for instance negligence or not, or, as in the instant appeal, dismissal or resignation, then when all the evidence in the case has been called the judge or the tribunal should ask himself or itself whether, on that totality of the evidence, on the balance of probabilities, drawing whatever inferences may be thought to be appropriate, the alternative which it is necessary for the plaintiff to succeed is made out. If it is not, then the operation of the principle of the burden of proof comes into play and the plaintiff fails.”

35. Also cited was the Court of Appeal in Stephens v Cannon [2005] EWCA civ 222 in saying:

“From these authorities I derive the following propositions:

(a) The situation in which the court finds itself before it can despatch a disputed issue by resort to the burden of proof has to be exceptional.

(b) Nevertheless the issue does not have to be of any particular type. A legitimate state of agnosticism can logically arise following enquiry into any type of disputed issue. It may be more likely to arise following an enquiry into, for example, the identity of the aggressor in an unwitnessed fight; but it can arise even after an enquiry, aided by good experts, into, for example, the cause of the sinking of a ship.

(c) The exceptional situation which entitles the court to resort to the burden of proof is that, notwithstanding that it has striven to do so, it cannot reasonably make a finding in relation to a disputed issue.

(d) A court which resorts to the burden of proof must ensure that others can discern that it has striven to make a finding in relation to a disputed issue and can understand the reasons why it has concluded that it cannot do so. The parties must be able to discern the court's endeavour and to understand its reasons in order to be able to perceive why they have won and lost. An appellate court must also be able to do so because otherwise it will not be able to accept that the court below was in the exceptional situation of being entitled to resort to the burden of proof.

(e) In a few cases the fact of the endeavour and the reasons for the conclusion will readily be inferred from the circumstances and so there will be no need for the court to demonstrate the endeavour and to explain the reasons in any detail in its judgment. In most cases, however, a more detailed demonstration and explanation in judgment will be necessary.”

36. We set that out at the start of our findings of fact because we have done just that in our decision making in this case. In sometimes evidentially challenging circumstances we have conscientiously striven to make findings of fact about what

happened, drawing inferences from other primary findings of fact where appropriate. In doing so we had the benefit of being an industrial jury of three.

37. We were acutely conscious in our decision making that at the heart of the allegations in this case is a serious issue about the state of 1R's town hall fire alarm system, and individuals' knowledge of and actions in relation to it. We were also acutely conscious that the seriousness of that issue would give various individuals a motivation to minimise or detract from their knowledge of or involvement in those issues. But we also reminded ourselves that even if anyone had that personal motivation it did not necessarily follow that the claimant was (as a matter of fact or causation) being disadvantaged or removed because of a fear of the state of the fire alarm system, or an individual's involvement in that, being exposed. It could be entirely unrelated. It required careful examination, which we undertook over our 3 days of deliberations.
38. This is a case in which on some key events, the evidence as to who did exactly what and why is fractured and sometimes contradictory. There are few truly contemporaneous documents. Unusually these days, it is a case which has generated little by way of emails, or messages or whatsapps as to what was being discussed or arrangements being made at the time. Complicating the position further (and hence the number of interlocutory hearings about disclosure issues) is that 1R's position is that some relevant contemporaneous documents, including those relating to the town hall fire alarm, have been lost or destroyed. They point the finger at 2R (see for example [689]). It is an allegation which 2R emphatically denies. But the absence of contemporaneous documents, and conflict and uncertainty in witness evidence made our fact finding at times a challenging task. Where there were factual points in dispute or were unclear, we looked to see what, if any, contemporaneous or near contemporaneous documents were available. We also looked to see what consistency there was between witnesses (whilst acknowledging such an analysis itself requires caution), within witness accounts, and the plausibility of the event or account in question when considered in the wider narrative. At times we also considered issues as to witness credibility, and we address that where relevant within the fact finding below. Here we also reminded ourselves that because we found a witness not credible on a particular issue, it did not necessarily follow that we should disbelieve that witness on other points; it all requires careful evaluation. Ultimately we conscientiously strove, notwithstanding the evidential difficulties at times, to make findings of fact and were able to do so unanimously.

The Townhall Fire Alarm System

39. At the heart of this case is the fire alarm system in 1R's town hall. Its history long pre-dates the start of the claimant's employment. It is, however, necessary to make some findings about that history, because it is potentially relevant to what happened and why during the claimant's period of employment, and its termination.
40. In 2014 the town hall fire alarm system in question was installed [278]. The fire alarm system was wireless i.e. it did not run off the mains electricity but off batteries. Having functioning batteries was therefore critical to the running of the fire alarm system.

41. By April 2016 it was being reported to 1R's Services & Property Committee [SB114] that some new batteries were needed in some of the fire alarm units. The cost was anticipated to be £900 and was allowed for in the repairs budget. On 25 May 2016 Flamefast/Morris Fire wrote to 1R to say in a recent test many detectors and sounders on site failed due to batteries. They quoted £1942.50 plus VAT to replace 16 batteries in detectors, 8 batteries in sounders, 2 manual call points which were damaged and to investigate some signal faults which had been found. The quote was placed before the Services & Property Committee who approved the quote [SB123]. As of 6 July 2016 2R reported he was meeting the company in the next week or so to take forward the works [SB129]. 2R's evidence is that a number of batteries were replaced by Morris Fire in 2016/17. That may well be the case as the claimant's composite document of the weekly check sheets completed by Mr McGrath when testing the system (which was agreed by 1R so that all of the weekly sheets did not need to be inserted in the bundle) [750-753], appears to have a hiatus of issues being raised in August and September of 2016. If so, its impact was short lived.
42. By 5 October 2016, a new contractor was involved, BI Developments ("BID"). BID serviced and inspected the town hall fire alarm system [148-161]. The system was assessed as "unsatisfactory." The only options available to the inspector are to find the system satisfactory or unsatisfactory. Batteries requiring replacement was flagged as "Recommendation Code 1" requiring urgent attention. The guidance notes state a Recommendation Code 1 means *"the safety of those using the building may be at risk. The Responsible Person is advised to take action without delay to remedy the observed deficiency in the system...It is important to note that the recommendation given at Section H (Next Inspection and Servicing) of this report for the maximum interval until the next inspection and servicing is conditional upon all items, which have been given a Recommendation Code 1 being remedied without delay."* There are around 14 smoke detectors listed as having failed and 3 manual call points. The report noted that the system would not comply with regulatory requirements in 4 years' time. On 2 November 2016 2R prepared Committee meeting minutes saying work had started on the Town Hall fire alarms [169]. If indeed that was the case then the problems do not appear to have been resolved because the log of the weekly sheets completed by Mr McGrath around this time record that reports and quotes were being obtained and sent to 2R, works were being awaited, meetings were being arranged and happening with Mr Gaunt from BID, that Mr Gaunt was contacting the office, and further breakdowns and quotes were being obtained [751].
43. The system must be inspected every 6 months and by the next inspection by BID on 19 May 2017, the report again concluded the system was "unsatisfactory" [162 -172]. There were about 27 smoke detectors which were non-operational or could not be located or were locked away. There were problems also with a sounder, a booster, and call points. Mr McGrath then started recording on the weekly sheets, against the box for "fire alarm tested:" "waiting on works". There is an example of this at [181-183] dated 24 July 2017. On some entries in August 2017 Mr McGrath had marked "priority" [750].
44. The next BID inspection was on 17 November 2017 [184-195]. Again, it was deemed unsatisfactory. BID noted in the body of the report that *"Nearly a 3rd of*

detection not working. This includes some call points” and “Sound levels in certain parts of building not efficient. Mainly main Market Hall.” It said “Recommend current equipment to be replaced from a wireless to a wired detection system as will be less faults and detectors will work. Currently there are 44 faults shown on control panel.” There were 28 detectors not working. It was also noted that the system would not be compliant with regulatory requirements in 3 years’ time. From around this time and onwards, there are then very few weekly inspection sheets which are now available.

45. The next sixth monthly BID inspection report was on 18 May 2018 [210-220]. This report founded that out of 58 detectors 30 were not working, out of 9 call points, 4 were not working or missing. Again, it was reported that sound levels in certain parts of the building were not efficient, mainly the main market hall. The same recommendation was made about changing to a wired detection system. It was noted the system would not be compliant in 2 years’ time. There are two weekly check sheets completed by Mr McGrath available from around that time for 26 March 2018 and 20 July 2018 that record “awaiting works” or “waiting on works.”
46. On 1 August 2018 Ellis Whittam prepared a risk assessment on the town hall. This noted that there was a need to improve the audibility of the fire alarm unit and that it may be necessary to replace sounder units or to add more sounders. They said that the alarm system should be tested on a weekly basis using different call points in rotation. Ellis Whittam reported that it was observed that call points and emergency lighting was damaged and some items did not work at all. They noted the fire system board was reporting 30 faults and that “*this is being addressed by the council as a priority.*” 2R was named in the risk assessment as being the most senior member of the management team with overall responsibility [221-234].
47. At a Services & Property Committee meeting on 8 August 2018 [SB257- 259] 2R reported that the fire alarm testing units were found to be faulty on an inspection and not giving a true picture of the workings of the system. We cannot see where the statement that the testing results were not giving a true reflection of the workings of system can be found in the actual inspection documents. 2R also told the Committee that works to repair the emergency lighting system and fire alarm system had been put in place and a full report will follow on the works carried out. However, there is no documentary evidence before us of that full report being provided or works to the fire alarm system being carried out.
48. Around this time Mr McGrath stopped carrying out the weekly fire alarm tests at the Town Hall because the system was not sufficiently functioning to allow him to test it. He said in evidence that he would record a form of wording on his weekly sheets to reflect this which he passed to Ms Moore in the office. There is one available dated 9 January 2019 on which Mr McGrath had written “*not working*” [750]. The next BID inspection report was 27 November 2018 [252-262]. The report noted the position in relation to Mr McGrath, stating “*weekly tests not carried out due to system not working.*” 30 out of 58 detectors were not working. 4 out of 9 call points were not working. There were 44 faults on the control panel. Sound levels in parts of the building remained inadequate, particularly the market hall. The picture had not changed since the report 6 months prior, and therefore works cannot have been undertaken.

49. There is a document called “Welshpool Town Council Remedial List” also dated 27 November 2018 [249-250] which seems to be a summary of works required across the sites for emergency lighting and fire alarms. It lists work required for the emergency lighting in the town hall and, in respect of the fire alarm, it says “*total upgrade needed to hard wired system.*” In contrast, the other 1R sites have listed against them work to be done to the fire alarm systems in place, such as the replacement of batteries or changing a panel.
50. Work was done to the emergency lighting system at the town hall. But the total upgrade to a hard wired system fire alarm was not done, or alternative remedial work. Mr McGrath said in evidence that the advice from BID was to be seen to make changes. He said that BID were instructed to do the emergency lighting first as that was the quickest and cheapest work, whilst the fire alarm went out to tender. However, there is no evidence before us of the town hall fire alarm being put out to tender at that time.
51. 2R said in a subsequent investigation meeting, after his suspension, [486-488] that when BID changed the emergency lighting, BID also went through the fire alarm but nothing alerted him to any problem. He said that the weekly sheets only came to him if something was marked on them and nothing had been marked on there so he assumed it was all working. He also said that he was not generally given the weekly sheets from the latter part of 2018 onwards, so again presumed that all was well. He said to the tribunal he only received one weekly form in May 2019 which was about plumbing which he directed be passed to the claimant. He said in the latter part of 2018 he met with Ms Moore and Mr McGrath to do a tour of the town hall and he asked about fire alarm testing as he had not had any reports of any difficulties with testing. 2R says Mr McGrath told him he was not testing the alarm because he did not know how to do it. 2R told us he instructed Mr McGrath to test the alarm weekly and to take advice to ensure that was done. He said he was not told that had not been done. In essence, he was saying he did not know that the problem with the town hall fire alarm was that serious, or that Mr McGrath was not able to, and was not undertaking, weekly tests. He said he was aware the fire alarm would eventually become non-compliant, only when the claimant told him about it later on, and even then he did not believe there was a significant problem in the meantime and batteries could be replaced. He said he did not read the BID reports in detail to know about the extent of the problems or the future regulatory compliance issues. He said he knew there were some battery issues but did not understand them to be serious because he had been told previously the system was recording battery levels as low when in fact they were still functioning. 2R said in answer to a question from the tribunal, that he did not know what he thought was happening with the battery problems he admitted to knowing about. He said that when he spoke to BID after the claimant had left, they had told him that they could replace the system in a piecemeal fashion, with one system running alongside the other, so again he did not understand any problems to be significant.
52. 2R’s evidence is contradicted by Mr McGrath and Ms Moore. Mr McGrath denied in evidence not knowing how to test the fire alarm. Ms Moore said there had been a meeting with 2R and Mr McGrath because Mr McGrath suggested a meeting as he wanted 2R to watch as Mr McGrath did the checks and to see the fire alarms did not work. She said Mr McGrath did know how to do the test, he just was not

able to as it was not working. Mr McGrath said he was submitting the weekly sheets. Ms Moore said that she gave the weekly reports to 2R, as anything with a comment on it went to him. She said the sheets said “*does not work*”. She said 2R would say to leave the document there with him and many of those he did not give back to her. She said those he did, she filed. She said that after 2R left the Council it was not possible to find all the weekly sheets.

53. Mr McGrath said if the fire alarm was set off maybe one or two sounders in the market were working and you could hear them if it was quiet, but upstairs you would not hear anything at all. He said he mentioned the problems to 2R on a few occasions but 2R would say, he would sort it out or they just needed new batteries which, Mr McGrath said, was nonsense. He said he challenged 2R when 2R said that it was just the batteries, and he had spoken about the frequency with which they needed changing, that the system was out of date, and the signal was not strong enough to reach certain parts of the building. Mr McGrath said 2R knew the system was not working as on one occasion the alarm in the council chambers was constantly bleeping as it had no signal and 2R told him to take the batteries out of it. They were permanently removed so there was no working smoke alarm in the council chambers. Mr McGrath said he did discuss the BID reports with 2R. He said that he and Mr Gaunt also sat with 2R on various occasions to discuss things, and that Mr Gaunt went away to put a quote together. Mr McGrath said he had spoken to 2R maybe 4 to 10 times over the years about the ongoing problems with the fire alarm system. He said that 2R knew the problems were more serious than just batteries.
54. The BID reports are available in this case because the claimant obtained them during the course of his employment directly from BID. He tried to find them as part of his work responsibilities, but the records were incomplete. In the course of these proceedings 1R could not find any more BID documents or email exchanges with BID or any Ellis Whittam risk assessment documents. 1R retrieved copies of the Ellis Whitham reports from Ellis Whitham but could not obtain any more documents from BID because they had become insolvent in the meantime. Ms Moore said that when the BID reports came in, they were printed and given to 2R and she put another copy in the file. She said initially she did not read them but about 9 months to one year before 2R left (so roughly August 2018 onwards) Mr McGrath was saying that he was increasingly worried about the situation, so she started to look at them. She said she spoke to 2R a couple of times saying they were not reading well, and Mr McGrath was saying it was not right. She said that Mr Gaunt, Mr McGrath and 2R had a meeting, maybe about a year before the town hall closed.
55. Councillor Bleivas said that on a date before 2nd May 2019 she had heard gossip and rumours about the fire alarm and she asked 2R. He said it needed new batteries. She said she asked him if they could afford them, and he said the money was there and not to worry. She said the gossip and rumour was in fact that she had overheard Ms Moore and Mr McGrath talking along the lines of “Still not working?” and “have you done anything?”, “I reported it to him?” She said they then stopped their conversation as they knew she was listening. She could not otherwise give any indication as to when she overheard this exchange.
56. Councillor Pritchard said, in his oral evidence, he had also heard rumours about the town hall fire alarms. He then said it was actually more than a rumour because

Mr McGrath had spoken to him directly. Councillor Pritchard said that Mr McGrath had mentioned the town hall fire alarms to him in the past about 2 or 3 times in the previous couple of years. He said he took it to the Property & Services Committee and 2R said nothing was wrong, he had checked, his son worked for an alarm company and it just needed the batteries changing. Councillor Pritchard said that Mr McGrath was telling him that 2R would not listen and he could not get anything done. He said Mr McGrath told him that he would not sign for something that was not correct and he had identified that to 2R every time he gave reports in. Councillor Pritchard said he brought it up at various Committee meetings and would always be given the same answer. He said he also brought it to the attention of Councillor Kaye. Mr McGrath denied speaking to any councillors about the fire alarms. Mr McGrath gave evidence before Councillor Pritchard, so he would not have known what Councillor Pritchard was going to say in his oral evidence.

57. Taking into account all the evidence before us, we consider and find that 2R knew the town hall fire alarm system was not properly functioning as at the time the claimant started his employment, and he knew it was more than just a problem with a few batteries that needed replacing and he knew that BID were recommending replacement with a hard wired system. We reach this finding because we preferred the evidence of Ms Moore and Mr McGrath, to that of 2R, and we find that Mr McGrath was unable to test the fire alarms because they were not working sufficiently to allow him to do so, and that Mr McGrath carried on reporting on the problem on his weekly sheets which were passed by Ms Moore to 2R. We find that such weekly reports had words on them to the effect that the town hall fire alarm system was not working and that 2R would have read them and been aware of that. We consider that there was no reason for Mr McGrath to fail to record this detail, and no reason for Ms Moore not to pass the reports on to 2R. Indeed there was every reason for them to do so. Such a finding is also supported by the BID inspection report from November 2018 which records that Mr McGrath was unable to do the tests. It is also supported by the evidence of Councillor Bleivas as to what she overheard between Ms Moore and Mr McGrath, and what Councillor Pritchard said Mr McGrath told him. We noted the conflict on this point between Mr McGrath and Councillor Pritchard but preferred the evidence of Councillor Pritchard as we considered it likely that Mr McGrath would not have wished to openly state he had told a Councillor, in confidence, of the problems.
58. We also accepted Ms Moore and Mr McGrath's evidence that they had spoken to 2R about their concerns about the town hall fire alarm system and that Mr Gaunt from BID had done so too. Some support for this is also gained from the account the claimant took from Mr Gaunt during these proceedings found at [534-537]. We have taken into account we did not hear from Mr Gaunt. That is through no fault of the claimant as sought Mr Gaunt's voluntary attendance, and thereafter sought a witness order. The application was rejected by EJ Jenkins so the claimant tendered his notes in evidence. We have to proceed with caution as these are notes prepared by the claimant not by Mr Gaunt. Mr Gaunt has not signed a statement with a statement of truth, has not given evidence under oath, and has not been available for cross examination. That limits the weight we can give to it. It appears to record Mr Gaunt saying he had been telling 2R, Ms Moore and Mr McGrath for years that the wifi system had never worked properly, that Ms Moore and Mr McGrath had approached him on several occasions with their concerns they may be held responsible, and he had told them to inform 2R, and that Ms

Moore had pushed him to meet with 2R which had not gone well (on a date unknown). The claimant's notes record Mr Gaunt saying the discussion with 2R about the potential phasing in of a wired system was in 2016/2017 not 2019, and on the basis of phasing it in alongside an operational system. The claimant's notes lend support to much of Ms Moore and Mr McGrath's evidence that 2R did know about the problems, and that included Mr Gaunt telling him too. In conjunction with the document at [249-250] and with Mr McGrath's evidence, it also shows that by November 2018 BID were recommending to 2R that a total upgrade was needed to a hard wired system. In all these circumstances we found it implausible that 2R would have been unaware of the extent of the town hall fire alarm because of him not thoroughly reading the BID reports. 2R also admitted some limited knowledge of battery problems, but he was unable to answer the question as to what he thought was happening with the battery problems (which is important as the system functions from batteries). Again, this suggested to us that 2R knew there were operational problems, and that the system was ever more deteriorating a time went on. But for reasons which will ultimately only be known to him, became stuck in a repeating pattern of behaviour whereby he denied the true extent and failed to do anything to remedy the situation.

The appointment of the Claimant

59. The claimant started his employment as deputy town clerk on 1 February 2019. 2R had a long term plan to retire. The plan was to recruit a deputy town clerk, which would in due course allow 2R to drop down to part time working. At some point thereafter 2R was intending to fully retire albeit there was no definite date and it depended on other factors such as an ongoing review into the structure of town councils. There was no guarantee that the deputy town clerk would be appointed as town clerk on 2R's retirement, as there would be an application process.
60. The intention was to gradually shift areas of responsibility over to the claimant. He was initially given responsibility for the markets. There is a weekly street market in Welshpool and the town hall also has a market hall. One of the claimant's tasks was to look at improving the market performance. At the Council meeting on 27 February 2019 2R reported that the claimant had taken over some duties and other duties were being moved in the next few months. He reported that the claimant had settled into his position very well and that 2R and Councillor Kaye (who was Mayor at the time) were happy with the split of duties [292].

