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Judgment: approved by the Court for handing down | *Delivered:* **11/04/2014**
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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BETWEEN:

PAUL KEOGH

Appellant;

-and-

BANBRIDGE AND DISTRICT CITIZENS ADVICE BUREAU

Respondent.

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Before: Morgan LCJ, Higgins LJ and Girvan LJ

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MORGAN LCJ (delivering the judgment of the court)

[1] This is an appeal by Paul Keogh who made claims before an Industrial Tribunal of unfair dismissal, sex discrimination, detriment and dismissal on grounds of making a series of protected disclosures and detriment and dismissal due to making health and safety disclosures. In a decision issued on 24 January 2013 the Tribunal unanimously dismissed these claims.

Background

[2] The appellant was employed by Banbridge and District Citizens Advice Bureau ("CAB") as a Generalist Adviser from November 2009 until 13 December 2011 when he was dismissed on the grounds of gross misconduct. Following a disciplinary procedure the respondent found the appellant guilty of gross misconduct in the form of insubordination and intimidatory behaviour leading to an irretrievable breakdown in relationships.

[3] The respondent is a charity funded mainly by financial contribution from the local council and is subject to requirements as to its opening hours and certain audit

requirements. The CAB had a board on which Mr Boyle and Mr Mowbray sat as unpaid volunteers as Chairman and Vice-chairman respectively. The appellant's role was to advise members of the public including during drop-in sessions on specified days of the week, during which clients were seen on a first come first served basis, and by appointment on other days of the week.

[4] There were no problems with the appellant's work or behaviour until mid-August 2010 after which the Tribunal found that there were various pressures in his private life which gave rise to stress. He was engaged in a family matter with Social Services and did not want to undergo medical treatment lest that should disadvantage his position. He began to be involved in a series of problematic incidents at work. These incidents ultimately formed the basis of allegations of insubordination against the appellant and culminated in an incident on 29 March 2011, in which it was alleged that the appellant spoke to a manager in an aggressive way. Following this, the Tribunal found that the appellant escalated his campaign by raising grievances and an inordinate number of complaints and issues in lengthy, verbose and pedantic correspondence. He was requested by the respondent to attend an Occupational Health consultant because of concerns about his health and record of absence due to stress. He refused to attend and instead provided a letter from his GP stating that he did not have a medical condition that precluded him from working. The incidents were then treated as disciplinary matters and a disciplinary process began. On 24 May 2011 the appellant was suspended pending disciplinary investigation into allegations of insubordination, bullying and threatening behaviour. He was dismissed on 13 December 2011.

[5] There were a number of specific factual issues on which the Tribunal made findings. At a team meeting on 9 September 2010 the appellant suggested that the CAB's opening hours be cut and that a system of triage for seeing clients be introduced, as an alternative to the drop-in system, in order to alleviate what he said were excessive workload pressures. He also suggested that a colleague, referred to by the Tribunal as Mrs McN, should relocate, when required, from the upstairs office to assist at the adviser sessions on the ground floor. He also suggested closing early on certain days to limit the extent of public access.

[6] Mrs Ellis was the appellant's manager and attended the meeting. Her evidence was that from early September she had concerns about the appellant's mental health. She observed him to be under stress, heard him alluding several times to being under stress and knew of the pressures in his private life. She said that he behaved inappropriately at the meeting. She did not agree that his proposals were necessary or desirable. Closing the doors early would have contravened a condition of the CAB's funding. There were short-term staffing problems that were manageable and which would soon be alleviated when new advisers completed training. Mrs McN was available on the first floor to assist any adviser as required.

[7] The appellant claimed that after the meeting he was cold-shouldered and ignored by Mrs McN and that this amounted to bullying. The Tribunal found that the height of the allegation was that Mrs McN passed him on the stairs without speaking to him and failed to speak to him several times when he was seated opposite her at the upstairs office between 9 September and 14 September 2010. He said that he raised this with Mrs Ellis and she did nothing about it. Mrs Ellis outlined reasons for having thought the appellant was mistaken about being ignored by Mrs McN.

