

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

Applicant: Mr M Appelqvist

Respondent: The States of Guernsey
(Acting by and through the Minister of the Home Department)

Witnesses: **Called by the Applicant:**
Principal Officer D Clark
Principal Officer J Lewis
Principal Officer P Pattimore
Senior Officer D Bourgaize
Officer A Jackson
Officer J Tardiff

Called by the Respondent:
Deputy Governor R Green
Senior Officer S Murphy
Governor T Wright
Emma Adkins

Decision of the Tribunal Hearing held on 18, 19 and 25 January 2011

Tribunal Members: Ms C Latham (Chair)
Ms P Brierley
Mr P Woodward

DECISION

Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal finds that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not unfairly constructively dismissed.

The complaint is dismissed.

Caroline Latham

.....
Signature of the Chairman

22 March 2011

.....
Date

NOTE: Any award made by a Tribunal may be liable to Income Tax
Any costs relating to the recovery of this award are to be borne by the Employer

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision are available on application to the Secretary to the Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF.

Unless otherwise noted, the Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended.

Extended Reasons

1.0 Introduction

1.1 The Applicant, Mr Mikael Appelqvist, was represented by Ms Robertson, and gave evidence to the Tribunal, supported by documentary evidence (Combined Bundle pages 45 – 77 refers).

1.2 The Applicant called the following witnesses, each of whom gave evidence under oath and supported by documentary evidence:

Principal Officer Dominic Clarke (Combined Bundle pages 78 – 79 refers)

Principal Officer Jeffrey Lewis (Combined Bundle pages 80 – 84 refers)

Principal Officer Philip Pattimore (Combined Bundle pages 83 – 84 refers)

Senior Officer David Bourgaize (Combined Bundle pages 85 – 86 refers)

Officer Andrew Jackson (Combined Bundle pages 87 – 88 refers)

Officer Jason Tardiff (Combined Bundle page 89 refers).

1.3 The Respondent, The States of Guernsey (acting by and through the Minister of the Home Department), was represented by Mr Jason Hill, Barrister at Law.

1.4 The Respondent called the following witnesses each of whom gave evidence under oath and supported by documentary evidence:

Deputy Governor Rachael Green (Combined Bundle pages 90 – 141 refers).

Senior Officer Sean Murphy (Combined Bundle pages 122-128 refers)

Governor Terence Wright (Combined Bundle pages 149 - 140 refers).

Ms Emma Adkins (Combined Bundle pages 141-147 refers)

1.5 The parties confirmed that:-

1.5.1 The effective date of termination was 7 March 2010.

1.5.2 The salary figures as detailed in the Applicant's ET1 were agreed.

1.6 At the outset of the hearing the Chairman clarified with the parties that the issue to be addressed was whether or not the Applicant was constructively dismissed.

- 1.7 The Applicant claimed that he had been constructively dismissed. He claimed that he had been bullied and harassed over a period time resulting in his resignation on 5 February 2010.
- 1.8 The Respondent refuted the claim.
- 1.9 The parties agreed that it was appropriate for the Tribunal to determine a preliminary matter (The Preliminary Matter) relating to the admissibility of evidence that was to be presented which referred to matters and events after the effective date of termination.

2.0 The Law

- 2.1 The relevant section of the Employment Protection (Guernsey) Law 1998 (as amended) is 5(2) (c)). This section refers to where “the employee terminates the contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer’s conduct”.
- 2.2 In order to prove constructive dismissal the Applicant must establish:
 - 2.2.1 that there was a fundamental breach of contract on the part of the employer;
 - 2.2.2 that the employment breach caused the employee to resign;
 - 2.2.3 that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

3.0 The Preliminary Matter

The Tribunal heard submissions from both parties on this matter and a summary of each argument is shown as follows:

3.1 The Applicant’s submissions:

- (a) The effective date of termination was 7 March 2010.
- (b) The Applicant conceded that events that took place after 7 March could not have influenced his decision to tender his resignation. However, the evidence which the Applicant wished to adduce supported his case that there was “bad faith” on the part of the employer towards him prior to his decision to resign.
- (c) The Applicant referred to the case of *Burford v Flybe Limited* 2008 in which it was claimed there was precedent for the Tribunal to consider matters after the effective date of termination.
- (d) The Respondent has already accepted the inclusion of documents in the “combined bundle” prepared by the parties prior to the hearing.

3.2 The Respondent's submissions:

- (a) Although the Tribunal is not bound by strict rules of evidence, its discretion must be exercised judicially and fairly.
- (b) The Applicant offered no explanation as to the relevance of the evidence post-dating the termination of his employment.
- (c) The Applicant referred to "bad faith" on the part of the employer. The Tribunal should have regard to the comments of Lord Justice Megaw in *Cannock Chase District Council v Kelly* – [1978] 1 All ER 154 where comment is made on Lord Greene's comments in the *Wednesbury Corporation* case [1947] 4 All ER 680.
- (d) The general principle applied in cases of this nature is that any evidence post the date of termination is not to be considered by a Tribunal. In the case of *Burford v Flybe Limited*, referred to by the Applicant, the Respondent argued that evidence after the date of termination, which was in dispute, had to be heard in order for the Tribunal to reach a conclusion as to the disputed date. Once the Tribunal had determined the effective date, evidence thereafter did not form part of the decision.

4.0 Tribunal's conclusions as to The Preliminary Matter

- 4.1 The Tribunal considered the submissions. The Tribunal is at liberty to admit any evidence given by the parties for the purposes of the hearing and determination of the dispute in accordance with Section 2 (b) of the Schedule to The Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005.
- 4.2 The Tribunal is mindful that it is inappropriate to use hindsight of events post the Effective Date of Termination unless there is good reason to do so and on the grounds of fairness to one or both parties.
- 4.3 After hearing the submissions on "The Preliminary Matter", the Tribunal concluded that there was no reason to accept evidence post-dating the Effective Date of Termination. The Hearing therefore proceeded to the substantive matter on this basis.

5.0 Facts Found by the Tribunal

The following facts have been derived from the evidence of witnesses given to the Tribunal at the hearing:

- 5.1 The Applicant was employed at Guernsey Prison from 18 February 1990, initially as a prison officer. He was promoted to Senior Officer on 1 May 2007.
- 5.2 His initial duties were in the Residential Department and later, in 2008, he worked in the Offender Management Unit (OMU).
- 5.3 During 2008/2009 the prison underwent a major review which resulted in changes to the management's structure and some working practices.