Early Street Scene Team Incident

61. The claimant says that he had a fairly early run in with 2R in late February 2019. He states that Mr McGrath told him there was a performance problem with a member of the Street Scene Team. The Street Scene Team undertook tasks such as looking after the running of the markets, street cleaning, emptying litter bins, and looking after the toilets and open spaces. The claimant says he spoke to 2R about it who said there was no substance to it and that Mr McGrath just needed to give clearer instructions. The claimant said Mr McGrath raised it with him later that week and the claimant suggested that Mr McGrath give clear instructions, and record the issues that arose but Mr McGrath said he had tried this before but the employee went running to 2R who did nothing about it. The claimant says that

when 2R found out about this he got angry and said to the claimant that the employee in question was not “*fucking going anywhere*” and “*her job is safe.*” The claimant says he told Mr McGrath he would revisit the issue when he had fully responsibility. We accept the claimant’s account as to these events.

Claimant’s first meeting with BID

62. On 1 March 2019 2R invited the claimant to attend a meeting he had with Mr Gaunt and Mr Stone from BID as the claimant would in due course be taking over wider responsibility for the town hall and other properties after that. In the meeting Mr Gaunt made a comment about there being some unreliability with the town hall fire alarm system. The claimant did not know about the fire alarm history. He asked Mr Gaunt what he recommended. Mr Gaunt said to replace the system with a hard wired one. The claimant asked if Mr Gaunt had been asked to provide an estimate, and he said he had not. The claimant therefore asked Mr Gaunt to provide one. A couple of days later the claimant spoke again with Mr Gaunt and asked him to provide a summary of the fire legislation requirements, so the claimant could understand what the obligations were.
63. On 18 March 2019 Mr Gaunt sent the Claimant, by email, the replacement fire alarm quote (itself dated 5 March), at £43,655 plus VAT [298]. Mr Gaunt also provided a summary of the regulations regarding what Mr Gaunt described as the non-compliant system currently in place. He also attached the inspection reports dating back to May 2017 and said “*feel free to look through the previous years fire alarm servicing certificates/reports which have continually highlighted the various fails in detail within the notes section of the reports*” [298]. The regulatory summary provided included the statement: “*Currently less than 50% of the existing system is functioning in its present state and this decreases further each visit. The primary objective of installing a commercial fire alarm system is to alert all relevant parties (any persons in the building) when safety or security is compromised. Ensuring it is working effectively is not only a legal requirement, it could be a matter of life or death.*” The claimant’s evidence, which we accept, is that he printed off and gave to 2R the fire alarm replacement estimate and summary of the regulations. It was 2R’s stated preference to receive hard copies of documents and talk about things face to face rather than being sent emails. 2R accepted in oral evidence he had been given these hard copy documents but said that he did not know if he had read them or not.

Tensions with the Street Scene Team

64. Fairly early on in the claimant’s employment he upset the Street Scene Team. The claimant was supposed to spend some time shadowing them. The Street Scene Team were expecting the claimant to spend a week with them. He only spent a morning. The claimant’s position was that was enough time. We accept the claimant did not intend to upset the Street Scene Team, but we also accept that they were offended and felt the claimant had snubbed them and that the claimant did not want to understand their work and considered himself above them. The claimant does not accept that he came across that way. But that sense of feeling snubbed came through clearly in the evidence of Mr Rollinson and Mr McGrath and, in the Tribunal’s judgment, left a long term sense of resentment in the team towards the claimant that it was difficult for him to fix.

65. Mr Rollinson said in evidence that he had other issues with the claimant early on. He said that in the first meeting the claimant told the team how things were going to be done without getting to know them. He said the claimant would try to put time constraints on their duties without understanding the practicalities and he could not communicate with the claimant as he felt talked down to. Mr McGrath said he did not consider the claimant showed an interest in their work, talked down to them, and that the claimant would say they were not working to the best of their abilities. He gave the example of being told by the claimant how long it should take to cut the grass on the cricket pitch, undertaken on the basis of the size of the pitch and the speed of the tractor. He said the claimant was given the nickname of “Martin Mugabe.” He said that after a few weeks he said to both 2R, Ms Moore and Councillor Kaye that he could not work with the claimant.
66. Councillor Kaye said that he started to hear negative feedback from Ms Moore. He said she told him that the claimant was rude and horrible and was nasty to staff. He said Mr McGrath asked him “*where did you get him from?*” and called the claimant “mini-Hitler”. Councillor Kaye said Mr McGrath said he (Mr McGrath) would not be around for long if it carried on. 2R said that on several occasions he found Mr McGrath in distress saying he was finding the claimant difficult and on one occasion Mr McGrath was in tears. He said he told the claimant at least twice to make his peace with Mr McGrath. He said he also found Mr Rollinson distressed on several occasions. Councillor Davies said that about 4 to 6 weeks in she started to hear negative feedback about the claimant that he had upset the Street Scene Team by only spending a morning with them, and that the claimant believed he was above them. Ms Moore said that Mr McGrath would often tell her that things were not going well, and that the claimant wanted to change the working practices of the Street Scene Team but that he refused to listen to them.
67. The claimant disputes that any of this happened. There is also a dispute about when it is alleged to have happened. Councillor Kaye said it was two to three weeks in. Mr Rollinson and Mr McGrath said it was soon after the claimant started employment. The claimant said that cannot be correct as on 27 February Councillor Kaye had been reporting to full Council that the claimant had settled in very well. The claimant said he only took on responsibility for the Street Scene Team later on sometime between 7 and 14 April. That point is, however, difficult to resolve as even on the claimant’s own account he was having interactions with the Street Scene Team early on because Mr McGrath approached him about performance concerns within the team. There are no documentary records and it is the kind of issue that, absent documents, is difficult for witnesses to pinpoint a date for. But that does not mean that the events themselves did not occur.
68. We consider and find that the claimant’s style did cause some upset in the Street Scene Team. We consider it was not as early on as Councillor Kaye recalls as it is likely that for a period of time at the start the claimant was finding his feet. But we think it likely, sometime in around the latter part of March or in to April time, as he was more settled, and started to flex his managerial muscles, the claimant did cause further upset to the Street Scene Team. That said we do not consider it reduced Mr McGrath to tears. But it is likely Mr McGrath complained to Councillor Kaye, to 2R and Ms Moore.

69. We also do not think it was the claimant's intent to cause upset. The claimant is a factual, analytical individual. His professional background is as a general manager/ executive director/ board member in a number of SMEs. We consider it likely he joined with a mindset of looking for ways working practices could be improved at 1R. There is objectively nothing wrong with that. However, the Street Scene Team had been doing their job, with little managerial oversight for a long period of time and we do not consider it likely that they took too kindly to what they saw as being questioned or interfered with. That became more of a perfect storm because it is likely the claimant's personal style, (in speaking in a factual, analytical style but which could come across to others as being abrasive, disregarding, authoritarian and instructional) in conjunction with having upset the Street Scheme Team relatively early on when leaving the shadowing early, resulted in the Street Scene Team perceiving and describing the claimant in the way they have done.

March 2019 - Relationship with 2R

70. By mid-March 2019 tensions were building between the claimant and 2R. Ms Moore said that after about 3 or 4 weeks it was apparent that the claimant and 2R could not work together and there was always an air of tension. She said that on at least 3 occasions the claimant stormed out of the office after words with 2R. The claimant disputes that anything was particularly wrong other than, he says, a failure by 2R to pass on information and documentation that he would need to learn the ropes, do his job, and take on increasing responsibilities as intended. He said he tried to speak to 2R about this several times. On 8 April 2019 the claimant prepared a note, that states he recalled on 14 March 2019 having told 2R that the absence of handover information was impeding his ability to effectively work for 1R [352]. In the same note the claimant recorded that on 26 March 2019 he had repeated his frustration to 2R at not having adequate and reasonable information that would help the claimant progress his work. It also records 2R stating that when he arrived he had to learn everything for himself and that was how the claimant would have to learn. The claimant records expressing his frustration at this being an obstructive approach that was not in the spirit of a co-operative handover.
71. We consider there was a fundamental personality and style clash between 2R and the claimant from relatively early on in their working relationship. 2R's management style was built around building and maintaining personal relationships with people. He was not document driven. He did not like emails, and indeed, that was a bone of contention between him and the claimant, as he told the claimant he should speak to people rather than sending emails given the offices were all next door to each other. He liked documents to be printed off and given to him. Ms Moore said that sometimes she would then receive documents back for action or filing, but sometimes not. Ms Wilson said that after 2R left in the August 2019 there were large piles of paperwork that she and Ms Moore had to spend several days sorting through. The claimant also described 2R's office as being in a mess, with files missing information from 2015 onwards. In terms of digital documents, 2R tended to keep these on a separate removable hard drive and/or on a laptop that was not networked.
72. The claimant on the other hand is an analytical individual. He saw the benefit, for example, in using email so that there was a record if needed. If he took on a task, he would want to obtain and read the historic paperwork first. The claimant and 2R

- are both strong personalities, but other than that they are like “chalk and cheese”. This led to increasing tensions between them when the claimant did things such as (which may seem innocuous or indeed sensible in many workplace settings) sending emails or asking for background information and documents. In respect of the latter, we consider that in part 2R’s resistance was due to the fact his documentary records were increasingly in disarray, which he would not have admitted to at the time. It is also likely that he held a lot of information, in his head. It is further likely that 2R, whilst on the one hand wanted in the long term to retire which would necessitate passing on the reins to someone else, in practice found that hard to do. Again, that was likely to then be a source of tension. From the claimant’s perspective, 2R’s way of operating was alien to him, and we consider the claimant could not understand why 2R could not or would not just hand over information to him that the claimant thought must exist. He was therefore frustrated with 2R. As Ms Moore was 2R’s PA it then became inevitable that the increasing tension and frustrations between 2R and the claimant would then spill over and impact on her.
73. Councillor Davies said that in March 2019 Ms Moore contacted her, on behalf of R2, asking her to meet 2R in the Royal Oak Hotel that morning. The respondents would tend to use the Royal Oak Hotel for meet ups and meetings. She said that 2R told her that things were not going well with the claimant and 2R wanted to get rid of him. She said she told 2R that he needed to give the claimant a chance, and he had only been employed about 5 weeks. She said that 2R was unhappy that she was unwilling to dismiss the claimant and said he would “*speak to Phil*” who would “*do what he wanted.*” It is likely that was a reference to Councillor Philip Pritchard (not Mr Philip Rollinson). 5 weeks in would give a date of around 7 March, albeit Councillor Davies said in evidence it could have been a bit later in the claimant’s employment than that, but it was some weeks before the 18 April 2019. 2R said he could not specially recall the conversation with Councillor Davies, but accepted it did not mean it did not happen. His position throughout his evidence was also that any deterioration in his relationship with the claimant had nothing to do with the town hall fire alarms, and they were simply not in his mind at all.
74. We accept Councillor Davies’ evidence that the discussion happened although we also accept it could have been a week or so later than the 7 March, as it seems more likely that it was from mid-March onwards that tensions were particularly building, given the claimant’s own documentary records, as above. The claimant’s position is that this happened straight after he became involved with BID and that early on 2R was trying to secure his exit because 2R feared the fire alarm situation being exposed by the claimant, once the claimant had the initial exchange with Mr Gaunt, as described above. We do not consider that at this time 2R’s actions were motivated by fear of being exposed over the town hall fire alarms. We do not consider it likely that 2R had appreciated the risk at this early point in time. We consider it likely that it was borne of a sense on 2R’s part that he did not see his relationship with the claimant as being workable because he was finding the claimant’s style, in contrast to his own, challenging. That those tensions were there and building for both parties, is demonstrated by the fact the claimant himself also later made contact with Councillor Davies to complain about 2R.
75. The claimant says that in mid-March the password was changed to access the central town clerk email account. He says despite asking 2R and Ms Moore on

several occasions the passwords were not given to him, and that 2R gave him the wrong password several times. The claimant alleges that he was deliberately locked out to stop him accessing previous communications with BID about the town hall fire alarms, because 2R became worried after the meeting with BID on 1 March 2019. 2R denied in evidence that the claimant was deliberately locked out. He said it was with Ms Moore to pass on the new password details. Ms Moore did not give evidence about the email passwords and was not asked about it in cross examination so we did not have the benefit of her evidence. On balance, we do not consider that the claimant was not given updated passwords because of a deliberate attempt by 2R to prevent the claimant accessing historic fire alarm records at that time. We do not consider that 2R was that technologically minded that such an intention would have occurred to him at this point in time, as he was not an email driven individual. We consider it more likely that 2R did not consider email password access as an issue of importance to resolve. It reflected his wider attitude that he did not see access to historic documents in general as being important, compared to the claimant's view on that (which was driving the conflict between them). Hence 2Rs' comment to the claimant that, in effect, the claimant could find out the information for himself.

Impact on Ms Moore

76. Ms Moore said that as time went on, and with it becoming clear that the claimant and 2R could not work together, that claimant's attitude in the office changed. She said the claimant was less inclined to say "good morning" and would be abrupt and less chatty when speaking to her. She said the claimant would keep his door closed when it had been open before. She said she found it increasingly difficult to work with the claimant and he could be abrupt and patronising. She considered the claimant thought she was being deliberately obstructive in not handing over information to him, when she was trying to do her best with the information she had. She said that as time went on, she felt the claimant was trying to catch her out by asking the same question repeatedly. She said that after 2 months she knew they were at the point of no return. She said that in early April she told 2R that she was struggling to work with the claimant, and she was no longer enjoying coming into work as she felt uncomfortable. She said that on a second occasion she told 2R if the claimant became town clerk following 2R's retirement she would not be able to work with the claimant. Ms Moore was unable to say when that conversation happened or what event happened to trigger her saying that. She said in evidence she thought she made three complaints about the claimant, although she gave no detail about the third and was unable in evidence to give dates or much context as to what had triggered the discussions.
77. The claimant does not accept that he acted in a way that did or would cause upset to Ms Moore. Ms Moore was not asked questions in cross examination about much of her evidence. The claimant said in his own cross examination that was because Ms Moore was unwell at the time, and he did not wish to add to that. (Ms Moore had tested positive for covid 19 but was able to give her evidence from her isolation at home). 2R says that Ms Moore did make comments to him about how she had been spoken to and approached by the claimant. Councillor Davies said that in about early April time Ms Moore confided to her that she was finding it difficult working with the claimant and that Ms Moore thought the claimant had assumed that Ms Moore was on 2R's side. She said Ms Moore told her that she felt the

claimant did not trust her and would ask her and ask her again, as if he thought she was concealing information.

78. We consider, and find, that Ms Moore did find being in work increasingly uncomfortable because she was aware of the increasing tensions between 2R and the claimant and she was caught in the middle between them. That would have been a real worry for her because it may well have been several years before 2R actually fully retired. She would therefore have envisaged being trapped between them potentially for a long period of time.
79. It is also likely Ms Moore found it stressful to have the claimant asking her for things or information that she did not have because that was not 2R's way of working. The claimant found that alien and difficult to understand and he would ask again. That in turn left Ms Moore feeling that the claimant was not believing her. She felt the claimant in expecting her to have paperwork, was then questioning her competence. Ms Moore had also worked with 2R for many years and was used to his ways. It is therefore also likely that she herself found, for example, the sending of emails by the claimant to be an oddity when they worked next door to each other.
80. Against all this it is likely that Ms Moore did comment to 2R that she found it difficult to work with the claimant and that she could not envisage working with him if he became town clerk. We do not consider, however, that Ms Moore was making complaints or direct threats that she would resign unless something was done; it was more that she was commenting she found the claimant difficult to work with. The reality was also that Ms Moore, whatever she was feeling, would not have told 2R that her working life was miserable because she was trapped between him and the claimant. We consider it is likely that she would have communicated more to Councillor Davies that she felt trapped in the middle of two very different management styles.

Market trader

81. On 5 and 8 April the claimant had to deal with incidents of aggressive behaviour displayed by a market trader. On 8 April 2019 the claimant drafted a warning letter to the trader [304]. The claimant later found out that the trader had arranged to meet with 2R and the claimant told 2R he wished to attend. The claimant was dissatisfied with how 2R handled the situation. He felt that 2R should not have led the meeting when he had delegated market related issues to the claimant. He felt that 2R had not tackled the trader about the trader's behaviour but had instead listened to the trader making complaints. He says that when the trader threatened to leave the market 2R said "*Martin makes all the decisions regarding the market*" but went on to say "*what do we have to do to keep you here?*" The claimant says that undermined him and also was counterproductive as he was happy for the trader to leave. 2R then signed the warning letter in place of the claimant. The claimant told 2R he was disappointed with how it had been handed. 2R then said "*sometimes we have to make decisions that create an easier outcome for us.*" The claimant recorded this in a subsequent note dated 26 April 2019 [353 – 354]. The next day 2R told the claimant that he had to learn how to handle market traders. In fact, the trader in question then resigned his stall. Later that day the claimant received a complaint from a member of the public about a purchase that individual

had made from the trader and how the customer had been treated by the trader [306]. The claimant responded to apologise and confirm that the trader had left the market. The member of the public thanked the claimant for his response.

82. On 9 April the claimant contacted Councillor Davies in confidence to complain about 2R. (The claimant in his witness statement says this was mid-March but Councillor Davies puts it as 9 April because she could recall the claimant then phoning her again the next day). The claimant contacted Councillor Davies rather than Councillor Kaye, as mayor, because he was concerned about the closeness of the relationship between Councillor Kaye and 2R. The claimant told Councillor Davies his concerns that he was asking 2R for documents relating to his delegated responsibilities, was being told it was all in 2R's office, but the office was in a mess and he could not find them. He told Councillor Davies that the Street Scene Team and Town Hall files only went up to 2015, with documents missing for 2016 through to 2019 and that 2R was giving him little information. He said 2R was being obstructive. He gave an example of having to contact the company directly for fire certificates. Councillor Davies advised the claimant that it would not be that way forever as 2R would retire, but in the meantime he should try to work with 2R.

Market café

83. There is a café within the market. It had a one star hygiene rating. The claimant told the café owner he wanted to work with her on improving the rating. The café owner at first appeared receptive to this but continued to tell the claimant she could not make progress as she could not reach the local authority. The claimant offered to contact the local authority on her behalf but the offer was rejected. On 10 April 2019 the claimant wrote to the café owner asking whether progress had been made on the reinspection, offering support, and asking when progress would be made as 2 months had gone by [308-309]. The café owner did not respond to the claimant but instead approached 2R informally. 2R asked her to put her complaint in writing. The claimant says 2R did so deliberately to create or embellish complaints against him to justify his removal, because of the risk of the claimant exposing the state of the town hall fire alarm. 2R said in evidence he asked for it in writing, because the claimant was complaining about 2R not having understood what had happened previously with the market trader.
84. On 10 April the claimant overheard 2R speaking to Councillor Arnold on the phone. The claimant says 2R was making derogatory comments to Councillor Arnold about how the claimant handled market traders. The claimant telephoned Councillor Davies and said he no longer wished to keep the discussion the day before confidential and Councillor Davies could tell Councillor Kaye. Councillor Davies said the claimant said he was not going to meet 2R halfway anymore. Councillor Davies says that she did telephone Councillor Kaye and they agreed the situation needed to be discussed with all Councillors, which later became part of the probation review process.
85. The café owner put her complaint in writing to 2R on 15 April 2019 [310] asking for a meeting. She made various complaints including the decision to close the market on certain days, that she thought the claimant had spoken to her in a condescending manner, she alleged he approached her behind the counter, that he had spoken to her in a smarmy tone, and other market related gripes. She said

the hygiene rating was in hand and that the letter about it was patronising. Her chief complaint would appear to be her dissatisfaction with the fact that the market opening times had been reduced which had a knock on effect on her café business.