[8] On 11 September 2010 the appellant sent an email to Mrs Ellis making 8 proposals for re-organisation of office operations because of his perception that the lack of triage meant that: *"Drop-in days are too frenzied and appointment days too sedate"*. He further stated : *"If my suggestions are at time too forcefully presented I apologise for this*." This was relied upon by the appellant as a document containing multiple protected disclosures. On 16 and 20 September 2010 he sent texts to Mrs Ellis and Mrs McN referring to the meeting of 9 September 2010. They contained an apology for the appellant's recent behaviour, particularly for the tone he had used, and stated that both colleagues had been very good to him, and that he would respect decisions made in respect of service provision.

[9] On Friday 8 October 2010 the appellant showed a two page article to Mrs Ellis that he intended to post on the discussion section of the intranet dealing with working practices. Most discussion items were of more limited content. He said that her reaction to it gave him to understand that he could post it on the intranet and he did so on Monday morning. The Tribunal accepted the evidence of Mrs Ellis that she had concerns about the article and about the appellant's agitated behaviour when she demurred about posting it. She asked him to wait until a one-to-one session arranged for Monday afternoon. The Tribunal also accepted that she raised with the appellant on Monday afternoon that he had posted the document without her permission. The Tribunal found that, rather than treating the incident as a disciplinary matter, Mrs Ellis encouraged the appellant to seek medical support for the stress from which she reasonably believed he was suffering.

[10] The appellant claimed that there were occasions when there were excessive numbers of people waiting to be seen at drop-in sessions which put pressure on him and the other advisers. While there was a period of a few weeks when it was busy because of staff turnover and training, the Tribunal accepted the respondent's evidence that the appellant was not subjected to an excessive workload and that the specific instances referred to by the appellant amounted to no more than normal CAB pressures. Mrs Ellis had checked at the time and found no discernible increase in the appellant's workload. There was no suggestion that advisers had to work extra hours to ensure that all clients were seen.

[11] In the one-to-one session on 11 October 2010 Mrs Ellis raised an issue of concern about the appellant's case recording. The correct recording of numbers of

client contacts and each client's issues was connected to CAB funding. The Tribunal found that the appellant was unreasonably inflating client contact numbers and grossly inflating the number of issues that each client had. Mrs Ellis showed him how his approach had changed from his earlier work. The appellant was adamant that he could see no difference in his performance and rejected any suggestion that there was a problem.

[12] Mrs Ellis took this denial of the problem as a sign of stress. In a letter to him dated 13 October 2010, which Mr O'Neill helped to draft, she expressed her concern for his well-being because of on-going stress. The appellant characterised this before the Tribunal as a detriment. The appellant also stated that Mrs McN started to scrutinise his case-recording unreasonably from December 2010 with a view to penalising him because of the suggestions he had made at the team meeting on 9 September 2010. The respondent's evidence was that it was a standard practice to check case-recording of all advisers as it related to funding conditions.

[13] On 2 March 2011 the appellant sent a letter to Mr Boyle, Chairman of the Board, which stated that he felt he had to raise a health and safety concern. He said that a newly-trained adviser, Ms IH, looked to him like she was under pressure and that Mrs Ellis appeared to be under pressure, unable to cope, and overwhelmed as a manager. He relied on its contents as protected disclosures.

[14] The Tribunal found that the appellant had not spoken to Ms IH about whether she was stressed. Ms IH was a qualified lawyer with a Master's Degree and relevant experience. She was not left alone in the session and had the support of Mrs McN upstairs as necessary. The number of clients that day was not exceptional or excessive. When approached by managers to discuss this point, Ms IH expressed anger that she had been used by the appellant in a complaint and denied that she was under pressure or unsupported.

[15] The Tribunal also found that the appellant did not reasonably believe that Mrs Ellis was suffering stress to the extent set out in the letter. Further, the Tribunal was of the view that the letter was a reaction by the appellant to his friend, Mr O'Neill, having been suspended on 25 February 2011. The Tribunal noted that Mrs Moore also sent a letter of grievance on the 7 March 2011 and accepted Mr Boyle's assessment that there was an element of orchestration about this.