- 5.4 In April 2009 an incident occurred when the Applicant had been involved in escorting foreign nationals from one part of the prison to another. Immigration detainees were moved and “D cuffed” by the Applicant for this transfer. Following this event, the Deputy Governor, Rachael Green sent an email, copied to A Le Page and D Clark, to the Applicant requesting further information, including why the detainees had been “cuffed”, why a “use of force” form had not been completed by him, the location of the cuff keys during the incident and the reasons why the detainees were carrying bags during the time they were cuffed.
- 5.5 In August 2009, the Applicant returned from annual leave to find that staff deployment had changed.
- 5.6 On 25 November 2009 an incident took place at approximately midday when force was used on a young offender. The prisoner was seen by the prison healthcare authority.
- 5.7 On 26 November 2009, Principal Officer Pattimore reported an alleged assault to the Deputy Governor. In the morning the prisoner attended healthcare and received treatment to his hand. On the same date, the Applicant took charge of the evening shift at the prison, unaware of any allegations.
- 5.8 The prisoner was examined by the Prison Doctor on 27 November. This resulted in a referral to the fracture clinic for treatment. On the same date the Applicant attended a previously scheduled Control and Restraint training course.
- 5.9 On 28 November 2009, the injured prisoner was interviewed by Assistant Governor Massey and Prison Officer Netherton. During the interview the prisoner alleged he was assaulted by an Officer. The Applicant was not identified at the interview.
- 5.10 The Applicant took charge of the night shift on 29/30 November 2009, unaware of the allegations.
- 5.11 On 30 November 2009 the following events took place:
- (a) Deputy Governor Green views the CCTV footage of the incident with the prisoner and identifies the Applicant.
 - (b) A decision was taken by the Governor and Deputy Governor to suspend the Applicant.
 - (c) The matter is reported to the police by the Deputy Governor.
 - (d) The Applicant is suspended from duty pending the police investigation and he receives a Suspension Notice together with the terms of reference for an internal investigation.
- 5.12 The Applicant made a decision, on 1 December 2009, to look for alternative employment.
- 5.13 On 2 December 2009, the prisoner provided a statement of complaint to the police.

- 5.14 On 3 December 2009, the Applicant requested a copy of the CCTV footage of the incident referred to at 5.6 above.
- 5.15 The Administration Manager, Ms J Hamilton, sent a letter to the Applicant, on 4 December, advising him of the support available to him during his suspension.
- 5.16 The Governor sent a letter to the Applicant informing him that his request for a copy of the CCTV footage should be made to the Police.
- 5.17 A security information report of the incident was received by the Deputy Governor on 10 December 2009. An interim report was submitted to the Governor the following day.
- 5.18 During the period 14 December 2009 to 14 January 2010, the Applicant applied for two externally advertised posts. The Applicant was shortlisted for one of these posts, interviewed on 28 January 2010 and was subsequently offered and accepted the position.
- 5.19 On 23 December, the Applicant receives a letter from the Deputy Governor extending his suspension for a further four weeks.
- 5.20 The Applicant attended a police interview on 31 December 2009.
- 5.21 The Deputy Governor requested an expert opinion on the CCTV footage from Her Majesty's Prison Service Litigation Manager and Principal Officer Pattimore on 6 January 2010.
- 5.22 The Applicant's suspension was extended for a further four weeks on 18 January 2010, pending the results of the police investigations.
- 5.23 On 6 January 2010 the police advise both Mr Appelqvist and the Deputy Governor that the Applicant would not be prosecuted in connection with the incident involving a young offender in November 2009.
- 5.24 Following an invitation to attend the prison for an interview, the Applicant was seen by the Deputy Governor. Principal Officer Lewis and Senior Officer Bourgaize (the Union representative) were in attendance. The details of the interview were reported to Deputy Governor Green and as a result the Applicant's suspension was lifted the following day, 5 February 2010. He was to return to work on restricted duties pending the outcome of an internal investigation. This was confirmed both verbally in a telephone conversation and in a letter to the Applicant dated 5 February 2010. His duties were to resume on 8 February 2010.
- 5.25 On the same day, 5 February 2010, the Applicant submitted his resignation with notice to take effect from 7 February 2010, to the Governor.
- 5.26 On 8 February 2010, the Applicant submitted a medical certificate to his employer for a four week period.
- 5.27 Mr Appelqvist attended an exit interview with Ms E Adkins on 24 February 2010.

5.28 The effective date of termination of the Applicant's employment was 7 March 2010.

6.0 Summary of Parties' Main submissions

6.1 Although all submissions and arguments put forward by both parties were considered by the Tribunal, whether they are mentioned specifically in this judgement or not, the Tribunal noted the following key points.

7.0 Evidence of Mikael Appelqvist

7.1 The Applicant read from a prepared witness statement (Combined Bundle pages 45 – 77 refers). In his statement he confirmed his role, rank and length of service with the Respondent. He also confirmed the dates of commencement and termination of his employment.

7.2 The Applicant referred to a review of the Prison in 2008/2009. He claimed that following the appointment of Ms Green, the Deputy Governor, the management style at the Prison changed. He described the style as one of "intimidation".

7.3 Mr Appelqvist stated that there were occasions when other Prison Officers approached him describing alleged actions by the Deputy Governor and Senior Officer Murphy as "intimidating behaviour". He gave examples of what he described as the Deputy Governor's behaviour towards other officers. Following the review, there was to be a reduction in the number of Senior Officers from five to three. This caused concern and there were many discussions amongst the Senior and Principal Officers about this. In mid-2009, three of the five Principal Officers, were placed on performance monitoring. All were set targets that he described as "unattainable or unfair".

7.4 Mr Appelqvist described discussions between Officers when concerns were raised with regard to the Deputy Governor and Senior Officer Murphy's treatment of staff. He stated that staff "kept their heads down as much as possible in the hope that someone else would be on the receiving end". The atmosphere in the prison became strained, sickness levels increased, staff refused to work overtime and between 12 and 14 staff left the service.

7.5 Mr Appelqvist described his concerns regarding Senior Officer Murphy. Shortly after the Applicant was promoted in 2007 he was the subject of a complaint by Mr Murphy who had apparently accused him "of treating me badly". He also gave detail relating to incidents regarding Mr Murphy and other officers.

7.6 Mr Appelqvist stated it was difficult to recount the number of occasions when he felt bullied or undermined by the Deputy Governor and gave examples of incidents that had occurred in 2009 that he particularly remembered.

7.7 In April 2009, he received an email (Combined Bundle page 197 refers), also copied to others, from Deputy Governor Green referring to his actions with a number of Foreign Nationals. He stated that he interpreted the intention of this email to be to both intimidate him and to ridicule him publicly. He responded to the email, explaining the rationale for using handcuffs, but he was not happy with the

questions asked or the tone of the email. He asked for guidance on any points that should have been handled differently but never received a reply. He “felt this was the turning point in the professional relationship”. When questioned, he did not think that it was reasonable for a senior manager to ask the questions contained in the email relating to the incident or whether the correct procedures had been followed.