Ladies Rounders team

86. Sometime around 7 April to 14 April 2019 the claimant was delegated responsibility for broader town hall issues, including the town hall building and the Street Scene Team. A ladies rounders team approached the council about using a field. On 16 April 2019 the claimant and Mr McGrath had a discussion about giving them use of the cricket pitch. On 17 April the claimant had a day off and on 18 April, in a meeting with Mr McGrath, learned that in his absence Mr McGrath and 2R had a discussion and 2R decided it should be the rugby pitch. The change was without the claimant's knowledge or agreement. Mr McGrath said that the claimant had shouted at him and had said he was keeping the claimant out of the loop. Mr McGrath said he tried to explain that the rugby pitch was better but the claimant spoke to him in an undermining tone saying "I told you to put them on the cricket pitch." He says he chucked the fixtures list at the claimant and told him to sort it out himself. Mr McGrath did not describe himself as being in tears in his evidence. The claimant denies shouting at Mr McGrath and says it was not a big deal. He says he simply asked to be informed if Mr McGrath and 2R made changes to agreements in future. He says that Mr McGrath looked very uncomfortable and quickly left the office but that there was no confrontation between them. He felt that Mr McGrath was uncomfortable being caught in the middle. We consider it likely and find Mr McGrath did feel upset with the way he felt the claimant had spoken to him.
87. In the afternoon the claimant spoke with 2R. Again, there is a dispute about what happened. 2R says that the claimant flew at him verbally and he felt quite threatened. He says the claimant then stormed out of the office. The claimant says he simply asked 2R to inform him or get Mr McGrath to inform him should 2R be in the position of needing to change a decision the claimant and Mr McGrath had reached. He says he told 2R he would have preferred 2R to raise it with him first so he could inform Mr McGrath of the change of instruction, rather than 2R tell Mr McGrath to do something that changed the previous agreement. He says he told 2R his actions were in danger of undermining his relationship with Mr McGrath. The claimant says it was clear to him that 2R did not like being told this. Ms Moore said that she heard raised voices and it ended with the claimant storming out of the office and driving off. She said 2R appeared visibly upset and left the office soon after. We accept that 2R was upset about the way in which he felt the claimant had spoken to him.
88. 2R asked Ms Moore to contact Councillor Davies and arrange a meeting at the Royal Oak Hotel. Councillor Davies' evidence was that she heard shouting in the background although that seems unlikely given the evidence from 2R and Ms Moore that the interaction resulted in the claimant leaving. Councillor Davies asked Councillor Church to attend the meeting. The claimant questions whether there was such a meeting, or one that involved Councillor Church, or whether it may have been the later date of 23 April. It is an oddity that Councillor Church is not included in the subsequent email. Further 2R's subsequent timeline at [339-340] refers to two separate meetings with Councillor Davies and Councillor Kaye and

- makes no mention of Councillor Church on 18 April. It refers to an attempt to speak to Councillor Pritchard followed by an email to the three of them but again makes no mention of Councillor Church. But Councillor Church gives a clear recall in his witness statement of attending the meeting, and the degree of 2R's distress, such that the Tribunal ultimately accepts it is likely he was present on 18 April. There must also have been some kind of meeting or discussion so that the arrangements for 23 April, which definitely did involve Councillor Church, could be made. We do not know why Councillor Church was left out of 2R's note or the subsequent email.
89. Both Councillors Church and Davies recalled 2R saying that he wanted to get rid of the claimant. Councillor Church said that 2R was very distressed and said he had never been spoken to like that before. He recalled 2R saying the claimant could not work with 2R or any of the staff. Both Councillors recalled 2R saying there had also been an altercation between the claimant and Mr McGrath, that Mr McGrath was very upset, and might walk out if they did not do something about the claimant soon. The Councillors told 2R that they needed to hear the claimant's side of the story and that a meeting would be arranged with the claimant.
90. This is an incident that (unlike much of what was before the Tribunal in this case) generated some emails which have been disclosed by the respondents [315]. At 9:16pm that evening 2R emailed Councillors Kaye, Pritchard and Davies saying *"Good evening. Following some thought this evening and the events of the last week and in particular this morning. I am not prepared to be spoken to as I was this morning. I am proposing to issue a verbal warning to Martin on Monday that such an occurrence must not happen again. His attitude towards Paul and myself today is not acceptable whatever the cause."* Councillor Pritchard replied to say he did not know what 2R was talking about, and said if such a course of action were taken 2R must make sure the claimant was told he had a right of appeal to a panel of councillors. 2R replied to say *"Thanks for email. We have an attitude issue, I have had two complaints so far from traders. I got the blast today as per other occasions. He is very critical of the way the Council is run by me. I have tried to work with it but it is getting difficult. Your comments noted."*
91. Irrespective of any dispute about who exactly met with who on what date, we do accept that 2R was presenting as very upset about the way in which he felt he had been spoken to by the claimant and that he wanted a verbal warning to be given to the claimant. On 18 April 2R also started completing a document [339, 728] which is entitled "record – employment -Martin Bond" in which he backdated entries. The backdated entries included that in the *"first 2 months"* *"When the employee is not happy with a procedure the tone of voice used to the Town Clerk is not conducive to good relations or a good working environment"*, *"staff unrest"* and *"The Town Clerk's PA has expressed she is uncomfortable with the employee. The town services manager is also not over happy with relationships."* There is an entry for the second week in April in which it is said there had been a complaint received from a market trader and that *"When a meeting was held with trader and martin bond it was clear that there was no compromise by the employee. To the town clerk it was clear that there was some misunderstandings between the trader and employee. The trader apologised, the employee refused to apologise and he claims he had nothing to apologise for. The trader stayed but the following day left after another incident which apparently related to poor customer service."*

92. 2R then recorded a host of entries dated 18 April 2019. The first is entitled “*review of progress*” and says that 2R was allowing the claimant to take over services in his own time but that it had taken nearly 9 weeks to take over the street scene, town hall, toilet and recreation services. There is a second entry for “*complaint received from café in markets*”, against which it is said “*The letter contains some information which is unjust, however again the attitude comes forward with the word “patronising” stated. The letter has been given to the employee and is to be dealt with after the Easter break.*” A further entry is head “*Employee not happy with decision of Town Clerk*” and says “*A verbal attack on the communications of the whole council operations was cited, although it has worked well for 13 years. An email was sent to a member of staff by email in the next door office. The employee was rude and aggressive towards the Town Clerk in his words and tone.*” There are then entries recording meetings with Councillor Davies and Councillor Kaye saying “*The Town Clerk is now concerned about the continuing attitude issues*” and that he met with the Councillors to discuss the issues. 2R also recorded leaving a message for Councillor Pritchard, and that he had sent the follow up email detailed above.
93. 19 to 22 April was the Easter weekend and no one would have been in work. On a date before 22 April (the document was first created on 18 April and last modified on 22 April) 2R also prepared a separate document entitled “*Verbal warning*” which was on the claimant’s personnel file. It says “*A verbal warning was given to Martin Bond on Tuesday 29th April 2019. The reason for such warning is noted here:*
- i) The attitude and verbal abuse of the Town Clerk on the Councils organisation, communication and records.*
 - ii) The way the Town Clerk was spoken to on a number of occasions is not acceptable.*
 - iii) The way some members of the market traders were treated is again open to question.”*
94. The claimant was not in fact given a verbal warning on 29 April 2019 (or indeed any other date). 2R said in evidence that the document should not have been on the claimant’s personnel file.
95. On Tuesday 23 April the claimant, on arrival at work, was called into a meeting with 2R and Councillor Church. Councillor Church said 2R told the claimant he was not prepared to be spoken to like that, nor for his staff to be spoken to in such a manner. He said 2R asked the claimant to confirm he would not behave like that again and the claimant agreed to this. He said the claimant apologised and they shook hands. Councillor Church says no verbal warning was given but the claimant was warned about his behaviour in the office. The claimant says that 2R made no reference to the claimant being aggressive or displaying a negative behaviour. He says he did not want to escalate things further and so decided to make a limited apology. He says he chose his words carefully to say he apologised if he had said anything that had upset 2R. He says no other allegations were raised by 2R. 2R’s note at [340] also says that he stated that the claimant “*must not speak to the Town Clerk again the way he did.*” We consider it likely, and find, that the main focus of what 2R was talking about was the way in which he felt in how the claimant

spoke to him. But we accept he may also have touched on the way in which the claimant spoke to other staff, as intending to be a reference to Mr McGrath. We find this because it is Councillor Church's evidence and is also supported by 2Rs' contemporaneous email in which he referred to the way in which the claimant had spoken to Mr McGrath. We also consider it likely, and find, that Mr McGrath had made a comment along the lines that perhaps he would look for another job.

First claimed protected disclosure – 23 April 2019

96. Later in the day on 23 April 2019 the claimant did an inspection of the town hall with Mr McGrath. He had by this time been delegated responsibility for the town hall. The claimant asked Mr McGrath about weekly fire alarm checks and Mr McGrath told him that he was unable to complete these as part of the system was not working. The claimant asked if instructions had been issued to get it repaired. Mr McGrath said, according to the claimant, that he had told 2R that the system had failed and remained faulty and he was unable to perform the tests. Mr McGrath accepted in evidence the claimant may have been in the town hall that day for a walkabout but denied having that specific conversation with the claimant. We consider, and find, that it did happen in the way the claimant sets out. What the claimant says Mr McGrath said matches Mr McGrath's wider evidence in this case. Furthermore 1R's grounds of resistance at paragraph 21 [15] accept that there was a meeting in mid-April between the claimant and Mr McGrath, that Mr McGrath was unable to carry out fire alarm tests, and that Mr McGrath reported to the claimant he had told 2R the system had not been working correctly.
97. The claimant's account is that when he returned to the office he told 2R that Mr McGrath had said he was unable to carry out weekly fire alarm tests as the system was not working. He says he told 2R that Mr McGrath had said he had told 2R of the failures but they remained faulty. He says 2R listened without responding. He says he said to 2R his opinion was that this was a serious health and safety issue and affected employees of the Council, traders, contractors and a wide range of members of the public visiting the town hall for various reasons. He says that again 2R did not say anything, so the claimant said he would meet with BID to get a comprehensive understanding of what the issues were. The claimant says the only comment that 2R made was an odd comment that the best thing they could do to the town hall was to "*put a match to it*".
98. 2R said in evidence that he was not saying this conversation did not take place, but that he did not recall it. He denied the claimant ever telling him that the fire alarm system was not working. He said he did not remember the claimant telling him that Mr McGrath had said he was unable to do the weekly test as it was not working, and he did not think the claimant did tell him that. We accept the claimant's version of events as to what was said in his conversation with 2R. We took into account 1R's arguments relating to, they would say, a lack of detail from the claimant about the event in question and that the claimant did not prepare a contemporaneous note of the discussion when he prepared notes about other topics. We also took into account the respondents' arguments that they consider the claimant manufactured his whistleblowing claim after the event. However, we found the claimant's account to be a plausible one. Mr McGrath ultimately accepted he had done a "walkabout" with the claimant; the working of the fire alarm system would then be an obvious topic. There would be no reason for Mr McGrath

to not answer direct questions from the claimant about the testing of the fire alarm system and to say what the claimant recalls him saying. Thereafter it is plausible and likely the claimant would raise this with 2R and also plausible and likely, bearing in mind the character and nature of the claimant, that he would make the health and safety comments that he says he did. 2R's superficially flippant comment about putting a match to the building also reflects that he did have some knowledge of the problems at the town hall albeit it being something he was, in terms of his outward behaviour, not taking seriously.

Wednesday 24 and Thursday 25 April 2019

99. At 9am on 24 April 2R met with the café owner (in 2R's timeline of events it is mis-recorded as having been on 23 April). The claimant was not invited. 2R says, which we accept, that the café owner did not want the claimant to be present. 2R, in his note of the meeting [318-319] summarised the café owner's concerns, and noted that her complaint there was no discussion at a market traders meeting over closing two days a week, did not accord with the claimant's information on file. 2R also recorded that he had pointed out that the markets had been delegated to the claimant and the claimant would deal with the smaller issues that the café owner was raising. 2R's note records that he says he listened and did not comment on any of the items raised and apologised if the claimant's comments had been taken the wrong way. The note says he said he confirmed it was not intentional and the claimant did care about the markets, including the café and that the claimant was trying to improve the markets for everyone. He said the claimant's decisions were supported by the Council and that the claimant's approach to the hygiene rating was meant to be in the spirit of being helpful. He said he had offered for the claimant to come and discuss any concerns directly but the café owner had declined this. He concluded by saying "*This was an informal meeting and the letter is not to be taken as a formal complaint. No formal action on the letter is needed. NOTE: There was little new that had not been covered in her letter to the Town Clerk. [The café owner] appeared to be more settled at the end of the meeting.*"
100. The claimant complains that despite this it was used as a purported reason to dismiss him, and he was criticised for not apologising when he was not given any opportunity to respond. We return to this. The claimant emailed 2R saying "*Would you please confirm for my file attendees, discussion held and agreements reached?*" Later that morning the claimant sent a further email asking 2R to confirm the password to the town clerk email [317]. 2R later went to see the claimant and, when leaving, told the claimant he did not wish to antagonise the claimant but that he preferred to communicate verbally rather than by email. 2R said he would send through a record of his meeting with the café owner in due course. The relationship between the claimant and 2R was clearly frosty at this time. On 24 April Ms Moore made the booking for the claimant's probationary review meeting due to take place on 2 May.
101. On 25 April, when the claimant received 2R's file note of the meeting with the café owner. He was upset. He emailed Councillor Davies [321]. He said that he had not received an invitation to attend the meeting with the café owner and 2R had not told him it was scheduled. He said he had seen it in the google diary the night before. He said that when 2R returned after the meeting 2R did not mention it, so he had sent his own email. He suggested to Councillor Davies that 2R was

undermining him. Councillor Davies forwarded the claimant's email, with his permission, on to Councillors Pritchard, Bleivas, Sherlock and Church [331] who were to make up the probation review board and said it would be picked up at the review meeting.

102. 2R said in evidence that also on Thursday 25 April, Councillor Kaye came into the office for a general catch up and amongst other things they discussed the fire alarm. 2R said he told Councillor Kaye that the claimant had done a safety audit on the fire alarm and it would need replacing due to the wireless system being non-compliant from 2021/2022. 2R said he told Councillor Kaye that the estimate was for £52,000 and that he had requested other quotes be obtained for the committee. He said Councillor Kaye offered to drop in business cards for other companies who could give a quote. 2R said in evidence that in late March 2019 he had asked the claimant to complete a safety audit across 1R's properties including the town hall which would include the fire alarm system. He said the claimant had done a good, detailed audit report for him. He then said the detailed report he was referring to was the BID estimate as he did not have another report from the claimant. He said all he learned from the claimant was that the system would be non-compliant in 2021/22 and at some point the claimant had commented that it was unsatisfactory. He denied the claimant saying in any conversation that the fire alarm system was in need of urgent work, or was not working or was seriously deficient.
103. Councillor Kaye said in oral evidence that he did recall the conversation with 2R and he thought the quote was a bit high so he said he would drop some cards in. He said that, however, he did not understand there was an existing problem with the fire alarm. He said he thought that 2R had the situation in hand.
104. It is likely that a discussion did take place between 2R and Councillor Kaye that day because the following day 2R made the claimant an offer to resign that Councillor Kaye knew about. We accept it is likely that 2R did tell Councillor Kaye that the claimant had done an audit and the fire alarm would need replacing as the wireless system was non-compliant from 2021/22. We do not, however, consider that this could have been the complete picture known to 2R. We do not accept that 2R's understanding of any problems with the town hall fire alarm were limited to it becoming non-compliant in two years. We have already found that by this time 2R also knew of the existing ongoing, deteriorating problems from BID, the weekly sheets, Mr McGrath and Ms Moore. He also knew that the claimant now knew that Mr McGrath was not able to undertake the weekly testing of the fire alarm system, that the claimant was concerned about health and safety implications and was going to discuss it further with BID. He had the quote for a replacement system obtained by the claimant. Moreover, there is no evidence, other than 2R's witness evidence, that 2R instructed the claimant to get other quotes for replacing the system. There is also no evidence of 2R tasking the claimant with preparing a health and safety audit report across all 1R's sites or the claimant preparing such a report. The claimant was, even on 2R's evidence a conscientious worker. If 2R had asked him to do these things, it is likely the claimant would have done so (and that any audit report would be far more detailed than merely obtaining a quote from BID about the town hall fire alarm system).

105. This ultimately begs the question as to why 2R would have told Councillor Kaye such limited information about the state of the fire alarm, given our finding about his wider knowledge and why he created the story of the claimant being given a health and safety audit to do. In our judgement it must come down to 2R trying to control the narrative of the situation, and paint the work needed on the fire alarm system as being necessary to meet changing regulatory requirements, as opposed to the true historic picture being exposed. To not want the true picture exposed must in turn be because 2R was seeking to protect himself from criticism for not having acted on the long term increasingly failing system.
106. The claimant says it is likely that 2R said more to Councillor Kaye than the system was due to become non-compliant. 2R and Councillor Kaye had a very close working relationship. Councillor Kaye had a full time job and understandably greatly relied on 2R for the day to day running of the Council. The claimant considers it is likely that 2R specifically told Councillor Kaye about the wider fire alarm problems and Councillor Kaye then became involved in covering for 2R. He relies on the evidence of Councillor Pritchard who says that he had a conversation with Councillor Kaye several days prior to 2 May 2019 in which he says Councillor Kaye told him that 2R had complained to him about the claimant, that 2R was sick of the claimant asking questions about the town hall fire alarms, that the Claimant had to go and if the claimant didn't go, then 2R would. In his oral evidence Councillor Pritchard went further than this. In piecemeal fashion his evidence was that when the rumours about there being a problem with the fire alarms continued he spoke to Councillor Kaye about it, and it was after that that 2R was complaining about the claimant raising the fire alarms and that he was fed up with it. He said he told Councillor Kaye it had been going on too long and Councillor Kaye had to get to the bottom of it. He said Councillor Kaye was going to come back to him. He said after the claimant's eventual dismissal he challenged Councillor Kaye about it and that Councillor Kaye knew Councillor Pritchard thought the claimant was dismissed because of the fire alarms.
107. Councillor Kaye denies knowing about the problems with the fire alarms and denies saying to Councillor Pritchard that 2R had said he was fed up with the claimant going on about the fire alarms. He says, as did 2R, that the most he said was that 2R was fed up about the claimant complaining about not getting information out of 2R. On balance, we do not accept Councillor Pritchard's evidence on this particular point, and we are not convinced on the balance of probabilities that 2R told Councillor Kaye about the wider problems with the fire alarm system. In particular, we reach this view on the balance of the evidence. Councillor Pritchard's evidence on this point came out in an unattractive piecemeal fashion and was not contained in his witness statement despite being a witness for the claimant. Further, when Councillor Kaye was ultimately directly told by Ms Moore about the problems with the fire alarm system he took steps to close the town hall until it could be made safe and suspended 2R. Whatever his loyalty to 2R, we do not consider that if 2R specifically told him about the true picture of the fire alarm system, that Councillor Kaye would have condoned doing nothing out of support for 2R.
108. The conversation between Councillor Kaye and 2R on 25 April was a wider one. They generally met for a catch up on a Friday when Councillor Kaye had some time he could dedicate to Council business. The claimant's probationary review

meeting had been booked in by then. Part of 2R and Councillor Kaye's conversation involved 2R complaining about the claimant. 2R said (albeit he incorrectly gives the date in his witness statement as being in early May) that Councillor Kaye said that the claimant "had to go" as staff relationships had not improved. He says that he asked Councillor Kaye if Councillor Kaye wanted him to have a private chat with the claimant to see if he was willing to resign. He says Councillor Kaye agreed to this. Councillor Kaye said that the conversation did not take place in the way outlined by 2R. Councillor Kaye said that 2R sold the conversation he envisaged having with the claimant as being a constructive one about resolving things and moving forward with everyone working together, and not a resignation. He says that 2R told him he would like the claimant to stay and wanted to do the right thing for the claimant and other staff in the Council. But he did also say in his oral evidence that the possibility of a resignation was discussed and it may have been one of the alternative things he said yes to. He said how 2R then took it forward was different to their discussion and that was how 2R would act, in that he would tell you one thing and then do something different.

109. We consider that Councillor Kaye's recollection of the discussion was more likely to be accurate than 2R's. In particular, 2R's account is difficult to accept because his witness statement disrupts the actual timeline of events. We consider, and find, that 2R led the discussion in a way that got Councillor Kaye to authorise one possible course of action with the claimant as making the claimant an offer to go, rather than to go ahead to the probationary review meeting.
110. We consider and find that 2R did this for mixed reasons. We accept that he was finding it difficult to work with the claimant as their styles and approaches were so very different. He did not like the way the claimant was challenging him about the handover of duties and information. He did not like the Claimant's direct and abrupt style. He was not used to people challenging him in that way. 2R had already spoken to Councillor Davies about his wish to get rid of the claimant and said the same again to Councillor Davies and Councillor Church. Notwithstanding the claimant's apology on 23 April, we consider it likely that 2R was still upset about how he felt the claimant spoke to him about the ladies' rounders pitch and the claimant challenging him over how he had handled the market trader and the café owner. We consider and find he considered the very fact that the market trader and café owner had complained about the claimant was, in 2R's views, a bad thing, even if the complaints were not legitimate. It was 2R's approach to his duties that the key thing to him was to try and keep good relationships with those around him; it was his measure of success. He wanted to keep the market traders and the café owner happy and keep their income coming into the council. It is likely he thought the claimant's manner had wound them up in a way he would not have done. The claimant and his styles were so alien to each other. 2R was also faced with Mr McGrath being upset about, what Mr McGrath saw as the claimant telling him off over the ladies' rounders pitch incident, and general grumblings from the Street Scene Team about the claimant, as well as Ms Moore expressing reservations. That things were tense between 2R and the claimant is shown by the fact on 24 April, the claimant was emailing 2R chasing his report of the meeting with the café owner, and the email passwords with 2R then saying to the claimant he did not want to antagonise him, but he preferred to be spoken to in person.