[16] The appellant was very friendly with Mr O'Neill and reacted badly when Mr O'Neill's role as a volunteer had been terminated. The Tribunal accepted Mrs Ellis' account of the appellant's disproportionate and aggressive reaction to the news and accepted that he said to her that she had not heard the last of this, that this was only the beginning and that he would take up every grievance he could. The appellant accepted that he said to Mrs Ellis that Mr O'Neill would take a tribunal claim on grounds of protected disclosures. The Tribunal accepted that Mrs Ellis had reason to

feel frightened by his extreme reaction due to his aggression. She instructed him twice to go home that day but he refused.

[17] The appellant then raised grievances and numerous complaints and issues in lengthy correspondence to the respondent. A report by Mr Shanks, a management consultant retained to deal with the issues first raised by the appellant and the grievances raised by Mrs Moore and Mr O'Neill, could not be implemented because the appellant had by April 2011 raised such a multiplicity of issues and grievances.

[18] In April 2011 triage was started as a result of the visit of Mr Murie in February 2011 as part of his role with numerous CABs to promote good practice and consistency. The appellant had previously been an advocate for triage and maintained that it was started as a result of his intervention. The Tribunal found that triage started when the appellant was off on holiday without any problem. The appellant argued that he was at work on the day it started but left shortly afterwards on holiday. It is clear, however, from the appellant's letter to Mr Mowbray dated 21 April 2011 that he did not engage in any triage work until 18 April 2011 when there were problems after the appellant returned from holiday. The appellant complained that triage had been introduced without full consultation and was an example of top down management.

[19] The Tribunal found that a key problem as perceived by the appellant was that Ms GD and Mrs McN remained upstairs rather than being downstairs. At the outset of the case the appellant's point appeared to be that Mrs McN should be available to advise clients when there were busy drop-in sessions. His case later appeared to be that they needed to be on the ground floor to support advisers. The evidence of Mr Murie satisfied the Tribunal that support to advisers from someone on a different floor is more than adequate and occurs in one-third of CABs. The appellant submitted in this appeal that it was relevant to take into account that in the previous premises occupied by this CAB the supervisors were located on the same floor as the advisers.

[20] On various occasions in September/October 2010 Mrs Ellis urged the appellant to seek advice from his GP or suggested that he go home or consider taking sick leave. In the main the appellant refused to do so stating that there was nothing wrong with him. He insisted he would not seek medical help and refused to go to an Occupational Health ("OH") consultant.

[21] The Tribunal found that, despite the fact that around September/October 2010 the appellant acknowledged verbally and in writing that he was stressed, he claimed to the Tribunal that Mrs Ellis was seeking to show that he was mad and alleged that this was a further detriment connected to health and safety disclosures. He also stated that Mrs Ellis was "a lovely woman", that he had had no problems with her, and had not been bullied by her. He also stated that he had had the same view about Mrs McN before she suddenly allegedly changed and bullied him. The

Tribunal also alluded to evidence of several instances of inappropriate behaviour by the appellant, such as making inappropriate references to details of his personal life in a letter sent on behalf of a client.

[22] On 19 April 2011 the appellant went off with stress. Mr Boyle emailed him requesting that he remain off work for a further period due to concerns about his health. The appellant came to work the next day but was sent home by Mr Boyle. He then wrote to Mr Mowbray on 21 April 2011 setting out at some length the manner in which he felt overwhelmed by work and objecting to the suggestion that this was in some way an indication of any mental problems. He blamed Mr Boyle for implying that he was unwell but stopped short of making a formal grievance.

[23] On 3 May 2011 Mr Boyle and Mr Mowbray met the appellant to discuss their concerns about his health, his reports of inability to sleep, his emails sent in the early hours of the morning and the two periods he was absent due to stress. A report on the functioning of the CAB had been commissioned from John Shanks who had a HR background and was a partner of Mr Mowbray. He had alluded to these concerns. The appellant agreed to see the OH consultant but, before the appointment, told the respondent that he would not attend as a risk assessment on his performance had not been done and that he would get a letter from his own doctor. In evidence the appellant said that he believed that Mr Mowbray would collude with the OH consultant to ensure that he was pushed out of the CAB and that he had no intention of going to the OH consultant.