- 7.8 In August 2009, he returned from annual leave to find that staff deployment had changed. There were no written instructions to enable him to understand the reason for the changes or how they were to be implemented.
- 7.9 In September 2009, whilst in charge of a late shift, he carried out a routine prisoner roll check. The Deputy Governor enquired why the roll call was being undertaken when two prisoners were in the gym. He explained to her that it was quite normal for prisoners to be in the gym at the time and that the roll call was detailing figures from the wings collected previously and not the current figures. This procedure had been in place for the past 20 years. Further discussion took place between them. Mr Appelqvist said he thought that the Deputy Governor inferred that he had failed in his duties.
- 7.10 He said he told his line manager that he thought he was being bullied many times. He was a member of a Union and had formerly been the Staff Representative for the Transport and General Workers’ Union. He confirmed that he had not approached the Union for help and did not make a formal complaint to his employer. He was aware of the Grievance Procedure Prison Order 81 (Combined Bundle tab 20, page 391 refers) and confirmed that he had not used it.
- 7.11 On 25 November 2009, he described another incident when he was called to an area where prisoners were kept in cells for short periods of time. There was CCTV both inside and outside the cells. Mr Appelqvist noticed that the wicket gates on the cell doors were open, which was contrary to instructions. Whilst closing one of the wickets, one prisoner resisted and tried to strike the Applicant who pushed the prisoner’s arm back through the flap and closed the wicket gate. The rest of the shift passed without incident. He said that he forgot to fill in a Use of Force form, but he had been informed during his annual training that Officers are routinely encouraged to wait several days before filling in the form. He confirmed that the prisoner involved was a young offender aged 17 and that such a matter should be treated seriously by the authorities.
- 7.12 The Applicant was in charge of the prison on a late shift on 26 November 2009 and attended training on 27 November 2009. On 29 November 2009 he returned to duty and was in contact again with the prisoner whom he later found out had made a complaint.
- 7.13 He stated that he subsequently found out from a colleague that the Deputy Governor had been made aware of the incident with the young offender on either 25 or 26 November 2009. He had not been informed of any allegation against him and could not understand why this had not been done immediately to ensure that he had no further contact with the prisoner. To his knowledge this was the only time this procedure had not been followed.

- 7.14 On 28 November 2009 the prisoner gave details of an alleged assault during an interview with Assistant Governor Massey. The Deputy Governor was contacted at home but did not attend the prison. Mr Appelqvist stated "I know she asked Senior Officer Murphy to take down the video footage to her and I fully believe that he would have advised her when viewing the CCTV footage, as to his interpretation of events". He believed that the Deputy Governor and Assistant Governor Massey made a decision "to get me".
- 7.15 On 30 November he was asked by Prison Officer Le Page to attend the prison for a meeting. He was informed that he was to be suspended in relation to an incident that had happened the previous week. He attended a meeting with Prison Officer Le Page and Senior Officer Bourgaize. When he asked what the meeting was about he said "I've had enough of this, I'm leaving". He said he was told "not to do anything rash and let the investigation run its course". Afterwards he attended a meeting with the Deputy Governor, with Prison Officer Le Page and the Union representative in attendance. At the meeting he was suspended. He stated that having these persons in attendance breached his "right to confidentiality".
- 7.16 He met with the Deputy Governor on 30 November 2009. Ms Green had been authorised by the Governor to investigate the allegation of an assault on a prisoner. He was informed of the complaint against him made by the prisoner and that the matter had been referred to the police by the prisoner. He was not informed as to the nature of the alleged injury. When questioned about the Formal Notice of his suspension, dated 30 November 2009 (Combined Bundle page 166 refers) he stated that he chose not to make formal representations as described at paragraph 6 of the document because "it was pointless". He had no confidence that any complaint would have been handled properly. When questioned he stated that the events of 30 November had been "the final straw". He had financial commitments and could not afford to be without a job. He decided to start looking for another job on 1 December 2009 and once he had found alternative employment he would then resign.
- 7.17 He was concerned about the fact that the Deputy Governor was the suspending officer, the lead investigating officer and also the person who reported the incident to the police.
- 7.18 Mr Appelqvist described his concerns regarding his suspension and how the investigations were conducted. He was not interviewed as part of the internal investigation for over two months; he did not provide a police statement until 36 days after the incident; he had not been informed of the details of the alleged injury to the prisoner; he was never asked for any details of the incident prior to his suspension. He found out that the prisoner was seen by healthcare on 25 November 2009 but did not report an injury to his hand; the Deputy Governor had visited the prisoner on "the Thursday" but no injury was reported to her; the prisoner was seen by a doctor on 27 November and yet the Deputy Governor "was not aware of it"; that the prisoner was "disappointed" that he had no broken bones following an x ray on 30 November; that he had requested copies of the relevant visit sheets known as a SCAPU visit sheets but these "could not be found".
- 7.19 On 24 December 2009 he received a letter extending his suspension for a further 28 days. He stated his interpretation was that the timing of this further suspension was

“planned”. He gave evidence regarding feedback he had received from fellow Officers during his suspension and that he had concluded that “my career within the prison was over”.

- 7.20 Mr Appelqvist was interviewed by the police on 31 December 2009 regarding the alleged assault. He was informed that he was to be arrested. He was concerned that he was checked into a security suite which he considered to be unusual in the circumstances. He knew of no other Prison Officer to be treated in this way during previous investigations. He requested sight of the CCTV footage of the incident but was told it was unhelpful because the prisoner had obscured the camera.
- 7.21 On 26 January 2010 he was informed by the Police that “there was insufficient information to support a prosecution” and that the Police investigation was concluded.
- 7.22 Mr Appelqvist was interviewed by the Deputy Governor on 4 February 2010. He was given the terms of reference for the inquiry. He said that he believed that because the Police investigations were concluded and because they had found that he had not assaulted the prisoner, he would be recalled to duty. During the interview, the Deputy Governor was interested in the contact made with the prisoner and why a ‘Use of Force Form’ had not been completed after the incident. He was afforded the opportunity to ask questions and discovered that the Deputy Governor had first known about the incident on 30 November 2010, then “she let slip that she was actually made aware on 28 November”. Other officers however, had informed him that she had actually known about the allegation on 25 or 26 November 2009.
- 7.23 During the interview, he requested sight of the “in cell” CCTV because it would help his defence. He was told that it was not available despite his previous request to the Prison Governor to see the footage in December 2009. His interpretation of the interview was that he believed that the Deputy Governor was unprepared and, in his words, “didn’t think that she was going to need to do an internal investigation, as she thought that the police would press charges and find me guilty, whereby I would be automatically sacked. This also explains why she had already advertised my post in December, because she did not think I was going to be coming back.”
- 7.24 He had learnt that another officer had been interviewed on 3 February about the same incident and found it significant that although the other officer had been questioned about the physical contact with the prisoner, he had not been charged or put forward for Police questioning. He stated that his own treatment was extreme by comparison and that the investigation into his conduct had not been objective.
- 7.25 Mr Appelqvist gave an example of a previous charge of assault made by a prisoner against his line manager. He stated that the treatment of this officer had been different from his own treatment; he had not been suspended but was subject to restrictions, had been interviewed by the police informally and although there was an internal investigation it was concluded quickly. In 2007 he was the subject of a prisoner assault allegation; this too had been dealt with informally and quickly. In his view, this is how the incident of 25 November should have been dealt with.
- 7.26 On 5 February 2010 Mr Appelqvist’s suspension was lifted and he was informed that he was to return to restricted duties. He said that “this was unheard of”. He could

not face going back to work on a restricted duties basis. He was signed off work by his doctor. He handed in his resignation on the same day and requested an exit interview.

- 7.27 The exit interview with Emma Adkins took place on 24 February 2010. He stated that he told her about numerous issues and in particular that of “institutional bullying”.
- 7.28 When questioned, he stated that he had not wanted to leave his job. He was part of a close-knit team and he got on well with colleagues, “it was the last thing on my mind. I had no choice” and if the incident on 25 November had been dealt with differently the situation would have been different.
- 7.29 When questioned, he stated that he had been subjected to bullying since 2007. His understanding of the definition of bullying was that it was how an action by another could make him feel inadequate and under pressure; it was how he perceived the action. He did not agree that the management style of Deputy Governor Green and Senior Officer Murphy was simply robust.