111. We do, however, also consider that by this stage 2R *had* started to worry about the risk of the claimant exposing the situation and history of the town hall fire alarms. We have already found that telling Councillor Kaye the claimant had done a safety audit which revealed that work would be needed on the fire alarm to meet changing regulatory requirements, was 2R controlling the narrative to avoid the historic failings coming to light. We therefore consider it is likely, and we find, that 2R would have been troubled by the claimant telling him he knew that Mr McGrath was not doing weekly fire alarm checks and was going to explore that further with BID. We consider it likely that by the time of the meeting with Councillor Kaye on 25 April, one of the reasons why 2R wanted the claimant to leave (on top of all that had already been troubling him) was to limit the risk of exposure of the town hall fire alarm situation. It is also one reason why 2R was pushing to make the claimant an offer to resign, rather than going through to the probationary review which would be in front of a full panel of Councillors. We note the respondents' argument that 2R had not tried to get other employees dismissed who knew about the fire alarms. However, we consider it likely that 2R firmly believed (albeit ultimately incorrectly) he was in control of the situation with Ms Moore and Mr McGrath; it had gone on already for some time. He was not in control of the claimant and it is likely this would have been a worry for him as time went on.

Offer to resign – Friday 26 April 2019

112. On 26 April 2019 the claimant came into the office, having been to the market, and saw that Mr Rollinson was talking to 2R. Mr Rollinson came to speak to the claimant and told him that he had come into work on his day off to help another member of the Street Scene Team who was stressed as he was having to arrange furniture and it was not normally his job (This is a different member of the Street Scene Team to the individual that was giving rise to performance concerns). Mr Rollinson also complained that he had worked additional hours the day before, on his time off, and that the Street Scene member in question was threatening to quit. He referred to Mr McGrath working to rule, that Mr McGrath was not working outside of his 40 contracted hours, and if things continued he would also consider working to rule. The claimant says he tried to ask what the "working to rule" referred to but Mr Rollinson walked out. The claimant prepared a contemporaneous account of this found at [322].
113. Mr Rollinson said in evidence that he had been called into work from annual leave due to a disagreement between the claimant and Mr McGrath, Mr McGrath had walked out, and the rest of the team needed a list of jobs to do. He said the street scene member had been crying and had said the claimant had spoken to him out of turn. Mr Rollinson said he told the claimant that the way the claimant was behaving was not on, and he could not go around upsetting people. He said the claimant invited him to sit down but he was too upset and told the claimant he was on holiday and should not be in the office in the first place before walking out.
114. The claimant said that Mr Rollinson did come in and have, in effect, a rant at him. He did not initially understand what Mr McGrath "working to rule" was all about. He denied upsetting the street scene member and said that he had not in fact spoken to the individual that day. He gave evidence of other occasions on which he had positive exchanges with that street scene member. We think it likely, however, that the street scene member was upset about Mr McGrath walking out

and him being given a job to do he did not normally do. Somehow, rightly or wrongly, the claimant was being blamed for all that by the Street Scene Team.

115. The claimant went to speak with 2R and asked him if he knew what Mr Rollinson was talking about. 2R told the claimant "*Martin this is not working out.*" The claimant continued to ask 2R what Mr Rollinson had been referring to. 2R said he did not know other than Mr Rollinson having said there was a problem and that 2R had directed him to the claimant. The claimant recorded that he said again to 2R "*Phil said Paul was working to rule*" and that 2R then said "*Yes the boys and Lizzie are unhappy with you*" and "*I have received complaints from several staff members about you.*" The claimant recorded 2R as saying that the staff had approached him and not vice versa and that 2R said again "*This is not working out Martin, you need to leave this employment.*" 2R said a financial package could be put forward for the claimant. The claimant records that he said "*We were due to meet this morning and it was my intention to ask you if for the benefit of the Town we could find a way to make this work, to work more cooperatively together in the spirit of a handover, for you to make more information available to me in the spirit of a handover.*" We pause here to again note that even on the claimant's own account the relationship between him and 2R was very difficult at that time, given his own observation they need to work more cooperatively together.
116. The claimant recorded that 2R said "*this is not working. When we have to send each other emails then it is not working.*" The claimant recorded he said again to 2R that the issues only related to the absence of information and that 2R said the claimant had everything he had, and it was the way he chose to approach the handover. The claimant asked if the Council knew about the offer to go. 2R said not the whole Council as he had not had chance to contact them all, but that Councillors Kaye, Davies and Church knew and that Councillor Kaye would inform the appointment committee. That in fact was not true, only Councillor Kaye knew. It appears to us 2R deliberately pretended other Councillors had endorsed the course of action to add weight to the offer being made to the claimant and avoid the probationary review meeting. 2R had spoken to Councillors Davies and Church about wanting the claimant to leave but they had told him that they would need to hear both sides of the story; they had not endorsed an offer to the claimant to resign.
117. The claimant clarified that the offer was an alternative to proceeding with the probation review meeting and if he did not take it the review meeting would go ahead. The claimant said again that he had been intending to speak to 2R that morning about putting things behind them and that he was going to mention that if they maintained their current positions neither of them would come out of a combative review well, and both their reputations would be tarnished. 2R said he was sure the claimant was right and it would not be good for either of them. He said the claimant was a lovely guy, he would give him an exemplary reference but he did not fit in. The claimant was made an offer of 3 months' pay, tax free. The claimant was to have a think and get back to 2R.
118. Later that day 2R gave the claimant a letter confirming his first 3 months was drawing to an end, and the probationary review meeting would take place on the evening of 7 May. The letter said that the panel would be considering not only performance but how the claimant had fitted in with the staff [326]. At some point

2R also recorded a series of entries in his timeline for 26 April. The first states *“Robert meets with Martin”* and says *“Points about attitude and unrest in staff put forward. Also reminded Martin that information is there, he only has to ask for what he needs. Also told that sending emails to the person in the next office is not good for staff team relations. It appeared both sides are not happy, perhaps time to think about the future.”* The next entry is entitled *“Phil Rollinson calls in to complain about Martin”* and *“Martin me with Phil Rollinson, first time Town Clerk was aware there was an issue.”* The next entry is *“Robert meets Phil Rollinson”* and says he went to see that Mr Rollinson and the Street Scene member who had been upset were ok. He wrote: *“Phil expressed the view that Martin did not respect them nor appeared to understand what they did.”*

Run up to the probation review meeting

119. On Sunday 28 April Councillor Davies co-ordinated some emails amongst the review panel, it would appear on the back of various phone calls between them. It would appear from the various email exchanges that all were in agreement that both the claimant and 2R should have opportunity to speak to the panel without the other one present. Councillor Davies confirmed that Councillor Kaye was travelling to an awards ceremony on the following Wednesday and returning on the Thursday and would tell 2R that he was not to be at the meeting. She said *“It is very helpful Steve will be able to do this face to face and as kindly as possible.”* Councillor Davies also forwarded on to Councillor Kaye the claimant’s earlier email about the café owner situation. Councillor Davies said she thought that 2R had been able to give his side of things to everyone other than Councillor Pritchard. She suggested that things he set out in writing to the claimant in advance. She said matters she thought they needed to cover with the claimant included the claimant’s knowledge and interaction with the staff. Councillor Davies also noted that 2R had told Councillor Bleivas that 2R had given the claimant a written warning on Monday. She said *“I do not believe this is correct; I think he refers to a conversation he had with Martin, with Richard present – this was not a Verbal warning. I do not believe Robert intended to mislead, but simply does not understand employment law.”*
120. Councillor Davies also noted in her email to the other Councillors that Mr McGrath had finally agreed to work a 40 hour week. She wrote that this had demonstrated the weaknesses in the system of expecting staff to work under managerial conditions when not given the status, responsibility or salary to match. She said *“As I think we all know this has been brewing amongst the 4 men in the street scene team and others for several years. It is something we have to address, but lets not get this and the Deputy Clerk issue intermingled.”* Councillor Davies also sent a separate email to Councillor Kaye, again that Sunday evening, in which she said *“Also I saw Phil (Street Scene) this morning and he assures me that they will all cope and that none will walk out. I’ve explained that we are all working hard to get through this and truly value them and know that warm words are not enough. We have some hard work to do in the HR department once we have sorted out the immediate crisis! I’ll speak to Lizzie again in the morning - she’s calming down, too. As we both know, we’ve had these blow ups plenty of times before but its always a case of “better the devil you know...” [333].*

121. Councillor Davies said to us in evidence that this was not a reference to the claimant but to a long standing issue that was affecting the Street Scene Team about their unhappiness with their pay and contracted hours, as they were salaried and no longer paid for overtime, hence Mr McGrath saying he was working to rule.
122. Councillor Church replied to confirm that at the meeting on the Tuesday, 2R had not given the claimant a verbal warning, but had expressed his dissatisfaction with the way the claimant spoke to him the Thursday before. Councillor Church stated 2R had told the claimant the review meeting was to happen the forthcoming Thursday at which issues over his work could be raised [328].
123. On Monday 29 April the claimant forwarded on to Councillor Davies his note setting out the discussion in which 2R had made the claimant the offer to leave. Councillor Davies replied to say she knew nothing of it and questioned whether others did [335]. Councillor Davies forwarded it on to the review panel saying she knew nothing of and 2R needed to be stopped before they ended up in court. Councillor Church confirmed he knew nothing of it either. He said as chair of the finance committee, which includes personnel matters, he would expect to be informed, whilst accepting that the town clerk was responsible for individual staffing matters. Councillor Davies told us she later spoke to 2R about making the offer to the claimant to resign, and he told her he had no choice as staff were threatening to walk out.
124. Also on 29 April 2R recorded on his timeline relating to the claimant that he has spoken to Mr McGrath. The entry says "*Just see if he is Ok. He not happy. He feels that Martin does not understand what they do and that they are doing their best.*" He also made an entry called "*Paul McGrath and team*" which says "*still not happy, in at weekend but minimum staffing.*" He also recorded that the claimant had met with Mr McGrath and that he had asked the claimant if all was ok now, with the claimant saying that Mr McGrath was considering what the claimant had said to him. He completed a further entry with the same date called "*Lizzie expresses view*" which reads "*Lizzie is still uncomfortable with Martin. Feels when he is asking for information it is for the purpose of ruffling feathers.*" The timeline was last modified on 29 April when 2R recorded an anticipatory entry for 30 April which says he was to meet with the claimant to see where they were. 2R in fact did not add any further entries to the timeline after 29 April.
125. Mr Rollinson said that in the days that followed the 26 April, members of the Street Scene Team went to see 2R and told him the way the claimant was treating them was wrong and they could not work with the claimant. He said he told 2R he would be leaving if something was not done soon.
126. So far as we understand it, the claimant told 2R, probably on 30 April, that he was going to go ahead with the probationary review meeting.
127. On Wednesday 1 May Mr Gaunt from BID emailed the claimant to see if he wanted any further information on previous quotes provided for outstanding remedial work [342]. The claimant said it would help if someone went through the paperwork with him and identified what needed to be done as he was keen to progress the work [341]. Mr Gaunt said he would send his colleague to see the claimant on Thursday or Friday, as he had quantified remedial work and the fire alarm design etc [341].

128. That day the Services & Property Committee also met [348-351]. The town hall fire alarm was not raised or discussed. The claimant said in evidence he did not raise it as he was not in possession of all the facts, as he was waiting to meet with BID. 2R stated that as the claimant did not mention the fire alarms he was left with a clear understanding there was no immediate action that needed to be taken. We do not accept that was his understanding for reasons already given. 2R also said in oral evidence that he had expected the claimant to raise the town hall fire alarm at this Committee meeting, and when the claimant did not, he raised it himself in the subsequent meeting in June. We return to this point, later.
129. 2R and Councillor Kaye travelled together to and from an awards ceremony. Councillor Kaye said in evidence that 2R raised with him at length, on both the way there, and the way back, the situation with the claimant. He says 2R told him that the claimant was not listening to 2R, that 2R was worried about the staff, that the claimant was dictating to the staff. Councillor Kaye said he commented to 2R that they should consider dismissing the claimant if things were that bad.

The probation review meeting

130. The probation review meeting took place on the evening of 2 May. There are no formal minutes but Councillor Bleivas' handwritten notes are at [360 to 365] and Councillor Davies' notes at [366 to 368]. It is not in dispute that at one point during the evening 2R became angry and stormed out of the meeting saying that if the claimant stayed they could have his resignation in the morning. There was a dispute about whether it was at the start of the evening or the end. By the time most of the Councillors had given evidence there appeared to be a large consensus that it was early on in the evening. The Tribunal accepts that was the case. We consider it likely that 2R and Councillor Kaye attended the review meeting with an expectation that the claimant would be dismissed following on from their discussions on the train. At the start of the evening 2R then learned that was not necessarily the case, triggering 2R to lose his cool and say what he did. Councillor Kaye went after 2R and eventually persuaded him to return.
131. The review panel were the same individuals who had made the decision to appoint the claimant: Councillors Kaye, Davies, Church, Bleivas, Pritchard and Sherlock. They met with the claimant, as they had intended all along, in the absence of 2R. Taking the narrative from Councillor Bleivas' note, the claimant was told that 2R had serious misgivings about him and he was given the opportunity to say himself what any issues were. The claimant explained the biggest issue for him was lack of information being handed over and 2R's response that when he arrived he had no information so the claimant was in the same position. He said he felt he was being set up to fail. He explained that paperwork only went up to 2015, and he did not have the email passwords. The claimant said he had an amicable relationship with the Street Scene Team. He said he felt unsupported by 2R when trying to address the performance of a member of the Street Scene Team that the other members had been complaining about. He explained he also felt that 2R was undermining his decisions with market traders which was undermining his responsibilities. He said he had received no warnings about any alleged issues. He denied having shouted at 2R over the ladies rounders situation. Councillor Bleivas also recorded "*There have been some worries from the workers regarding*

how Martin speaks to them. He is too brusque etc and Paul felt spoken down to. Martin has since chatted to Paul to retrieve the situation. Martin has done this after several friendly conversations with Paul. Martin would like to stay and rebuild everything and stay.”

132. The claimant’s own notes of the meeting [369] record him asking the panel whether they were aware of the offer made to terminate his employment. Councillors Davies and Church confirmed they had not, and Councillor Kaye confirmed that he had been. The claimant also recorded that there was a brief discussion about Mr McGrath working to rule, and Councillor Pritchard asked the claimant whether he was aware the employment contracts had been changed some two years previously to provide annualised salaries rather than hourly pay to recognise extra hours worked. The claimant confirmed he did not know that about the Street Scene Team.
133. Councillor Davies said in evidence that during the meeting she had told the claimant that he needed to build bridges with the staff and that the claimant had said “*what do you mean?*” She said she told him that he had a poor relationship with staff members and that the claimant seemed surprised when she said this. She felt that the claimant did not have insight into how his behaviour was received by staff.
134. Councillor Bleivas has then written in her notes “*We (the Councillors) want the situation to be made better and that Robert and Martin must try to sort out their differences together. We want Martin to remain with us. Richard Church will always be available for Martin to confidence or to discuss any worries.*” The Tribunal’s understanding was that a motion or motions were put to the review panel and the majority of the panel voted in favour of the proposal Councillor Bleivas recorded in her notes. Councillors Kaye and Church did not, and were in favour of the claimant being dismissed.
135. Councillor Bleivas’ notes also record the review panel speaking to 2R. She recorded 2R as saying that 5 members of staff avoid the claimant and two market traders had complained about the claimant. 2R said that one agreed it was all over a misunderstanding and the trader had apologised but the claimant refused to apologise. She recorded 2R saying that the next day the claimant had attacked 2R for undermining him and had spoken badly to 2R. She noted that 2R had no issue with the claimant’s ability and it was his attitude that was the issue. She said that 2R’s worry was that the claimant was upsetting the office staff and other workers, and the claimant needed to communicate more with 2R and the staff as the role was people based not IT based. She noted that Councillor Sherlock recommended that 2R start from scratch and that the claimant and 2R meet twice a week to discuss each aspect of what the claimant needed to learn. Councillor Davies said in evidence that 2R was most concerned about the claimant’s attitude to him but he also mentioned traders and the staff.

After the review meeting

136. 2R’s evidence to the Tribunal was that whilst he was upset at the start of the probationary review meeting, by the end he had calmed down and he accepted he

had to work things out with the claimant. He said that he had dealt with the market trader complaints and was looking to move on from these.

137. The morning after the panel review meeting, Friday 3 May, the claimant was called into a meeting with 2R and Councillor Church. 2R told him that they would be working closely together and the panel would meet again in June to measure progress [370]. The claimant was told that later that morning they would separately see the office staff and Street Scene Team to start afresh and 2R would see each group on his own first before the claimant was invited to join them. 2R says the claimant was told his behaviour towards staff needed to improve and he needed to spend more time working with staff on their duties to understand their role, and he would also spend more time sitting in on the town clerk's meetings.
138. 2R then held separate staff meetings with the Street Scene Team and the office staff before the claimant joined. 2R's evidence was that it was accepted by everyone in the meetings that they could start again and work together.
139. Mr Rollinson's evidence was that he did not notice any improvement in the claimant's attitude and that the claimant did not attempt to sit down with the team and clear the air. Mr Rollinson did not, however, give any specific examples of anything in particular happening after that meeting on 3 May. He said in oral evidence that he could not really remember the street scene meeting or the period of time after the probationary review.
140. Mr McGrath's evidence in his witness statement was that he said he could not work with the claimant in a staff meeting in early May. He was not able, however, to give a date for that, and it may therefore have pre-dated 3 May when we are told it was accepted by everyone that they would start again. Mr McGrath also said in his witness statement that following the review meeting there was no attempt by the claimant to improve working relationships or to spend time with the Street Scene Team. He did not give any specific examples of anything in particular negative happening involving the claimant after the meeting on 3 May. In fact he told us he could not really remember that period of time. He said that they all knew that the claimant had been given extra time to build bridges.
141. Ms Moore's evidence was likewise that there was no attempt by the claimant to salvage the working relationship and he did not try to clear the air or apologise. Again, her witness statement did not set out any particular instances that she said happened after the 3 May meeting where it was agreed there would be a fresh start.
142. Mr McGrath, Mr Rollinson and Ms Moore's did not say in evidence that at the meetings on 3 May with 2R that they said they did not think that they could rebuild relationships with the claimant or that they were threatening to leave.
143. Councillor Kaye talks about the period after the review meeting at paragraph 6 of his witness statement. The remarkable thing about paragraph 6 of that witness statement is that it appears to be Councillor Kaye just making observations as opposed to give evidence of facts within his knowledge. He says "*It seems the Claimant failed to take on board any of our recommendations following the meeting on 2nd May 2019 and the situation between the Claimant, the Second Respondent*

and the staff within the premises does not improve.” He refers to the Claimant’s own note (that he cannot have seen at the actual time) of a conversation with 2R on 9th May 2019.

144. Councillor Kaye said in oral evidence that straight after the review meeting the claimant was straight back shut in his office not talking to staff and back to the claimant’s version of normal. He said he was getting really bad vibes from the office staff and from the town hall staff, and that they were wanting to leave, and that 2R was blowing his top all the time. He said he wanted to neutralise the claimant to get things back on an even keel. He said he thought that Mr Rollinson, Mr McGrath and Ms Moore all wanted to leave. There is, however, no direct evidence of Mr Rollinson, Mr McGrath or Ms Moore saying that directly to him after the probation review meeting. We return to this later below.
145. Also on 3 May 2019 the claimant met with Mr Stone from BID [401]. Mr Stone gave the claimant hard copies of the historic fire alarm inspection reports since May 2017. The claimant asked Mr Stone to provide an estimate for the work needed to restore the town hall fire alarm system to fully operational condition.

Second claimed protected disclosure – 3 May 2019

146. The claimant then met with 2R. He says he gave 2R hard copies of the paperwork that Mr Stone had given him (which the claimant had previously received by email from Mr Gaunt on 18 March). The claimant says he told 2R that the town hall fire alarm system did not work and he believed it needed to be made fully operational immediately. He says he stated to 2R it was an unacceptable health and safety risk for people using the town hall. The claimant says 2R told him that he did not believe the work was necessary.
147. 2R said in oral evidence that a discussion did not happen that day as described by the claimant as he would not have stood in the way of the claimant taking such steps.
148. We prefer the account of the claimant. That the claimant met with Mr Stone that day is documented. It is logical in the circumstances for Mr Stone to have brought a copy of the paperwork with him for the claimant and for the claimant to have asked Mr Stone for an alternative estimate to return the existing fire alarm system to a fully operational condition. Thereafter, we accept that it is likely that the claimant would have given hard copies to 2R and to say he understood the fire alarm system was not working and he considered the fire alarm system needed to be made fully operational immediately. We also consider it likely, given the claimant’s analytical nature and direct way of speaking, that he would have told 2R that he considered the current situation was an unacceptable health and safety risk for people using the town hall. Such a likely content also reflects Mr Gaunt’s follow up email in which he mentioned he hoped the claimant had a better understanding of the legislation and requirements. We also consider it likely that 2R responded to state that he did not believe the work was necessary. This echoes the type of response that Mr McGrath said he would receive from 2R. We think it likely that at this point in time the claimant left the discussion as it was. He was in a difficult situation at the time having had his probation extended and having been

told to try to work with 2R. He was also waiting for the estimate from Mr Stone before going back to 2R again.