[24] At the meeting the appellant also raised a grievance in writing alleging that Mrs McN and Ms GD had bullied him. This was investigated by Mrs Pamela Neill in a report prepared in September 2011 but was not upheld. The appellant did not appeal the decision. There were aspects of the report which were helpful to him and he regarded it overall as a vindication of what he had been arguing.

[25] A disciplinary hearing was arranged for 24 May 2011 to discuss the appellant's refusal to attend with an OH consultant. The appellant produced a letter of 16 May 2011 from his GP and the hearing was suspended. The GP letter stated that he suffered from no physical or mental problem but alluded to the appellant reporting work-related stress. Mr Boyle suspected that the GP had not been fully appraised by the appellant of his behaviour.

[26] The appellant raised a grievance dated 23 May 2011 against Mr Boyle and Mr Mowbray listing various points including the fact that they had suspended the appellant, that documents were not provided, that actions requested by the appellant were not carried out and that they were pursuing an agenda to have the appellant removed from the CAB. This grievance was investigated by Pamela Neill but not upheld. The appellant unsuccessfully appealed the decision. In evidence the appellant admitted that he raised this grievance protectively with possible disciplinary action in mind as he feared that he might lose his job.

[27] On 24 May 2011 the appellant was suspended by Mr Boyle. Mr Boyle's letter indicated that, given the appellant's GP's assessment that she was not aware of any medical condition that would preclude the appellant from carrying out his work and given the appellant's refusal to attend with the OH consultant, the allegations made against him relating to issues of insubordination, bullying and threatening behaviour should be investigated. Mr Boyle carried out a disciplinary investigation and produced a report on 21 November 2011. The investigation involved a meeting with the appellant on 4 July 2011, a report from Mrs Ellis drawn from her handwritten contemporaneous notes of the appellant's behaviour and relevant incidents and a statement from Ms GD and a statement from Mrs McN.

[28] Mr Boyle also asked Alistair Joynes Associates, Business and Management Consultants, to review all the documentation. Mr Joynes' report recommended that the appellant should face the charges of insubordination and intimidatory behaviour, which had been proposed by Mr Boyle following his investigation along with a further charge of fundamental and irretrievable breakdown in relationships between the appellant and his managers as a result of his attitude and behaviour.

[29] On 9 July 2011 the appellant lodged a further grievance against Mr Boyle, alleging bias and hostility at the disciplinary investigation meeting on 4 July 2011 and contending that it was improper for Mr Boyle to have attended when there was an outstanding grievance against him. The Tribunal stated that this grievance was also rejected by Mrs Neill and was not appealed. The appellant submitted that the outcome of the grievance was that Mrs Neill encouraged the Board of Directors to reach a final decision regarding the appellant. That accords with the written terms of the report. We accept the appellant's submission that Mrs Neill "passed the buck".

[30] The incidents of misconduct alleged by the respondent against the appellant can be summarised as:

(a) insubordination by:

(i) placing notes on the NICAB website without the agreement of the manager, and in contravention of her requests not do so in advance of obtaining agreement;

(ii) refusal to leave work on 29 March 2011 when instructed to do so by the manager;

(iii) bypassing the manager with a complaint made directly to the Chairman as contained in the letter of 2 March 2011 and other stated actions demonstrative of a conscious challenge to the manager's authority;

(b) use of threatening and intimidatory behaviour by verbal threats made to the manager on 29 March 2011, when she had asked the appellant to leave the workplace, and the fact that two female members of staff made written statements to the effect that they felt threatened by the appellant's behaviour and did not wish to be left alone on the premises with him; and

(c) actions resulting in a fundamental and irreconcilable breakdown in work relationships, namely raising grievances against the manager, staff colleagues and members of the Management Committee, none of which were upheld; and the fact that members of staff stated their concern in the event of having to work in the premises alone with the appellant.