8.0 Evidence of Dominic Clark

- 8.1 The witness read from a prepared witness statement (Combined Bundle pages 78 – 79 refers).
- 8.2 He confirmed that he had been the Applicant’s manager for two years and nine months. He had known him for the whole of his career within the prison service.
- 8.3 He had always found the Applicant to be honest, trustworthy and to have integrity.
- 8.4 He stated that he had been involved in an incident when an inmate of the prison had made allegations against him. He had not been suspended but had been interviewed by Assistant Governor Massey and the police. His police interview “appeared to be dealt with informally with the interview being dealt with in a normal office rather than a Police Custody Suite”. He had been cautioned but not arrested.
- 8.5 Mr Appelqvist had reported to him that he felt bullied by the Deputy Governor. He had done nothing about it which he regretted.
- 8.6 During the police investigation he was instructed not to have contact with the prisoner who had made the complaint. This was normal practice for the benefit of the parties involved.
- 8.7 Following the police investigation, there was no internal prison investigation.
- 8.8 He stated that the Applicant had reported that “he felt he was being bullied by the Deputy Governor”. The witness said “I also felt bullied by her and Senior Officer Murphy”. He had felt belittled by the Deputy Governor in management meetings and he had been placed under ‘poor performance monitoring’. He regretted not helping the Applicant but felt that he had to “keep my head down”.

9.0 Evidence of Jeffrey Lewis

- 9.1 The witness read from a prepared witness statement (Combined Bundle pages 80 – 82 refers).
- 9.2 He confirmed he was involved in the investigation into the incident that occurred in November 2009, when allegations were made against the Applicant.
- 9.3 He stated that on occasion prisoners made false accusations against staff and that is the reason for having simple investigations before decisions are made.
- 9.4 He had identified to the Deputy Governor that the CCTV footage of the incident in November 2009 was of poor quality and not clear enough to make a definite decision about the alleged assault. He expressed the view that reporting the matter to the police without the Control and Restraint Co-ordinator viewing the CCTV footage of the incident seemed to be a failure in procedure.
- 9.5 Mr Lewis gave evidence regarding his view of the general feelings of staff at the prison. He stated that communication within the prison was not good, even though he said that this was not the intention. This was evident when staff returned to work from a period of absence. The Applicant “would often fall foul of Senior Officer Murphy and the Deputy Governor”.

10.0 Evidence of Philip Pattimore

- 10.1 The witness read from a prepared witness statement (Combined Bundle pages 83 – 84 refers). He stated that he is Head of Control and Restraint within the prison.
- 10.2 He was told by a colleague that a prisoner had reported an assault in late November 2009. This had been “on the day or two days after the alleged incident”. He had reported this to the Deputy Governor.
- 10.3 During the subsequent investigation he was instructed to view the CCTV footage from outside the cell of the incident and submit a report. He was not given the opportunity to speak with the Applicant about the incident. In his opinion the officers had used more force than necessary and that Mr Appelqvist could have spent more time negotiating with the prisoner.
- 10.4 He stated that the two officers involved in the incident had been suspended from duty. In previous incidents with complaints from prisoners, officers had not been suspended.

11.0 Evidence of David Bourgaize

- 11.1 The witness read from a prepared witness statement (Combined Bundle pages 85 – 86 refers). He stated that he is the senior shop steward for the prison service.
- 11.2 He became aware that two members of staff were to be suspended on 30 November 2009. The suspensions related to an incident that occurred on 25 November 2009. He attended a meeting with Mr Le Page and the Applicant. Mr Appelqvist was unaware that he (Mr Bourgaize) would be in attendance until he attended the prison

on 30 November 2009. When the Applicant had arrived at the prison he had said “I’ve had enough of this, I’m not putting up with this anymore, I’m going”.

- 11.3 The witness said that he persuaded him to remain and not to do anything rash.
- 11.4 He said that during the meeting, it was “clear that the Deputy Governor was first aware of the incident on Friday 27 November”.
- 11.5 The witness explained the standard practice following an incident of this type. Procedure included; review of CCTV footage, undertaking a simple enquiry by interviewing staff, suspension or redeployment of the officer to limit contact with the prisoner involved.
- 11.6 He stated that the Deputy Governor did not follow these procedures on this occasion and that although she was aware of the incident, took no action and waited for the prisoner to make a formal complaint. She also allowed the Applicant to continue with his duties, leaving him at risk of further allegations.
- 11.7 Prior to the suspension of the Applicant on 30 November 2009, he had questioned whether there was a conflict of policy with the Deputy Governor having the role of both reporting and suspending officer.
- 11.8 On 26 January, the witness was advised by the Applicant that all charges against him were to be dropped.
- 11.9 Mr Bourgaize stated that on 3 February 2010, Mr Appelqvist was contacted to attend an internal investigation the following day, 4 February, 2010. The Applicant was given the terms of reference by the Deputy Governor, but she had failed to read through these or clarify the alleged injury to the prisoner. Many questions were asked during the interview including reference to a control and restraint technique known as a “goose neck”.
- 11.10 Following the meeting on 4 February 2010, he stated that he had ascertained from the Deputy Governor and Principal Officer Lewis that any penalty made against the Applicant at an internal inquiry would be no more than a verbal or written warning. When Mr Appelqvist’s suspension was lifted and he was put on restricted duties, the witness expressed the view that this was excessive.

12.0 Evidence of Jason Tardiff

- 12.1 The witness read from a prepared statement (Combined Bundle page 89 refers) and gave evidence relating to the hand-over of CCTV footage, he did not recall the date when this occurred; the Tribunal took note of the evidence.

13.0 Evidence of Andrew Jackson

- 13.1 The witness read from a prepared witness statement (Combined Bundle pages 87 – 88 refers). He confirmed that he had been employed by the Respondent for seven years.

- 13.2 The witness stated that on 26 November 2009, he was working in an area where there were “difficult” prisoners. A young prisoner informed him that he had been assaulted by an officer the previous night. When he subsequently checked the records, reference had been made to the incident in an entry made on 25 November 2009.
- 13.3 Mr Jackson stated that morale at the prison had declined during the past eighteen months, staff turnover had been high and that there had been many changes to working practices. He said staff had been “picked on” for not agreeing to a new roster system. He had not been the subject of “perceived bullying”, but stated that many fear reprisals from certain managers regarding the proposed changes.