Week commencing 6 May 2019

149. On 6 May Mr Gaunt emailed the claimant to confirm that Mr Stone was pricing up the remedial work. He said "*I hope the meeting was informative and helped achieve a better understanding of the legislation's and requirements.*" [401]. That day was a bank holiday, and the claimant would not have been in work.
150. On Tuesday 7 May 2019 the claimant again chased up access to the town clerk's email account [372]. BID also attended to undertake the next biannual inspection of the town fall fire alarm [375].
151. On Wednesday 8 May 2019 the claimant attended a Street Scene meeting. 2R did not attend. On 10 May 2019 the claimant prepared a note of his own thoughts. It says he was approached by Mr McGrath, Mr Rollinson and another individual about the member of the Street Scene Team they continued to have performance concerns about. He recorded that in the meeting they had been talking about that employee's dismissal and about their complaints not being recognised or responded to. He wrote "*I offer to respond by setting standards of performance and... measuring all against this, seemed to be some reluctance to approach matter in this way, they simply wanted her sacked.*"
152. On 10 May the claimant also prepared himself a note headed "*Street scene Meeting 9/5*". He wrote "*Weak employees are controlling what can and cannot be discussed. Lizzie view is that 3 employees should go immediately.*" He wrote that three employees had complained about the particular member of the Street Scene Team and "*I raise performance management and they all get upset. They want her dismissed, they not understand process necessary. They are impatient, want action now, feel RR has not supported them or taken action.*" He also wrote a further note that states "*You don't perhaps realise how obstructive Lizzie has been. No email address [pass] words 3 months Now starts to look for keys Got keys cut Starts booking in meetings that I might find benefit in attending Diary All sorts of info is suddenly coming forward.*" The claimant told us in evidence that this note referred to a discussion with Ms Moore where she was giving him information, booking him into meetings and giving her opinion on staffing issues and that he felt that she had started to be more helpful towards him.
153. On the morning of Thursday 9 May 2019 the claimant met with 2R. His note is at [383]. 2R told the claimant he had met with the café owner that morning, that she was not happy and did not wish to speak with the claimant. 2R said he had told her that she needed to speak with the claimant and that he had told her the claimant had his and the Council's full support. The note records that 2R went on to say "*there is world war 3 over in Town Hall. That the boys are not happy. I ask what the issue is, RR confirms it is my attitude. RR confirms he will think about what needs to be done and will inform me later today. That he wont do anything without telling me first. RR – I want this to work.*"
154. 2R was unable to tell us in evidence what specific complaint or incident lay behind the statement that there was world war 3 in the town hall and "the boys" were not

happy (presumably a reference to the Street Scene Team) and that there was an issue with the claimant's attitude. He told us that he had actually stayed out of things and he thought things were getting slightly better until he subsequently found Ms Moore in tears. Mr Rollinson and Mr McGrath likewise did not give any evidence that anything in particular had happened which had upset them at this point in time.

155. There is an absence of evidence from the respondents and their witnesses as to what, if anything, it is said was specifically upsetting the Street Scene Team at this particular point in time. All that we are left with is the claimant's own notes. These suggest that the Street Scene Team's gripe was with long term performance concerns they held about a team member. They were annoyed with 2R for a historic lack of action. They were upset because they wanted the claimant to dismiss the individual in question, this was the first Street Scene Meeting the claimant had led by himself, but he had then said a performance process needed to be followed first. Quite how much of the detail of this was known to 2R is unclear, but 2R's clear evidence to us was that this was *not* a reason why he took the subsequent steps he took in relation to the claimant. His evidence was clear that from his perspective it was because he found Ms Moore in tears and was not due to the Street Scene Team. We therefore do not find that any gripes expressed by the Street Scene Team at this point in time played a part in what happened next. There was also no evidence before us of such gripes at this particular point in time being told directly by Street Scene Team members to Councillor Kaye or Councillor Pritchard (or indeed any other Councillor), other than what Councillor Pritchard was told on or around 9 May 2019 which we address below.

Third claimed protected disclosure 9 May 2019

156. The claimant says that later on 9 May 2019 he received the latest town hall fire alarm inspection report [375-382]. This showed further deterioration in the alarm, with it being nearly 60% failed and classified as unsatisfactory. Out of 60 detectors, 23 were not working. The claimant met with 2R and gave 2R a copy of the report. The claimant said he told 2R he was concerned that the health and safety of people using the town hall was at risk and they needed to do something immediately. His account is that he said he felt very uncomfortable at having responsibility for the town hall when such a significant issue was not being immediately addressed. He says he told 2R that he was waiting for an estimate for remedial work from BID and also that if 2R was not comfortable with the quote for the hard wired replacement, he would be happy to request other quotes. He alleges that 2R replied to say he knew the Chief Fire Officer and could get him to inspect the building but would not do so as the Chief Fire Officer would probably close the building down. The claimant says the meeting ended without authorisation to proceed with the remedial work.
157. To the best that we could understand 2R's oral evidence he appeared to accept, in part at least, that this conversation had happened with the claimant as he said he was happy for the claimant to go and get other quotes. He said that he had only skimmed the BID report and that, in effect, whilst the claimant may have said the system was unsatisfactory, he only understood that to be a problem with a few batteries and he did not understand the situation to be serious or that the claimant communicated that to him.

158. We accept the evidence of the claimant. Given our findings of fact made up to this point, it is likely the claimant would have again said that he was worried about the health and safety of those on site and that he was uncomfortable having responsible for the town hall. We have already made findings of fact that 2R knew that the problems with the town hall far alarm extended beyond, and were more serious than, a few battery issues (if indeed that could be considered non serious given the system was battery powered).

Royal Oak Hotel meeting

159. 2R said in his written witness statement that one day in May he came in to work and found Ms Moore in tears, that Ms Moore said it was the claimant and "*it feels like bullying.*" He said he took Ms Moore out in his car to calm her down. He said he was in a quandary as he had been tasked with getting a normal relationship back on track but was faced with a member of staff using the word bullying. He said he contacted Councillor Kaye who was not able to meet that day. He said he therefore made contact with Councillor Pritchard and arranged to meet him at the Royal Oak Hotel. 2R's evidence was that he was looking for advice from Councillor Pritchard and did not want Councillor Pritchard to take his word for it, but to meet the staff. He said that he therefore arranged for Ms Moore and Mr McGrath to attend. He said he left the three of them to have a discussion and does not know what was said. He said on his return Councillor Pritchard said he knew what he had to do, and to leave it with him. 2R said after that he had no other real involvement in the decision to dismiss the claimant. He said he thought Councillor Pritchard was then leading things. Councillor Pritchard did not dispute having said words to that effect on 2R's return.
160. By the time of his oral evidence 2R said he now knew that these events took place on 10 May as he knew it was a Thursday. He said he knew it was a Thursday as he was expecting to hear back from Councillor Pritchard the next day. In fact the Thursday in that week was 9 May, not 10 May and is the same day that the claimant recorded he had the discussion with 2R about the Street Scene Team (see above).
161. Councillor Pritchard, did not mentioned the meeting or confirm that it happened when cross examined by 1R's counsel, but then accepted, when directly cross examined on the point by 2R's counsel, that the meeting in the Royal Oak Hotel had happened. It is not mentioned in his written witness statement. He said 2R had told him that the meeting was to discuss that Ms Moore was upset with the claimant, but when they got there and 2R went off to get teas and coffees Ms Moore and Mr McGrath said they did not feel listened to by 2R and he would get angry if challenged. Councillor Pritchard did not give a date when the meeting happened, but did not dispute that it was a few days before the claimant was dismissed.
162. Ms Moore did not mention the meeting at all in her written witness statement. When asked in cross examination she said that she was upset and went for a drive with 2R to calm down but she could not recall what the issue was which caused it. She said the meeting in the Royal Oak Hotel did happen, but she had forgotten about it, hence why it was not within her written statement. Whilst accepting that it is likely

to be hard to remember an exact date that something happened, the Tribunal considers it troubling that Ms Moore would not remember the background detail of a situation where it is alleged that she was that upset that 2R took her out for a ride in his car, and that led to the highly unusual situation of 2R taking her and Mr McGrath to meet Councillor Pritchard in the Royal Oak Hotel. Likewise, we do not understand why she would not remember such an incident, if it related to the claimant, that happened so shortly before he was dismissed. People tend to remember if they think they have been involved in an incident that shortly thereafter was linked to someone being dismissed.

163. Mr McGrath does mention the meeting in his written witness statement but he puts the date as being in mid-April (and therefore before the review meeting). He said the meeting was to discuss the claimant and his behaviour and he told 2R (not Councillor Pritchard) that he could not work with the claimant and he felt he could not do anything right. He said Ms Moore said something similar, and they then left 2R and Councillor Pritchard talking. He said he was staring at the table and Councillor Pritchard told him to pick his head up and tell Councillor Pritchard what was going on. It is difficult to put much weight on this account by Mr McGrath given the extent of his uncertainty. Again if there was a meeting in which he was principally discussing the claimant very shortly before the claimant was dismissed, we consider it is likely that he would remember that and would be able to give a more detailed account of it.
164. As unattractive the way the evidence materialised was, we are therefore left in the situation where the most detailed account of what was said at the Royal Oak Hotel meeting came from Councillor Pritchard's oral testimony. If Ms Moore and Mr McGrath actually spent a material part of the discussion complaining about 2R rather than the claimant, that also may explain their reticence to say what actually was discussed with Councillor Pritchard. Again that lends support to our conclusion that Councillor Pritchard's account of what was said is likely to be the most accurate. It also accords with what Mr McGrath said about Councillor Pritchard telling him to pick his head up and say what was actually going on.
165. Councillor Pritchard denied that 2R said he was looking for advice. He said 2R just asked him to meet the staff, saying it was about concerns between Mr McGrath and Ms Moore that needed to be ironed out. Councillor Pritchard said that 2R was rather wound up and said he was bringing Mr McGrath and Ms Moore with him. Councillor Pritchard said 2R wanted to get on the table complaints from others about the claimant but that in fact, once 2R had left to get the refreshments, they actually then complained about 2R.
166. More specifically Councillor Pritchard said 2R had said the claimant had shouted at Ms Moore and had an aggressive attitude, but that this did not come over from Ms Moore herself and that she did not really want to make a complaint or to discuss it. He said his impression was that 2R wanted to make something of it, but that Ms Moore would not say what had been said. He accepted that she had made it clear she was low because of being shouted at and she did not feel she had anywhere to go to complain but that included 2R. He said that 2R was trying to drag out of Ms Moore and Mr McGrath that there was a big argument in the office that Mr McGrath was a witness to, but it did not come over like that and came over more that 2R wanted to complain about the claimant. He said that 2R was saying

something happened and Ms Moore was correcting him every now and again. He said it was something the claimant had gone into the office about to check, Ms Moore had given an answer that the claimant had said he was not happy with, and she felt she was being blamed and that the claimant was cross and angry with her, which had upset her. He said that Mr McGrath had been there when it happened but did not add much.

167. Councillor Pritchard said that when 2R was absent getting the refreshments, Ms Moore and Mr McGrath then said they did not feel listened to by 2R, and when they spoke to 2R nothing happened. He said, Ms Moore and Mr McGrath said that if they said anything critical of 2R he got angry with them, and it was a waste of time going into the office to see 2R. Councillor Pritchard said they did give one specific example, but he could not remember what it was. He said the fire alarms were not mentioned on this occasion. He said Ms Moore said she had been into office to see 2R the week before and he come out in tears. He did not understand what that was about and 2R then came back before more could be said. Councillor Pritchard said Ms Moore said she had been questioning something with 2R and that Mr McGrath was saying he was fed up not being listened too but did not have time to give specifics. He said they did not find it easy to speak out against 2R.
168. Councillor Pritchard said he took both sets of concerns to Councillor Kaye, and that he told Councillor Kaye it was an isolated incident and a difference of opinion. He said Councillor Kaye said he would look into it and speak to 2R. Councillor Pritchard said he thought they should sort it out round a table and Councillor Kaye said he would but other things superseded it before there was time to do so as there were a lot of rumblings going on then after. He did not explain what he meant by "rumblings." Councillor Pritchard said that he told Councillor Kaye that Ms Moore and Mr McGrath had complained about 2R too and Councillor Kaye said to leave it with him. Councillor Kaye said in his evidence he did not know when Councillor Pritchard had done his own "investigation." He said Councillor Pritchard told him he had done his own digging and had gone to see Mr McGrath and Mr Rollinson and had a chat with Ms Moore. Councillor Kaye said that as far as he knew it was similar to what he was doing and he, Councillor Pritchard and 2R had gone in as a group when dismissing the claimant. Councillor Kaye's evidence was therefore slightly different to Councillor Pritchard's as to his understanding of who Councillor Pritchard had spoken to, but it does confirm that the two of them had spoken after Councillor Pritchard's enquiries. On balance, however, we accept Councillor Pritchard's evidence on this point. He had said to 2R words to the effect that he knew what he needed to do, and to leave it with him. If so the natural course of action was to report back to Councillor Kaye, and to report back both sides of what he had heard from Ms Moore and Mr McGrath.

Run up to the dismissal meeting

169. The evidence of what exactly happened after the meeting in the Royal Oak Hotel is also fractured and contradictory. It is important as it relates to who made the decision to dismiss the claimant and why. 2R says that after the meeting in the Royal Oak he heard nothing more until Councillor Kaye contacted him asking him to set up the dismissal meeting. However, 2R in his written statement also says that on a day in early May Councillor Kaye phoned him for an update as they generally had a call on a Friday afternoon about various matters. He says that

Councillor Kaye asked him how things were going with the claimant and that he had said there was still an issue. He says that Councillor Kaye said "*he has to go.*" 2R's witness statement then muddles up the timeline of events. He goes on to say that he and Councillor Kaye agreed that 2R would make the claimant an offer to resign. But we know from the documents (as set out above) that the offer to resign was much earlier, and before the probationary review meeting. It does not, however, necessarily mean that there was not a discussion on a Friday in May between 2R and Councillor Kaye, that was separate to and after the earlier discussion about making the claimant an offer to go.

170. The evidence was that 2R and Councillor Kaye generally did have a catch up on a Friday, because Councillor Kaye was in work, and did not have much availability on a Monday to Thursday. There were only two Fridays in May before the claimant's dismissal; 3 May and 10 May. It strikes the Tribunal as unlikely that 2R and Councillor Kaye would have had this discussion (if it happened) on 3 May as that was the day after the probationary review meeting, which had only been the night before. If so, that leaves the potential date of 10 May.
171. Councillor Kaye's evidence was that on 10 May he went into the office to see 2R. He says 2R told him that things had not improved and that the claimant's relationships with staff members were awful and staff were threatening to leave if something was not done soon. He says 2R asked him what they should do and Councillor Kaye said that they should consider dismissing the claimant as something needed to be done and there was no reason to delay. He said it was apparent to him that the claimant was causing no end of upset with the staff and something needed to be done. He said the claimant had declined to take on board being told at the review meeting to improve his relationships. He says that 2R agreed it was the best way to proceed. Councillor Kaye says he suggested to 2R to convene a meeting with the claimant and it would be better to have a third party present. He said they decided that Councillor Pritchard would be the best person to assist as he had some background with HR matters and that the meeting would take place on 15 May. This part of his evidence, at least, was incorrect. Councillor Kaye and 2R in fact originally decided to ask Councillor Church to participate.
172. Councillor Kaye said he assumed that 2R had rung round the panel to get approval of the decision. He said the dismissal meeting was arranged by 2R. Councillor Kaye said he thought that they had to act before the staff disappeared, that 2R was with him at the time and Councillor Kaye said "*I need to get it done*". Councillor Kaye said he said to 2R he did not mind dismissing the claimant but everything had to be legal. Councillor Kaye said it was two weeks in from the review meeting and people were chomping at the bit to leave because of the claimant's actions. He said he asked 2R if it was legal and 2R said that it was and he had got permission from the legal team.
173. Councillor Kaye said Councillor Pritchard was invited as he knew a bit about HR and he wanted a witness. He thought 2R had arranged it with Councillor Pritchard. He accepted that Councillor Church had been asked and declined first. He said that Councillor Pritchard was brought into the discussion on the Friday and he probably asked 2R to phone him. He said he asked 2R to make sure that it was legal and everyone was happy with it. He said he was nervous that if it was not

sorted they would not have any staff left. He said there would be no PA, and no one to run the town hall the grounds or get litter; they would be in serious trouble.

174. Councillor Kaye said that Councillor Pritchard knew the claimant was going to be dismissed because it was agreed before the claimant came into the room. He denied that Councillor Pritchard was upset or disgruntled about being dragged into it. He said Councillor Pritchard had said that the claimant had no leg to stand on as he had only been there for a period of time, had not gelled with the staff and needed to go. Councillor Kaye said that 2R also knew they were going into the meeting to dismiss the claimant, as all three of them had sat down beforehand. He denied being persuaded by 2R to dismiss the claimant. He said he agreed with 2R on the evidence and what he had been told by staff and he was scared of people leaving. He said most of the staff and 2R had complained to him.
175. 2R said in evidence that he heard nothing between the meeting with Councillor Pritchard until about 3 or 4 days later (which would be about 12 or 13 May) when Councillor Kaye contacted him and asked him to arrange for him and Councillor Pritchard to meet the claimant and to prepare a dismissal letter and cheque. He also said he did not hear anything until he had a call on the 15 May itself from Councillor Kaye, to arrange the meeting and write the dismissal letter. He said he was not involved in the decision making, and that he tried to talk Councillor Kaye out of it by asking "*are you sure this is what you want to do?*" to which Councillor Kaye said yes. 2R said he assumed that Councillor Pritchard had consulted with the panel and they had made a collective decision to dismiss. 2R denied that he had a discussion on 10 May with Councillor Kaye or demanding that Councillor Kaye dismiss the claimant. He said he originally thought Councillor Pritchard contacted the other councillors on the 14th, but it appears not, and that he then thought Councillor Kaye had done so, but maybe it turned out that Councillor Kaye did not either. 2R said Councillor Kaye told him that the panel had made the decision and he knew nothing of Councillor Church being approached to carry out the dismissal.
176. Councillor Church said he was asked by Councillor Kaye to attend on the morning, or at lunchtime, on 15 May, when they would carry out the dismissal. He said he was not consulted about the decision, just asked if he would come to dismiss the claimant that day. He was not phoned by anyone the evening before the dismissal. He said when he refused, he was then asked if he would attend to observe. He refused again. He said that Councillor Kaye did not give a reason why this was happening. He said he told Councillor Kaye that the agreed process was not being adhered to, and therefore he was not willing to be a party to the claimant's dismissal. He was upset as to why 2R had taken Ms Moore and Mr McGrath to see Councillor Pritchard and not to him when he was supposed to be the point of contact for both the claimant and 2R following the probationary review meeting.
177. Councillor Pritchard said in his written statement that he was asked by Councillor Kaye to attend as a witness as to what was said, and that he was only invited to attend on the day of the meeting itself. He said he was not told it was about the claimant being dismissed. His initial evidence was that he thought it was Councillor Kaye who rang him but later on he said he thought it may have been 2R because that was the usual process. He said his impression was that Councillor Kaye and

2R had already discussed it. We return to our views on all this evidence in our decision below.