[31] The appellant was informed of the intention to hold a disciplinary hearing on 7 December 2011. He objected on the basis that he was concerned that the meeting would be hostile and degrading. He was not satisfied that some of the concerns he had raised in earlier correspondence had been addressed. He suggested that in light of his mother's recent suicide he was at risk but produced no medical evidence. The disciplinary hearing took place in the appellant's absence. In light of the large volume of material they adjourned until 12 December. The appellant wrote on 8 December to indicate that he had consulted his GP for counselling for work related stress. No medical evidence was forwarded on this occasion either. The outcome was dismissal for gross misconduct communicated by letter of 13 December 2011.

[32] The appellant appealed his dismissal. The appeal was dealt with by Mrs Yvonne Clydesdale and Mrs Margaret Campbell. The appellant raised a fourth grievance to complain about the involvement of Mrs Campbell on the disciplinary appeal panel. He mistakenly believed that she was connected with a particular political party and took issue with her having sat on a grievance panel that had reached a decision without meeting the appellant. On 10 January 2012 Mrs Clydesdale rejected it on the basis that Mrs Campbell was not the person involved in the political party and that the appellant had said that he would have no objection to another board member sitting instead of Mrs Campbell, even though that person had sat on the same impugned grievance panel.

[33] The appeal hearing took place on 10 January 2012. The appellant attended and presented a submission orally and in writing comprising 120 pages. The appeal panel considered the documentation, followed up several of the points made by the appellant and sought further information from several individuals. By letter of 21 February 2012 the appeal panel dismissed the appeal.

The Tribunal's conclusions

[34] The Tribunal concluded that the reason for dismissal was gross misconduct, that the respondent's actions were within the range of reasonable responses for a reasonable employer in relation to both process and penalty, and that the dismissal was therefore not unfair. The respondent had complied with the statutory dismissal procedure. There were flaws in the grievance procedure but these were not relevant to the dismissal process and had no bearing on the fairness of the dismissal.

[35] The Tribunal further concluded that the dismissal was not connected to any disclosures about health and safety matters nor to any protected disclosures. The appellant had failed to prove that he was subjected to any detriment or that any alleged detriments related to any disclosures. He failed to show that any of the alleged disclosures were protected disclosures in that he lacked the requisite reasonable belief and/or the alleged disclosures amounted to allegations and expressions of opinion, rather than conveying information. The appellant lacked the requisite good faith.

[36] It appeared to the Tribunal that the appellant was unhappy because the CAB was not being run exactly as he wanted it to be run, his friend's appointment was terminated, and he was under great stress in his personal life. These factors seemed to cause a change in his behaviour and attitude. He then conducted a campaign to try to penalise the respondent and he tried to formulate a set of claims based on unfounded health and safety risks when there was no evidence of him or anyone else being overworked or of him being bullied.

[37] The appellant had alleged sex discrimination because he had been suspended pending disciplinary investigation while Mrs McN and Ms G, about whom he had complained of bullying, had not. The Tribunal found that the two situations were not comparable and that the suspension did not amount to a detriment. The appellant had failed to prove facts to found a claim of sex discrimination.

Consideration

[38] The first point made by the appellant was that the Tribunal failed to give adequate reasons for its decision and thereby failed to comply with the duty to give reasons set out in Rule 30(6) of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005. The requirement for reasons in industrial tribunal cases was considered in this court in Ferris and Gould v Regency Carpet Manufacturing Ltd [2013] NICA 26.

> "[7] The leading authority on the adequacy of reasons for judicial decisions is English v Emery Reimbold & Strick Limited [2002] EWCA Civ 605. Lord Phillips MR stated that justice will not be done if

it is not apparent to the parties why one has won and the other has lost and gave the following guidance:

> '[I]f the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon. …
>
> When giving reasons a judge will often need to refer to a piece of evidence or to a submission which he has accepted or rejected. Provided that the reference is clear, it may be unnecessary to detail, or even summarise, the evidence or submission in question. The essential requirement is that the terms of the judgment should enable the parties and any appellate tribunal readily to analyse the reasoning that was essential to the judge's decision'.

[8] The issue was addressed in this jurisdiction in Johansson v Fountain Street Community Development Association [2007] NICA 15 where Girvan LJ quoted with approval a passage in the

judgment of Donaldson LJ in UCATT v Brain [1981] ICR 542:

> 'Industrial tribunals' reasons are not intended to include a comprehensive and detailed analysis of the case, either in terms of fact or in law. … Their purpose remains what it has always been, which is to tell the parties in broad terms why they lose or as the case may be win. I think it would be a thousand pities if these reasons began to be subjected to a detailed analysis and appeals were to be brought based on any such analysis. This, to my mind is to misuse the purpose for which reasons are given.'