14.0 Evidence of Rachael Green

- 14.1 Ms Green read from a prepared statement (Combined Bundle pages 90 – 121 refers). She confirmed that she was the Deputy Governor of Guernsey Prison and gave details of her employment and experience in Her Majesty’s Prison Service since 2003 and Guernsey Prison since July 2008.
- 14.2 She stated that seven days after her arrival at the prison the Governor went on three weeks annual leave and she became Acting Governor during his absence. She described how she had managed the prison – as she would have done in the UK. Having experienced the death of a prisoner on her first day in Guernsey, she formed the view that working practices were not always in accordance with best practice. She stated that she sought to improve staff safety and raise the standard of care for prisoners. This aim had not always been popular with staff.
- 14.3 In Autumn 2008 another Senior Operational Manager was seconded to the prison to complete the Prison Service review. She contributed to the Review which aimed to ensure that Guernsey has a “working prison” where those detained could participate in purposeful activities.
- 14.4 Ms Green gave evidence regarding the Applicant’s allegation of harassment and bullying. She had not treated him differently from other members of staff. She had no concerns about his performance other than the fact that he had amassed a significant amount of overtime and time off in lieu, which resulted in her having concerns that he was having problems managing his time effectively. She had asked the Applicant’s line manager, Dominic Clark to deal with the matter.
- 14.5 The witness gave evidence regarding the incident where she had apparently challenged the Applicant regarding a roll call check. She said that she could not recall the incident specifically, but she disputed the accuracy of the Applicant’s statement on the basis there was no wrong time to call a roll check.
- 14.6 Ms Green gave evidence regarding the completion of Assessment Care in Custody and Team Work (ACCT) Books which had been referred to by the Applicant. These documents have to be completed accurately and kept up to date. She was concerned about the standard of these reports and she set about raising and tightening the standards. She stated that she did not recall specifically having any conversation with the Applicant on the subject. She had raised the subject with

Operational Managers during meetings but she did not accept that she had dealt with the Applicant in an intimidatory fashion.

- 14.7 On 8 April 2009 she had sent an email to the Applicant regarding the treatment of foreign nationals, whom she considered did not pose a significant security risk, awaiting release to Immigration Officers. She expressed her opinion that it was not appropriate for such prisoners to be cuffed and that the use of such force was only to be used as a last resort. At the time of the incident the prisoners were carrying personal effects whilst walking up and down steps. Their treatment was unnecessarily demeaning and put the prisoners at an unacceptable health and safety risk. It had been her expectation that a 'Use of Force Form' would have been completed by the Applicant to justify his decision making. She denied that she had reminded him to complete the form; she had wanted to clarify that handcuffing the prisoners on that occasion had constituted a use of force. She accepted that anyone required to use the form should wait up to 48 hours to ensure that it was completed accurately and objectively. Staff should not need to be prompted to comply with Prison Order 1600. When the Applicant responded to her email she did not reply as she had delegated the follow up actions to two colleagues.
- 14.8 On 19 August 2009 Ms Green stated that the subject of the temporary relocation of the Offender Management Unit (OMU) had been discussed. She had been disappointed that the Applicant had not managed to put forward a practical solution. She did not accept that she had belittled anyone, however she was concerned that the task had been outstanding since 2008.
- 14.9 She gave evidence that she recalled an incident involving a Principal Officer referred to at paragraph 4 of the Applicant's Statement of Particulars (Combined Bundle page 7 refers). She denied she had said "now is there any more of your job you want me to do", stating she did not speak with staff that way.
- 14.10 New procedures for prisoner movements were announced in June 2009. Details had been drawn up whilst the Applicant was on holiday. Ms Green denied the Applicant's assertion in his Statement of Particulars (Combined Bundle page 3 refers) that he was "set up". He had not been treated any differently from other members of staff given that the new procedures were first reviewed at a meeting he had attended on his return from leave.
- 14.11 Ms Green stated that if the Applicant was bullied or harassed during his employment, he could have approached a member of Senior Staff, contacted the anti-bullying co-ordinator or a member of Human Resources. She was not aware that he had taken any of these courses of action.
- 14.12 Ms Green described the events leading to Mr Appelqvist's suspension on 30 November 2009 following an allegation that he had assaulted a juvenile detained at the prison. The incident had taken place on 25 November 2009 when the Applicant had forced a juvenile's hand through the hatch in a cell door. She stated that she would have expected the officer to have completed a 'Use of Force Form' and to ensure that other procedural matters had been complied with. She disputed the Applicant's assertion that he could not fill in the necessary forms due to his suspension. He had five days to do this but failed to complete the required form.

- 14.13 Ms Green considered that it was serious for a senior officer to use force against a prisoner, especially a minor, and to fail to report the matter.
- 14.14 Ms Green stated that Mr Appelqvist had worked on 25 November; his shift on 26 November and attended training on 27 November. The prison management had not become aware of the incident until late on 26 November 2009 when the juvenile reported the incident to Officer Devine who apparently completed an incident form. The form was not filed until 15 days later.
- 14.15 Ms Green became aware of the incident on 26 November 2009, when she was informed by Principal Officer Pattimore that the juvenile had reported that an officer had hurt his hand. At this stage the identity of the officer was unknown. She instructed Mr Pattimore to make enquiries, review the CCTV footage, establish whether there had been an incident, establish if the juvenile had suffered an injury, when the injury had been sustained and who was involved.
- 14.16 On 28 November 2009, Assistant Governor Massey and Senior Officer Netherton interviewed the juvenile on an unrelated matter. Mr Massey reported to Ms Green that the juvenile had difficulty signing a form and alleged that he had been injured by the Applicant. This was the first time the identity of the Prison Officer had been revealed. She checked with Mr Massey whether Mr Pattimore had made a further report on 27 November 2009 and was told that he was not on duty again until 30th November 2009. The purpose of her investigation was to establish whether the Applicant had used force against the young offender. She had not considered it necessary to suspend the Applicant prior to 29 November 2009 because she was not aware of any evidence to support the allegation of assault. The Applicant did not pose any threat as he was unaware that any allegation had been reported.
- 14.17 On 30 November 2009 she received a security information report confirming the information provided by the juvenile. She reviewed with Principal Officer Pattimore what enquiries he had undertaken and he confirmed that he had not reviewed the CCTV footage, neither had he received 'Use of Force Forms'. Senior Officer Murphy reviewed the CCTV footage and she then viewed it. The CCTV footage showed the Applicant applying force to the juvenile. On the same day the juvenile attended the fracture clinic.
- 14.18 In consultation with the Governor and Assistant Governor Massey it was decided that the matter should be referred to the police.
- 14.19 Ms Green stated that the Applicant was suspended at a meeting held with Assistant Governor Massey on 30 November 2009. She was not in attendance at the meeting. Prior to the meeting she had requested that Mr Bourgaize, in his capacity as the Union Representative, represent Mr Appelqvist at the meeting. She stated that in response to Mr Appelqvist's allegation that Mr Bourgaize's presence had breached his confidentiality, he had not requested that Mr Bourgaize leave the meeting. On the same day, the other prison officer involved in the incident was also suspended.
- 14.20 In response to criticism by the Applicant that he should have been suspended for his own protection on 25 November 2009, she stated that it was not until 28 November 2009 that she had become aware of the identity of the prison officer involved.

There was no supporting evidence until 30 November 2009 when CCTV footage of the incident became available.