Dismissal meeting

178. The claimant was told by 2R on the morning of 15 May that he would like to meet with him later that afternoon. The claimant saw Councillors Kaye and Pritchard enter. He was concerned something was going to happen and so decided to record the meeting on his phone. The respondents did not know the claimant was recording the meeting. If the claimant had not done so there would have been no record of what was said as no one from 1R took any notes or prepared any minutes. The transcript is at [141-143].
179. Councillor Kaye led the meeting and said: *“The fact is I’m sorry but following review board meeting your employment is untenable. Its come to the stage now where we are starting to look for a new Town Clerk... I don’t know what it is, you’re a nice guy don’t get me wrong, its just you don’t mix with the rest of the staff... I’m sorry about that but its one of those things and... its got to the stage now if we leave it until then and the way the people do feel they will be marching out the door and we cant afford that. I’m sorry about that. Perhaps you work in different ways but it just doesn’t work our way. I know you’re a nice guy I don’t want to be a problem to you, but if you get future employment I’m sure you’ll do fine probably in corporate or something like that but it just doesn’t fit in here. It’s a shame cause when you first started brilliant, I thought you were, we had found someone but there’s too many people getting upset and we don’t want to upset you, its no good pushing around it any longer because we will end up hating one another and we will all fall out... so I think it would be a better idea if we terminate it now, there is a cheque in here and P45.”*
180. He went on to say *“So that’s the decision we have come to but we talked last night, the whole review board talked last night except for one Alison who is away on holiday we couldn’t get in touch with her.”* 2R added that he was also not there.
181. Councillor Pritchard then said: *“I would have to say we have had numerous issues raised over the period and the review board has had to make a decision and they are all of one mind, five of one and 4 of the other. I regret it very much Martin but at the end of the day that’s what it is, that’s life and we are in the position where we have to consider the future of the Town Council and that’s our aim all the time.”*
182. 2R suggested that the claimant gather his things and leave. Councillor Kaye added again: *“Its just the way it holds together, this is going to sound funny, is just get rid of that chair, go at a certain time, cant afford to these ill feelings kicking around, we must do something, its not your responsibility anymore but its just ongoing and I’ve got to put my foot down firm hand enough is enough right lets get going. So this is what its ended up with, I’m sorry about that Martin...”* Councillor Pritchard added *“From our point of view we would have to, you know, there is no other manoeuvre for us, there’s no other move for us at all really, its that situation...”*
183. The claimant said that the decision had been made without giving him the opportunity to respond to allegations and he had been told at the review meeting he would have the opportunity to do so. Councillor Kaye said *“No we haven’t*

because its got to the stage now where if we wait to the next meeting we feel a lot of people are going to walk. And being the Chairman of that I cannot afford that, its too small, we're not a big corporate business, if it was we could take you to one side and say to you sort it out, but we cant." The claimant said if they had asked they may have found answers different to those they had been given. Councillor Pritchard said *"I have to say I have done my own digging and it really is that situation. As I say Martin I'm sorry as these 2 are but at the end of the day that's where we are."*

184. Councillor Kaye confirmed that they would give the claimant a reference, which would *"probably be its own reference because its 2 different conflicts there and I think you're a nice guy."* The claimant asked *"Yes but beyond that what are the terms for, what are the reasons for, is it dismissal. what is it?"* 2R's evidence was his only involvement in the dismissal meeting was to say the word "attitude" when the claimant asked why the decision had been made, following which there had been silence. The transcript of the dismissal meeting, however, does not show this (and shows 2R saying in the meeting far more than one word). Instead 2R said *"It's the end of the probationary period, so we can end the employment, there is no reason given, we don't have to give a reason, its within 12 months."* Councillor Pritchard said it had been *"advised by our legal people."* 2R appears to have been proceeding under the misapprehension that 1 years' service is required to accrue unfair dismissal rights. In fact it has been 2 years since 2012. On the way out the claimant said *"Robert its been fun."*
185. Councillor Kaye was correct to say that Councillor Davies was away at the time. It became increasingly clear as each witness gave evidence, however, that the rest of the panel had not been talked the night before and had not made the collective decision to dismiss the claimant. Councillor Kaye made a positive statement to the claimant that collective conversation had happened (*"we talked last night, the whole review board talked last night except for one Alison who is away on holiday so we couldn't get in touch with her."*) Councillor Kaye therefore knew what he was saying to the claimant was untrue. What he said cannot be framed as a misunderstanding about, for example, 2R, having contacted the panel to get consent, because Councillor Kaye said he was an active participant in the discussions the night before. He deliberately misled the claimant.
186. Councillor Pritchard doubted whether the things attributed to him in the transcript were actually said by him. He was the claimant's witness in this case, having contacted the claimant in the run up to the hearing to offer to give evidence, when the respondent said they were no longer calling him. The claimant confirmed he had checked the transcript and he was confident it was correctly attributed to Councillor Pritchard. The transcript had also been checked and approved by 1R's solicitors. Councillor Pritchard was not clear what the reference to *"five of one and four of the other"* referred to. He said it sounded like a vote, but that the numbers would not make sense. In response to the Tribunal's questions he confirmed that at the earlier review panel meeting 4 Councillors had voted in favour of the motion that the claimant should say, and 2 had voted against.
187. Councillor Pritchard said he also did not understand the reference attributed to him having done his own "digging." He also said that after the dismissal meeting he took Councillor Kaye to task for, in effect, bouncing him into the dismissal meeting

without warning. He said he told Councillor Kaye they could not treat people like that and he was appalled with what had happened. He said Councillor Kaye was not interested. Councillor Kaye denied that Councillor Pritchard had challenged him about this or that Councillor Pritchard was upset. We set out our findings as to what we considered happened and the reasoning behind the claimant's dismissal in our discussion and conclusions below.

188. In his closing submissions 2R alleges that the claimant has doctored the recording of the dismissal meeting. We do not accept this (and is an incredibly serious allegation that was not directly put to the claimant in cross examination, which 2R's representative would well know should have been done). It was checked by 1R's solicitors. 2R would have had the opportunity to check it himself if he had engaged proactively in preparation for the final hearing. Councillor Kaye confirmed his recollection of the meeting is as set out, as did the claimant. We accept it is an accurate record of what was said by all participants.
189. The claimant was given a letter from 2R dated 15 May 2019 [144-145] which says "*I write to confirm our discussion this morning with Cllr Pritchard and which followed a meeting of the Employment Panel of the Council with regards to your position with us.*" That line is odd as it refers only to Councillor Pritchard and not Councillor Kaye and also refers to a meeting in the morning, when in fact it happened in the afternoon. 2R was unable to explain in evidence why the reference to the morning was in the letter he had drafted.
190. A memo was circulated to all Councillors from Councillor Kaye saying that with some regret a meeting had to be held that afternoon with the claimant in the presence of himself, Councillor Pritchard and 2R. He said that as a result of that meeting the claimant's employment had ceased with immediate effect [402].

After the claimant's dismissal

191. On 28 May the claimant sent two letters asking for the reasons why his employment was terminated and lodging an appeal [406 – 407]. He said that no performance issues had been raised with him, and in fact he had been given a pay rise.
192. The next full Council meeting was on 29 May 2019 [408]. The minutes stated "*The Town Clerk outlined the situation with the termination of the employment of the Deputy Clerk. The Town Clerk had deep concerns over the attitude towards the staff leaving the Council in a serious situation. The Deputy Clerk had been spoken to about his attitude on a number of occasions. The Panel delegated the responsibility for the appointment of the Deputy Clerk was contacted by Cllr P Pritchard following a meeting with the Town Clerk where advice was sought on how to deal with the Street Scene staff situation appertaining the attitude of the Deputy Clerk.*" The minutes again incorporate an untrue reference to the panel being contacted by Councillor Pritchard following a meeting with 2R. They also refer to 2R seeking advice from Councillor Pritchard about the Street Scene staff when 2R's clear evidence to this Tribunal was that he contacted Councillor Pritchard about Ms Moore, not about the Street Scene staff.

193. The minutes then record Councillor Church expressing concern about how the process was carried out “*and his concern about his conversations with Cllr Pritchard.*” He said as Chair of the Finance Committee he should have been consulted first and not last and he wished his views to be recorded in the minutes. The minutes say there was some discussion in the Chamber and that 2R had pointed out he had a duty to all staff and not just one. 2R said in the minutes he had taken legal advice to protect the Council. He said a letter had been received from the claimant which would be responded to with legal advice and that the legal position had been confirmed that for the first 12 months of employment there was no right to compensation for unfair dismissal and no requirement to give reasons for dismissal. It seems highly unlikely to the Tribunal that 2R had in fact taken legal advice specifically related to the claimant’s dismissal and 2R said in evidence he had not done so after the probation review meeting. It seems highly unlikely that 1R’s solicitors would have got the period of qualifying service needed to claim unfair dismissal wrong.
194. 2R prepared a staffing report for the Council [412] which said that the claimant had proved to “*not be for us*”, and that his attitude towards staff and others who he was involved within in his daily life were treated poorly which led to breakdowns of relationships. He said again that the decision had been made by the panel members. A staffing proposal was made to train up Ms Moore and a colleague of hers, and to delay employing a new town clerk until a date they could take over from 2R with limited overlap.
195. On 4 June 2019 Councillor Kaye wrote back to the claimant to say issues had been raised with him during his employment and that the pay increase was an administrative error and not to recognise any positive performance [414-415]. The claimant was told he was at liberty to provide a written appeal submission to the Council which would be made available to them, and upon which they may or may not comment.
196. 2R’s evidence was that in late May or early June he met with BID and that they said the town hall fire alarm could be replaced in stages and they gave him an estimate for the first stage of £10,500. He says that BID did not tell him there was an immediate issue or that the system had failed. The estimate quoted of £10,500 is not before us in documentary evidence. [416-418] is a document headed “updates- June 2019.” One entry includes “*Some work to the emergency light system has been completed during the year. There is also some more to do to the fire alarms and advice has been sought. A full report on actions over a period of time will be presented to the Council Services Committee in June.*”
197. The next Council Service & Property Committee took place on 5 June 2019. The agenda is at [419]. The agenda says in relation to the town hall: “*The annual fire alarm report has been received. There is a need to renew areas of the system over a period of time. The wireless system is now beginning not to be fully effective. The emergency lighting system is not an issue. A quote for the first phase of the system is being gained for the Council Chamber and top of the landing. Each area of the Town Hall can then be done over the next few years to rewire the whole building.*” The minutes repeat this and include 2R adding that there is a sum budgeted for the ensuing year. The minutes record that 2R would seek some alternative tenders for comparison [423].

198. 2R here told the committee that the wireless system was “*now beginning not to be fully effective.*” That is different to saying that the wireless system would be non-compliant in the future. It is talking about current problems. He did not, however, tell the Council that 60% of the system had failed. He also had no basis on which to say the system was “now beginning” not to be fully effective, (i.e. that it was a new development) when the problems dated back to 2016.
199. We consider and find here that 2R was manipulating what he was telling the Council about the fire alarms, rather than it being a poor choice of wording. He was presenting the problems as being a recent development and that they could be dealt with by a phased renewal. In doing so he was hiding the truth of the history of the failing system, and the current and future risks there would be in a fire alarm system that was substantially not working, and which he was proposing would continue in place whilst there was a gradual installation of a new system.
200. 2R said in evidence that he told the Committee the current system was tested and was working. He says Ms Moore was present at the meeting and he asked her to confirm this to the committee and she did so. We return to this below.
201. The claimant sought some advice from the Society of Local Council Clerks [425-428]. He did not at the time suggest he had been dismissed because of whistleblowing about the fire alarms. The claimant raised the possibility for the first time on 10 June 2019 [429-430]. He mentioned in his email to the SLCC that Mr McGrath had not been completing weekly fire alarm checks because the system was not working and the weekly activity forms confirmed this, which were located in 1R’s offices, that he had spoken with 2R several times in April and May about the alarm system and recommended that the defects identified were corrected, but 2R had refused to accept there was a problem, saying that the alarm system was working properly. He told the SLCC that he had confirmed to 2R that he was uncomfortable in having responsibility for a building that was not compliant, but 2R would not give him authority to carry out repairs and did not support proceeding with a hard wired replacement system.
202. On 11 June the claimant wrote to the respondents stating the suggestion that he provide a written appeal submission that may or may not be commented upon was not acceptable to him and was contrary to the Council’s own procedures [431]. On 19 June 2019 R1’s solicitors responded [435] stating the position remained the same and if the claimant wanted to appeal he had to provide written submissions which would be given due consideration and would then be considered by an independent party. On 21 June the claimant emailed Councillor Sherlock as new chair of the Finance Committee asking if she would consider his request for an appeal in person [436 -437]. 2R responded to the claimant to tell him to correspond with the Council’s solicitors [438]. The claimant again emailed Councillor Sherlock asking if she was refusing his request for the council to hear his appeal. On 25 June the solicitors wrote again to the claimant to confirm all correspondence should go through them [442].
203. On 18 June 2019 the claimant emailed Mr Rippon at the Society of Local Council Clerks attaching the committee agenda [440-441]. He said that some work to the fire alarms was now proposed, but did not remove the risk of harm users of the

- town hall were exposed to, and there was no way of knowing whether the councillors had seen the earlier or current reports, such it was possible they did not know how serious the issues were. He asked “*Do you feel this kills the whistleblowing opportunity?*”. He emailed Mr Rippon further observations on 1 July 2019 [443 – 444].
204. On 26 July 2019 the claimant sent his grounds of appeal to 1R’s solicitors [451]. One ground was that the reasons for his dismissal were not as presented by the town clerk but were said to be a consequence of the claimant suffering a detriment for whistleblowing.
205. At [452-453] there is a weekly check sheet completed by Mr McGrath on 6 August 2019 stating “DOES NOT WORK!!” next to the fire alarm test entry.
206. At the Services & Property Committee meeting on 7 August 2019, the minutes record 2R saying again the wireless system was now beginning to not to be fully effective and there was a need to renew areas of the system over a period of time. It was recorded that advice had been sought from two contractors, and a price and report from each was awaited [455].
207. Councillor Bleivas said in evidence that around this time she asked 2R if the fire alarm system was working properly and that he told her his son worked for a fire alarm company who had said the system only needed new batteries and would then be in perfect working order. Councillor Kaye said that in a meeting before the August failure he asked a question about the fire alarm and 2R said his son was doing something with fire alarms and had said that the batteries need changing. He said that 2R asked Ms Moore if that was right and she said it was. He said they took that to mean that everything was ok.
208. 2R said that in late August 2019 a staff meeting took place and he asked Mr McGrath about the fire alarm and Mr McGrath said he was still not testing it. 2R’s evidence was that he directed a test to be carried out within the hour, and that Ms Moore then reported back to him that the system was operating. This was not Ms Moore’s and Mr McGrath’s evidence.
209. Mr McGrath said that around this time, on a Thursday Ms Moore pulled Mr McGrath into a room with 2R. He said she said they needed to speak about the “*elephant in the room.*” Mr McGrath said Ms Moore had mentioned the fire alarm at the Council the night before and 2R said he did not know anything about it, when he did. Mr McGrath recalled they both said to 2R that they had both told him that the fire alarm was not working. Ms Moore said that about 1 or 2 weeks before her disclosure to councillors she asked Mr McGrath to come and see 2R with her because she could not do it anymore. She said she told 2R that he knew the fire alarms were not working and that she was not covering for him anymore. She said, he said yes we need to get it sorted, leave it with me. She said she decided that if she did not see an immediate response she would speak up at the first opportunity. 2R denied that this meeting had ever happened. We consider it likely that it did. We think it likely that matters came to a head when Ms Moore felt she had been dragged into saying to the committee something which was not true, and that she and Mr McGrath went to see 2R to give him a last opportunity to sort things

out. When he did not do so she took the opportunity, set out below, to make her disclosure.

210. On 21 August 2019 the claimant commenced Acas early conciliation. The Acas conciliator made contact with 2R on 22 August 2019 [459].
211. A grievance was raised against by 2R by another member of staff that is unrelated to the subject matter of these proceedings. It led to Ms Moore being called to an investigation meeting on 22 August 2019. During the course of that meeting Ms Moore disclosed that the town hall fire alarm was not working adequately.
212. On 23 August 2019 Councillor Kaye directed that the town hall be closed. Mr McGrath explained he was setting up the town hall for a party and Councillor Kaye arrived and told him to set off the alarm. Mr McGrath told him there was no point as it did not work. Councillor Kaye told him to shut the building. Councillor Kaye instructed Universal Fire Protection Limited to install a new fire alarm system in the town hall. After the initial shutdown they were able to re-open with a fire warden system in place until the new fire alarm was installed.
213. 2R says that on 23 August 2019 he drafted and handed to Councillor Kaye a resignation letter giving 3 months' notice expiring on 30 November 2019 [460]. Councillor Kaye said he did not receive it and that he could not have received it because 23 August 2019 was a Friday and 2R was not in work that day. There is a dispute about whether 2R genuinely did try to proffer his resignation at that point in time and whether the resignation letter is genuine.
214. 2R told EJ Harfield at the preliminary hearing on 18 October 2021 that he had a copy of his resignation letter that he would drop in to R1's solicitors. He said in evidence at the final hearing he did not actually have a copy and just had some notes that he prepared at the time and so recreated the resignation letter that is at [460]. In recreating it he got the date wrong at the top of the letter, which refers to 2021. When 2R gave the parties by way of belated disclosure the resignation letter he did not explain to the parties or the Tribunal that it was a recreation rather than a copy of the original he says he drafted and gave to Councillor Kaye. Moreover, he actually held it out to be an actual copy as he handwrote on the document at [460] "*copy from my computer files.*" 2R said in evidence he did so because he felt under pressure at the time. His presentation at the preliminary hearing on 18 October 2021, however, was not of someone under pressure but said that it would be no problem at all to drop a copy of the letter to the solicitors, as he was headed into Welshpool in any event. He has never disclosed the notes he says he was working from when recreating the letter. This was an incident that did affect our views on the credibility of 2R, and also his potential ability to manipulate the narrative of events. That said, when reaching our findings of fact in general we considered each event as it happened. We did not wholesale reject 2R's evidence and there are occasions above where we accepted it.
215. On 24 August 2019 Councillor Kaye placed 2R on gardening leave/suspension pending the outcome of a disciplinary investigation against him. The Council minutes from 28 August 2019 confirm this related to the grievance raised by the other member of staff in relation to alleged bullying, potential discrepancies in legal documents relating to a land trust, and a failure to comply with health and safety

responsibilities of ensuring that all fire alarm and prevention equipment was in good working order in Council premises. The minutes say *"It was reported that there had been a faulty fire alarm system in the Town Hall since 2016, the matter had been raised at previous Council meetings but works had not been carried out; there has been no functioning fire and smoke alarm system covering the Town Hall and no Councillor had been made aware."*

216. On 2 September 2019 at a special meeting [469-471] 1R approved a draft letter to be sent to 2R confirming his suspension on full pay pending outcome of an investigation. The minutes set out the allegations 2R was to face. This included a failure to sanction works to the fire alarm system or report it to Councillors. It was noted that a number of leases had been granted of parts of the building which were occupied by members of the public which were unsafe and present as a danger to life, and no emergency preparedness plans were in place. It was also alleged there had been a lack of compliance with data security legislation with no data being held on a shared secure system and the majority of confidential documents being held on 2R's personal laptop.
217. Minutes from the Services & Property Committee of 4 September 2019 included an entry stating *"Robert reported that only batteries need replacing. David Matthews of Universal Fire to issue a full breakdown of problems."*
218. On 5 September 2019 2R wrote to Councillor Kaye [475-477]. He said the actions taken by 1R *"once the system had been identified as failed"* were quite correct. He said: *"The fire panel over the last 18 months or so have shown faults which on investigation related to battery levels in each unit. The company which fitting the system was asked to advise."*

They recommended changing many of the batteries and a lot were replaced approx. 15 months ago and at that time the Council Services Committee were informed that work would be needed over the coming years. The company providing the original system and battery changes has now ceased trading (as I understand it).

I asked Martin Bond to take over the Town Hall management (along with the markets and street scene) and assess all health and safety aspects. This he did a lot of work on the Town Hall during February through to May. Martin was very competent and I could not fault his work. During that period, he identified a need to replace the system, he also received the weekly reports and at no time said the system was not working. A quote was gained by him in May and in June 2019 the Committee was informed of this and that fact that we needed to get further advice, this was done.

When I met the company (which Martin called in) they confirmed that the system will need to be replaced over the next 2 years, they also confirmed that as long as we had a paper trail showing that we were working towards renewal that was fine. At no time did they say the system was not working or should be replaced in full straight away.

They advised that a renewal could be done in parts and provided an estimate for the first part (landing, entrance and Council Chamber). This would see two panels side by side (one for the new areas and the existing one).

I also took advice from my son – who is in the industry – (which would have been reported on at the Council Services Committee in September) confirming that the system is to become non-conforming in 2021 and that batteries were available for the interim.

The second company called gave a quote and also did not say the system was not working or should be replaced in full straight away. They saw the existing panel.

The weekly check sheets did not show the fire alarm not working, I discovered that perhaps it was not being checked properly approx. 2 weeks before my suspension and I asked for a proper test to be put in place. As I understand it this was done and that the system worked the week before.

The various activities of the Council, including reporting on where we were with the fire alarm, were notified to the Mayor when we met on Fridays when we often had a general update.

The Committee was made aware of the need for a new system in June 2019 as noted in the minutes. The quotes and taking forward such changes were to be put before the Council Services Committee on 4th September 2019.

The emergency lighting has recently been updated. There are emergency procedures in place generally and these are in framed instructions around the Town Hall. On advice the wheelchair rescue equipment was also installed over the last 18 months.

I accept that there are no procedures for when the system fails, if this had happened I would have put some in place immediately. This was not picked up in the Town Hall Risk Assessment report by Ellis Whitham.

Ellis Whitham our Health and Safety Advisers have also in the past 2 years assessed the Town Hall and from these inspections the framed instructions appeared. They also did not say the system had to be replaced.”