[9] This matter was again more recently examined in Brent LBC v Fuller [2011] ICR 806. Mummery LJ dealt with the way in which the tribunal judgment should be approached at paragraph 30:

> 'The tribunal judgment must be read carefully to see if it has in fact correctly applied the law which it said was applicable. The reading of an employment tribunal decision must not, however, be so fussy that it produces pernickety critiques. Over-analysis of the reasoning process; being hypercritical of the way in which the decision is written; focusing too much on particular passages or turns of phrase to the neglect of the decision read in the round: those are all appellate weaknesses to avoid.'

He went on in paragraph 46 to give guidance as to the manner in which the tribunal should approach its answers to the questions arising from paragraph 5 above.

> '..when an employment tribunal asks a correct question, as this tribunal did

> about the reasonableness of the investigation into Mrs Fuller's conduct, it is better for the tribunal to give a specific answer to it in addition to its discussion of the facts, law and argument on the question. It should not be left to the parties, or the appeal tribunal or this court to have to work out the answer for themselves. Failing to answer the question could encourage an appeal and false optimism about the prospects of its success'."

[39] Under this part of the claim the appellant contended that the Tribunal did not record that the CAB had previously occupied premises in which the supervisory staff were on the same floor as the advisers. We do not accept that this part of the history was material to the issues in this claim. It certainly was part of the appellant's case that supervisors should be on the same floor as advisers for business reasons and he was persistent in presenting his view. It is clear, however, that the Tribunal rejected that part of his case. It accepted the evidence of Mr Murie that one third of CABs have an upstairs/downstairs arrangement and support to advisers from someone on a different floor is more than adequate. That is a point that was never accepted by the appellant but the reasoning of the Tribunal is clear.

[40] The Tribunal found that the evidence of Mr O'Neill was evasive, vague, contradictory and at odds with the evidence of the appellant and Mrs Moore in several respects. The appellant characterised this as a bald statement. The Tribunal, however, identified three issues which materially affected Mr O'Neill's credibility. The first was that at an earlier stage in the appellant's employment Mr O'Neill had several conversations with Mrs Ellis about the appellant's uncharacteristically unusual and irrational behaviour and helped to draft a letter to the appellant referring to her concerns about his well-being. Mr O'Neill claimed to have no recollection of those matters. He further had no recollection of trying to reason with the appellant because of his concerns. The Tribunal plainly did not accept that such matters would have been forgotten. Finally, he denied having a conversation with the appellant around August 2010 discussing how protected disclosure provisions could be used as a vehicle to make a claim on health and safety grounds which would be difficult to defend. The Tribunal was satisfied on the evidence of Mrs Ellis that such a conversation had taken place. Mr O'Neill had also been dismissed and the Tribunal concluded that this was his motive for supporting the appellant's version of events. That is a perfectly adequate basis upon which to conclude that he was not a credible witness.

[41] The Tribunal rejected Mrs Moore's allegation that the appellant was overworked and that leaving an adviser to operate a drop-in session alone was a risk

to his or her health and safety. This allegation was contradicted by Mr Murie. The appellant pointed out that he and Mrs Moore had complained about the workload prior to the team meeting on 9 September 2010 but this was not recorded by the Tribunal. There was no need to do so. The reasoning of the Tribunal was clear. The Tribunal found that the witness had meetings with the claimant, Mr O'Neill and Mr Shaw who were all disgruntled employees. The Tribunal concluded that it could not accept the evidence of the appellant that he was as uninvolved in Mrs Moore's claim as was alleged. These were more than sufficient grounds to conclude that she was not a reliable witness and to prefer the evidence of Mr Murie.