- 14.21 The two officers that had been suspended were treated differently because soon after the matter was referred to the police, the police decided to treat the second prison officer as a witness. He would not be charged with any offence. For this reason the prison investigation could proceed into the conduct of the other officer.
- 14.22 On 14 December 2009, a post was advertised for a temporary replacement for what the Applicant considered to be his post. Ms Green stated that the prison was short of two senior officers and as the positions were not the Applicant's post there was no need to inform him whilst he was suspended from duty.
- 14.23 On 26 January 2010 she was informed by the police that the matter would not be prosecuted. She refuted the Applicant's assertion that there "was no case to answer" and that the "police found no evidence to bring charges".
- 14.24 On 27 January 2010, Principal Officer Lewis was commissioned as Assistant Officer to the investigation. She was satisfied that he was fully competent to assist and that he had adopted a measured approach to the investigation.
- 14.25 On 3 February she contacted the Applicant and requested that he attend an interview the following day. She provided him with a copy of the terms of reference of the investigation, as issued by the Governor on 30 November 2009, together with DAPS 2 Form.
- 14.26 On 5 February 2010 she discussed with the Governor whether it would be appropriate to lift the suspension, since any subsequent disciplinary action would not result in dismissal. She telephoned the Applicant on 5 February 2010 to inform him of the decision. She also wrote a letter of confirmation to him. She asked him to report for duty on 8 February 2010. Although he sounded hesitant the Applicant did not inform her that he would not be reporting for duty, or that he felt ill or that he was due to visit his doctor on 8 February 2010. She was aware that the Applicant subsequently tendered his resignation.
- 14.27 Prior to conducting her investigation, Ms Green sought expert advice from Principal Officers Pattimore and Williams. Following her interview with the Applicant on 4 February 2010, she did not provide a transcript of the interview to these officers to avoid there being a perception of bias. Their reports could be completed taking into account only the information available to them at the time, which was the other prison officer's statement and CCTV footage from the corridor in the secure unit. The reports from the experts were not completed until 11 and 12 February 2010.
- 14.28 Ms Green refuted the Applicants's charge that she did not comply with Prison Order 86 that states "the Investigating Officer must explain to the member of staff under investigation what the allegation is and give them relevant information to be able to answer questions in relation to it". She had informed him of the matters known at the time at the beginning of the interview on 4 February 2010. He had also viewed the CCTV footage and had undergone a police interview regarding the allegations. She did not have any further information available other than to ask the Applicant why the 'Use of Force Form' had not been completed and the reasons why he had

not referred the juvenile to the prison healthcare authority. She stated that she had conducted the investigations correctly and in accordance with the Prison Order.

- 14.29 She stated that she understood that the Applicant telephoned Assistant Governor Massey on 7 February 2010 informing him that he was unwell and would not be reporting for duty the following day.
- 14.30 Ms Green stated that she was never aware, prior to the Applicant leaving his post, that he considered that she had bullied him or treated him differently from any other member of staff. She did not consider that the investigation into the incident of 25 November 2009 had given the Applicant reason to consider his employment contract breached by the Department.

15.0 Evidence of Sean Murphy

- 15.1 Mr Murphy read from a prepared statement (Combined Bundle page 122 refers).
- 15.2 Mr Murphy gave details of his career in the prison service in the UK until 2004 and his position in Guernsey prison since that date. In total he had 27 years service.
- 15.3 Mr Murphy described himself as decisive, assertive and confident in voicing his opinions if he considers that they are of assistance. He described both himself and Ms Green as robust in their approach, particularly bearing in mind their significant UK experience. He stated that standards and adherence to procedure is higher in the UK. These views and his UK experience may have made him the subject of resentment. There was a culture and deeply held belief that the Guernsey Prison Service does not need any advice from people who have worked in the UK. He said that this manifests itself in statements such as "you are not in the UK now", "This is Guernsey: we do things our way". He gave other similar examples.
- 15.4 Mr Murphy stated that he only became aware that the Applicant had alleged that he had been bullied and harassed by him during the course of this unfair dismissal complaint. He denied this allegation was true and could not think of any reason why he may reasonably have felt that way. His views may have differed from the Applicant's on operational matters but he did not consider that to constitute bullying or harassment or that any such differences were an issue for the Applicant. The Applicant never voiced any concerns that he considered himself to be the subject of bullying by him or anyone else.
- 15.5 He stated that he did not work closely with the Applicant; he saw him at morning briefings. He did not socialise with him.
- 15.6 Mr Murphy described the following:
- 15.6.1 During 2009 he had sat with a re-profiling team from the UK to examine shift patterns with a view to amending and improving them. He thought that his Guernsey colleagues may have resented his role.
- 15.6.2 He had observed a prisoner on parole working at the Applicant's property. He had considered it appropriate to report this to the prison management

since it was contrary to normal practice. The Applicant was fully aware that he had raised the issue.

15.6.3 In August 2009 the Applicant and his line manager had become agitated during a discussion regarding the relocation of the Offender Management Unit. Their proposals were considered to be financially unrealistic for a temporary move.

15.7 Mr Murphy stated that following the Applicant's suspension, he was aware that an incident occurred on 25 November 2009. He was also aware that the incident was investigated. He had no involvement in the investigations other than to produce copies of the CCTV footage. He did not meet with the juvenile concerned or prepare letters or other documents as alleged by the Applicant during his exit interview.

16.0 Evidence of Terence Wright

16.1 Mr Wright read from a prepared statement (Combined Bundle pages 129 - 140 refers). Mr Wright, Governor of Guernsey Prison, gave details of his career in the Royal Marines Commandos and the Guernsey Prison where he had served since 1983.

16.2 Mr Wright described the Applicant to be enthusiastic; had held strong opinions and was passionate about a number of management and operational issues at the prison. Mr Appelqvist's management role was limited and his concerns were delegated to others to manage.

16.3 Mr Wright did not consider the Applicant to be generally receptive to different points of view. Whilst he had no concerns regarding Mr Appelqvist's performance, it was necessary for senior managers to keep a reign on his enthusiasm and temper it appropriately, otherwise he could have forged ahead on issues contrary to the decisions of senior management.

16.4 Mr Wright stated that no issues relating to bullying of the Applicant were ever brought to his attention. He had observed nothing in the day to day operation of the prison. He did not consider that there was any foundation in the allegations made by the Applicant regarding bullying from Ms Green and Mr Murphy. He stated that the Applicant was treated in the same way as other members of staff.

16.5 Mr Wright stated that the National Audit Office and Her Majesty's Chief Inspector of Prisons had prompted structural change at the prison. Recommendations had been made about working practices to improve performance at the prison, including greater accountability of staff. When Ms Green became Deputy Governor he asked her to actively manage staff. He considered her to be best placed to take an objective view as she was new to Guernsey prison and more driven to implement change. Ms Green had applied herself fully to the task and made great progress in improving operational practices. She had expectations of the standard of performance of staff that was beyond previous expectations. He became aware that there was some resistance from staff.