219. 2R also said “*Maybe it is time for me to retire (you have my formal notice ending 31st May 2020 unless we agree something else)*”.
220. 2R attended an investigation meeting on 12 September 2019. The transcript is at [486– 488]. In that meeting 2R said that the batteries in the fire alarm system had a technical problem in that when they got down to a third of power warning lights would go on, but they were still functioning. He said that Morris Fire said not to worry about it and they would sort it out at the annual service. 2R said that about 18 months ago more lights appeared than he would have liked to have seen and so Morris Fire renewed a lot of the batteries and that reduced it right down.
221. 2R said that in late 2018 BID changed the emergency lighting because there were faults on it and when they did so BID went through the fire alarm but nothing alerted

him to any problem. He said that the weekly sheets only came to him if something was marked on them and nothing had been marked on there so he assumed it was all working. He said the claimant was tasked with a health and safety check and came back with a quote to renew the system and that at that time they knew that in 2 years time the existing alarm system would come to the end of its life. He said *"We knew that was the case, but as the return sheets were showing nothing back, for the time being, I didn't have a problem."*

222. 2R said that after the claimant left he met with BID and asked whether the work had to be done all at once as it was a lot of money, and they said it could be done in phases. 2R said that BID did not tell him that there was a problem with the system as it stood. He said he therefore presented the quote in June 2019 and said they would get more quotes. 2R said he told the Committee in June 2019 that the fire alarm was being tested every week, and that Ms Moore had confirmed this. He said a couple of days later Ms Moore said she did not know whether they were in fact testing them properly. 2R said he told her to get a fire test done immediately and that Ms Moore went to see Mr McGrath and then told him it was working. He said that it failed a week later, but can only have failed a short time before that as he had heard the alarm for himself the year before when in the building doing something else. We have already set out above that we consider 2R's knowledge was greater than he set out to the 1R here and also that the discussion with BID about doing works on a phased basis was far earlier than 1R asserts.
223. On 18 September 2019 2R wrote to Councillor Kaye saying he wished to take retirement sooner rather than later [489]. He suggested a separation agreement. At a Council meeting on 25 September 2019 it was agreed (the investigation panel, who had not released details of their investigation, abstaining) to look at taking that forward. The disciplinary proceedings against 2R therefore did not proceed beyond the investigation stage.
224. On 4 March 2020 the claimant wrote to Councillor Kaye asking for 1R to give him a reference, saying not having a reference was proving to be a significant barrier to his securing new employment.

Discussions and Conclusions

225. Applying our findings of fact and the applicable law to the issues we have to decide our conclusions are as follows. In setting out our conclusions we largely follow the timeline of key events. Where appropriate because of overlap we have grouped some detriments together.

First claimed protected disclosure – 23 April 2019

226. We have made a finding of fact that on 23 April 2019 the claimant did tell 2R (following his conversation with Mr McGrath) that Mr McGrath had said he was not able to carry out the weekly fire alarm tests as the town hall fire alarm system was not working, that Mr McGrath had said he had told 2R of these failures previously but they remained faulty, and that in the claimant's opinion it was a serious health and safety issue that affected employees, traders, contractors and members of the public visiting the town hall, and he was going to meet with BID to get an understanding of what the issues were.

227. We find that in doing so the claimant made a disclosure of information, with sufficient factual content and specificity, that was capable of tending to show that the health and safety of those attending the town hall was being endangered, and (on the same basis), that the first respondent was failing to comply with legal obligations to which they were subject. It was also a disclosure of information capable of tending to show that a criminal offence was being committed. A worker could reasonably believe that not having a fire alarm system that was sufficiently functioning to allow it to be regularly tested, in a building that was a workplace and a public space, would not only place safety at risk, but also breach legal obligations that the first respondent would hold to its employees and occupiers, and also amount to a criminal offence.
228. We further find that the claimant himself did believe that his disclosure of information tended to show these things. We also find that this was a reasonably held belief on the claimant's part, given what we have found as a matter of fact Mr McGrath had told him.
229. We find that the claimant believed his disclosure was made in the public interest, and was not just a matter of the claimant doing his job solely in his own private interest. It is demonstrated by the fact the claimant referred, in his disclosure, to his concerns about health and safety risks. It was a reasonably held belief given the inherent public interest there is in workplaces and public buildings having properly functioning fire alarm systems.
230. The disclosure was made to the claimant's employer, through 2R as his line manager and town clerk. It was a protected disclosure.

Claimed detriment - raising and/or instigating false, or at least unjustified, concerns regarding the Claimant's performance which led to his dismissal

Claimed detriment – 2R was approached informally by café operator which 2R escalated to a formal written complaint

Claimed detriment – Claimant was excluded from the meetings 2R held with the café operator

231. A whistleblowing detriment claim arises where a worker is subjected to a detriment by an act or deliberate failure to act of his employer or a co-worker done on the ground that the employee made a protected disclosure. The detrimental act or omission complained about must therefore *post-date* the protected disclosure. The protected disclosure must also materially influence the employer/ co-worker's treatment in question, in the sense of looking at why the decision maker in question, in their conscious or unconscious mind, acted as they did.
232. Where the claimant seeks to complain about concerns he says that 2R unjustly raised about him *prior* to the first protected disclosure (for example the initial handling of the market trader complaint, or the complaint the claimant makes about 2R allegedly escalating an informal approach by the café owner into a formal written complaint, in its initial stage, or the creation of the verbal warning on his personnel file, which whilst dated 29 April 2019 was last modified on 22 April 2019),

they simply cannot be detrimental treatment done on the ground that the claimant had made a protected disclosure. The timing of events simply does not work as a legal construct. The claimant has not sought to argue that the obtaining and giving to 2R of the quote to replace the fire alarm system on 18 March 2019 was in itself a protected disclosure (albeit he says it is relevant background to what he says was going on in 2R's mind).

233. What did post-date the first protected disclosure was the meeting that 2R had with the café owner on 24 April 2019, which the claimant complains he was excluded from. We do not find that the claimant's first protected disclosure was a material influence on 2R meeting with the café owner on that (or the subsequent occasion on 9 May) without the claimant present. We accept his evidence that the café owner refused to have the claimant present.

Claimed detriment – 1R Chairman Cllr S Kaye breached 1R procedures by not seeking or gaining Full Council and/or Appointment Review Panel approval to his and/or 2R's actions including the instruction to the Claimant he resign

Claimed detriment – 2R made an offer to Claimant to leave on 26.04.19 which only 1R Chairman S Kaye knew about. Claimant was told other Councillors knew of the offer and that they supported it which was subsequently confirmed as not true by the other named Councillors. Councillors only learnt of the resignation offer because the Claimant informed a Councillor on 29.04.2019

Claimed detriment – 2R took decision to hide fire alarm faults from councillors and claimant and acted to remove Claimant before councillors because aware of the same

Claimed detriment - raising and/or instigating false, or at least unjustified, concerns regarding the Claimant's performance which led to his dismissal

234. The claimant gave 2R on 18 March 2019 a copy of the estimate from BID to replace the townhall fire alarm system with a wired system, and Mr Gaunt's summary of the regulatory requirements. On 23 April 2019 the claimant discovered that Mr McGrath could not test the town hall fire alarm system and he made his protected disclosure to 2R, as above. We have found as a matter of fact that in a discussion on 25 April 2019 2R told Councillor Kaye that the claimant had done an audit and the town hall fire alarm would need replacing as the wireless system was non-compliant from 2021/22, that the quote was £52,000 and other quotes would be obtained. We have also made a finding of fact that 2R knew at that time about the wider, existing problems with the fire alarm system but did not tell Councillor Kaye. 2R had also created a narrative of the claimant being given a health and safety audit to do, which was not correct.
235. We have made a finding that in his actions 2R was trying to control the narrative of the situation and paint a picture of work being needed to meet changing regulatory requirements and to avoid having the true historic picture being exposed, which would expose 2R to criticism.

236. In their conversation on 25 April 2019 2R led the discussion with Councillor Kaye in such a way as to get Councillor Kaye to authorise a potential course of action as making the claimant an offer to go.
237. We have made a finding of fact that 2R was acting in this way for mixed reasons. We accept 2R was genuinely finding it very difficult to work with the claimant and he did not like the claimant's style. He did not like the way the claimant had spoken to him about the ladies' rounders pitch incident, and the handling of the market trader and café owner. 2R saw the very existence of people raising complaints as being a bad thing. We accept 2R was in receipt of grumblings from Ms Moore and the Street Scene Team about the claimant, that they had difficulties in working with him and Mr McGrath was also upset about how the claimant had spoken to him about the rounders pitch allocation and he did not feel he could do anything right. However, we have also found that by that stage 2R had started to worry about the risk of the claimant exposing the situation with the fire alarm and that one of the reasons why 2R wanted the claimant to go, and wanted to make the claimant an offer to go quickly and quietly and avoid the probationary review meeting, was to limit the risk of the fire alarm situation being exposed and to allow 2R to address the issue at his own convenience. We do not accept it was done for the benefit of the claimant, in giving him the opportunity to go quietly.
238. We have also found that 2R pretended that Councillors Davies and Church had authorised the offer being made to the claimant, when they had not, to add weight to the offer being made to the claimant and to encourage him to take it.
239. The making of the claimant's protected disclosure (in saying the fire alarm tests were not being done, it was a health and safety risk and the claimant was going to investigate it further with BID) materially influenced 2R's concerns about the risk of the fire alarm situation being exposed, and therefore materially influenced (in the sense of being a more than trivial influence) 2R's actions in getting Councillor Kaye to authorise the making of the resignation offer to the claimant, the subsequent making of that offer and in inducing the claimant to accept the offer by telling him that other Councillors had endorsed the offer. The making of the protected disclosure made 2R more worried about the risk of the fire alarms being exposed and was a material influence on 2R's actions.
240. Being made an offer to resign and lose your job, and being induced to do so with incorrect information, was detrimental treatment. A reasonable worker in the claimant's position would consider it so. The respondents have not satisfied us that the claimant's protected disclosure did not materially influence the conduct in question.
241. The complaint that 2R subjected the claimant to a detriment by his acts in getting Councillor Kaye to authorise him making an offer to the claimant to resign, the making of that offer and inducing the claimant to accept it by incorrectly saying the councillors had endorsed it was done on the ground that the claimant made a protected disclosure is well founded and is upheld. 2R is liable under section 47B(1A) and 1R is liable under section 47B(1B). 1R has not run a reasonable steps defence.

242. We do not, however, uphold the claimant's complaint that 1R, through Councillor Kaye, subjected him to detrimental treatment on the ground that he made a protected disclosure by not gaining full approval of the resignation offer. Councillor Kaye was on the face of it authorising 2R to shortcut procedures, where he may well not have had authority to do so. But we have not found that Councillor Kaye knew about the claimant's protected disclosure and therefore cannot have himself (in terms of his own mental processes) been influenced by it.

Claimed detriment – denying the Claimant the ability to respond to the allegations against him – (review meeting stage)

Claimed detriment – 2R took decision to hide fire alarm faults from councillors and claimant and acted to remove Claimant before councillors became aware of same

Claimed detriment – 2R undermined Claimant's position with Councillors, staff and Market Traders

243. We have divided up the complaint about the alleged lack of ability to respond to allegations made against the claimant, to look at it separately at the review meeting stage and then at the dismissal stage (see below) and have pulled it together with some other complaints that relate to what happened at the probation review meeting stage.
244. Concentrating on the allegations that actually postdate the first protected disclosure, the claimant complains that he was not given an opportunity to respond to complaints levelled against him in his discussion with 2R on 26 April, when 2R and Councillor Kaye discussed him on the train journeys and at the probation review meeting itself. We do not find that 2R deliberately deprived the claimant of an opportunity respond to specific allegations that the Street Scene Team and Ms Moore were unhappy with the claimant, on 26 April because (in the sense of being a material influence) of the claimant's protected disclosure. 2R was in a conversation in which he was making the offer to the claimant to resign that 2R had already discussed with Councillor Kaye (see above) so he was concentrating on communicating that. The discussions between 2R and Councillor Kaye about the claimant whilst on the train journey to and from the awards ceremony were on the face of it a discussion about a staffing issue that one would ordinarily expect 2R and Councillor Kaye as town clerk and mayor to have, and not one that would ordinarily involve the employee themselves at that point. So, we do not find that there was a failure to involve the claimant in those discussions that was materially influenced by the claimant's protected disclosure.
245. We do consider, however, that in his discussions with Councillor Kaye on the train 2R's position remained as it was in the run up to the resignation offer previously made to the claimant. That is, we do consider that 2R was, in effect, continuing to petition Councillor Kaye to get the claimant removed and we consider that 2R continued to have mixed reasons for doing so. These mixed reasons are as set out above, but with the addition of the events of 26 April 2019.
246. In respect of 26 April 2019, a significant cause of the unrest in the Street Scene Team and Mr McGrath "working to rule" would appear to have been an ongoing contractual dispute about working hours and pay and conditions, which pre-dated

- the claimant's employment and was not his responsibility. It is also likely that ill feeling about their contractual arrangements and ill feeling towards the claimant were not so easily delineated in the minds of the Street Scene Team as was expressed to us by Councillor Davies. Dissatisfaction in one area of an employment situation tends to feed into a sense of dissatisfaction in other areas. So if, for example, Mr McGrath was feeling disgruntled about the requirements that were being put on him and the hours he was being required to work/being paid for, and was also feeling disgruntled with the claimant about how the claimant spoke to him about duties it would all feed together in Mr McGrath's mind, when deciding to "work to rule." That then has a knock on effect on the other members of the Street Scene Team, who ended up having to cover for Mr McGrath, which upset Mr Rollinson and the Street Scene member mentioned above, who we accept, also themselves, were generally unhappy about the way the claimant had handled his relationship with their team.
247. The historic issue about terms and conditions, that lay in part behind Mr McGrath working to rule and wider dissatisfaction in the Street Scene Team that pre-dated the claimant's arrival, would have been known to 2R. However, we do also accept it is likely that 2R did also take from Mr Rollinson and the Street Scene member who was upset that they were unhappy with the way in which the claimant spoke with them, and had not taken time to understand their duties and ways of working.
248. We however, remain of the view, and find, that in part 2R's discussions with Councillor Kaye on the train on 1 and 2 May 2019 about the claimant in petitioning to get the claimant removed, were motivated (in the sense of being materially influenced by) by 2R's concerns that the position with the town hall fire alarm would be exposed by the claimant and therefore materially influenced by the making of the claimant's first protected disclosure. It is an action for which 1R would be vicariously liable but we do not find that Councillor Kaye himself personally had that motivation. As already stated, he did not know about the claimant's first protected disclosure.
249. Turning to the probation review panel meeting itself, we consider that 2R's outburst that either the claimant went or he would go, was seeking to secure the claimant's exit, and was again in part materially influenced by a desire to secure the claimant's exit without the town hall fire alarm issues coming to light, as well as 2R's genuine concerns about the claimant. As already stated that was inherently linked to the making of the claimant's first protected disclosure and was therefore materially influenced by it.
250. We accept that the concerns 2R raised with the panel in his own session about the difficulties between the claimant and members of staff, his communication skills, and being upset at how the claimant had spoken to him personally, were genuine concerns that 2R held. We also accept that he genuinely did believe that the sheer fact that market traders had complained about the claimant was something wrong in itself.
251. We do, however, consider it likely, and find, that the extent that 2R was pushing for the claimant's dismissal still remained in part motivated and materially influenced by a desire to secure the claimant's exit to prevent the fire alarm situation coming to light. We also find that 2R did exaggerate the situation with the

market trader by referring to there being a misunderstanding and that the claimant had refused to apologise. 2R in evidence said that the claimant did not have anything to apologise for, and it was just that 2R would have apologised himself in the situation. That is not a sufficient explanation to explain why 2R continued to paint the market trader situation in the way that he did to the review panel as a reason to dismiss the claimant, and we consider it was materially influenced in part by the desire to secure the claimant's exit due to the fear of the town hall fire alarm situation being exposed.

252. We do not find that at the review meeting the claimant was denied the opportunity of responding to allegations made against him on the ground that he made the protected disclosure. Whilst the claimant was not given written notification of a set of specifically allegations raised against him to respond to, and he was spoken to before 2R was spoken to, the issue before us is not whether the conduct of the meeting was procedurally fair. The notes that are available do also show that the claimant was given some indication of the concerns, as they show the claimant talking about his perspective on his relationship with the Street Scene Team, the ladies rounders pitch situation, that the claimant was told of the worries from some workers as to how he spoke to them, the situation with the Street Scene Team's contracts, and we accept Councillor Davies' evidence that she had a discussion with the claimant about the need to build bridges. 2R was also not present at the session the Councillors had with the claimant so 2R was not able to influence how they spoke with the claimant, and they were unaware of the claimant's first protected disclosure.

Claimed detriment – claimant was excluded from the start of two staff meetings by 2R

253. The claimant was excluded from the start of the two staff meetings with the Street Scene Team and the office staff on 3 May by 2R. We do not, however, find that 2Rs' decision to do this was materially influenced by the claimant's first protected disclosure/ fear of the fire alarm situation being exposed. We consider and find 2R simply did that because that was his managerial decision as to how to conduct the meetings that morning. His evidence was, which we accept, that everyone in the meetings agreed to there being a fresh start.

Second claimed protected disclosure – 3 May 2019

254. We have made a finding of fact that on 3 May 2019 the claimant met with Mr Stone from BID who gave him hard copies of the historic inspection reports and that the claimant then met with 2R and told him that the town hall fire alarm system did not work, he believed it needed to be made fully operational immediately, and it was an unacceptable health and safety risk for people using the town hall.
255. For reasoning that is essentially the same in relation to the first protected disclosure, we accept that in doing so the claimant made a disclosure of information, with sufficient factual content and specificity, that was capable of tending to show that the health and safety of those attending the town hall was being endangered, and (on the same basis), that the first respondent was failing to comply with legal obligations to which they were subject. It was also a disclosure of information capable of tending to show that a criminal offence was being

committed. The claimant himself did believe that his disclosure of information tended to show these things. We also find that this was a reasonably held belief on the claimant's part, given the claimant understood from BID. We find that the claimant believed his disclosure was made in the public interest, and was not just a matter of the claimant doing his job solely in his own private interest. It is demonstrated by the fact the claimant referred, in his disclosure, to his concerns about health and safety risks. It was a reasonably held belief given the inherent public interest there is in workplaces and public buildings having properly functioning fire alarm systems. The disclosure was made to the claimant's employer, through 2R as his line manager and town clerk.

Third claimed protected disclosure – 9 May 2019

256. We have made a finding of fact that on 9 May 2019 the claimant received the latest town hall fire alarm inspection report and met with 2R and gave him a copy. We have found that the claimant told 2R he was concerned the health and safety of those using the town hall were at risk, they needed to do something immediately, he was waiting for an estimate for remedial work from BID, and he felt uncomfortable having responsibility for the town hall when such a significant issue was not being immediately addressed.
257. For reasoning that is essentially the same in relation to the first protected disclosure, we accept that in doing so the claimant made a disclosure of information, with sufficient factual content and specificity, that was capable of tending to show that the health and safety of those attending the town hall was being endangered, and (on the same basis), that the first respondent was failing to comply with legal obligations to which they were subject. It was also a disclosure of information capable of tending to show that a criminal offence was being committed. The claimant himself did believe that his disclosure of information tended to show these things. We also find that this was a reasonably held belief on the claimant's part, given the claimant understood from BID. We find that the claimant believed his disclosure was made in the public interest, and was not just a matter of the claimant doing his job solely in his own private interest. It is demonstrated by the fact the claimant referred, in his disclosure, to his concerns about health and safety risks. It was a reasonably held belief given the inherent public interest there is in workplaces and public buildings having properly functioning fire alarm systems. The disclosure was made to the claimant's employer, through 2R as his line manager and town clerk.