[42] The appellant pointed out that in respect of the disclosures upon which he relied the Tribunal concluded that many of the alleged disclosures were expressions of opinion and allegations and that the claimant did not reasonably believe the truth of some of them. He submitted that it was necessary for the Tribunal to identify its finding on each of these many claims. The overall conclusion of the Tribunal, however, was that the appellant did not suffer any detriment connected to the disclosures nor was the dismissal connected in any requisite way to any alleged disclosures. In those circumstances there was no need to make any further finding since the appellant could not succeed under Articles 67A to 67L of the Employment Rights (Northern Ireland) Order 1996. In the alternative the appellant relied upon Article 68 (1) (c) of the 1996 Order but that similarly requires some detriment. In any event the Tribunal found that the appellant lacked the requisite good faith as the issues were raised as part of his campaign to paralyse the respondent managers in order to get his own way.

[43] Finally the appellant complained that the relevant passages from the statutory provisions dealing with sex discrimination were not included in the decision. It is clear, however, that the Tribunal applied the correct approach by establishing whether the appellant had proved facts from which the Tribunal could conclude that his suspension was due to his sex. That is the test which was set out by the English Court of Appeal in Igen v Wong [2005] ICR 931and approved by this court in Curley v Chief Constable [2009] NICA 8 among other cases. Nothing further by way of reasons was required. We do not accept that the complaint about lack of reasons has been made out.

[44] The second ground of appeal is that the decision contains incorrect factual findings which are sufficiently serious to undermine the decision. The first major issue advanced on behalf of the appellant relates to the finding by the Tribunal that triage started when the appellant was off on holiday and there were no problems with its operation in that period. It appears that triage started on 4 April 2011 and that the appellant was at work on 4 and 5 April 2011. In his letter to Mr Mowbray dated 21 April 2011 he set out what work he was doing in those days and it is clear that he was not involved with triage. He did not start doing triage work until his return from holiday on 18 April 2011. The point made by the Tribunal was that there

was no issue with triage until the appellant became involved after his holiday. The evidence entirely supports that conclusion.

[45] We do not consider that disputes over the dates on which grievances were raised were material. The appellant raised issues in respect of the Tribunal's treatment of two investigations carried out by Mrs Pamela Neill. The first relates to his failure to appeal the finding made by her in September 2011. He accepts that this was factually correct but suggests that the finding was largely in his favour. The second complaint relates to an interview conducted by Mrs Neill with the appellant on 30 September 2011 as a result of which she made a report to the Board asking it to look at all the written interviews and reach a final decision regarding the appellant. She neither accepted nor rejected the grievance but "passed the buck". These findings were incidental to the issues which the Tribunal determined. There is nothing in the decision to indicate that they were material to its conclusion.

[46] The next point concerns the appellant's reasons for objecting to the participation of the chair and vice-chair in the disciplinary investigation. The appellant maintained that his reason for the objection was that the insubordination charge against him related to these two individuals. The insubordination charges are set out at paragraph 30 above. The Tribunal stated that his reason for objection was because he had raised a grievance against both of them. That reason was also recorded by Mrs Neill who interviewed the appellant on 30 September 2011. The notes of his evidence to the Tribunal indicated that he then placed emphasis on the fact that the insubordination charges related to the investigators. The Tribunal concluded that the grievance raised on 23 May 2011, the day before the planned disciplinary hearing, was intended to stymie the disciplinary process. The appellant admitted as much in the hearing. The Tribunal recognised the weaknesses in the disciplinary process but concluded that Mr Boyle, who investigated, and Mr Mowbray, who chaired the panel, reasonably formed the view that anyone nominated to be involved would be objected to by the appellant in an effort to derail the process. That finding is not undermined by any dispute over the reasons for objecting to the chair and vice-chair. In those circumstances the Tribunal was entitled to place emphasis on the appeal procedure.

[47] The appellant complained that the Tribunal condensed the legal issues in the case but in our view they were entirely right to do so. He also complained about the approach to the sex discrimination allegation. The Tribunal correctly recognised that the appellant was suspended both because of concerns about his mental health and concerns about colleagues and clients. The Tribunal concluded that no such similar concerns arose in relation to the two proposed comparators. It was perfectly entitled to conclude that the burden of proof did not shift.

[48] The third issue raised by the appellant related to findings on credibility. He took issue with the statement by the Tribunal that Mrs Ellis said that he had behaved aggressively at the meeting on 9 September 2010. He accepts that Mrs Ellis said that

the appellant was not a very pleasant person at the meeting and verged on disrespectful. She couldn't cope with the "nonsense" that was going on. As a result she felt unable to hold further team meetings. The Tribunal was entitled to assess this is an indication of aggression which was supported by the evidence of Mrs McN.

[49] The appellant took issue with the finding by the Tribunal that the appellant had changed his case in relation to the role of the supervisor. The Tribunal concluded that the appellant initially made the case that the supervisor was required to assist with clients whereas he then changed the case to a requirement to supervise the advisers. That is specifically noted by the Tribunal at paragraph 6.53 of its decision. The Tribunal made a similar point at paragraph 6.45 where it noted the difference in the case made for going over Mrs Ellis's head to the chair. His suggestion that the supervisor located on the first floor could not supervise an adviser on the ground floor was rejected by the Tribunal. The evidence of Mr Murie was preferred. The rather pedantic resort to dictionary definitions was of no assistance.

[50] The third credibility issue related to the fact that the appellant strongly denied that he ever applied to volunteer at the CAB and insisted that this matter was relevant to the Tribunal's deliberations on credibility. In fact it is common case that he did apply to volunteer. The Tribunal was entitled to put this material in the balance in assessing credibility. The fourth credibility issue related to the fact that the appellant admitted that he had not disclosed earnings of £120 as a painter and decorator to the tax authorities in 2010 and the fifth matter concerned the Tribunal's acceptance of the evidence of Mrs Ellis about the conversation between the appellant and Mr O'Neill. These were all conclusions that the Tribunal were perfectly entitled to reach.

[51] The appellant raises issues about his claim of bullying by Mrs McN. He relies in particular on accounts given by Mrs Moore, Mr O'Neill and Mr Shaw. The Tribunal demonstrated the basis upon which it did not give weight to their evidence. It also gave no weight to the evidence of Ms McCreanor since she had made no complaint prior to her resignation. He sought to rehearse issues on which the Tribunal had found against him and to seek to draw inferences in his favour from matters which the Tribunal had clearly taken into account. None of this showed any error of law on the part of the Tribunal.

[52] The appellant maintained that the Tribunal was biased against him. We accept the formulation by Lord Hope in Porter v Magill [2002] 2 AC 357 relied upon by the appellant that the test is whether a fair-minded and impartial observer would conclude that there was a real possibility or a real danger that the tribunal was biased. It is implicit in that test that the fair-minded observer is informed. Since we do not accept any of the earlier points made by the appellant we consider that they are of no assistance to him. He complained about the fact that the Tribunal removed

four statements that he had used at an interim hearing which he proposed to use at the full hearing. We do not accept that this indicates bias. As a result of his failure to submit his witness statements on time the Tribunal ruled that the evidence should be given orally. The Tribunal was entitled to take the view that his proposed reliance on the interim statements was an attempt to circumvent that ruling.

[53] The Tribunal limited oral closing submissions to one hour. This was a sensible case management approach in a case which the Tribunal had considered carefully over the previous nine days. The appellant complained about the speed of the decision which was given approximately 5 weeks after the end of the hearing. The Tribunal is to be commended for its expedition rather than criticised.

[54] The appellant submitted that the decision was perverse. He accepted that the governing authority is Yeboah v Crofton [2002] EWCA Civ 794 and that the hurdle is high. In his submission he rehearsed issues relating to the conduct of the disciplinary hearing and his failure to attend at. He asserted that the investigation conducted by Mrs Clydesdale was a whitewash. The Tribunal did not accept that view. He returned to the issues of triage and workload. He does not appear to be able to accept that the Tribunal rejected his complaints about these matters.

[55] His final complaint concerned an allegation that he was prevented from presenting his claim effectively and thereby denied a fair trial. The Tribunal imposed time limits in this case which were entirely appropriate, removed witness statements which should not have been put in the bundle and gave a speedy decision. There is nothing about any of these matters that could possibly give rise to a complaint about a fair trial.

Conclusion

[56] This appeal is without merit and is dismissed.