- 16.6 He stated that he became aware that some staff resented the changes. In her effort to improve accountability she identified the importance of tackling the standard of completion of forms.
- 16.7 Mr Wright stated that he considered Mr Murphy to be a member of staff with extensive knowledge and as a senior member of staff had clear views and opinions.
- 16.8 He explained that there are no specific anti-bullying policies at the prison, however, the Professional Standards Policy applies to all staff and prohibits discrimination, harassment, victimisation and bullying. Grievance Procedures apply and are available to all staff should they consider that they are suffering from bullying or harassment in the course of their employment.
- 16.9 Mr Wright described events following the incident that occurred on 25 November 2009. He had become aware of the incident on 30 November 2009 and had viewed the CCTV footage of the incident and immediately commissioned an investigation to be conducted by Ms Green. He was concerned that a use of force, as defined in prison regulations, appeared to have occurred against a juvenile prisoner and that a 'Use of Force Form' had not been completed. The matter was referred to the police as a matter of standard practice.
- 16.10 To protect the juvenile involved he was satisfied that it had been appropriate to suspend the Applicant. He stated that Mr Appelqvist had not made any representations to him about his suspension.
- 16.11 The internal investigation was not advanced pending completion of the police investigations which was normal practice. He stated that he was entirely satisfied with the investigations carried out by Ms Green and Mr Lewis and that at no time did he receive a complaint from Mr Appelqvist.
- 16.12 He stated that he had received a request from the Applicant for a copy of the CCTV footage in a letter dated 3 December 2009. He had considered it inappropriate to provide a copy because the matter had been referred to the police.
- 16.13 On 14 December 2009 "Temporary Senior Officer Posts" were advertised to fill gaps in the staff complement. These posts were not to cover the Applicant's role.
- 16.14 Following the completion of the police investigation he understood that the internal investigation proceeded and that the Applicant was interviewed and his suspension lifted on 5 February 2010.
- 16.15 On 5 February the Applicant came to see him and handed him a letter of resignation. He had another job. He passed the letter to Human Resources and thought that they were best placed to deal with a number of issues raised in the letter.

17.0 Evidence of Emma-Louise Adkins

- 17.1 Ms Adkins read from a prepared statement (Combined Bundle page 141 refers).
- 17.2 Ms Adkins gave details of the Bullying and Harassment Policy at the prison. She explained that Prison Officers are not "Established Staff" and are therefore not

covered by the States Dignity at Work Policy. The prison does have its own policy that encompasses bullying and harassment.

- 17.3 She stated however, that in practice the States Dignity at Work Policy would be referred to, to provide guidance in circumstances where a member of “Non-Established Staff” complained that they were the subject of bullying and harassment.
- 17.4 Ms Adkins detailed the actions that would be taken if a member of staff complained of bullying and harassment. She would expect that in the first instance the concern would be raised with the individual’s line manager or their Union Representative. Alternatively, an individual can raise the matter with Human Resources. She was not aware that Mr Appelqvist approached either his line manager or the Union Representative. If he had, then the matter had not been reported to Human Resources. He had made no direct contact with her department regarding such allegations.
- 17.5 On 1 December 2009 she attended the usual weekly meeting with senior prison staff. She was informed that the Applicant had been suspended.
- 17.6 She was aware of the Applicant’s concern that his post was advertised on 14 December 2009, but this was not the case. There were gaps at Senior Officer level at the prison and the adverts were for temporary positions to cover these.
- 17.7 She understood that following his resignation he may have raised an allegation with the manager for Human Resources. The first time she had been made aware was at the exit interview she conducted on 24 February 2010.
- 17.8 At the exit interview the Applicant raised many issues and produced several papers including a copy of the Deputy Governor’s email dated 8 April 2009.
- 17.9 Ms Adkins had been told by the Applicant that he considered that he had been subjected to a regime of bullying by Ms Green and Mr Murphy. He had set out examples of incidents, not all of which related to the Applicant. She did not advance these points given that the individuals concerned had not brought any of the matters to her attention. At the interview the Applicant did not tell her that his contract of employment had been fundamentally breached.
- 17.10 During the interview the Applicant had told her that he intended to take the matter as far as he could on the basis that he “wanted justice”.
- 17.11 After the interview she spoke with the Human Resources Manager and the Chief Officer of the Home Department to outline the discussions during the exit interview and they agreed that the information put forward by the Applicant related more to his perception of a culture of bullying rather than any bullying or harassment directed specifically against him.
- 17.12 She was aware that changes at the prison were not always popular with many staff members. She had on occasion needed to explain to staff that senior staff making operational changes did not constitute “bullying”. She believed from conversations with prison staff that the term “bullying” is used freely to make an impact.

- 17.13 On 18 February 2010, she wrote to the Applicant to follow up on points from the exit interview. The purpose of the letter was to acknowledge the points raised at the exit interview but not to accept that there was any basis to them.

18.0 Conclusion

- 18.1 In this case the Applicant claims that he was constructively dismissed as a result of a repudiatory breach of contract by his employer. In order to establish this breach the onus is on the Applicant to demonstrate that in accordance with S.5 (2) (c) of “The Law”:

18.1.1 that there was a fundamental breach of contract on the part of the employer

18.1.2 that the employer’s breach caused the employee to resign

18.1.3 that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal

- 18.2 The Respondent denied the allegation. It argued that the test to be applied is whether the Respondent:

18.2.1 without reasonable and proper cause; and

18.2.2 viewed objectively

18.2.3 conducted themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee

- 18.3 The Tribunal had to consider whether there were grounds that justified the Applicant’s resignation. In order to succeed, the Applicant had to demonstrate that, on the balance of probabilities, a fundamental breach of either an express or implied term of his employment contract had occurred, and this breach could be found to be unfair. In this case the Applicant alleges that he was bullied and harassed by his employer. The Tribunal noted the definition of “bullying” in the Oxford English Dictionary as *“overbearing insolence; personal intimidations; petty tyranny”*.

- 18.4 It is the duty of an employer to treat everyone with dignity and respect at work. In this case, the Respondent had a duty of care to ensure that the Applicant worked in a safe environment, which includes freedom from bullying. Therefore, the Tribunal seeks to find specific evidence of acts by the employer that can be perceived by the Applicant as a fundamental breach of contract.

- 18.5 Both parties gave evidence regarding the changes that had occurred at the prison in recent years. This was useful to the Tribunal by way of description of the general working environment. There was a major review of the Prison during 2008/2009, resulting in reviews of procedures and management structure. At the same time there were changes of personnel at senior level who were given specific responsibility for implementing the required changes. Witnesses described a

number of specific changes that were introduced to improve standards and prison performance, including the objective of improving staff accountability and the improvements required to comply with Prison Orders relating to filling in forms.

- 18.6 The Tribunal considered all the evidence put forward by the Applicant in order to prove that there had been a fundamental breach of contract. It applied the test referred to at 18.1 above.
- 18.7 Mr Appelqvist gave evidence of his relationship with Mr Murphy. He described events during the period 2007 – 2009 where he claimed he was bullied by Mr Murphy. He made no complaint about any of the incidents. It also heard evidence from Mr Murphy and the Governor. The Tribunal heard from Mr Murphy that he was decisive, assertive and confident in voicing my opinions that may not have made me universally popular”. The Tribunal accepts this description, but considered that his handling of various events did not equate to bullying. Rather, it was a management style that was not preferred by Mr Appelqvist.
- 18.8 The Applicant gave detailed evidence regarding several incidents between April and September 2009 when he stated he felt bullied or undermined by the Deputy Governor. These events are detailed in the evidence given by him, Ms Green and others. The Tribunal has considered all this evidence. It considered each incident with the knowledge of the changes taking place at the prison and the specific responsibilities given to the Deputy Governor with regard to improving procedures and staff accountability. The Tribunal is aware that change is not always popular and evidence to this effect was given by several witnesses. The incidents and management actions reflect the change that was taking place at the prison. There was clearly a change of management style. The Deputy Governor delegated responsibility for line management to members of the senior management team. However, the Applicant’s expectations were that she would be involved in the minutiae of all management decisions.
- 18.9 The Tribunal heard evidence from the Applicant where he gave examples of Ms Green’s behaviour towards other members of staff. The events did not directly involve the Applicant. The Tribunal had therefore disregarded the evidence as it does not find it specific to the Applicant.
- 18.10 Mr Clark gave evidence that Mr Appelqvist felt he was being bullied by the Deputy Governor but had not done anything about it because he felt under attack. No specific detail was offered to support this view.
- 18.11 The Tribunal considered the events that occurred relating to the alleged assault on a juvenile on 25 November 2009 and the date of Mr Appelqvist’ resignation. Much evidence was given detailing each party’s version of events. In many, but not all, respects the chronology are similar. There are differences, for example, where the Applicant believed the Deputy Governor was aware of the incident a few days earlier than her version of events; on balance, the Tribunal prefers the evidence given by Ms Green. It is not the role of the Tribunal to comment on internal prison procedural matters other than to consider whether they were conducted in accordance with defined practice and, if so, that the employer acted reasonably. The alleged assault had been against a juvenile and it was reasonable for the matter to be treated very seriously by the prison.

- 18.12 Whilst the Tribunal accepts that the Applicant found the period from 25 November 2009 to 5 February 2010 very difficult, it cannot find that any action on the part of the employer to be unreasonable or unjustifiable when viewed objectively. The Respondent gave evidence to support its actions and these were found to be logical, understandable and followed proper prison procedures described by its senior managers. The Tribunal did consider evidence that a second officer involved in the incident had been treated differently. The Tribunal accepts the reasons given by the Respondent for this different treatment as reasonable and justifiable. There was no action on the part of the Respondent calculated or likely to destroy or seriously damage the relationship of confidence and trust between the employer and employee. If the Applicant had a grievance with regard to his treatment there were procedures available to him to make a complaint.
- 18.13 The Tribunal considered the Applicant's decision to resign. When questioned, he confirmed that the events following the allegation of assault in November 2009 were considered by him to be the "final straw event". The Tribunal accepts that this was the event that triggered the subsequent resignation by the Applicant. However, it considers the Respondent's actions, triggered by the alleged assault on 25 November 2009, to be reasonable.
- 18.14 Mr Appelqvist cited incidents that he described as bullying and harassment. The detail was given in evidence. He maintained there was no prison policy in place for dealing with complaints of bullying. Ms Adkins gave evidence to the contrary, explaining the procedure for staff complaints. The Tribunal was satisfied with the existence of the procedure and that it was known to staff. It further heard evidence that Mr Appelqvist had not made a formal complaint with regard to the incidents described in the evidence. He was cognisant of the availability of the process for complaints, he was a member of the recognised Union to whom he could also turn for help, he had known the senior management for many years during his career but did not turn to them either informally or formally, Human Resources were readily accessible but they knew nothing of his concerns until the exit interview. The Applicant had every opportunity to make a complaint but he chose not to do so.
- 18.15 The Tribunal had to ask itself whether, having regard to all the facts that preceded Mr Appelqvist's resignation, it was reasonable for him to consider that the actions of his employer had been so unreasonable that he had been constructively dismissed?
- 18.16 The Tribunal considered Mr Appelqvist's claim that he had been subjected to bullying and harassment. It is mindful of the duty of care an employer owes to its employees and that if the mutual trust and confidence between employer and employee is broken through bullying or harassment at work an employee could resign and claim constructive dismissal under The Law. An employee should decide on a course of action as soon as possible.
- 18.17 Mr Appelqvist cited examples of actions on the part of his employer that he thought constituted bullying and harassment during a period from 2007 to his resignation. Mr Appelqvist complained that the prison had no formal anti-bullying policy. Evidence given drew attention to the prison "Professional Standards Statement" (Combined Bundle page 212 refers). The Tribunal is satisfied that adequate procedures and protection were in place to deal with bullying at the prison. Mr

Appelqvist was a very experienced officer with many years service including time as the Union Representative. The Tribunal could find no reason why he should not have been aware of the grievance procedures and he could have followed them at any time since the date on which he alleged that the bullying commenced which was some considerable time prior to his resignation.

18.18 The Tribunal found as a finding of fact that there were several incidents during 2009 involving Mr Appelqvist. The Tribunal considered each incident and considered whether the actions of the Respondent were reasonable. There was detailed evidence on the various events and in particular in relation to the incident in November 2009. It was also aware that the prison was in a period of change as a result of an external review. The Respondent presented evidence regarding the need for greater accountability and improving standards at the prison. The Tribunal heard from the Respondent that Ms Green and Principal Officer Murphy's management style was "robust" which was not always popular with staff. The Tribunal accepted the Respondent's evidence that these changes included stricter adherence to compliance with Prison Orders. The Tribunal accepts the Respondent's argument that its employees should obey these orders. Where there is non-compliance it is reasonable for the employer to require an explanation from the staff member involved. In this context the Tribunal concluded that Mr Appelqvist's complaints were a reaction to these changes and the Respondent's requirements for staff to comply with the various rules, regulations and working practices were reasonable.

18.19 The Tribunal had regard to the considerable evidence relating to the incident that occurred in November 2009 which resulted in the suspension of the Applicant on 30 November 2009. The Applicant claimed that he had been treated unfairly. The Tribunal was satisfied that the Respondent reacted correctly to an allegation of an assault against a juvenile prisoner. The Tribunal accepts that such an allegation is very serious. It was reasonable for the Respondent to follow Prison Orders and procedures as well as involve the police. The Applicant claimed that another Officer that was also involved was treated differently; the Respondent gave a coherent and well reasoned explanation for this difference in treatment.

18.20 The Applicant gave evidence that, as a result of what he concluded to be a "last straw event" on 30 November 2009, he decided to seek alternative employment and he applied for other jobs. The Tribunal was told that the Applicant did not take advantage of his rights in accordance with paragraph 6 of the Notice, served on him dated 30 November 2009, relating to his suspension (Combined Bundle page 166 refers). If the Applicant was aggrieved, he should have taken advantage of his right to make representations to Governor Wright. Evidence was given regarding the events of 25 November 2009; the Tribunal found no reason to conclude that the prison management had not conducted the investigations correctly.

18.21 The Tribunal is not critical of the Applicant's delay in his formal resignation. The Tribunal acknowledges the Applicant's explanation for the delay - because of financial reasons - however, this recognition does not absolve the Applicant from his responsibility to respond appropriately at the time of his acknowledged "last straw" event. At the date when he decided to resign, he made no attempt to alert his employer to his objections to his suspension or to his claims of bullying and harassment that he claimed had occurred.

18.22 In view of these reasons the Tribunal concluded that the Applicant had failed to demonstrate that the employer had acted in such a manner that entitled him to view his contract so fundamentally breached that he was entitled to resign as a result of the actions of his employer.

19.0 Decision

19.1 The decision takes into account the relevant Law, the Guernsey and UK authorities cited by the parties.

19.2 Having due regard to all the circumstances presented to it, whether specifically referred to in this judgement or not, the Tribunal unanimously finds that under section 5 (2) (c) of the Employment Protection (Guernsey) Law 1998 (as amended). the Applicant was not unfairly constructively dismissed from his employment.

Caroline Latham

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Signature of the Chairman

22 March 2011

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Date