Claimed detriment – 2R was party to the decision to dismiss and subjected the Claimant to the detriment of dismissal

Claimed detriment – 2R took decision to hide fire alarm faults from councillors and claimant and acted to remove Claimant before councillors became aware of same;

Claimed detriment – 2R undermined Claimant's position with Councillors, staff and Market Traders

258. We find that notwithstanding 2R's statement that by the end of the review panel meeting he accepted the outcome and that he wanted and was willing to make things work with the claimant, that he was in fact upset with the outcome and that

- the claimant had not been dismissed. We consider it likely and find that 2R still wanted the claimant to be removed. We find this because he had repeatedly made previous attempts to secure the claimant's dismissal by approaching various councillors, 2R then made the claimant the resignation offer, he then spent a significant time on the train with Councillor Kaye talking about the claimant and, we have found, in effect, still petitioning for his dismissal, he attended at the review board meeting in anticipation the claimant would be dismissed, and conducted himself in a significant outburst when he found out that may well not be the case, and that he may instead be asked to continue to work with the claimant. 2R had various reasons he wanted the claimant dismissed, as already set out, which included a desire that the claimant leave to stop the situation with the fire alarms being exposed. We simply find it wholly implausible that by the end of the meeting 2R was in complete acceptance that the claimant was going to stay, and he was going to start afresh with him. 2R says the claimant was his ticket out of the organisation, and so he had to make it work. However, at that point in time it was not clear that 2R would in fact be wholly retiring any time soon. In any event he would not want the fire alarm situation being exposed.
259. We accept that on or about 9 May 2019 2R found Ms Moore was upset in work and it was his understanding that it was the way in which the claimant had spoken to her about something. We consider it likely, and find, that following the claimant's second protected disclosure on 3 May 2019 that by this time 2R was even more concerned that the situation in relation to the town hall fire alarm was going to be exposed (we do not know the exact sequence of events on 9 May, and it may well be that the claimant had not made his third protected disclosure by this time).
260. We consider it likely, and find, that 2R did not want to wait, with the claimant in place, for the additional month's probation period to take place, following by a further probation review meeting. We consider it likely and find that 2R wanted to bring the claimant's employment to end at an earlier date if feasible and in a way that would reduce the risk of the town hall fire alarm situation being exposed.
261. We consider it likely, and find, that 2R considered the situation with Ms Moore was a way to get the claimant's employment situation looked at again. He contacted Councillor Kaye, but he was not available. He decided to approach Councillor Pritchard. We consider it likely that 2R saw Councillor Pritchard as an amenable individual, given 2R's earlier comment to Councillor Davies. 2R considered that if he put Ms Moore and Mr McGrath before Councillor Pritchard, it would be more impactful. 2R would not have anticipated that Ms Moore and Mr McGrath were going to also complain about him.
262. If the claimant was to improve working relationships with 2R, Ms Moore and the Street Scene Team, it was not going to happen overnight. Building or rebuilding a relationship with a work colleague requires time, hence why the review panel had decided to look at things again in another month. We have already made a finding of fact that 2R did not have any particular recent instances with the Street Scene Team and the claimant on his mind at this point in time.
263. Whilst we accept 2R found Ms Moore upset, we do not consider of itself it was at a level that would have necessitated the dismissal of the claimant without the extended probationary period being completed and there being a further panel

- review. There is no evidence that Ms Moore was threatening to resign on the back of whatever had upset her with the claimant that day. The event to her was that insignificant that she did not even think to put it in her own witness statement. To assess the ups and downs of the relationships and whether they were going to work out in the longer term was what the extended panel process was intended for; allowing a period of time for assessment. We consider and find that 2R wanted to short cut the process and speed up the claimant's dismissal, and he saw the situation as an opportunity for him to do so. We consider and find that one key reason why 2R wanted to shortcut the review process (in the sense of being a material influence) was his concerns about the situation with the fire alarms being exposed which is inherently linked to the making of the claimant's protected disclosures. The making of the claimant's first and second protected disclosures was therefore a material influence on the detrimental treatment carried out by 2R, for which 1R will also be vicariously liable.
264. We have made a finding of fact that Councillor Kaye and Councillor Pritchard did have a discussion after Councillor Pritchard's meet up in the Royal Oak Hotel on 9 May and Councillor Pritchard told Councillor Kaye what had happened (including the complaints by Ms Moore and Mr McGrath about 2R) and that he thought Councillor Kaye should get everyone round a table.
265. We have made a finding of fact that 2R and Councillor Kaye did have a discussion on 10 May 2019. We accept Councillor Kaye's evidence that 2R told him that things had not improved, that the claimant's relationships with staff members was awful and staff were threatening to leave if something was not done soon. We accept the incident with Ms Moore had happened, as set out above. But we do not find that anything else specific had happened since the probation review meeting that was weighing on 2R's mind when he said what he did to Councillor Kaye, including unrest in the Street Scene Team. We do not find that Ms Moore had made a fresh threat to resign, and nor had Mr McGrath or Mr Rollinson or anyone else in the Street Scene Team whether to 2R or to Councillor Kaye. We consider that in saying what he did about staff unrest and threats to leave, that 2R was exaggerating the situation. 2R was again trying to short cut the probation review process and speed up the dismissal of the claimant. By this stage the claimant had definitely made his third protected disclosure. We consider that the making of the three protected disclosures had a material influence on 2R acting in this detrimental way.
266. We consider and find that both Councillor Kaye and 2R played active roles in deciding that the claimant should be dismissed. We do not accept that 2R had no involvement and knew nothing about the decision to dismiss or that he tried to talk Councillor Kaye out of it. The weight of all the evidence in this case, including from Councillor Kaye himself, was that he and 2R were very close and Councillor Kaye greatly depended upon him. We find that 2R did influence Councillor Kaye in that decision making process. He exaggerated the picture to Councillor Kaye. A material influence in 2R's motivation was the making of the claimant's protected disclosures and 2R's consequential fear the situation with the town hall fire alarm would be exposed.
267. We consider it likely and find that Councillor Kaye and 2R decided to approach Councillor Church to be a part of the dismissal process, and add some legitimacy, because at the previous panel meeting he had voted in favour of the claimant's

dismissal. Councillor Church then refused to participate. We consider it likely and find that Councillor Kaye and 2R then decided to involve Councillor Pritchard.

268. We consider it likely and find that Councillor Pritchard may well not have known that the claimant was going to be dismissed until shortly before it happened. It is likely he thought he was being brought along to a round table discussion. But the transcript clearly shows that Councillor Pritchard was an active participant in the dismissal meeting. We therefore do not accept his evidence that he was totally blindsided by what occurred, bearing in mind what he was able to say during the meeting about the reason for the claimant's dismissal and his own "digging." However, we do accept that he was probably faced with a scenario in which the decision to dismiss had already been made, and he felt it was better to go along with it in support of the Council as a whole, rather than fight against it and he then played the active part that he did.
269. With significant input from 2R, the decision to ultimately dismiss the claimant was made by Councillor Kaye. We consider, and find, that the reason why he decided to dismiss the claimant when he did, without seeing through the panel probation review process, was that he was fed up with the situation. Councillor Kaye was a busy man, with limited time to spare for council business. It is likely that a significant amount of his time was being taken up with 2R complaining about the claimant, or 2R complaining to other Councillors about the claimant that Councillor Kaye then became involved in. 2R was described by various witnesses as being highly strung, and that can be seen by the outburst he had at the review meeting. By 10 May, it was only 8 days after the probation review meeting, and Councillor Kaye was having 2R complaining to him again about the claimant, and Councillor Pritchard telling him about what transpired at the Royal Oak Hotel, which now involved Ms Moore and Mc McGrath complaining about both the claimant and 2R. As Councillor Pritchard said, Ms Moore felt low and that she had nowhere to go to. Employees were caught in the middle between the claimant and 2R. We consider it likely and find that Councillor Kaye reached the conclusion that it could not continue, the claimant had not been there very long, and the best way (in his view) to neutralise the situation between the claimant and 2R (as he phrased it) was to remove the claimant. Employees would not be caught between the two, and 2R would calm down and it would make life easier for Councillor Kaye. It would also have been on his mind, bearing in mind what 2R was telling him, that there was a risk that staff such as Ms Moore and Mr McGrath could leave. The claimant ended up being the worst off in that situation. But this is not an "ordinary" unfair dismissal claim; the claimant did not have sufficient service to bring such a claim. We do not find that Councillor Kaye in making his decision was personally influenced at all by the claimant making protected disclosures as he did not know about them.
270. We took into account the fact that Councillor Kaye acted without authority from the review panel, and more than that he knowingly presented an untruth to the claimant that the panel had met the evening before and had sanctioned the decision. We did not, however, consider that this was because Councillor Kaye knew about the fire alarm situation and was covering for 2R. We consider that Councillor Kaye was an individual who saw himself as being someone able to make tough decisions when needed to, and that he had a tendency as mayor to make decisions if he considered them necessary, and account for them after the event, even if that involved saying something that was untrue. This he did, for

example, when shutting down the town hall and ordering a replacement of the fire alarm in August 2019, and when he earlier authorised 2R to make the claimant an offer to resign. It is also like Councillor Kaye thought it was an easier message to give to the claimant if the claimant was to think that the whole probation review committee was in agreement with the decision.

Claimed detriment – denying the Claimant the ability to respond to the allegations against him – (dismissal stage)

271. The dismissal meeting happened without advance warning to the claimant and specific allegations were not put to him to answer whether at the hearing or before it. He was presented a decision that had already been made. We do not consider that the claimant's protected disclosures were a material influence on the claimant not being given an opportunity to respond to allegations. Whilst 2R may not have wanted the claimant to speak at length, and saw this process as being preferable to the full probation review being carried out, he was not that far in control of exactly what was said by whom at the dismissal meeting. We consider it was done because 2R and Councillors Kaye and Pritchard thought that they could dismiss an employee and not give reasons for doing so when that individual had less than 1 year's service. In fact it is two years, but 2R had not sought up to date employment advice.
272. The above deals with the key aspects of the claimant's whistleblowing detriment claim but for the sake of completeness we cover off the remaining detriments in the claimant's list as follows.

Claimed detriment – 1R's Chairman claimed Claimant's pay rise was an administrative error

273. We accept Councillor Kaye's account that he told the claimant that the pay rise was an administrative error because he did genuinely believe that it had been given to the claimant in error and was not intended to be effective until the claimant had fully completed his probation. We do not consider that it was influenced by the making of the claimant's protected disclosures. The complaint is not well founded and is dismissed.

Claimed detriment – 1R has not responded to Claimant's requests for a reference

274. We accept that the reference promise made was in respect of reference requests made by prospective employers. There is no evidence of a request for a reference being made by a prospective employer that 1R has not responded to. This complaint is not well founded and is dismissed.

Claimed detriment – the Claimant was denied the right of appeal

275. The claimant was told, after initial correspondence, that an appeal would be dealt with on the basis of written submissions that would be put before an independent party [435]. The claimant, having unsuccessfully sought to challenge that via various means, ultimately submitted his letter at [451], which contained only summary grounds, which included that he considered the reasons for his dismissal were as a consequence of suffering a detriment for whistleblowing (without setting

out the detail), and continued to ask for a “full and fair” appeal. There was very little questioning of witnesses on this issue. 2R’s evidence was that it was Councillors Kaye and Pritchard who decided there should be no right of appeal, and that he suggested a route through would be to allow an appeal in writing. We do not accept that Councillor Pritchard denied the claimant a right of appeal. It was Councillor Pritchard who earlier in the process had reminded 2R that if the claimant was to be given a verbal warning he should be given the right of appeal. It is not likely in those circumstances that Councillor Pritchard would deny the claimant the right of appeal against dismissal.

276. We consider it likely that the instruction to limit the process to a written one came from Councillor Kaye and that he did so on the basis of wanting to bring the unrest he thought existed to an end, in the same way as he did when deciding to dismiss the claimant. He did not know about the claimant’s protected disclosures. We also consider it likely that the claimant’s appeal ultimately did not proceed because there was little detail within his grounds. He was, in effect, still trying to force it to a face to face appeal process. It is unprofessional that his appeal letter was not responded to, at least to say that was the outcome. However, we did not consider it was materially influenced by the making of the claimant’s protected disclosures. At that point in July 2019, all that 1R knew was the claimant’s passing reference to whistleblowing in his appeal letter.

Claimed detriment – Claimant was approached informally by café operator which 2R escalated to a formal written complaint.

277. This complaint is not well founded. The alleged detriment happened before the claimant’s first protected disclosure.

Claimed detriment – Claimant was blocked from or given limited access to information and resources

278. This complaint is not well founded. We have made a finding of fact that much of 2R’s paperwork was in general in disarray. The claimant was asking for things that did not exist or did not exist in a structured way. 2R as part of his inherent personality struggled with the idea of sharing with the claimant, and was not technologically minded enough to have deliberately blocked the claimant from email access because of fears about exposure of the town hall fire alarm situation. It was not done on the grounds that the claimant made protected disclosures.

Claimed detriment – 2R displayed on occasions bullying behaviour toward the Claimant

279. This is on the face of it a wide ranging and unfocused allegation. In the claimant’s written closing submissions he focuses on the incident with 2R about the Street Scene Team member in February 2019. That pre-dates the claimant’s first protected disclosure and therefore cannot have been on the grounds of any protected disclosure. It is therefore not well founded and is dismissed.

Claimed detriment – Claimant was given responsibility for Town Hall operations, its fire alarm and H&S, but was not informed of the historical and ongoing fire alarm failures which had not been addressed by 2R.

280. This particular complaint is illogical. It amounts to an allegation that because the claimant made protected disclosures about the town hall fire alarm system, that 2R then gave the claimant responsibility for town hall operations, its fire alarms and health and safety without telling the claimant about the failings. It does not follow as a matter of timing or logic and is not well founded and is dismissed.

Claimed detriment - False documentation has been created by 2R including a written record of verbal warning on claimant's personnel file dated 29.04.2019 which did not happen and is confirmed as false by Councillor.

281. The respondents can only fairly respond to specific allegations made by the claimant and the specific allegation here relates to the purported written record of a verbal warning. The verbal warning document was created and last edited before the claimant made his first protected disclosure. It cannot therefore have been materially influenced by the making of any protected disclosures. The complaint is not well founded and is dismissed. The Tribunal in any event considered the document was probably written by 2R in anticipation of a verbal warning that was never actually given.

Claimed detriment – Claimant was victimised by 2R for making protected disclosures which would have been damaging to 1R had Councillors learnt of the facts

282. This allegation is on the face of it wide ranging and unfocused. We do not consider that it adds anything to the other allegations already dealt with above.

Claimed detriment - 2R was not truthful in his reporting of the Town Hall fire alarm issues to Councillors following the Claimant's dismissal.

283. This complaint is not well founded and is dismissed. It does not amount to a complaint that the claimant was subject to a detriment, through the acts or omissions of 2R that were materially influenced by the making of his protected disclosures. It is simply a statement made about 2R.

Claimed detriment – 1R did not follow its own, Acas's or other fair procedures in the Claimant's dismissal

284. 1R did not follow its procedures in respect of completing the probation review process or follow any Acas Code, to the extent applicable. This is not, however, an "ordinary" unfair dismissal claim. We have addressed above the fact that 2R was motivated in part to short cut the probationary review process by reason of the claimant's protected disclosures. Other than that we do not consider any procedural failings were materially influenced by the making of any protected disclosures. Instead, they were due to the respondents' mistaken belief that they did not have to follow a particular procedure for an employee with less than a year's service.

Claimed detriment – 1R failed to adequately manage the 2R leaving him to operate largely without oversight or adequate checks and balances to the detriment of the Claimant. The 1R effectively enabled 2R to act as he saw fit which led to issues such as the unsatisfactory Town Hall fire alarm, Claimant’s dismissal and other significant areas of concern.

285. This is a statement of the claimant’s belief about the inadequacy of 1R’s management of 2R. It is not a complaint that the claimant was subjected to a detriment by an act or omission of 1R that was materially influenced by the making of the claimant’s protected disclosure(s). It is not well founded and is dismissed.

Claimed detriment – 1R failed to investigate the Claimant’s concerns about the 2R’s behaviour when this was raised by the Claimant with 1R between early April and his dismissal

286. The concerns raised by the claimant about 2R were principally with Councillor Davies, and then at the probation review meeting. Councillor Davies and the other councillors were unaware of the making of the claimant’s protected disclosures. This complaint is not well founded and is dismissed.

Claimed detriment – Claimant believes 1R Chairman S Kaye may have had some knowledge of the Town Hall fire alarm faults

287. This is a statement of the claimant’s belief. It is not a complaint that the claimant was subjected to a detriment by an act or omission of 1R that was materially influenced by the claimant’s protected disclosure(s). It is not well founded and is dismissed.

Claimed detriment – Vicarious Detriments. The Claimant holds 1R vicariously liable for all detriments listed under heading Second Respondent Detriments, including that as the 2R was party to the decision to dismiss, he subjected the Claimant to the detriment of dismissal.

288. This has been addressed above.

Protected disclosure – unfair dismissal – Was the principal reason the Claimant was dismissed by 1R the fact that he had made a protected disclosure or disclosures.

289. For the reasons set out above, we do not find that the principal reason for the claimant’s dismissal by Councillor Kaye was because the claimant made a protected disclosure or disclosures. We have set out our finding as to Councillor Kaye’s reasoning above, and in any event we have also found he did not know about the claimant making protected disclosures at the time he dismissed the claimant.

290. The claimant also pursues a protected disclosure unfair dismissal claim, following Jhuti, on the basis that Councillor Kaye was unwittingly fed false allegations about him by 2R, 2R being motivated to do so by the making of the claimant’s protected disclosures, such that 2R’s reasoning should be ascribed as being the reason for the claimant’s dismissal.

291. We do not consider that such a complaint is made out on the facts of this case. As commented by the Supreme Court, Jhuti was a highly unusual case where the line manager created a false picture of inadequate performance, dishonestly constructed, and put before an unwitting dismissing officer. The facts as found in this case are very different. Councillor Kaye was not proceeding just on the basis of a wholly false picture of the claimant constructed by 2R. He was proceeding on the basis that there was a staffing situation that had become overwhelming to him. His time was being sucked up by 2R (a demanding individual in himself) and others contacting him about the claimant. Employees were caught in the middle between the claimant and 2R. Councillor Kaye reached the conclusion that the situation could not continue, and the best or easiest way to neutralise it was to remove the claimant. It would also have been on his mind, bearing in mind what 2R was telling him, that there was a risk that staff such as Ms Moore and Mr McGrath could leave. He had some personal knowledge of their dissatisfaction albeit it pre-dated the probation review meeting. Councillor Kaye exercised some independent thought in his decision making. Whilst we have found he was manipulated by 2R in the exaggerated picture of staff unrest that he was fed at that particular point in time, he was also not proceeding solely on the basis of bogus information fed to him by 2R. The information fed by 2R was also not all entirely false. The claimant did, at times at least, have a difficult working relationship with 2R, the Street Scene Team and Ms Moore. What we have found that 2R did was to exaggerate the picture, and short cut the probation review procedure, and one of the reasons (but not the sole reason) he did so was because of a desire to secure the claimant's exit to try to ensure the situation with the fire alarms was not exposed. Looking at it in that context we cannot say that the principal reason for the claimant's dismissal was the making of his protected disclosure(s). The situation, and the role played by the protected disclosure(s) through the actions of 2R is better evaluated as a detriment claim, as set out above.

Health and safety detriment

292. We accept that in being passed responsibility for the town hall the claimant had been designated by his employer to carry out activities in connection with preventing or reducing risks to health and safety at work.
293. We accept that the claimant was carrying out such activities when he made the disclosures to 2R that we have found amounted to protected disclosures in the whistleblowing claim. 2R was an individual in the hierarchy of responsibility above the claimant who can be considered to be, in effect, the claimant's employer (applying the principles as to who can be considered to be an "employer" in Jhuti). We therefore find that the detriments we have found established as protected disclosure detriments would also amount to detriments under section 44(1) ERA, as the claimant was also subjected to a detriment by any act of 2R, as employer, done on the ground that the claimant was carrying out activities in connection with preventing or reducing risks to health and safety at work. Section 44 must be analogous to the equivalent protected disclosure provision, and therefore we conclude the same causation principle of "material influence" must likewise apply here, and therefore the factual and legal analysis, is, in effect, mirrored. Such complaints can, however, only succeed against 1R. There is no provision within section 44 to make a manager/co-worker personally liable.

Health and safety dismissal

294. For the reasons already given above in relation to the protected disclosure dismissal complaint, we do not find the principal reason for the claimant's dismissal was that, having been designated by his employer to carry out activities in connection with preventing or reducing risks to health and safety at work, he carried out or proposed to carry out such activities. The complaint is not well founded and is dismissed.

Section 10 Employment Relations Act 1999

295. We do not find that the respondent was in breach of section 10 Employment Relations Act 1999. This is because the section applies where a worker reasonably requests to be accompanied at a disciplinary hearing. Here the claimant did not actually make a request to be accompanied at the disciplinary hearing. We appreciate that he did not have advance notification that he was attending a dismissal meeting in order to be able to make the request in advance. It is also understandable that he may not have been minded to ask the respondents to pause the meeting to allow him to ask to be accompanied. However, the wording of the statute is as is set out, and the claimant did not request to be accompanied. The complaint is therefore not well founded and is dismissed.
296. It will, however, be a matter for the remedy hearing for the Tribunal to decide whether there should be any adjustment to any award made to the claimant in respect of any failure to comply with the Acas Code of Practice on grievances and disciplinary proceedings. On the face of it, the claimant was not told in advance the basis of the allegations he was facing to enable him to prepare, or given time to prepare, he was not given copies of any written evidence, he was not given the opportunity at the dismissal meeting to put his case in response or ask questions, present evidence or call witnesses, he was not informed of his right to be accompanied, and he was given a limited right of appeal. The Tribunal will need to hear submissions from the parties at the remedy stage as to which, if any Code applied in the circumstances as found, the extent of any breaches and submissions as to the appropriateness of making any adjustment and its level and degree. It will also be a matter for the remedy hearing, amongst other things such as any issues of mitigation of loss, to assess the likelihood of whether the claimant's employment with the respondent may not have continued in the longer term in any event.
297. The case will be listed for a remedy hearing and remedy case management orders sent to the parties.

Employment Judge R Harfield
Dated: 28 June 2022

JUDGMENT SENT TO THE PARTIES ON 29 June 2022

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche