Justice and Fairness in the Workplace: A Disciplinary Case analysis in the UK Public Sector.

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ABSTRACT

This thesis investigates justice and fairness in the UK public sector when formal disciplinary procedures are invoked.

The golden thread of justice and fairness in the workplace addresses the following questions:-

1. What types and scale of workplace disciplinary transgressions exhibit in the UK public sector, and are demographics relevant?

2. How the Host employer processes disciplinary cases and what are the experiences at this and other bodies of the parties involved, employees, trade unions, managers, HR, and politicians, and what improvements could be made?

The initial phase comprised a five year longitudinal study of a public sector employer's disciplinary records, and compared employee demographics with workforce characteristics of which they formed a part. It is unique in being purely case-based, and unlike much research does not conflate grievance and disciplinary cases. Employee demographics of **age, gender, tenure** and **absence** show statistically significant linkages to a propensity to commit serious breaches of contract resulting in a formal disciplinary investigation. In the case of *gender*, evidence strongly points to it being generalizable.

The concluding qualitative phase found isolated examples of 'good' practice, but also serious inconsistencies and lapses by employers. Three key concepts emerged. **Structural Differentiation** where disciplinary criteria were being applied differently across the same employer; **Hierarchical Differentiation** where senior management interpreted and applied policies in favour of themselves; and **Boundary Conditions** where gatekeeping decisions are made whether to invoke formal procedures. These Boundary Condition failures saw unimaginable harm being meted out to victims of child sexual abuse, with innumerable employee, service and society implications.

This work tasks Human Resource professionals to be more proactive in constructively using the wealth of data metrics at their disposal, so as to avoid unnecessary investigations, and challenges them along with management to remove impediments to achieving equitable justice and fairness in the workplace.

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List of Key Abbreviations

Acas	Advisory, Conciliation and Arbitration Service
BME	Black and Minority Ethnic
C/C	Capability/Counselling
CBI/PFIZER	Confederation of British Industry/Pfizer
CEO	Chief Executive Officer
CIFAS	Credit Industry Fraud Avoidance System
CIPD	Chartered Institute of Personnel and Development
COI	Consumer prices Index
CSA	Child Sexual Abuse
CSE	Child Sexual Exploitation
CWB	Counterproductive Workplace Behaviour
D	Dismissal
E	Employee
EAT	Employment Appeal Tribunal
ET	Employment Tribunal
FOI	Freedom of Information
FWW	Final Written Warning
GDPR	General Data Protection Regulation
GMC	General Medical Council
HCCPA	House of Commons Committee of Public Accounts
HR	Human Resource Manager
HRM	Human Resource Management
IRS	Internal Revenue Service (US)
IT	Information Technology
LIFO	Last In First Out
M	Manager
MoJ	Ministry of Justice
NCA	No Case to Answer
NFA	National Fraud Authority
NHS	National Health Service
NMC	Nursing and Midwifery Council
NTU	Nottingham Trent University
Nvivo	Qualitative data software package by QSR International Ltd.
OCB	Organisation Citizenship behaviour
ONS	Office for National Statistics
P	politician
PACE	Police and Criminal Evidence Act (1984)
PwC	PricewaterhouseCoopers
R/R	Retired/ Resigned
SA	Settlement Agreement
SD	Summary Dismissal
SPSS	Statistical Package for the Social Sciences
TA	Taxpayers' Alliance
TU	Trade Union Representative
UUK	Universities of United Kingdom
VW	Verbal Warning
WW	Written Warning

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1. INTRODUCTION

1.1 Introduction

In our encounters with others, with organisations and officialdom, there is an assumption that justice and fairness will prevail. The importance to the individual of being treated fairly reinforces not only their belief in a just world (Lerner, 1980), and how they make sense of their position in it, but importantly their self-worth which, in a work context, can be one of the major defining characteristics of their identity; James (1890, p. 45) noted, "our self-feeling in this world depends entirely on what we *back* ourselves to be and do". Handled correctly, disciplinary situations are remedial, but contrast to this, when handled less than ideally, such processes can feel unnecessarily punitive, where people lose trust in the employer and leave, or as one subject noted several years after their case, they felt they could still not trust management.

This research sheds light on current workplace practices within the UK public sector, in respect of how disciplinary procedures are applied; and the workforce is held to account by management's interpretation of what justice and fairness means in practice. Justice research has lacked a focus on this aspect of employee relations.

1.2 Justice and Fairness Research

 The workplace relationship is governed by contract, with *express* codified terms for written particulars, other documents and correspondence, and *implied* terms which are unspecified but the courts may read into the contract such terms as they think are reasonable (*Stevens v University of Birmingham* [2015]). It is the duty of either party to honour both these aspects, but where implied terms are concerned, how is either party to know what is required? Could it be that given the lack of clarity with *implied* terms, these may dominate breach cases? The short answer to that is no, it is clear that both *express* and *implied* terms figure in workplace infractions. Organisations might view employees committing misdemeanours as 'mad or bad' (anomie), and some possibly are, but latter sections of this research point to management itself as being instrumental in creating the situation, where dissent is not unexpected. Trust is the foundation on which the employment relationship is built. Uncertainty Management Theory (Lind and Van den Bos, 2002), stresses its fundamental role in shaping the mind-set of the individual in cooperating with the employer; and this promissory nature about future employer/employee relationships, can be sorely tested during a disciplinary.

The paradox in the employment relationship is that despite trust being the bedrock of the relationship, this cooperative mind-set can be radically transformed into an adversarial one during the disciplinary process. If handled impartially in a genuine quest for justice and fairness, investigations can indeed be cooperative, where either 'side' has *trust* in the other, and a collaborative stance is taken to arrive at a proportionate 'finding of fact'. Where the employee is unable to *trust* in the impartiality of the employer, and latter sections of this work testify to this, limited cooperation can result, accompanied by an adversarial stance. This is particularly so when the employee feels they have been wronged, (Greenberg, 1990,involving theft: Sommers, Schell and Vodanovich, 2002,involving revenge), for as Aristotle wrote "Men regard it as their right to return evil for evil—and, if they cannot, feel they have lost their liberty" (Sackett and DeVore, 2001, p.160).

Justice research, and particularly that concerned with workplace transgressions, has been criticised for adopting a 'management' agenda, often seeking solutions which control, and some might even say oppress, the worker. Understandably management seek to minimise and or eliminate such conduct, whilst others see this as a vain hope given they view employee resistance as endemic, and a feature of organisational life (Ackroyd and Thompson, 1999).

Whilst research to date affords a good level of understanding of some of the antecedents of given types of counterproductive behaviour (CWB), little work has attempted to amass evidence as to the magnitude of this behaviour, or importantly for this research, gauge the resultant disciplinary processes used.

In every day work situations, the expectation is that whatever events or agents one encounters, justice and fairness will be demonstrable, and they are seen as critical if one intends to remain. So why do people care about justice and fairness? Research has established that people care about justice from a variety of perspectives. From a *group value* position it reaffirms one's position in relation to others and or groups with which the individual identifies (Tyler and Lind, 1992). Alternatively, it can be *instrumental,* much like 'voice', which is seen as providing an element of control over an outcome (Brooks, 2018). Folger, Cropanzano and Goldman (2014) saw respect for individuals as deontological, and involving a *moral duty approach.* Finally, it shapes a *self-concept*, which is that idiosyncratic view of oneself, which can be seen as at the opposite end of the relational continuum noted in the group value disposition. These perspectives are not to be seen as working in

isolation, nor are they immutable, but are dynamic and changeable as one adjusts to, and makes sense of, one's place in the world; as James (1910, p. 294) noted, the malleability of the individual has "as many different social selves as there are distinct groups of persons about whose opinion he cares". These social selves have a 'requirement' for justice and fairness in all walks of life, but never more so than when facing a disciplinary investigation, a situation that can demonstrably change one's life and everything on which that life has been built.

The challenge for this work is to help answer these underlying questions, about what type and scale of serious transgressions do employers have to address, and how disciplinary matters within the public sector are handled from a justice and fairness perspective.

1.3 Contribution

Justice and fairness research have been dominated, methodologically, by general workforce surveys, and laboratory studies and suffers from common method bias. This mixed method research uses primary and secondary data from actual disciplinary cases, complimented in Phase 2 by semi-structured interviews giving the 'lived' accounts of those involved. As such it differs appreciably from extant research, and in this, contributes significantly to the field. Involving access to such sensitive, albeit anonymised data, sets it apart from the vast majority of justice and fairness inquiries.

Longitudinal studies typically may span one or two years; however, this work extended to five years. It gives a comprehensive account of *all* disciplinary activity within the Host employer, and unlike most research which focusses on a specific kind of infraction it includes all serious offences; being so protracted ensures that any annual fluctuations were encountered. As a result, it provides an authentic picture of the application of justice and fairness in the public body concerned, a picture normally considered so confidential that seldom are organisations willing to lay themselves open to such scrutiny. In using extensive employee demographics, the type of alleged infraction, resultant level of disciplinary finding, along with how the case progressed, it furnished both a *distributive* and *procedural justice* insight, and Phase 2 captured many *interactional* aspects. For the first time it has been possible to gauge not only the complexity of this type of dysfunctional behaviour, but in obtaining employee workforce demographics, has afforded analysis of those variables which uniquely enable the dysfunctional employee to be set against the workforce of which they were a part.

Phase 2 interviews involved all levels within organisations with a responsibility for handling disciplinary cases, including politicians, managers, Human Resources managers (HR), trade union representatives, and employees who had been the subject of an investigation. These first-hand accounts, gave a 'balanced' picture of twenty-first century justice and fairness practice in a range of public sector bodies, a practice that varies considerably, from what might be described as 'best practice', to others where justice and fairness can be applied differently even by the same employer, to examples of excessive use of power by management in seeking a preferred outcome in preference to an impartial one. A less than ideal situation has not been enabled by the extent of public service budget cuts, and the large-scale devolution of responsibility for disciplinary investigations to line managers. This work also highlights the critical nature of the *Boundary Conditions*, where decision making as to whether to investigate or not, can have catastrophic consequences.

The findings will be of interest to academics, management, HR, and politicians who along with the trade unions, have the potential to improve justice and fairness for the employee, provided they are prepared to accept existing practices may be deficient.

Other than strikes and work-to-rule situations, employee relations are seldom tested more rigorously than in a disciplinary, with both sides generally diametrically opposed, and seeking a resolution that will save face for either party. This work examines the 'dark side' (Furnham and Taylor, 2004), the 'dirty' (Punch, 1996), and the 'insidious' (Greenberg, 2010) workplace behaviour resulting in formal disciplinary investigations. Here the main statistical analysis relies on comparing the data set with the workforce from which it is drawn, and where possible setting this against other comparable data. This quantitative aspect gives way to a qualitative focus in the latter section when semi-structured interviews capture the personal experience of all levels involved.

The following conventions have been applied. *Justice* and *fairness* will be used synonymously, as will *trade union representative, steward,* and *convenor*. The terms *sickness* and *absence* will refer to time off work. Where public bodies are overseen by elected politicians to whom the Chief Executive is accountable, this body will be referred to as *'Executive'*, and the members of that group will be noted as '*Members'*. Anyone belonging to other groups will be seen as a 'member'. Whilst technically different, no distinction will be made between Child Sexual Exploitation (CSE), and Child Sexual Abuse (CSA), these and other abbreviations were included earlier.

1.4 Remaining Thesis Outline

Chapter 2. Literature Review examining salient research and theories

Chapter 3. Methodology outlining the philosophy and research design

Chapter 4. Host employer longitudinal disciplinary case survey, analysis

Chapter 5. Justice and Fairness analysis of Host employer disciplinary procedures, and semi-structures interviews

Chapter 6. Research summary

Chapter 7. Conclusions and limitations

The literature review follows setting out the extant research pertaining to this work.

2   LITERATURE REVIEW

2.1 Introduction

The Advisory, Conciliation and Arbitration Service (Acas), and the courts are the final arbiters as to how *fair* and *just* employers treat their employees. However, whilst legislation and case law dictate the parameters within which workplace conduct is managed, the question remains as to how *fairness* and *justice* are actually delivered beyond the judicial gaze.

The following explains the legal context of the employment relationship, what is understood by counterproductive workplace behaviour (CWB), and the scale and economic impact on the economy. It sets out the Phase 1 hypotheses which drove the research, and covers extant research on the four key independent variables which proved statistically significant in relation to CWB (*gender, age, tenure and absence)*. Variables which proved not to be significant are addressed in Chapter 4 (Disciplinary Case Findings) and are not elaborated here. Finally, the ethics, chronological and conceptual development of *Justice* and *Fairness* research provides a basis for understanding the qualitative aspects of Phase 2; and in doing so it addresses some limitations of existing research and highlights the areas of contribution of this work.

2.2 Legislative Background

A triumvirate of interests, business, trade unions, and government/EU are constantly in a state of flux in shaping the industrial relations climate. Early work by the Donovan Commission (1968, p. 143), despite being primarily concerned with collective bargaining, also highlighted the disparity in power between the employer and employee in matters of discipline, where the employers' interests frequently "automatically prevail over the employees'". This imbalance of power had been a feature since the establishment of the Conciliation and Arbitration Service (1896). It was not until the 1970s with (Acas) becoming independent of government, that the third element of these tripartite interests, the employee, gained access to professional advice. Acas publications (2015, 2019) concerning Disciplinary and Grievance issues sets out the expectations for a just and fair process. This together with access to 'professional' guidance affords a balancing of the power between employer and employee, unlike the original facility. Wood, Saundry and Latreille (2014) provide the most recent review of the nature, extent and impact of the working of the Acas guidance and this will be referred to in later chapters.

Rawls (1971) saw *justice* and *fairness* as the first virtue of a civilised society, and this open access to employment advice for workers goes some way to delivering this, though with the recent imposition (2013), and removal, temporary of otherwise (2017), of Employment Tribunal fees, the role of government with regard to *justice* for the worker as provided by the state can be seen as ambivalent. The triumvirate of tensions therefore still persists. What then is meant by these workplace transgressions?

Employment contracts are founded on the express terms of the contract of employment (Employment Rights Act, 1996) and the implied duty of mutual trust and confidence (MTC), which together impose a mutuality of obligation prohibiting anything which may damage (misconduct),or destroy(gross misconduct), that relationship. Recent trends in litigation seem to be evidencing (MTC) being almost automatically cited in Employment Appeal Tribunals which the judiciary have described as unhelpful (*A v B* [2003]). Employers, by instigating the disciplinary process, are minded to legislation, case law, along with Acas and CIPD guidance, and seek to arrive at a 'finding of fact'. However, establishing this 'finding of fact' involves a widely held misconception of what is required of an employer. The demands imposed are merely that that they act *reasonably*, and in doing so arrive at a conclusion that fits within the *range of reasonable responses (RRR).* Notably a criminal burden of proof (beyond reasonable doubt) is not required.

Justice and fairness in the context of extant research have been seen as synonymous (Sheppard, Lewicki and Minton, 1992), which has recently been contested by Goldman and Cropanzano (2015); however, in the application of disciplinary procedures and the law, it can be argued that *justice* pertains more to law and due process, whilst *fairness* involves a subjective evaluation by those involved. The following theft case law findings question this synonymy.

Theft is always taken seriously, and usually merits a gross misconduct finding, which in law means a repudiation of the contract and automatic dismissal. The sums can be considerable and lead to the collapse of the business itself, but even small sums, for example a suspected 50p loss, can, given all the circumstances and one's previous record, warrant termination (*Docherty v Reddy* [1977], or £10 in *Trusthouse Forte Hotels Ltd. v Murphy* [1977]).There is no requirement to categorically establish guilt, merely to act within (RRR),and in *Frames Snooker Centre v Boyce* [1992], any one of three employees were deemed involved in an 'inside' job of burglary, but only two employees were dismissed. The third employee, who was related to the owner, was deemed to be honest

and continued in employment. In *Palmer v Southend-on-Sea Borough Council* [1984] Mr. Palmer and a colleague were convicted of theft in the Crown Court and subsequently dismissed. However, the convictions were quashed about a year later, but the employer refused to reinstate them. Palmer's dismissal awaited the Crown Court finding, but employers are not compelled to await the outcome of a police investigation or court ruling before determining a disciplinary outcome, or, as in the Palmer case, reinstate despite the ultimate decision of the courts dismissing the case.

Much depends on the veracity of the investigation and adherence to procedures, and the natural justice of allowing the employee's active participation and 'voice', yet the in *Sartor v P & O European Ferries (Felixstowe) Ltd*. [1992], and *Baiyelo v London Borough of Southwark* [2011], lapses in procedure and failure to accept additional evidence failed to see the dismissals as unfair. Acting on the information available, employers are able to pursue the interests of capital and make such decisions they see as fit (RRR), (*British Home Stores v Burchell* [1980], *Sainsbury's Supermarket Ltd v Hitt* [2001]); but are advised not to unnecessarily delay investigations which would be unwarranted (*Marley Homecare v Dutton* [1981]). Refusing to work overtime when not expressly contracted to do so can result in dismissal *Pengilly v North Devon Farmers Ltd*.[1973], and even dismissal without investigation is permissible (RRR), as in *Carr v Alexander Russell Ltd*.[1979], and *Parker v Clifford Dunn Ltd.* [1979].

These examples illustrate the employer acting 'reasonably' within the law and as such, they may well be seen as *just,* but when clearly innocent workers are dismissed it is hard to accept these legal proceedings and precedents as *fair*. Ultimately it is at law that precedents are set and whilst the judgement in *Haddon v Van Den Bergh Foods Ltd*. [1999] suggested that *fairness* replace (RRR), this view has not prevailed. However the first vestiges of fairness may be re-emerging in the case of *Stevens v University of Birmingham* [2015], where a refusal for accompaniment at a disciplinary investigative meeting outside established policy which had been agreed with the trade unions was deemed to be "conspicuously unfair". To some, the vestiges of a master servant relationship still exists, and *justice* and *fairness* cannot always be seen as synonymous at law or in disciplinary decisions, and this dichotomy would be fruitful ground for further research.

In addition to the express terms, workplace manuals, custom and practice, and safe working procedures are expected to be not only used as *guidance* (which implies optional adherence) but in reality *must* be followed. A failure to do so in most cases might require

the intervention of a supervisor to require compliance, but occasionally where the breach is a repeated offence, or of a more fundamental nature, formal disciplinary proceedings may be enacted. It is then a matter for the employee and/or their representative to prepare and present a case in the employee's defence in line with the procedure noted in Appendix 1 (Acas, 2019, p. 7).

Breach of contract issues are confidential matters and are difficult for researchers to access, and Jackall (1988) is said to have been rejected by over thirty corporations before being granted cooperation. This research was possible like Jakall's, by similarly guaranteeing anonymity to contributors and the Host employer.

It is critical, therefore, initially, that we understand what is meant by CWB.

2.3 Recognising Misbehaviour

Students of Human Resources Management (HRM) might be forgiven for thinking that the scholarly texts on managing the workforce are premised on there being compliant workers, with practically no differentiation between them. In effect they appear to be androgynous and prescribed policies and practices espoused suggest a 'one size fits all' as best practice. This researcher, in a recent survey of over 4000 such pages, returned just over 1% of script on conflict, deviance, dysfunctional behaviour etc. which is very similar to Ackroyd and Thompson's (1999) findings, suggesting that a distinct 'window dressing' by authors somehow fails to recognise the subject. Publications on industrial relations and employee relations do a little better but nonetheless generally concentrate on collective rather than individual conflict. Ackroyd and Thompson (1999 p.1) view these omissions as, "…sanitized accounts of behaviour that appear in many books on organizational behaviour".

They see the texts on organisational behaviour as alluding to a management agenda, which "focus on a positive depiction of organizational life" (Vardi and Weitz, 2004, p.6), and is left wanting if the dark side of employee behaviour is essentially omitted. Punch (1996, p.43) refers to these exclusions with the comment "The dirty side is largely ignored", and Furham and Taylor (2004, p.27) refer similarly to it as the "dark side".

The UK public sector can be viewed as a composite of disparate individuals, formal and informal collectives, sections and departments. Weber (1991) saw bureaucratic individuals as dehumanised, dominated and shackled to the monolith that is the modern-day public sector organisation: "The individual bureaucrat cannot squirm out of the apparatus in

which he has been harnessed" (p.228). This seeming oppression suggests a compliant workforce, which is at odds with Ferguson (1984, p. 7), where bureaucracies are "political arenas in which struggles for power, status, personal values, and/or survival are endemic", and Ackroyd and Thompson (1999) from a gendered viewpoint, saw them as a hotbed of desire, passion and perversity. This research tends to reject Weber's depiction.

 Organisations cannot function effectively without there being a controlling influence over all its constituent parts. The public sector has traditionally been seen as Weberian, a bureaucratic imposition of formal control from above; but latterly, with a more enlightened HRM approach, trade union collective bargaining, economic pressures from reduced funding, and a need to generate income streams, things are changing. A major push has been to engender a more 'business' oriented mind-set, seeking a cultural change to win over the "hearts and minds", Gramski-like, of the workforce (Ouchi, 1979).This readjustment has some way to go and the fact that formal disciplinary procedures operate in most organisations suggests the battle for control and conformity has not, as yet, been won, or as Ackroyd and Thompson (1999,p.3) note, " both managers and organization behaviour specialists alike not only underestimate the extent of organizational misbehaviour but that they also exaggerate the extent to which organizational behaviour can be changed by them" .

The gap in research largely falls into the following: i) it overwhelmingly relies on self-report methodologies, ii) is usually focused on a specific type of misbehaviour, iii) seldom encompasses a longitudinal aspect, iv) accepts perceived accounts of misbehaviour rather than documented ones, and v) very rarely focusses on serious infractions involving disciplinary procedures. It is at addressing these deficiencies that this research is aimed.

 The following illustrates early interest in CWB research and some of its weaknesses.

2.4 Early Interest in CWB and the Research Questions Posed

That employee misbehaviour is not new can be seen by reference to examples in ancient papyrus Egyptian manuscripts (Vernus, 2003), accounts of unrest during the peasants' revolt (1381), the Luddite rebellion (1811-13), and right up to today when newspaper articles regularly mention workplace transgressions, sometimes resulting in imprisonment. Acas notes that whilst workplace conflict is inherent, it is not inevitable. Yet, despite this optimism, a whole new vocabulary has evolved, the very mention of which conveys revulsion at the wrongdoing within and by corporations (Tyco, Enron, BCCI, WorldCom,

Poly Peck, Parmalat, Refco, Madoff, Mid-Staffs, MP's expenses, PPI, LIBOR, EUROBOR, Leeson, Maxwell, Goodwin, Shipman, Allit, Poulson) examples of these are in Appendix 2. Typically, these organisations have faced financial penalties imposed by the regulatory authorities, though, in a few exceptional cases, a handful of individuals faced prosecution in the courts. However, I must emphasise that corporate corruption is *not* covered in this research; only individual transgressions like Shipman would qualify.

Cesare Lombroso (1835-1909) was a founding criminologist whose basic premise was a Darwinian explanation as to what separated criminals from honest people. Readily accepted during the nineteenth and early twentieth centuries, his classification of likely deviants focused on cranial shape, size and features, along with their writing, drawings and tattoos. These now ill-conceived ideas as to the reasons for dysfunction were later overtaken by more accepted theories of *anomie* by sociologists Durkheim and later Merton. A more psychological based concept is control theory, which sought to explain work transgressions by a lack of self-regulatory capabilities and impulsivity, but with this psychological leaning Hirschi (2017, p. 34) posed the question "Why do they do it?" and suggested the correct line of inquiry should be "Why don't we do it?" Philosophically control theory is a variant of anomie in that it rests on the concept of the "level" of self-control, with anomie subjects having little, and control theorist candidates being more 'measured'. A more utilitarian model is rational choice theory and is centred on deliberate calculative transgressions, where the risk, the effort involved and reward are balanced (Clark, and Cornish, 2000). Finally the social learning theory associated with Albert Bandura (1977), sees deviant behaviour being learned from others, which is particularly significant if the reference group is meaningful to the transgressor; much akin to social exchange theory where tangible and intangible 'goods' are exchanged.

The consequences of CWB can be considerable, so just how prevalent is it?

2.5 The Importance of CWB: Fraud Large and Small

In an ideal world there would be no need to concern ourselves with dishonesty from the public at large or in the workplace. The estimated loss to the UK economy due to fraud for 2012 was £73 billion (NFA, 2012) which is approximately equivalent to the combined revenue from Fuel Duty, Business Rate, and Council Tax combined @ £78.2billion(HMS Treasury, 2011/12). Whilst much of this fraud is committed not by employees but by members of the public and organised criminal gangs, evidence from across the globe

indicates that insider-enabled fraud to be on the increase. The largest frauds were committed by insiders, 60% of cases globally where the perpetrator is known was perpetrated by an insider, and cases of fraud increased around 14.5% between 2010/2011 (PwC, 2011: Kroll, 2011/12: CIFAS, 2011). Approximately 70% of business losses are attributable to employee theft along with around 30% of business failures (Wimbush and Dalton, 1997). Not only do employers have to contend with wayward employees, but evidence has emerged that criminal gangs have moved on from trying to corrupt existing employees, and are now seeking to place members of their fraternity into employment with the intention of perpetrating fraud. A recent survey noted 70% of people when questioned said they would commit a fraud if they were assured of not being detected (Leicester University, 2003), and much fraud goes undetected such that "Large organisations [10,000+] can expect to dismiss in the region of 100-150 members of staff every year for fraudulent activity."(CIFAS, 2007,p. 12, my parenthesis). Such is the willingness of the public toward misrepresentation, that '4% of *successful* applicants ultimately failed the vetting process*,* and 18% of temporary vacancies similarly failed because of applicants having no right to work in the UK, and/or false identification, references, work histories, qualifications; or they had committed benefit or council tax fraud' (Oversight Board, 2011, p.36). Researchers have estimated that far from employees generally honouring the terms of the contract of employment, deliberate acts of misconduct and dysfunctional behaviour are common with around 75% to 85% (Harper 1990: Harris and Ogbonna, 2002) routinely engaging in such activity. The scope for conflict and subsequent wrongdoing is therefore considerable.

2.6 Contextual Factors Contributing to Employer/Employee Conflict

Whilst the above demonstrates the financial scale of malfeasance, employers are tasked with resolving conflict in the workplace across the full spectrum of misbehaviour. The Workplace Employment Relations Study (WERS, 2013) contains several factors concerning the changing working conditions brought about due to the recession. In the public sector, changes in terms and conditions were reflected in employee organisations experiencing wage cuts/freezing (68%), vacant posts frozen (44%), reduced paid overtime (23%), reduced training (32%), redundancies (32%), work reorganisation (35%), including increased personal pension contributions and delayed eligibility for retirement. A workforce experiencing such decrements through no fault on their part (injustice) is more prone to retaliatory acts of misconduct (Greenberg and Scott, 1996).

Added to this, within the WERS (2013) findings could be signs of an alienation of the workforce in that only 37% of public sector employees felt they were satisfied with the amount of involvement they have in workplace decision making, despite having well established Joint Consultative Committee facilities. This possibly reflects a lack of 'voice', as well as confidence in trade union representation; paradoxically, only 71% of union members believe trade union representation was the best means of resolving a disciplinary matter, and with regard to pay and complaints saw themselves as a better representative than the trade union (van Wanrooy et al., 2013, p.17). Whether part time or full time the well-being of employees appears to be problematic with more than half of all employees reporting their job made them feel either 'Tense', 'Worried', or 'Uneasy'. Finally, perhaps Vardi and Weitz's (2004) perspective is most clearly evidenced in their view as to the organisation employment relations climate, where a disconnect showed that managers were considerably more positive than employees.

With this backdrop of problematic industrial relations, it is appropriate to consider historically how academic research has furthered our understanding of CWB, what it entails and what further aspects warrant consideration.

2.7 Defining the Topic

The study of wrongdoing in the workplace has its origins in a variety of academic disciplines, and is bereft of an accepted definition, but for the purposes of this discourse, the term counterproductive workplace behaviours (CWB) will be used (Appendix 3 contains alternatives). The tendency to research specific types of CWB, for example theft, aggression, lying and the like, has created a problem in that, with precision, you create, by definition, an almost limitless list of fields of inquiry. Analoui and Kakabadse (1992) identified 451 such examples before condensing them down into six categories, and Gruys (1999) evidenced 87 types for which factor analysis gave 11 groups.

Whilst these approaches are a useful individual identification of CWB, a more nuanced categorization is noted below (Table2.1).

TABLE 2.1

Typical Categorisation of the Range of 'breach' Behaviours	
NEGLIGENCE	Wasting Resources, Working Slowly (Soldiering), Leaving Work for Others to do, Time Wasting, Intentionally Making Errors, Sabotage, Failure to Follow Procedures, Failure to Report "Change of Circumstance" eg. Health, Driving licence etc.
UNRELIABILITY	Leaving Work Early, Abusing Sickness Provisions, Absent Without Authorisation, Persistent Lateness, Inappropriate Use of Internet etc., Lying, Failure to Declare Conflict of Interest, Unprofessional Conduct, Unauthorised Access to Information.
INSUBORDINATION	Defying Reasonable and Lawful Instructions, Undermining Superiors, Defamation.
INTERPERSONAL	Spreading Rumours, Blaming Others for Own Failings, Gossiping, Harassment, Bullying, Sexual Offences, Discrimination, Treating Others with Disrespect, Making False Allegation/s, Using Foul and Abusive Language, Threatening and Abusive Behaviour, Murder.
HEALTH & SAFETY	Unsafe Working Practices, Dangerous Gaming/Fooling Around, Physical Assault, Reckless Conduct, Failure to Report Potential Hazards, Reporting for Work in Unfit Condition, Breach of Legislation, Drug and Alcohol abuse.
THEFT/FRAUD	Working Unnecessary Overtime, Theft, Fraud, Embezzlement, Receiving "Kickbacks", Falsifying Documents, Misuse of Resources/ Facilities/Privileges/Discounts etc., Knowingly Overcharging, Excessive Use of Internet etc., Personal Use of Phone/Mailing System etc., Undertaking Personal Business in Work Time.
REPUTATIONAL	Posting Defamatory Items on Twitter/Blogs etc., Criminal Conduct Outside Work, Disclosure of Personal/Confidential Information, Bringing the Employer into Disrepute Conduct Unbecoming a Person's Standing.
NB. The above categories are taken from the Department of Employment (1973) and the examples adapted from Robinson and Bennett (1995), Buss (1961).	

It is crucial in bringing clarity to a subject that there is a clear understanding and commonality between researchers as to what facet is being studied. This has been sadly lacking in the subject of workplace deviance, with little prospect of agreeing an overarching definition of CWB itself. Kemper(1996, p. 288), categorised these breach behaviours as where employees "steal, come late, procrastinate, 'goof off', fail to give proper service to customers and clients, forget to report details to supervisors and otherwise subvert the goals of the organization or deprive it of its rights". Whilst Kemper's (1996) categorisation

is quite broad the field has seldom been studied holistically. In contrast a few researchers, Robinson and Bennett (1995), Sacket (2002) and to a lesser extent Buss (1961) Hollinger and Clark (1983) and Vardi and Weitz (2004), sought to embrace the full gambit of workplace dysfunction as opposed to focusing on a single type of infraction. From these emerged typologies with many common features for analysing CWB (Chart 2.1 below).

CHART 2.1

Holistic Research Typologies for Analysing CWB/OCB						
Researcher	**OUTCOME**					
	CWB					**OCB**
Hollinger & Clark (1983)	Property	Production				
Vardi & Weitz (2004)	Property	Production	Interpersonal	Intrapersonal	Political	
Robinson & Bennett (1995)	Organizational (Major/Minor)		Interpersonal (Major/Minor)			
Sacket (2002)	CWB ⟶ OCB		Continuum ⟶			
Buss (1961)			Physical/Verbal			
			Active /Passive			
			Direct/Indirect			
OCB = organisational citizenship behaviour (typically constructive activity beyond the contractual requirements).						

This active and passive concept was first illustrated by Buss (1961) in his typology of aggressive behaviours via V*erbal v. Physical, Active v. Passive, and Direct v. Indirect* misbehaviour. Robinson and Bennett (1995), in their landmark typology, saw it very similarly as being I*nterpersonal v Organisational*, and M*inor v. Major* and later Vardi and Weitz (2003) viewed it as I*ntrapersonal v. Interpersonal, Production v. Property,* and *Political* misbehaviour.

 However, only Sacket (2002) offered the prospect that counterproductive workplace behaviours could have both a positive and negative effect, acknowledging that a deviation from accepted practices today may become main-stream tomorrow, for example by unofficial methods being formally adopted, or some whistleblowing being seen as new acceptable ethical practice. The above affords alternative structures for the analysis of these behaviours, and Robinson and Greenberg (1998) offer even more alternatives than those listed above for detailed studies examining antecedents. Whilst offering refinement

and clarity to CWB analysis, they are not intended to cater for the *motivation* as to why misbehaviour occurred and this is a major problem. If, therefore, an employee is absent when not actually sick or without it being authorised, what type of misbehaviour is this?

Using the above typologies, and according to Vardi and Weitz's (2004) typology (Chart2. 1), could the true reason for misbehaviour be ***Property*** (if they wish to use the company van to move personal goods between dwellings), ***Production*** (where operating systems and faulty equipment are leading to increased anxiety), ***Interpersonal*** (given they have serious relationship problems with their supervisor), ***Intrapersonal*** (given the employee's desire for another stint of drug abuse),or **Political** (where they have become disillusioned by the organisation and its internal politics)?

A single behaviour of unauthorised absence can thus be seen as indicative of all categories of misbehaviour and therein is a major problem in accurately identifying underlying *causal* cognition. It is vital then in understanding CWB that a clear definition guides research before any typologies can be applied. At Table 2.2 below are several CWB definitions which highlight the diversity of approach to this research.

TABLE 2.2	Disparate definitions of breach behaviour	
TERMINOLOGY	DEFINITION	RESEARCHER/S
ANTISOCIAL BEHAVIOR	"any behavior that brings harm, or is intended to bring harm, to an organization, its employees, or stakeholders"	Giacalone, R. A., & Greenberg, J. (1997, p. vii)
COUNTER PRODUCTIVE WORK BEHAVIOUR	"characterized by a disregard for societal and organizational rules and value; actions that threaten the well-being of an organization and its members and break implicit and explicit rules about appropriate, civil and respectful behavior"	Martinko, M., Gundlach, M. and Douglas, S. (2002) "Towards an Integrative Theory of Counter Productive Workplace Behaviour" 10 pp. 36-50. In Furnham A. and Taylor J. "The dark side of behaviour at work" p.88.
EMPLOYEE DEVIANCE	" behavioural departures from the norms of a reference group"	Warren, (2003, p.622).
"	"any intentional unacceptable behaviour that has the potential to have negative consequences to an organisation and the staff members within it"	Instone K.(2012, p. 4)
DARK SIDE BAHAVIOR	" motivated behavior by an employee or group of employees that has negative consequences for an individual within the organization, another group of individuals within the organization, or the organization itself."	Griffin, R. W., and O'Leary-Kelly , A. M. (2004) "The Dark Side of Organizational Behavior" p.4.
DISHONEST WORKPLACE ACTIVITY	"the unauthorised taking, control, or transfer of money and/or property of the formal work organisation perpetrated by an employee during the course of occupational activity which is related to his or her employment"	Hollinger,R and Clark, J.P.(1983)"Theft by Employees . In Gill, M. and Goldstraw-White J. "Handbook of crime "Ed. Brookman, F. et al. (2000) p.101
DYSFUNCTIONAL BEHAVIOR	"a subordinate's behaviour is dysfunctional if he *knowingly* violates established control system rule and procedures"	Jaworski, B. J. and Young, S. M. (1992, p. 18).
EMPLOYEE DEVIANCE	"voluntary behavior that violates significant organizational norms and, in doing so, threatens the well-being of an organization, its members or both."	Robinson, S. L. and Bennett, R. J. (1995, p.556).
OCCUPATIONAL CRIME	"any act punishable by law that is committed through opportunity created in the course of any occupation that is legal"	Green (1997 [1990] p.15)
EMOTIONAL ABUSE	" hostile verbal and nonverbal behaviors that are not specifically tied to sexual or racial content yet are directed at gaining compliance from others"	Keashly, (1998). In Greenberg (2010, p.20)
ORGANIZATION MOTIVATED AGGRESSION	"is the attempted injurious or destructive behavior initiated by either an organizational insider or outsider that is instigated by some factors within the organizational context."	O'Leary-Kelly, Griffin and Glew. (1996). In Vardi, Y. and Weitz, E. (2004)"misbehaviour in organizations."p.70.
SABOTAGE	"anything you do at work you are not supposed to do "	Sprouse, R.M. (1992) "Sabotage in the American Workplace"p.3.

Table 2.3 (below) shows the majority of researchers believe that *intentionality* must be evident for a breach to occur; however, this suggests that acts of *omission* would not qualify as deviant. The Captain of the Herald of Free Enterprise in 1987 and the deck-hands whose job it was to close the bulkhead door *before* departure did not intend to kill 193 passengers and crew. However, their actions in not complying with procedures, albeit that such 'early' departures had become common-place, accord with Anteby (2008, p.x) "gray zones" where "...workers and supervisors together engage in officially forbidden yet tolerated practices", akin to Ditton's (1977) recollection of the Wellbread bakery. The lack of intent or due diligence therefore is of no consequence when a dereliction of duty results in a breach, thus **omission** as well as **commission** warrant inclusion (Sprouse 1992). Semantic arguments could also be furnished as to the precise meaning the researchers had in mind with "intended", "wilful", "motivated", "voluntary" etc. and if O'Leary-Kelly (1996) "attempted" actually ruled out deviance [breach] that was "accomplished or not".

TABLE 2.3

TABLE 2.3	Fundamentals of the 'breach' Definitions from Table 2.2 Compared.						
	MOTIVATION	WHEN/WHERE	INSTIGATED BY	DIRECTED AT	OUTCOME/ THREAT	RULES/NORMS VIOLATED	DESCRIPTOR
Giacalone & Greenberg	INTENDED			EMPLOYEES ORGANIZATION STAKEHOLDERS	HARM		
Martinko, Gundlach & Douglas				ORGANIZATION MEMBERS	WELL-BEING	SOCIETAL. ORGANIZATIONAL RULES/VALUES*$_1$	
Warren			EMPLOYEES		BEHAVOURAL DEPARTURES	REFERENCE GROUP	NORM VIOLATINS
Instone	INTENTIONAL			ORGANIZATION STAFF MEMBERS	NEGATIVE CONSEQUENCES	UNACCEPTABLE BEHAVIOUR	
Griffin & O'Leary-Kelly	MOTIVATED		EMPLOYEE GROUP OF EMPLOYEES	INDIVIDUAL GROUPS INDIVIDUALS ORGANIZATION	NEGATIVE CONSEQUENCES		
Hollinger & Clark		DURING COURSE OF OCCUPATIONAL ACTIVITY	EMPLOYEE				TAKING, CONTROL,OR TRANSFER OF MONEY AND/OR PROPERTY
Jaworski & Young	PURPOSEFULLY		SUBORDINATE	ESTABLISHMENT CONTROL SYSTEM	FOR THEIR OWN PUROPOSES		MANIPULATION
Robinson & Bennett	VOLUNTARY			ORGANIZATION MEMBERS	WELL-BEING	SIGNIFICANT ORGANIZATIONAL NORMS	
Green			EMPLOYEES	EMPLOYEES/EMPLOYERS	PROSECUTION	LAW	
Keashly	INTENTIONAL		MEMBER/S	OTHERS	OTHER'S COMPLIANCE		HOSTILE VERBAL & NONVERBAL BEHAVIOURS
O'Leary-Kelly, Griffin & Glew	ATTEMPTED INJURIOUS OR DESTRUCTIVE BEHAVIOUR		ORGANIZATION INSIDER/OUTSIDER				INSTIGATED BY FACTORS WITHIN ORGANIZATIONAL CONTEXT
Sprouse		AT WORK				ANYTHING YOU ARE NOT SUPPOSED TO DO	
NB. *1 Also Implicit and Explicit Rules and appropriate Civil and Respectful behaviour. *$_2$ Also Standards of Proper Conduct.							

An individual's conduct in their private life, in most instances, will have little to do with their terms of employment but it is not so in all cases; an individual must be minded that the contract of employment stretches beyond the factory gates. Examples established at law regarding misconduct outside work include *Royal Life Estates (South) Ltd. t/a Fox & Sons v Campbell* [1993] (gross indecency in a lavatory), *Pay v Lancashire Probation Service* [2004] (legal sexual behaviour), *Moore v. C and A. Modes* [1981] (shoplifting at another store), and *Gosden v Lifeline Project Ltd.*[2009] (private electronic communication).The workplace boundary must, as a result, be extended to society at large to encompass any *relevant* breach which might impact on the contract of employment.

Sprouse (1992, Table 2.2, above) gives a close definition of CWB as **"anything you do at work you are not supposed to do"**. However, even this requires additional refinement and needs a qualification that adds **"…including action/s outside work having a fundamental impact on the contract of employment"**. Only in this way will the employees have clarity in terms of their contractual obligations, and it is a more accurate reflection of what employers have in mind when considering breach behaviour:

> **"Anything you do at work you are not supposed to do, including action/s outside work having a fundamental impact on the contract of employment".**

Of all the typologies available, it is Robinson and Bennett's (1995) which is most often used as an aid to understanding CWB and an explanation follows along with some of its weaknesses.

2.8 The Robinson and Bennett (1995) Typology

Their work is the most frequently cited and seeks to differentiate CWB directed in terms of the *person v. organisation,* and to so categorise it as either *major or minor* (Chart 2.2 below).

CHART 2.2

Robinson and Bennett (1995) CWB Typology

ORGANISATIONAL

Production Deviance	Property Deviance

MINOR ←————————————————→ **MAJOR**

Political Deviance	Personal Aggression

INTERPERSONAL
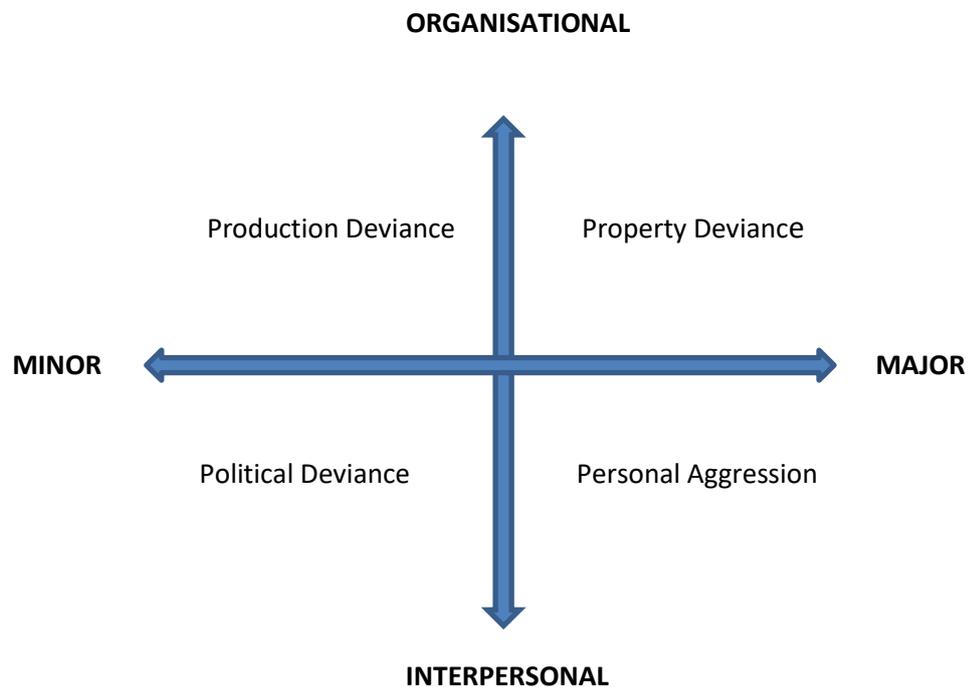
A progressive disciplinary procedure (Acas) involves a step-wise increment from the lesser magnitude of breach (counselling/capability), through to a fundamental breach which renders the contract void and summary dismissal usually results. Each step up the progressive ladder stays in force for a specified time (sanction period), and provided there are no further breaches during that period, the disciplinary offence is expunged. It should be noted that even when a case is expunged from the employee's record it remains on file and may be taken into account, for example in redundancy or organisational restructuring. However, should a further offence be proven whilst the sanction period is still in force, even for a 'minor' offence, at the very least, the next step up the progressive ladder would apply. It is possible therefore for an employee to be on a Final Written Warning (penultimate step before dismissal) when they commit a subsequent 'minor' offence, only to find they are dismissed given the next step in the progressive disciplinary ladder is Dismissal.

 Critically, therefore, whilst a breach may relate to a single or several infractions, consideration of the case and its consequences cannot be taken in isolation, but against the backdrop of past behaviour where a sanction period may still apply. This is a fundamental omission in the

seminal work done by Robinson and Bennett (1995) in developing their 2x2 *Interpersonal v Organizational,* and *Minor v Major* typology Chart 2.2 above. One's past walks in unbidden.

2.9 Organisational Responses to CWB

The issue for employers is whether the action taken is intended to be *retributive* or a *rehabilitative*. The imposition of some form of punishment when a breach of contract is established is permitted both in law and under the contract of employment. Wheeler (1976 p. 237) defines this punishment as: "Some action taken against an individual who fails to conform to the rules of an organization of which he is a member".

Taking "some action" raises the question of *certainty* of retribution, as well as *severity* of punishment. However, the research findings on this are mixed, von Hirsch et al., (1999) found a link between CWB and the *certainty* of punishment, but a much weaker relationship regards the likely *severity* of sentence. Findings such as this lend weight to the widespread monitoring in the workplace as being a deterrent, though taken to excess it can be a stimulant to further retaliatory behaviour (Edwards and Scullion, 1982).

That punishment should be instrumental and not indulgent is at the heart of Acas philosophy and, optimistically, a preventative and rehabilitative position is the aim. How, these processes are enacted and the question of how just and fair they are concerns the remainder of this work and will be elaborated further in Phase 2.

2.10 Agent Based Responses to CWB

The culture of the organisation and ideology of the supervisor are meant to be aligned in the handling of discipline. Maier and Danielson (1956) researched how experienced foremen handled disciplinary cases where the organisation had very clear policies and specific sanctions for certain breaches. The ideology of the supervisor relative to the punishments imposed were either *judicial* (rule bound, formulaic, rightness/wrongness of the employee action), or *human relations* (problem solving, adaptive, flexible, rehabilitative). Just over a third followed company rules (judicial), with about a half impose alternative punishments (human relations), the remainder imposing a combination of the two. This was despite having very prescribed sanctions noted in the policies. The approach chosen for the imposition of a punishment had an adverse effect on some employees resulting in an intention to reduce production (judicial 40%, human relations 6%).

This individualistic approach to punishment was also studied by Beyer and Trice (1981), who similarly found that the ideology of the supervisor was important in predicting whether supervisors offered a supportive stance toward the subordinate; in their study, demographics were not relevant, but situation variables like the severity of breach and span of control were the key to deciding to initiate disciplinary action. However, differences did appear in that a breach covered by a defined policy and rules (alcoholism) was handled consistently (unlike Maier and Danielson, 1956) compared to those infractions where no set rules applied.

Supervisors' handling of discipline was also studied by Atwater, Bret and Charles (2007) who found that supervisors generally felt that handling discipline in front of other workers *was* a valuable vicarious learning experience; but as a result, quite the opposite appeared to be the case, with about a third of subordinates losing respect for the supervisor. They did highlight some interesting gender differences in that, a) males were perceived by the recipient as more effective at delivering discipline, b) males tend toward a harsher punishment on case study research, c) a human relations perspective elicited better outcomes in recipients, d) culture and power differentials between the parties call for particular sensitivity, e) managers tend to underestimate the potential problems following a disciplinary. Gender differences were also found in supervisor handling of disciplinary cases by Bellizi and Hasty (2001:2002), for women tended to be more consistent with both sexes, unlike males who had a tendency to be more lenient with female cases of breach. Hook et al. (1996), in examining the style with which supervisors handled these cases, found the least serious cases were handled fairly autocratically, more serious cases were handled with some flexibility, and the most serious cases managed in the least prescriptive manner. There were no significant demographic relationships. However, adopting this varying type of approach is likely to be least effective in minor offences (little involvement of the subordinate) and most effective for serious breach of contract (because in these cases there would be the active participation of the employee as per the Acas guidance). Also examining supervisor styles, Kipnis and Vanderveer (1971) saw that low tenure supervisors often attempted to refer a case to other managers, but if this failed they had a tendency to adopt a more punitive stance, which Acas indicates would be less effective in resolving the case to the satisfaction of all parties.

Academic texts in HRM suggest that the handling of disciplinary issues by supervisors requires objectivity and consistency, yet the evidence above begins to cast doubt on this in practice. It would appear that all people are not treated equally. An unblemished disciplinary record and considerable length of service may see a long tenure employee given special consideration

compared to what a newer entrant might expect for a similar offence (see *Taylor v Parsons Peebles Ltd*. [1981], and *Edinburgh District Council v Stephen* [1977] for special considerations). The same may be true for anyone with Middle Eastern familial connections where preferential *Wasta* (nepotism) might apply. Research by Boise (1965) indicated that the choice of penalty bore a relation to contextual influences and how valued the individual was, and whether their skills were in short supply, a lesser punishment than expected suggesting that the interests of production in some instances takes precedence. From this one would expect that these decisions are driven, in part, by the prospect of the supervisor having difficulty in replacing specialist skills, where punishment outcomes lead to dismissal or quit decisions.

Unequal disciplinary treatment by supervisors and others bears some resemblance to what Hollander (1958) called *idiosyncrasy credit theory* which Phillips, Rothbard and Dumas (2009, p.722) recently defined as, "...the accumulation of positive impressions of an individual acquired through achievements or past behaviour, which are associated with greater ability to deviate from expectations without sanctions".

Shapiro et al. (2011) examined this in respect of the conduct of leaders and the way subordinates view their actions. Dishonesty by lying, intentionally misleading others, lying in reports, taking credit for others' achievements and withholding pertinent information were the major observations criticising the conduct of leaders, including abusiveness and incompetence. Some of these, in other employees would probably have led to disciplinary measures. Yet, despite these failings, 'followers', in judging this conduct, rated managers less harshly when there was a strong evaluation of the leader and particularly so if the organisation saw the leader as highly valued. From this, Shapiro et al. (2011) gave credence as to how organisational corruption can be normalised in followers particularly if the leader's behaviour is not questioned, a process Zuber (2014) likened to a contagion. By comparison, Ditton (1979), in seeing the central role supervisors had in "orchestrating" the systematic theft by employees at the Wellbread bakery, speaks of "controlology" in that this was an active engagement by the supervisor and employees were complicit. Meanwhile in Shapiro et al. (2011) leaders are largely passive and followers 'learn' vicariously (social cognition theory Bandura, 1999).

However, if factors from the above were summative and one wanted to minimise the chance of being subject to a disciplinary, it appears that working in a high-paying firm, in a position of leadership, being highly valued, and it being a unionised environment all combined offers the

best likelihood of having trouble free employment. However, a range of other factors can impact on how discipline is handled.

2.11 Contextual Factors

Intuitively if unemployment was high, breach behaviour serious enough to risk dismissal would be expected to be low because of the difficulty in finding other work, and vice versa in times of minimal unemployment. This supply/demand for labour and the likelihood of other employment is shown below (Table 2.4).

TABLE 2.4

Anticipated Impact of Local Unemployment on Occurrences of 'Breach'			
Unemployment Level	Expected		
	Cases of Breach	Quit Rate	Dismissal Rate
High	Low	Low	High
Low	High	High	Low

This supply and demand perspective on discipline and punishment was studied by Edwards (1995), yet no link was found that high local unemployment was linked to the rates of punishments, though quit rates (voluntary resignations) were reduced. Thus, voluntary terminations are impacted by economic factors, yet the difficulty of obtaining another job if one is dismissed, does not appear to have the effect of reducing the number of workplace infractions. This accords with Ackroyd and Thompson's (1999) view that conflict is endemic, under-reported, and labour is in a constant battle for control, what Edwards (1979) termed a "contested terrain".

Discipline and punishment in a unionised factory setting were studied by Bensman and Gerver (1963) where the process was airplane wing manufacture for the Air Force. In assembling the wing sections, the bolt holes occasionally did not align. The dilemma for the fitter was whether to lose production time in dis-assembling and re-assembling the sections; the alternative being the use of a "tap", a prohibited tool, to cut the misaligned holes so the bolt would fit. If the inspectors caught anyone using the tool they were referred to the foreman for disciplinary action. The foreman's dilemma lay in their knowledge that this practice was widespread and the fact that its existence facilitated them in meeting production targets. Typically, the foreman severely reprimanded the fitter telling him that he had spoken to the inspector on his

behalf and warned the fitter that further offences could be serious, and it is only because of the foreman's intervention that he is not being dismissed. This researchers termed 'pseudo-law enforcement' and it has some semblance of similarity with Boise's (1965) predicament above when dealing with breach cases by "valued" employees. Whilst not mentioning this informal practice in the Workplace Industrial Relations Survey (WIRS3), Edwards (1995) drew attention to the disciplinary charade played out between foremen and the trade union, where in this case, it is the union steward who tells the worker they remain employed only because of the steward's involvement with management behind the scenes (Edwards and Scullion, 1982). Provided the parties are sworn to confidentiality, the solution borders on utilitarian for all parties involved, and foreman, steward and worker feel they have gained; for as Bensman and Gerver (1963) note, these role contradictions of supervisors and managers are inevitable as their principal responsibility is to keep the production process going. Not surprisingly, management use all means at their disposal to administer the disciplinary process and the enrolment of peers, shop stewards and even occasional family members as aids in the control and punishment process is a fact of organisational life. Pollard (1963, p.259) wrote of the change in mind-set that the industrial revolution brought to the handling of workplace discipline: "The concept of industrial discipline was new, and called for as much innovation as the technical inventions of the age".

The adaptability shown by current supervisors and managers in handling discipline and punishment suggests that 'innovation' and pragmatism continue.

Despite the prescriptive nature in the Acas guidelines, the above points toward a dynamic contingency model in terms of how discipline and punishment are handled. When a breach occurs, management may choose to do nothing, but depending on the type of offence, they run the risk of it escalating into an 'incivility spiral' (Anderson and Pearson, 1999).Taking action also has resource implications. The CIPD (2007, p.21) note the average number of days spent managing each disciplinary was 13 days (21 days in the public sector on which this research is based). For many supervisors with excessive work pressures, huge spans of control following the trend of de-layering, unreliable production, and burdensome targets to meet, the last thing needed is a disciplinary case to handle, particularly if it is complex or sensitive.

Not surprisingly, once the case is heard, the matter is effectively closed, and papers filed away. However, Hackman and Oldham (1976) and Beyer and Trice (1981) advocate a close scrutiny given they may contain valuable indicators of issues warranting attention, not only to be remedied in putting things right, but also for potential improvements which often surface as a

result of whistleblowing (Dasgupta and Kesharwani , 2010), functional dissent (Darley, 1995), tempered radicalism (Meyerson and Scully, 1995), and how employers react to these challenges can be critical for the organisation, and particularly for the public as the latter part of this research will show..

The constructive use of such data, qualitative as well as metrics, is a corporate responsibility which Cooper and Stern (2017, p.13) identify by saying, "Number one, HR can provide data…We need HR to make courageous interventions where they help busy, pressured leaders to understand what's really happening…to join the dots between strategic thought at the top and the reality of working life lower down".

Not mentioned by Beyer and Trice (1981) is the question of whether the supervisors themselves have the skills to appropriately handle the process, the people involved, and the outcome; so additionally, some introspection might also be warranted if the analysis is to be truly holistic. The increasing outsourcing of internal HR expertise and the devolution of many HR responsibilities down to line managers, often without adequate training, is also a compounding factor, particularly so for Cooper and Stern (2017, p. 13) who see the calibre of management post the economic downturn as lacking: "The one thing they [CEOs, academics, and entrepreneurs] said managers lack is good social and interpersonal skills…they were reasonable for the time they were in, but not now we are in a different era".

Having noted these deficiencies in agents, and the various ways they approach discipline, it is important to appreciate how extensive CWB is.

2.12 CWB and its Prevalence

Research has seldom considered the volumetric aspect of CWB, in respect of the scale of the problem and its resource implications. Wood, Saundry and Latreille (2014) note the prevalence of CWB varies between public/private sectors, unionised or not, industrial sector and size. Discipline is a particular problem for SME's where a skills gap may, in part, be reflected in cases before Employment Tribunals which far exceed their proportion of employees in the economy (Harris, Tuckman and Snook, 2009); and the special situation of working 'with' capital (the owner) as a co-worker makes the entire process of handling discipline and punishment more problematic than usual (Marlow and Patten, 2002). Many of these problems are avoided in this research given size, unionisation, and the fact that, by definition, capital is remote it being based solely on the public sector.

In the workplace generally, the majority of dysfunctional behaviour may be *low level* and handled informally Edwards and Greenberg (2010 a, p.4) describe it as "-a form of intentionally harmful workplace behaviour that is legal, subtle, and low level (rather than severe), repeated over time, and directed at individuals or organizations". Reflecting the inevitability of an inherent conflict between organisational and personal interests, Ackroyd and Thompson (1999) see workers left with *power,* albeit modest, to use in ways they see fit.

The media is regularly filled with accounts of questionable, unethical and/or illegal acts and In the majority of applied research, academics have usually been *very* specific in their research focusing on categories of deviance, typical examples being, Absence (McHugh, 2002),Bullying (Hauge, Skogstad and Einarsen, 2009), Conflict (Ayoko, Callan and Härtel, 2003), Demographics (Kelley, Ferrell and Skinner, 1990), Ethical climate (Petersen, 2002), Fighting (Adams, Davis and Jennings, 1988), Gender (Khazanchi, 1995), Personality (Colbert et al., 2004), Whistleblowing (Vinten,2004), Anger/Aggression (Fitz, 1976), Internet Misuse (Leonard and Cronan, 2005), Sabotage (Ambrose, Seabright and Schminke, 2002), Swearing (Baruch and Jenkins, 2006) Weight (Judge and Cable, 2010). Yet others have sought less specific explanations of deviance based on Antecedents (Andreoli and Lefkowitz, 2009), Organisation commitment (Meyer and Allen, 1987), Locus of control (Taylor, 2010) and Scaling study (Robinson and Bennet, 1995).

What is striking about the above, and in over 100 articles surveyed, is the frequency with which survey subjects are not representative of the population, in that they are too often attendees at universities as undergraduates, or on Masters/PhD courses or other management trainee courses (Andreoli and Lefkowitz, 2009). Appropriate sampling is therefore essential to guarantee validity.

2.13 Representative Sampling of CWB

Of greater concern methodologically is that in these articles, only 5% were able to base their study on people *that had actually transgressed* (Lee 2000: Knapp 1964: Mulder 1971: Atwater, Carey and Waldman, (2001) and Roberts et al., 2007). The others used well recognised tools like questionnaires, surveys, vignettes, in-basket exercises, self- reports, essays and laboratory studies; and whilst these are credible research tools, they have inherent deficiencies when it comes to interpreting explanations of deviant behaviour.

At best they are a good approximation, yet in a survey by Sacket and Larson (1990), they found 52% of studies over a ten-year period relied on self-report measures. The inherent deficiencies of inviting subjects to recall their personal, and other peoples' misbehaviours in a self-report is

fraught with potential errors as the following highlight. Adams et al. (1999) found the extent of bias gave a gross over-estimation of 27% over objective clinician records; Himes et al. (2005) found over- and under-estimations varied with gender, age, and race; Fendrich et al. (1999) found only 18% of cocaine users and 30% of heroin users admitted positive results when checked against toxicology tests; even under test retest conditions Harrison and Hughes (1997) found about 20% of drug users having admitted their use initially denied it four years later. The reasons for the above were said to be related to impression management where socially desirable answers are given to meet the expectations of the researcher, to fit in with the body image of peers, to down play socially disapproved of drug habits etc. Extensive psychological work by Kahneman into heuristics and biases point to judgements, decisions and actions being influenced by a host of seemingly unrelated factors: "the boundary between perception and judgement is fuzzy and permeable" (Kahneman and Frederick, 2013, p. 50). Heuristics therefore are generally seen as inescapable, but can also be imperfect.

The above research is more informative though clearly possibly subject to an appreciable margin of error. Fox et al. (2007) sought to lesson this by using self-reports but these were matched with other co-worker accounts. It is vital therefore that acts of deviance are not only labelled as such but are as *objectively* as possible labelled as such. Essentially this can only be achieved when the *labelling agent* is divorced from the subject in the shape of the independent findings of a disciplinary hearing. Labelling theory (Becker,1963) therefore holds true in that it is not the act itself that is deviant, but the labelling of it by society that is crucial (in this case the employer), and certainly not the deviant or an observer which is usually the case in self-reports.

2.14 The Scale of the Disciplinary Problem

Employers have the onerous task of dealing with misconduct and whilst researchers have studied the various types, devised classification systems and sought to uncover meaningful antecedents, there has been an almost complete omission of a consideration of the overall scale of the problem. Salamon (1992, p.593) wrote, "There is an absence of reliable published data relating to the extent of formal disciplinary action".

A quarter of a century later little has changed, though over the years a few attempts have sought to hazard an annual 'guestimate' as to how extensive is the use of disciplinary procedures and overall dismissals (Table 2.5 below).

TABLE 2.5

Disciplinary Action Surveys.		
Disciplinary Sanction % (short of dismissal)	**Dismissal Rates (as % of workforce)**	**Researcher**
	0.45	Civil Service 2007-15(ONS, 2015).
	0-1.0	48%	British Manufacturing (Deaton, 1984)
	1-5.0	40%
	5-10.0	8%
	10 & above	4%
3.0	1.9	Knight and Latreille (2000)
	1.8	Up to 100 employees	Daniel, & Millward (1984)
	0.4	.. .. 1,000 ..
	1.1	Overall
30 cases		CIPD (Range 6 to 51 per annum per employer, 2004)
0.63		CIPD (Range 0.3-1.61%, across sectors,2007)
6.84	1.73	Private sector	Wood, Saundry and Latreille (2014)
2.29	0.35	Public sector
3.81	1.19	Trade union recognised
6.77	1.62	.. .. not ..
7.06	1.63	5-9 Organisation Employees
6.14	1.31	10-49
6.06	1.65	50-249
2.72	0.9	250-499
4.95	1.63	500-999
7.04	1.92	1,000-9,999
6.26	1.65	10,000+

The above are widely varying, with unionisation, employer size, and public/private being key variables. Using Wood, Saundry and Latreille's (2014, p.28) results and taking the economy as a whole excluding self-employed, the extent of conflict as measured by Disciplinary Sanction (short of dismissal =6.23%), and Dismissals (1.54%), suggest the following.

TABLE 2.6

British Workplace Disciplinary Conflict				
	%	**Average Days to Process**	**Millions**	
			Cases	**Management Days**
Disciplinary Sanction (short of dismissal)	6.23	13	1.557	20.241
Dismissals	1.54		0.500	8.557
Totals	7.77		2.057	28.789
NB. 1. Case figures from Wood, Saundry and Latreille (2014, p. 28, Table 23). 2. Management days on each case CIPD (2007, p22, Table 17). 3. Workforce excluding self-employed taken as approximately 25m.				

This is clearly a huge problem for employers who, having the potential that many cases might finish in an Employment Tribunal (ET), must commit resources to undertake a thorough, timely and impartial investigation. The CIPD (2004, 2007) began some volumetric work on this and taking the figure from Table 2.6 above, with 28million days/annum involved, and assuming a modest UK daily labour cost of £100, it suggests the British workplace disciplinary overheads approximate to £2.8 billion/annum. This excludes any additional cost of temporary cover for suspensions and dismissed employees, as well as the actual cost of the recruitment for replacing those terminated. Yet academia has been preoccupied with seeking an explanation for deviance and has forfeited *volumetric* (the scale of the problem) for *variety* (the type of offence). It is essential that the Department for Work and Pensions, CIPD, CBI, and Federation for Small Businesses complement the work of academia so as to combine causal and explanatory research with details on the order of magnitude of this issue in order that it can be addressed holistically.

The disciplinary process, besides hopefully remedying the conduct of the dysfunctional employee, also aims to send out a message to the entire workforce as to acceptable conduct in general (Furnham and Taylor, 2004). With the disciplinary process being held in private, and parties constrained by confidentiality, it seems paradoxical that these very processes which are not widely divulged, somehow 'constrain' the workforce into compliance. The vicarious effects of breach therefore warrant further research to extend the work of Atwater, Carey and

Waldman (2001) and Trevino (1992), in affording an 'understanding' of its impact on the workforce at large.

2.15 CWB Summary and Hypotheses

Despite being well prescribed by way of guidance, the manner in which management responds to and implements discipline and punishment is variable; individual characteristics and contextual factors play a part. Ultimately should a case be heard before an Employment Tribunal, its assessment will centre on whether action by the organisation, irrespective of size or resources, will be that of the *reasonable employer acting reasonably (RRR).* In instances of discipline, this could well be assessed in line with Arvey and Jones (1985, p.383) "It makes sense that punishment which is applied soon after the infraction occurs, is administered consistently among and within employees, is accompanied by a clear explanation for the discipline, and applies a penalty that is not unduly harsh will be more effective than punishment that is administered haphazardly, with little explanation".

The variability highlighted above by which disciplinary issues may be dealt with begs the question as to what individual characteristics individuals exhibit which may impact on the handling and outcome of the judgement. It is expected that conflict situations like discipline will be resolved by reasonable people but, all organizations are not staffed by such 'reasonable' people (employees or management), as Phase 2 of this research will show. In summarising the above, and as a basis of this longitudinal study, the following hypotheses guided Phase 1 of this research.

TABLE 2.7

		HYPOTHESES	
			Indicative Research
H_1	Job Tenure and Age Will be Positively Correlated for Breach Employees.		Wanous (1992), Kohlberg & Hersch (1977)
H_2	Job Tenure and Breach are Negatively Correlated or will be of a Lesser Tariff as Tenure Increases.		Hafidz, Hoesni and Fatimah (2012)
H_3	Manual/Craft Employees Will be more Prone to Breach than Administrative/Professional Employees.		Hansen (2003)
H_4	Females will be Under-Represented in Breach Cases.		Eagly (1987), Anwar et al. (2011)
H_5	Age and Breach are Negatively Correlated or Will be of a Lesser Tariff as Age Increases.		Kohlberg & Hersch (1977), Levinson et al. (1978)
H_6	A Breach of IT Protocols Will be Predominantly a Younger and Male Preserve.		Mastrangelo, Everton and Jolton (2006)
H_7	Ethnic Minorities and the Disabled Will be Under-Represented in those being Disciplined.		Liao, Joshi and Chuang (2004)
H_8	Acts of Aggression and Sexual Offences Will be Predominantly a Male Preserve.		MoJ (2010)
H_9	Breach of Contract Employees will have Above Average Absence Rates.		Hirschman (1970)

An oversight of organisations in general and HRM, in particular, attests that ethics and morals will play a part in their functioning. An employee transgressing may have breached some ethical norm, but the employer and HRM will equally hold themselves accountable to some ethical principles, not only in every-day affairs, but particularly whilst handling disciplinary issues. Academics like Miller (1996) and Legge (1995) question the absence of ethics and morals within HRM, in actions, policies and procedures. They see them as being advocates of prescribed formalistic corporate mantras guided by market pressures and aimed at achieving from the workforce 'compliance' and not 'commitment', perhaps even the agents of capital/ism (Taylorism or Marxism).

With this imperfect background, the question of ethical considerations, fairness and bias-free handling of disciplinary investigations follows.

2.16 Ethical Considerations in Disciplinary Decision Making

The concept of ethics in the context of disciplinary issues, will be seen as the decision maker seeking to resolve a position twixt the extremities of 'good and bad', 'fair and unfair', 'just and unjust', 'right and wrong'; it is the value system that is brought to bear in making judgements regarding employee transgressions.

The issue, therefore, is how impartially such breaches by employees will be investigated and ultimately adjudged by management in deciding what action (none, remedial or punitive) to take. This section seeks to address the question of whether those persons involved can be seen to be truly impartial, or do their minds come (at least in part) already made up, for as William James is credited as saying *A great many people think they are thinking when they are merely rearranging their prejudices*. Can it be taken as a given that all parties will act in the best interests of ensuring justice and fairness are guaranteed?

Judging the conduct of others and deciding if a sanction is appropriate should be driven by a 'finding of fact', previous precedent and legal constraints. However, the 'facts' would normally only be arrived at by a detailed assessment of all aspects of the case. Attribution theory (Heider 1958: and Green and Mitchell, 1979) sees the judgement being premised on a) internal attributions of the subject on matters largely 'within' their control, and b) external attributions concerning issues 'beyond' the individual's influence. The decision maker would then balance the two and arrive at a judgement.

Forsyth (1980) and some of his predecessors note being perplexed as to why people presented with exactly the same information about aspects of *right* and *wrong* can arrive at not only different, but at times wildly different, moral judgements. Research seeking to address this dilemma has sought explanations in *developmental stage theory,* in line with Piaget (4 stage, 1957), Kohlberg (6 stage, 1969), Fisher and Lovell (7stage, 2009), and a range of other factors: general criminology (Farrington, 1986), workplace criminology (Friedrichs,2002), organisation size (CIPD, 2007), manager ethicality (Zabid and Alsagoff, 1993),attendance record (Martocchio and Judge, 1995), and even neuroscience (Arueti et al., 2013). Additionally a diverse field of psychologists and sociologists has emerged examining individual factors, which acting singularly, or in combination with other variables, are seen to significantly impact on ethical decision making; and whilst none of this can be seen to be *causal,* they do account for varying degrees of variance in the dependent variable ie. ethical/unethical behaviour and/or decision making. This field of inquiry includes variables such as **Demographics**:- nationality, culture,

gender, age, education type and level, employment type and level; *Cognition*:-religiosity, Machiavellianism, Locus of control, personality, ego strength, belief in a just world; *Contextual* :-tenure, ethics training, rewards, sanctions, dyadic relationships, codes of ethics, heuristics and trust, and many more. The complexity of this research topic, given the possible permutations evidenced from these variables, make a comprehensive study embracing all factors impractical. Forsyth's (1980) more parsimonious Ethical Position Questionnaire (EPQ) taxonomy sought to overcome this complexity, though even this 'aggregate' approach has not been too widely adopted.

Empirical work by Rest (1986), complemented by Jones (1991), laid the foundations for the analytical study of ethical decision making, which has, as yet, not been superseded. Rest (1986) accepts the basis of Trevino's (1986) situation-individual model but delineates it into a four-stage process, which Jones (1991) further refines accounting for the impact of the moral intensity of the situation being considered (Chart2.3 below).

CHART 2.3

Ethical Decision Making Process
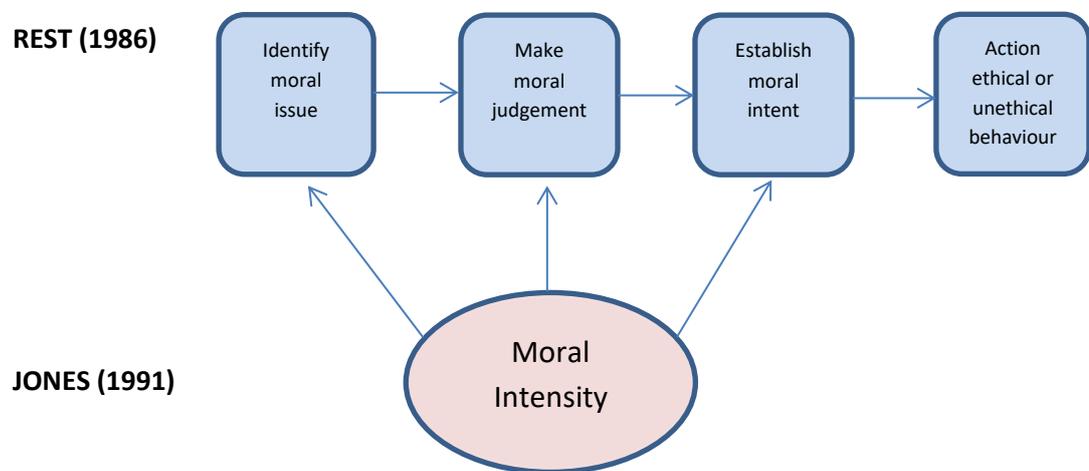
In committing CWB, individuals will knowingly or by default find themselves in the fourth stage of Rest's model, that is, in breaching some norm. For example they may have recognised an issue as having a moral content (underpayment), arrived at a moral judgement (inequity), decided how to enact appropriate remedial action (what to steal), and eventually carried it out (theft).At each stage, they have decided whether the moral intensity (Jones 1991) is of sufficient merit as to warrant ownership of a remedy. Thus, a perceived marginal underpayment of perhaps one percent, whilst being annoying may be resolved cognitively by

readjustment; however, the loss of overtime pay, or a down grading of salary, might trigger sufficient moral intensity (inequity, Adams 1965), that recompense, even by theft, would be sought (Greenberg 1993, a).

The culture of the organisation and the ethical climate within which it operates will, potentially, have a marked impact, not only on the day-to-day conduct of employees, but on the manner in which any disciplinary investigation is handled. "The key element is fairness and this is of the essence" (Merchant and Hoel, 2003, p.260). "The investigation will be judged on fairness or unfairness, both at an internal appeal and in court" (p. 267). The personal attributes of the investigator are critical as is the issue of resources, particularly of time to do justice to all concerned. "The investigator must be thorough and objective; understand relevant laws and workplace rules, policies, and regulations; have organizational, communication, and interviewing skills; and sensitivity with respect to the situation and persons involved" (Woska, 2013, p.93). Above all, they should exhibit neutrality and a lack of bias. However, possibly reinforcing the misgivings of Miller (1996) and Legge (1995), "the investigation must be strictly in accordance with the Policy and Procedures, good or bad"(Merchant and Hoel, 2003, p.267).

The quest for justice and fairness is thus conditional on a variety of factors, and for the employee, sadly, all are largely beyond their control, though their input 'voice' could mediate or moderate the outcome.

Having outlined the ethical context, the key areas of research follow regarding those elements of the hypotheses, which produced the more meaningful findings.

2.17 Gender as an Independent Variable

 Gender is one of the most readily available variables to monitor in social science research, and in the latest review of empirical studies on ethical decision making between 2004 and 2011, 38 researchers used it as a dependent variable (Craft, 2013, about 10% of all papers). Despite the interest in this period and earlier, the findings are still inconclusive. With the increasing numbers of females entering the workforce and attaining positions of responsibility, more than ever, how gender may impact on the handling of breach situations is important. Work by Chan and Leung (2006), Forte (2004), and Marques and Azevedo-Pereira (2009) failed to establish any overall *significant* difference between males and females on their perception of what was considered ethical/unethical. However, differences have been found. Each sex viewed the other sex as less ethical than them (Kidwell, Stevens and Bethke, 1987), which potentially raises the question of whether, even before a case is heard, the

adjudicator/investigator may have their mind partially made up where the alleged wrongdoer is of a different gender. Secondly, in cases of an employee concealing their errors, males were significantly more inclined than females to transgress in this way (Glen Jr. and Van Loo, 1993), bringing into question how sympathetic and more lenient they would be than females in considering a breach of this nature. Khazanchi (1995) and Eweje and Brunton (2010) saw a similar gender imbalance with females consistently rating information system breaches as more unethical than men with disclosure of information, user integrity, and conflicts of interest being particularly significant. Beekun et al. (2010) found females were very considered, in terms of both justice and utilitarianism, when making moral decisions, but males relied mainly on justice. Guidice, Alder and Phelan (2008) saw men displaying an increased unethicality by being more prepared than females to mislead a competitor.

So, on the balance, whilst much research has found no difference, or small yet not significant differences, in general, the advantage of having higher ethical values must rest with the female, and the meta-analysis by Franke , Crown and Spake (1997, p. 920) of more than 20,000 respondents showed the female as being more ethically aware, though in line with Eagly (1987), "the gender differences observed in pre-career (student) samples declines as the work experience of samples increases".

The above addresses gender issues concerned with ethicality and making moral judgements, which are equivalent only to stage 2 of Rest's (1986) model (Chart2. 3 above), but fails to consider gender differences which finalise at stage 4. The question of gender differences often creates polarised opinions and findings given the question of socialisation, politics, and researcher epistemological philosophy. Gilligan (1982) evidenced numerous gender differences and was not convinced by the 'sameness' of the gender neutralising movement, a point evidenced in Fox and Lituchy (2012).

It is important therefore to assess gender in relation to the full extent of Rest's model including stage 4, relating to *actual* behaviour, and only then can a more reliable picture emerge. As a foundation for this 'differences' insight, a meta-analysis by Feingold (1994) saw innate aspects of personality showing women having higher extraversion, anxiety, trust, and nurturance, whilst males excelled at assertiveness and self-esteem. Aggression research shows males as greater than females in using more direct physical aggression, with females favouring indirect aggression aimed at more psychological harm and reputational damage to their target (Björkqvist, 2018), though a meta-analysis by Card et al. (2008) saw no appreciable difference according to gender in indirect aggression. In contrast, criminology evidences the greatest

gender differences, with males overwhelmingly the dominant offenders (UNODC, 2014), a picture replicated in the workplace with females still transgressing, but seldom on the scale of male offenders (Spector and Zhou, 2013: Anwar et al., 2011). In summary, "For the most serious economic crime experienced by UK respondents in the last 12 months, the profile of the internal fraudster was reported as: male, aged between 31 and 40; employed with the organisation for between three and five years; and educated to high school and not degree level" (PwC 2011, p. 3). It is probably only by detailed meta-analyses that clarification of any differences can be made, which may assist in theory development. Reinforcing the dominant 'gender offender' being male, Maguire (2002, p. 362) notes that in almost a half a million offenders convicted or cautioned for indictable offences in the year 2000, "80 percent were male". Clearly only a small proportion of their crimes are likely to have been committed in the workplace, but the overwhelming implication from this, is that probably this male gender stereotypical offender will carry-over into organisational life. Whilst a range of factors may be contributory, Maguire (2002, p. 363) alludes to education as possibly impacting by noting "40 percent of male prisoners had left school before the age of sixteen (compared with 11 percent of all British males)",though education was not one of the variables of this research..

Age is regularly included as a variable in social science research and its key contributions to CWB inquiry are considered next.

2.18 Age as an Independent Variable

Age in CWB and ethical decision making has not been researched as often as gender, and here again, the findings are mixed. Piaget (1957), Kohlberg (1969) and Levinson et al. (1978) suggest ethicality, and thereby a lack of propensity to transgress, should have a positive correlation and improve with added years. Without being specific as to actual age in years, numerous findings support the above (Kelley , Ferrell and Skinner 1990: Ruegger and King, 1992: and Peterson, Rhoads and Vaught, 2001). However, a few contrary results show quite the reverse (Latif 2000: and Kracher, Chatterjee and Lundquist, 2002), and neutral results showing no correlation included (Marques and Azevedo-Pereira, 2009: and Forte 2004).

Complex results have been identified by Chan and Leung (2006) where increased age had a positive correlation with ethical awareness and sensitivity, but this correlation was not sustained in subsequent moral decision making. However, if Chan and Leung (2006) are correct in there being no difference in terms of age in the subsequent decision making, this suggests that the older individual not a younger person may experience more cognitive dissonance

(Festinger, 1957), or have a greater ability for "moral disengagement" (Bandura, 1999), compared to the younger person when making decisions contrary to their ethical values. This state of disharmony would probably have been evident in the work of Latif (2001) in studying pharmacists, which gave a finding that high tenure was negatively correlated with moral reasoning and therefore resulted in an increased propensity to CWB.

Kelley, Ferrel and Skinner (1990) reviewed a range of marketing manager demographics, identifying increasing age as positively correlated with increased ethical judgement and behaviour, a position partially supported by Glen Jr. and Van Loo (1993), and Kim and Choi (2003). The former two researchers found a positive relationship between age and ethical judgement but with the caveat (GLen Jr. and Van Loo, 1993, p. 842-843) "Finding that students make less ethical choices than practitioners must be treated with caution: we cannot be sure that it tells us anything about actual behaviour". Of concern from Kelley, Ferrell and Skinner (1990) was that educational attainment, rather than leading to a more ethical ideology, gave a negative relationship, which is a potential cause for concern as these employees are often higher-ranking managers responsible for setting and maintaining an organisation's ethical climate.

The above illustrates the complex nature of research design, in that unethical behaviour far from being solely correlated with the two variables noted above (gender and age), can be influenced by a host of factors within and without the organisation as well as employee characteristics.

Work by Henle (2006), Bass, Barnett and Brown (1999) and Hastings and Finegan (2011) attest that counterproductive workplace behaviour has both a contextual and a personal component. So, whilst system theorists, Marxist, and some criminologists may posit organisational primacy as the principal contributor to CWB, personal characteristics are equally of merit. Maguire (2002, p.364), noted one of the personal characteristics was that "nearly a third of twenty-two to twenty-five-year-old males (though only 4 percent of females) admitted to committing a criminal offence within the previous year". This early adolescent offending toward the younger ages is the basis of the age-crime curve as identified by Farrington (1986) and McVie (2005), showing a peak in the late teens to early twenty age groups and it falls away quickly by the age of around thirty, and gradually reduces to a plateau after that. Accordingly, age and transgressions are negatively correlated in both work and social life quite strikingly in the age-crime curve, though Ezell and Cohen (2005) suggest a more complex set of six discrete trajectories may better reflect a more nuanced age-crime distribution. Adding further to this

age/offending linkage, whilst the age-crime curve can be pictured as an inverted 'U' shape and a positive skewness gives values clustered to the left (lower ages), work by Stashevsky and Weisberg (2003), studying line managers, gives a 'U' shaped distribution centred around the 30-39 age group as 'low offenders', with age groups either side being roughly equal and more frequent transgressors. Age and workplace CWB do not thus have a simple linear relationship but, mindful of the possible impacting variables, must be considered curvilinear.

How long a person has been employed within an organisation can materially affect how well they 'fit in', and this aspect of tenure follows.

2.19 Tenure as an Independent Variable

Tenure has been studied and defined differently as time employed in the current organisation, in the current job, under the current supervisor, and relative to other employees (Liberman et al., 2011: Wright and Bonett, 2002: Duffy, Ganster and Pagon, 2002: and Kim 2018), each displaying the pivotal contextual influence of the working environment. However, in this work, it is taken as the *length of time an individual has worked for an employer*. As a variable, it has principally been of interest in gauging labour turnover rates (CIPD, 2013), given this can have a marked effect on all aspects of a business not least productivity and costs. Where it has been seen as a key variable, retention, group dynamics and realistic job descriptions had a positive relationship to tenure (Self and Dewald, 2011). New recruits can bring new ideas, enthusiasm and motivation enabling their assimilation; this 'honeymoon effect' of contribution was positively related to job performance and commitment (Cropanzano et al., 1993). This commitment-job performance link was examined in a meta-analysis by Wright and Bonett (2002), suggesting a tailing-off after the 'honeymoon' period, though to class this as a 'hangover' (Boswell et al., 2009), may be a little over dramatic. Indeed, despite this being a meta-analysis, it is at odds with the work in the other meta-analyses of Waldman and Avolio (1986), and McEvoy and Cascio (1989), where no fall-off in job performance was evidenced. If there was a reduction of performance with increased tenure, this would likely manifest itself in increased CWB, yet extant literature has established quite the reverse, with a negative CWB relationship as tenure increases. I have to conclude that the reduction in job performance, if it exists, is no more than a 'tapering-off', which along with positive workplace behaviours like mentoring and OCB are more than compensated for by these and other positive behaviours.

Whilst tenure begins once the employee is in post, it can be argued that the psychological contract is in a formative stage even before the commencement date. This pre-employment

period (Lanyon and Goodstein, 2004) is recognised as a period of gestation where impressions are formed and promissory contracts made in the minds of both the individual and the employer. If their interests align, the 'honeymoon' period should materialise, but if not, disillusionment may manifest itself in turnover or CWB. Thus, attitudes and expectations are formed even before the tenure time clock equals zero.

Tenure begins with induction, though this is merely the initial introductory stage during which the new entrant is introduced to the work environment, masters the rudiments of the job, and familiarises themselves with their contract, work routines, working relationships, welfare and health and safety matters. Ongoing from this, socialisation continues to the extent that the *outsider* eventually becomes an *insider.* Thus, learning and adjustment don't just happen and they are implicit in socialisation, for "socialization requires a certain amount of time in the organization to occur" (Rollag, 2004 p. 854).

It is crucial that new entrants to an organisation not only "fit in", but in doing so, avoid the pitfalls of lapsing into dysfunctional behaviour which may ultimately lead to a breach of contract. The aim is that "Newcomers become insiders when as they are given broad responsibilities and autonomy, entrusted with 'privileged' information, included in informal networks, encouraged to represent the organization, and sought out for advice and counsel by others" (Louis, 1980, p. 231), or noting the interactive nature with newcomers, "When experienced insiders answer the questions of inexperienced newcomers, the insiders themselves are often re-socialised" (Weick, 2000, p.269).

The importance of tenure and its associated socialisation can be seen when one considers that the adverse effects can result in turnover, withdrawal, absenteeism, dysfunctional behaviour, poor production, stress, anxiety, and isolation (Wanous 1992: Van Maanen and Schein, 1979: and Saks and Ashforth, 1997). Across Europe, around 20% of employees are estimated to move jobs in any one year (Cooper-Thomas, Anderson and Cash, 2012), and work by Grusec and Hastings (2016) suggests that US workers will experience, on average, over ten employer changes in a lifetime, thus tenure and the associated socialisation implications are potentially considerable.

It is usual that individuals are motivated to apply to join an organisations and in so doing, will have expectations of anticipated rewards (Lawler and Suttle, 1973) be this in terms of pay, benefits, status, and/or security, which the organisation has the ability to supply. Thus, they offer themselves up as willing participants to increase tenure and take part in the process of

socialisation in return for the contractual benefits, and the intangible anticipatory rewards. Together, these "agreements" form the psychological contract (Rousseau, 1995) with which the newcomer balances the inputs and outputs of the employment relationship to assess its equity (Adams, 1965). It is clear from this that with unspecified anticipatory returns, there is considerable scope for the individual and the employer to have varying interpretations of each other's obligations. Blau (1964) termed this *social exchange theory* where an element of reciprocity was expected though the exact nature, timing or permanence was not known in advance.

Where there is disconnect, not only in the pre-entry new starter, and ongoing work experience, a "reality shock" (Dean, 1982) can result which can be the trigger for disengagement from the organisation, the start of CWB and exit strategies (Hirschman, 1970). Resolving "reality shock" and socialisation itself is an interactive process. An outdated conception is that the entrant is effectively passive and things happen to them, which somehow bring about the necessary alignment of interests. Recent research takes a quite a different view with the entrant being seen as active in learning directly and vicariously, seeking out information, forming meaningful relationships, with the intention of uncertainty reduction and coping mechanisms designed to address the heightened levels of stress (Van Maanen and Schein, 1979). It is a constant and ongoing process which accompanies an employee throughout their working life. This *fundamental social dilemma* (Lind, 2001), is ever present given that the modern workplace is in a constant state of flux organisationally, operationally and workforce-wise. Tenure and socialisation are therefore synonymous.

Other than where tenure has been researched numerically as a measure of turnover, in extant research it has been seen as an *associated variable*, where the data subjects have divulged aspects of their organisational life regarding organisational commitment, socialisation aspects, entity relationships, job satisfaction, psychological reasoning and the like (Duffy, Ganster and Shaw, 1998: Pennino, 2002). Longer tenure is correlated with increased "frustration-induced behaviors and symptoms" (Duffy, Ganster and Shaw 1998, p. 955), and Latif (2001, p. 131), found pharmacists with longer tenure "scored significantly lower on moral reasoning than those pharmacists with fewer years of tenure", implying in both cases an expected heightened offending rate. This is counter to Lau, Au and Ho (2003), and Hollinger, Slora and Terris (1992) where it is the low tenure employees who have a greater tendency to CWB; this inconsistency will be addressed in this research.

Public sector employment has traditionally been seen as a tacit 'guarantee' of continuity of employment and therefore increased tenure, though the changes imposed resulting from the global financial crisis have cast doubt on this assumed psychological contract; this is a point Colley (2019) notes as a re-drafting of this tacit understanding by a "general de-privileging of public servants" (p. 611).In the public sector, elected officials are provided with administrative guidance by professional employees, and implementing reasonable change to terms and conditions, even the tacit ones, is fundamental to avoiding the unintended consequences evidenced by Queensland Public Services, where "the aftermath is a culture of fear and timidity in which the very purpose of tenure—to foster an environment for frank and fearless advice—was undermined" (Colley 2019, p. 622). Structural changes like these are not only an Australian preserve, and the UK experience, it could be argued, is comparable; with disaffection resulting from such upheaval, workplace misconduct (CWB) is likely inevitable.

In an examination of the public sector, it is exceptional that tenure, as a variable, is studied without the input of the data subject. It is this gap in knowledge that needs addressing where primary subject data are analysed alongside demographics and *actual* disciplinary case outcomes in order to evidence tenure as a meaningful independent variable in CWB cases. This research treats tenure as just such a *discrete variable* due to there being no subject contact, and seeks to bridge the knowledge gap by relating tenure not only to the probability of committing CWB, but also identifying if there is uniformity across the tenure range regarding the seriousness of offending.

Irrespective of how long an employee has been employed, their absence from work, whether certified or not, can cause problems for both the employer and work colleagues, and is addressed next.

2.20 Absence as an Independent Variable

Absence has essentially been studied from two perspectives, its contributory antecedents and its outcomes. It is an impediment to organisational functioning both operationally and financially, and has wider implications for the economy at large (CBI/Pfizer, 2013: Selander and Buys, 2010). It can be measured in a variety of ways, typically hours or days, and refers to employee non-appearance for scheduled work as required by their contract of employment (Seccombe, 1995). In that respect, absence is literally taken as the employee being an 'absentee', and will not concern those avenues of research dealing with employees who are in attendance but withholding labour, mindlessness, and general 'withdrawal'. Absence has

received widespread attention from researchers, including several meta-analyses adding greatly to our understanding; however, noting the complexity of the subject, Johns (1997) and Harrison and Martocchio (1998, p. 311) thought similarly that "absence does not have a simple aetiology".

Whilst not able to point to causal reasons of absence other than in medically certified cases, researchers have identified numerous correlations of variables that contribute to absence. Attempts have been made to treat absence as *voluntary* (where genuine illness is questionable), and *involuntary* (when clinically established), though being categorical on either can be problematic. The former is normally associated with short absences, and even clinically certified absence in this researcher's experience can be questionable (real-life examples include someone 'signed-off' for work with a bad back who is observed carrying sacks of potatoes into a customer's car, or an employee certified sick but operating a different employer's toll booth when his manager drove up to pay).

For the employer, a problematic aspect of absence is "absence proneness", whether it be frequency and/or duration, which has led it to be seen as a topic of workplace deviance, which falls within the rubric of CWB. This negative labelling does a disservice to any employee who suffers from a heightened morbidity and therefore has justified absence; and this unavoidable absence is generally overlooked in researching absence, for employers are accustomed to accepting serious illness as legitimate absence (Haccoun and Desgent, 1993).Notwithstanding this, Hogan and Hogan (1989) developed a psychometric measure termed 'Employee Reliability', which sought to screen-out unreliable entrants given their proclivity to "Excessive absences, tardiness, malingering, equipment damage, drug and alcohol abuse, grievances, suspensions from work, insubordination, and ordinary rule infractions"(p. 275). This they termed the "delinquency syndrome", and a host of other patented psychometric tests followed aimed at a preventative aid regarding absence, and occasionally avoiding CWB infractions, though none have been universally adopted by employers as the gold standard.

A broad range of models has sought to conceptualise the components of absence, and a brief outline is shown below in Chart 2.4. Demographics alone show little promise as a solution (Farrell and Stamm, 1988), and the scope essentially now comprises *individual, organisational,* and *group* influences, though societal influences cannot be ruled out (Selander and Buys, 2010: Markussen et al., 2011). *Individual* influences are one's interest in the job, psychological factors and the like, and *organisational* factors would be pay equity, justice and extent of monitoring, whilst *group* issues would be entity relationships, group norms and absence

cultures: "the set of shared understandings about absence legitimacy and the established 'custom and practice' of employee absence behaviour and its control" (Johns and Nicholson,1982 p. 136).

CHART 2.4

Typical Absence Correlations		
Model Components	**Key variables**	**Outcome**
Personality traits **Locus of control** **Motivation** **Reasoned action** **Deontic ethics** → **Perceived control** **Justice/injustice** **Demographics** **Familial aspects** **Morbidity/health**	Job satisfaction/involvement Organisational commitment Group norms Utility →	Absence

Absence may be thought of as an imponderable, given it is difficult to predict, yet Farrell and Stamm (1988) and Steel (1990) returned 'carry-over' correlations respectively from 0.5 to 0.7 from one year to the next, leading Harrison and Martocchio (1998) to note "research in the last twenty years has shown that by far the best predictor of this year's absenteeism is last year's" (p. 309).

Despite the range of contributory factors evidenced above, too often the results have been contradictory; and there are still gaps in this body of knowledge. Firstly, only very infrequently has absence been associated with CWB (Judge and Martocchio, 1995: Johns, 1997); however, results based on *hypothetical* scenarios have less validity than *actual* primary data, given these results are expectations not real-life outcomes. Secondly, gender has been a fruitful variable in research generally, though only exceptionally in absence studies. Thirdly, research has too often relied on survey periods of a matter of months, or up to a year, whereas longitudinal periods help remove or reduce such sampling bias (Markussen et al., 2011). Fourthly, studies that have related absence and CWB have been holistic in accounting for all types of CWB (Robinson and Bennett, 1995), and rarely concentrated on those potentially serious offences warranting formal disciplinary action. Donaldson (1994) is to be credited with such work in the NHS in using a longitudinal five year study, in which about 6% of senior medical staff were subject to an investigation. Tellingly, whilst registering various types of offence, none involved

absence, suggesting these individuals were committed to their work, or there was an absence tolerant culture, albeit half of those investigated subsequently left. Thus, absence alone even though seen to be counterproductive, cannot be taken as inextricably linked to CWB. Additionally, the pattern of absence by way of duration by those employees committing CWB has not been analysed compared to the workforce population of which they are a part. Finally, absence by gender indicates women's absence exceed that of men in Western studies: "Overall, the finding is pervasive over time and place" (Patton and Johns, 2012, p. 151), yet gender has not been specifically studied for serious infractions necessitating the use of disciplinary procedures.

Absence research focussing solely on the public sector is very limited, but McHugh (2002), and Thomson, Griffiths and Davison (2000), within the UK studied comparable bodies to the Host organisation in this research. Methodologically across a range of public bodies, McHugh (2002) illustrates a qualitative and quantitative approach to determine the scale of absence, as well as establishing the impressions employees had of management with regard to absence in their respective bodies. The 25 organisations returned an average absence of 8.7 days/employee/year, (ranging from 5.6 days to 18.9 days), with grade differences showing Managers =6.8, Clerical Staff=9.4, and Manual Workers=10.5days. Qualitatively the "high" levels of absence were explained by "the fact that the majority of employees do not lose out financially if they are absent from work" and because of "the prevailing organisational culture which incorporates acceptance of a set level of absence" (p.728). Contrasting this, "low" figures were attributed to "the fact that the organisation is located in a small town where employees are exposed" and a "lack of tolerance within the organisation regarding sickness absence" (p. 728). Worryingly, Focus Groups identified "the lack of consistency that operates both within and between [public bodies] with regard to the implementation of policies…Many participants reported that differences exist between departments" (p. 730). This differentiation is attributed, in part, to the varying discretion evidenced by departmental managers, a differentiation that saw "High absence levels among senior staff were considered to provide legitimacy to the absence levels among other staff" (p. 731). A dichotomous structural component was also noted by there being a "them" and "us" attitude between management and staff (p. 732).

Whilst McHugh (2002) focused on overall absence, the psychological well-being and motivation of staff, Thomson, Griffiths and Davison (2000) were concerned with the ageing workforce, short-term and flexible contract working, and how absence, age, and tenure

interplay. Using certified and non-certified absence records for *Administrative, Homecare*, and *Residential workers*, they established a positive relationship between age and certified absence, but a negative relationship between age and non-certified absence. That *Homecare* and *Residential* workers were, on average, older and had more physically demanding jobs compared to *Administrative* employees, this was seen as adding weight to the elevated absence in middle/later life which evidenced the positive relationship. The UK non-gendered figures of absence support this when aggregated over the last decade:

Table 2.8

Aggregated UK Age & Sickness Absence Relationship (2009-2018)					
Age Range (Years)	16-24	25-34	35-49	50-64	65 & over
Days lost per worker/ year	2.69	3.59	4.40	6.32	3.45
Data from ONS (2019)					

However, as informative as these papers are and despite using a mixed method approach, they fail to account for any *gender* differences in absence when, as noted above, it is well established that overall absence rates do differ. McHugh (2002) used overall figures from the public bodies with no indication of gender composition, and Thomson, Griffiths and Davison (2000) accepted that "the samples were treated statistically as though they were exclusively female" (p. 20), thus obviating any gender comparison. Secondly whilst being different, the trajectory of gender absences when plotted with age do not run parallel, but are curvilinear and are thus masked in the figures as in Table2.8 above. Thirdly, McHugh (2002) avoided sampling bias by using three years of data, which cannot be said for Thomson, Griffiths and Davison (2000) who only used absence figures from a single year. Finally, to my knowledge, no research has been conducted examining the absence patterns of disciplined employees when compared to the workforce population from which they are drawn.

A review of the public sector CIPD (2016) highlights the worrying state of public sector absence, which, in monetary terms, was quoted as £835/ employee/year (8.5 days /employee compared to 5.2 in the private sector). Stress-related absence was becoming more evident, and "Line managers are more likely to have responsibility for managing absence", yet "Despite the high prevalence of mental-health-related absence in the public sector, less than two-fifths report they provide training for managers" (pp.2–3.). Presenteeism and a long-hours working

culture have evolved, at least in part due to the "cuts and changes of the austerity drive over the last few years" (p. 4). Without a concerted intervention, the future therefore looks bleak, not only in terms of reducing the average annual per person absence rate, but overall, for employee well-being.

The preceding outlined the current state of the UK public sector and the four variables of age, tenure, gender and absence, along with key research findings on the subject of CWB. What follows relates to our concept of justice and fairness, and how judgements are made. Additionally, it highlights the research streams which have identified the dimensions of justice and fairness and have been characterised by a process of deconstruction and continual refinement, to a more recent perspective which is both holistic and heuristic.

2.21 The Perception of Justice/ Fairness

Rousseau (1995) suggests psychological breach by the employer is commonplace, Oakley and Lynch (2000) found similarly that promise–keeping was a low priority in the workplace, whilst Vardi and Weitz (2004, p.28) note one of the consequences of these management failings is that CWB is "pervasive". Justice as a concept has philosophically been viewed differently, as a libertarian and equalities concept (Rawls, 1971), as a means of maintaining social order without there being any universality (Mill, 2001), as a basis of morals (Hume, 1983), as a capitalist system designed to preserve a hierarchical social order (Marx, 1978), or as a criminologist (Farrington, 1986). These diverse views allude to the essential fact that whilst definitive interpretations of justice may exist in the legal domain, in the context of this work, *precision* gives way to *perception*. In that workplace justice is an interpretation of a social encounter; it may be a feeling, an observation, is experiential and results from interactions inside and outside the workplace that give meaning to one's contract within it. "Justice is the grease of social dynamics, the lubrication that makes interactions work [or not work]" (Tyler, 2001, p.11, my parenthesis). The working definition I will be guided by is that of Beugré (1998, p. xiii):

> "the perceived fairness of the exchanges taking place in an organization, be they social or economic, and involving the individual in his or her relations with superiors, subordinates, peers, and the organization as a social system".

Justice and fairness will be seen to be synonymous as will injustice and unfairness (Sheppard, Lewicki and Minton, 1992), and early research on this is next.

2.22 The Formative Stage of Relative Deprivation

Recent scientific research on justice arguably began with Stouffer et al. (1949) with their work on relative deprivation. Being concerned with outcomes, it can be classed as **instrumental** and focused on US troops during World War II, and their perceptions of how military and civilian life had, or had not, treated them fairly in differing parts of the US. Those making the justice comparisons, however, took no account of whether the service personnel actually warranted promotion, for its main focus was on tenure, and paid no attention to inputs by the service personnel in terms of whether they were exemplary or otherwise. It is thus not the extent or magnitude of the outcome itself that determines justice but the comparator chosen that is critical. This line of research was not taken further, but later work by Festinger (1954) gave meaning to how cognitive dissonance can arise, and in some instances, be rationalised where one's comparators are at odds with one's belief. Crosby (1984) saw relative deprivation as a result of unmet aspirations, and emphasised the arbitrariness of the evaluation: "People's feelings of deprivation, discontent, grievance, or resentment often do not relate in a simple, direct, or isomorphic way to their objective situations" (p.52). It was therefore necessary to extend this theory further.

2.23 The Distributive Justice Stage

Stouffer et al.'s (1949) work was developed further by considering the often contractual relationship between parties, still with an *instrumental* intent in which Homans (1961) introduced the concept of inputs and outcomes and spoke of "***distributive justice***" (p.75). It was premised on the notion that in the social exchange of employment, expectations are created which become self-reinforcing such that they are eventually accepted as normative. Blau (1964) added to this social exchange concept by categorising them into **economic** (mainly contractual and stipulated in advance), and **social** (which are not precisely defined and are expectations). This retrospective and prospective interpretation is centred on trust. These basic elements at the formative stage of justice research, along with expectancy theory (Vroom, 1964), were, in part, to lay the foundation for much later work by Rousseau (1995) on psychological contracts; Settoon, Bennett and Liden (1996) on reciprocity; Cole, Schaninger and Stanley (2002) on social exchange networks; and Colquitt and Rodell (2011) on linking justice, trust and trustworthiness. However, it was Adams (1965) complemented by Blau (1964) and Stouffer et al. (1949), who developed Equity Theory which was to dominate justice research for the next twenty years.

This instrumental theory comprised four basic elements: i) justice is evaluated by comparing one's own and a comparator's outcome/input ratio; ii) if this comparison is unequal then inequity exists; iii) the greater the inequity felt by the individual, the greater the distress and iv) the greater the inequity the harder the individual will work to restore equity.

Restoring equity could be achieved by cognitive readjustment, varying the quantity or quality of inputs, changing the comparator, or renegotiating the contract; and if all else fails, even withdrawing from the relationship. Adams considered typical inputs to include skill, education, training, experience, and effort, whilst outcomes involved, among other things pay, status, occupational benefits, and meeting supervision requirements. Despite its prominence, equity theory has its limitations in that it failed to clarify: a) how one defines with accuracy the various inputs and outcomes; b) whether the intrinsic items are stable over time; c) whether if a person is over-rewarded (inequity) but fails to compensate by working harder this invalidates the theory; d) where outcomes like pay are distributed based on equality (group- focused) whether this automatically devalues an equity allocation (individually based) (Leventhal, 1976). Greenberg (1978) also noted it failed to account for the relationship between the parties, a point also made by Deutsch (1985) but extended beyond the dyadic to include groups. Meanwhile, by comparison Huseman, Hartfield and Miles, (1987) were more introspective in introducing *Equity Sensitivity* to explain the differing mind-sets where *Equity Sensitives, Benevolents,* and *Entitleds* had varying views as to their justice evaluations when balancing inputs and outcomes. Irrespective of these limitations, Adams Equity Theory is a powerful conceptual model and was a sound basis for distributive justice research in preference to the more mathematical model developed by Walster , Walster and Berscheid (1978) or Jasso (1994).

Leventhal (1976) introduced the *Equity, Equality,* and *Need* concept of outcome distribution which from the allocators' perspective can be used to reward personal contribution, group norms and cohesion, or individual deprivation. However, in later work from Leventhal, Karuza and Fry (1980), the receiver's perspective saw a *distributive preference* akin to Huseman, Hartfield and Miles (1987) being proposed dependent on the individual's education, economic status, and family. By comparison, Deutsch (1985) took a more holistic and humanistic approach to outcome distribution seeing it not only as encompassing goods, but also being concerned with an individual's well-being, psychological, physiological and general social situation. These broad ranging criteria set the scene for the next wave of justice research which extends far beyond mere distributive justice concerns for as Cropanzano and Randall

(1993, p.9) note "outcomes are not the only relevant issue to an individual; the way one is treated is equally important".

2.24 The Procedural Justice Stage

Whilst distributive justice concerns outcomes, there must inevitably be a process to attain those outcomes. The means by which this is achieved is what Leventhal, Karuza and Fry (1980, p. 169) referred to as "the causal network which generates that result". Thibaut and Walker (1975), researching in the legal system, developed the procedural justice concept. This **self-interest model** (instrumental) sees the individual as seeking a distributive outcome in the long term which is beneficial to them. It comprises both **process control** which "refers to control over the development and selection of information that will constitute the basis for resolving the dispute"; and **decision control** the "degree to which any one of the participants may ultimately determine the outcome" (p.546). Their model is essentially egoistic but not only dependent on the outcome, and favours the adversarial (USA and British system) over the inquisitorial (continental Europe methods), in that participation was more fruitful for the participant, irrespective of the outcome of the court case.

Early work by Katz (1960) sowed the seeds of an alternative epistemology of procedural justice development, suggesting that in certain situations, giving individuals a chance to express themselves was in and of itself rewarding. This participative role was also noted by Hirschman (1970) in his *exit, voice* and *loyalty*; and later Folger et al. (1979) with their *Fair Process Effect,* all recognising the importance of an active involvement. However, it was Tyler, Rasinski and Spodick (1985), building on this concept of *voice* as the key component in their **Value-Expressive Model**, who summarised subsequently that "disputants want to have *voice* because they value having the chance to state their case irrespective of whether their statement influences the decisions of authorities" (Tyler, 1987, p. 333). Voice, in and of itself was seen to be beneficial in justice evaluations compared with mute situations, but this raised the question of exactly how much voice and when? Is more voice always good?

Sheppard (1985) found that sometimes people preferred procedures with *less* voice, though this was tested by Folger et al. (1996) who, to their surprise, confirmed the original finding that as far as justice evaluations are concerned, the benefits of *voice* are not monotonic. Work by Peterson (1999) in a laboratory study saw justice evaluations doubling when voice input rose from low to medium, but fall away by approximately a quarter when voice was high, producing a distorted but inverted "U" shape. This he felt was due to "things other than voice deciding

the fairness of the procedure" (p. 314). Thus, the value placed on having *voice* is certainly instrumental, but unlike Thibaut and Walker (1975) accepts that extensive use produces limiting returns.

Employment relationships, whilst having a contractual base, are nonetheless codified in day-to-day operations by interactions which reflect long-term associations built on *trust*. This collegiate view of justice sees employees expecting "organizations to use neutral decision-making procedure enacted by trustworthy authorities and to treat them with respect, dignity, and politeness that, over time, all group members will benefit fairly from being members of the group" (Tyler, 1989, p.837).

Employees form relationships with numerous groups both within and outside work. Some alliances can be very weak, for instance where a person has little interest in remaining with the employer, whilst others can be fundamental where familial relationships abound in many SME's. Membership of such groups (***group-value model)*** is valued because it reaffirms one's self-identity as well as one's group status. Any adverse treatment members receive relating to *injustice* can threaten their very concept of oneself: "...to stake part of one's identity on being part of one's organization or on belonging to a team or department within the organization and then to be rejected is to have one's very self diminished" (Lind, 2001, p.63). This model has tended to have more of a socio-emotional implication rather than a socio-economic.

2.25 The Interactional Justice Stage

Whilst procedural and distributive justice is essentially systems oriented by being assessed in terms of process and outcomes, interactional justice is the product of an encounter between individuals. Thus, it is not only how comprehensively a judicial system was followed, or whether a favourable outcome was obtained, but also the extent of consideration and courtesy given to those involved that determines a perception of interactional justice.

The ground work by Bies and Moag (1986, p.44) defined it in the following way: "Interactional justice refers to the quality of interpersonal treatment people receive during the enactment of organizational procedures". They pictorially saw the 'person' bridging the gap between procedural and distributive justice (Chart 2.5 below).

CHART 2.5

<u>Procedural, Interactional and Distributive justice linkage</u>

```
┌──────────────┐      ┌──────────────┐      ┌──────────────┐
│  PROCEDURAL  │─────▶│ INTERACTIONAL│─────▶│ DISTRIBUTIVE │
│   JUSTICE    │      │   JUSTICE    │      │   JUSTICE    │
└──────────────┘      └──────────────┘      └──────────────┘
```
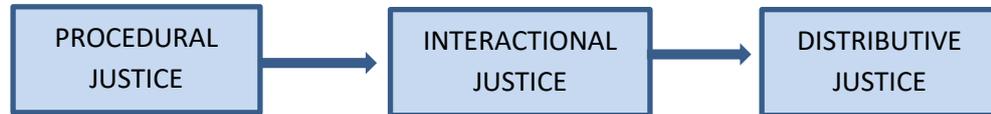
Settoon, Bennett and Liden (1996) considered the interaction between two parties to be a *social exchange, one of reciprocity,* and similarly Rousseau (1995) saw it as socio-emotional in the *psychological contract*. Early debate viewed interactional justice not as a third construct of justice but as a sub-component of procedural justice (Greenberg, 1993b,: Tyler and Bies, 1990). However, as Bies himself confessed, a theory is a living thing and after a wider analysis of extant research, his position was reversed. One key factor highlighting the distinctiveness of interactional justice was that it tended to be associated with an *entity (*supervisor, manager, group) whereas procedural justice was more aligned with inert objects like the organisation. With this, the three-factor model of justice became firmly established. Later research established that a fuller interpretation of justice measurement could be made if *interactional* was split into *informational* and *interpersonal* constructs. This was established by Colquitt (2001), and furnished a widely accepted questionnaire design to measure justice constructs, which as yet has not been superseded (see Table 2.9 below).

TABLE 2.9

Justice Questionnaire regarding an 'Outcome' (Colquitt, 2001)			
Dimension		Question	Origin
Procedural	1	To what extent have you been able to express your views and feelings during those procedures?	Thibaut & Walker (1975)
	2	Have you had influence over the outcome arrived at by those procedures?	
	3	Have those procedures been applied consistently?	Leventhal (1980)
	4	Have those procedures been free of bias?	
	5	Have those procedures been based on accurate information?	
	6	Have you been able to appeal the outcome arrived at by those procedures?	
	7	Have those procedures upheld ethical and moral standards?	
Distributive	8	To what extent does your outcome reflect the effort you put into your work?	Leventhal (1976)
	9	Is your outcome appropriate for the work you have completed?	
	10	Does your outcome reflect what you have contributed to the organisation?	
	11	Is you outcome justified, given your performance?	
Interpersonal	12	To what extent has the authority figure treated you in a polite manner?	Bies and Moag (1986)
	13	Have they treated you with dignity?	
	14	Have they treated you with respect?	
	15	Have they refrained from improper remarks or comments?	
Informational	16	Has the person who enacted the procedure been candid in their communication with you?	
	17	Have they explained the procedures thoroughly?	
	18	Were their explanations regarding the procedures reasonable?	Shapiro, Buttner and Barry (1994)
	19	Have they communicated the details in a timely manner?	
	20	Have they tailored their communications to your specific needs?	

As with the parsimonious nature of the EPQ, even Colquitt's authoritative means of 'measuring' the justice dimensions is not without its weaknesses. For example would

respondents be clear about the difference between *dignity* and *respect* (Q13 and 14)? Given the structure of multi-nationals, will *every* individual be given an opportunity to express their views about, for example, a restructuring of the plant (Q1), and having seen that this is practically impossible and is usually left to the trade unions, with many employees not being members, by default their answer to Q2 in most people's case almost certainly will be negative? Are all employees fully conversant with organisational procedures, are they aware of their application in other circumstances and do they have a grasp of all the relevant details of *consistency, bias, accurate information* (Q3, 4, 5)? In the case of breach of contract and the disciplinary investigation, by the time an individual has concluded the process, they may have encountered local and regional shop stewards, a supervisor, departmental manager, human resource staff, possibly audit, witnesses and a panel of politicians at appeal. How realistic is it then to frame in the *singular* Q.16, 17, 18, 19, 20? Similar imprecisions can be identified with many of the remaining questions. Thus a different approach to dimensionality is needed.

Work by Leventhal, Karuza and Fry (1980) identified certain procedural rules which can impact on justice judgements which comprise *Consistency, Bias Suppression, Rule Accuracy, Rule Representativeness,* and *Rule of Ethicality.* These have underpinned the evolution of various models of justice research, and are still seen as current.

 The ability of these constructs individually or in combination, to adequately account for the variance in justice effects like job satisfaction, turnover intentions, workplace aggression, theft and a host of other behavioural intentions essentially culminated with accounts of variance in any particular element ranging from anywhere between 3% to, at best, around 30%. This inefficiency of justice research to account for the effects under investigation are best illustrated by comments made by Leventhal (1980, p.47), possibly being overly self- critical, given that he continued research in this field, but which have turned out to be somewhat prophetic:

> "the position adopted in this paper is that an individual's concern for fairness is only one motivational force among many that affect perception and behaviour, and that it is often a weaker force than others. In many situations, most individuals probably give little thought to questions of fairness" (p.47).

As a result and opposed to further deconstruction, attention turned to the latest phase of development which is *integrative,* where the focus has shifted from the question of **what** elements justice comprises to **how** justice judgements are made.

2.26 The Integrative Stage: Overall Justice

Justice research moved on from a deconstruction of the issue into how collectively they combine. As Cropanzano notes (2001, p. 19), "It is time to pull them together and look at justice the way individuals do: as an omnibus concept not separate pieces". The reason for this is that *Overall Justice* is thought to better reflect how an individual experiences fairness in the workplace, and affords the opportunity to compare more consistent results than the fragmented analysis of individual components. Patel, Budhwar and Varma (2012) found that all four justice dimensions were significantly positively related to overall justice, and Nicklin et al. (2014) further showed overall justice to be an independent construct additional to the four domains. However, wider research on the relationship of the domains to overall justice has not been as unequivocal, and listed below (Table2.10) are the results of the various elements showing the strength of each factor in predicting Overall Justice.

TABLE 2.10

Strength of prediction by each element toward concept of Overall justice.				
	Justice Dimensions			
	Distributive	**Procedural**	**Interactional**	
			Interpersonal	**Informational**
Kim and Leung (2007)	1	3	2	
Ambrose and Schminke (2009)	2	1	3	
Jones and Martens (2009)	3	0	1	2
Patel, Budhwar and Varma (2012)	2	2	1	2
NB. Strength of influence highest =1, lowest =3, no influence=0.				
Some researchers are still wedded to the three-factor model of justice.				

How justice judgements are made has been the key driver for researchers including Lind, Van den Bos, Vermunt, and Ambrose. Its origin rests in the Group-Value model Lind and Tyler (1988) and the Relational model (Tyler and Lind 1992, p.158) in which the individual uses their justice experience to gauge their self-identity, and individual place in their social and organisational group status, "This group-value belief is, in turn, a potent determinant of various attitudes and behaviors, including judgements of legitimacy and obedience to authority".

This obedience Lind (1995) termed the ***fundamental social dilemma***, which is the question of whether, and to what extent, an individual trusts another (agent or organisation) to know with certainty that they will not be exploited; for whilst the other party may afford outcomes that are desirable, the dilemma relates to the extent to which cooperation should be forthcoming. Individuals form cognitive schema regarding the parties with whom they interact, which are built on past encounters and other information including social comparators (whether relevant or not) and this forms the template against which epistemological judgements are made. This has certain arbitrariness much like the comparator of choice in Relative Deprivation, and Equity Theory. These heuristics are then used as a short cut to form justice judgements, these being an even shorter bounded rationality minus the selective deliberation, for to act otherwise in a comprehensive and calculative way would be beyond the scope of most cognitive processing. It is a pragmatic survival mechanism affording individuals the opportunity to concentrate on other issues. A key finding of **Fairness Heuristic Theory** (Lind, 2001) is that initial justice impressions have primacy and are normally only shifted by compelling new information or impressions (phase-shifting), and these stimuli can be positive or negative and is focused on long-term relationships. In the context of breach of contract, this places a particular emphasis on initial impressions (primacy) and may well not hold for employees who are in the withdrawal phase (Hirschman, 1970; Collins, Mossholder and Taylor, 2012), given their disinterest in any long-term relationship. The development of the different justice research themes can be seen in Appendix 4.

Being in its infancy, how best to measure overall justice is open to debate. Employees, whilst being subjected to a multitude of policies, procedures, and personal encounters, are only able to accurately convey a personal judgement, though in addition they assess vicariously how they believe the workforce in general is treated. Ambrose and Schminke (2009) have developed the most widely accepted combination of these *personal* and *vicarious issues* into a measurement questionnaire; for the time being, others are using variations of this, or context specific alternatives (Appendix 5). Where then does justice research go next?

2.27 The Next Stage of Justice Research?

This stage of justice development is likely to be a combination of: a) tidying up loose-ends and trying to get some uniformity in justice measurement; b) a concentration on composite measures like Overall Justice and c) new directions in biological psychology and neuroscience. Several factors which have an impact on justice judgements have been studied yet all too often have produced conflicting results. These 'loose ends' covering demographics, contextual

and cultural factors warrant detailed scrutiny to substantiate if, when, and in what capacity these variables are impacting. Typical inconclusive factors include Dyadic Relationships (Dalton and Todor, 1985), Gender (Sweeney and McFarlin, 1997), Ethics (Schminke, Ambrose and Noel, 1997), Obesity (Roehling, 1999), Voice (Peterson, 1999), Justifications or Excuses (Shaw, Wild and Colquitt, 2003), Vicarious Justice (Kray and Lind, 2002), Longitudinal Studies (Mesch and Dalton, 1992), Emotions (Weiss, Suckow and Cropanzano, 1999) and many more. In addition, the use of measurement scales warrants revision and some standardisation given the proliferation of variants currently in use.

A paradigm shift is needed to bolster the new direction of research using functional magnetic resonance imaging (fMRI), to examine the neurological activity surrounding justice and related judgements. Kosfeld et al. (2005) illustrates that enhanced levels of a naturally occurring hormone oxytocin increases *trust* particularly in interpersonal encounters; and Theodoridou et al. (2009) evidenced this in both sexes regarding facial trustworthiness; but the counter to this was a reduced adherence to fairness norms found by Radke and de Bruijn (2012). In other neurological experiments without the administration of drugs, evidence is emerging that damage to certain parts of the brain materially affects judgements. Foregoing ones' rights in order to punish another for an unfair act (altruistic punishment) DeQuervain et al. (2004) saw evidence of enhanced activity in the Dorsal Striatum (the reward area of the brain) during such acts. Studies such as these offer a new perspective far beyond the self-report methodology, but it is still unclear whether these neural processes are pathways moulded during the formative years of socialisation, or perhaps more controversially by inheritance (Wallace et al., 2007) reigniting the nature/nurture debate (blank slate or hard wired?). Recent work by Carlisi et al. (2020) has only added to this in examining the brain structure of subjects in the longitudinal 45 year Dunedin Study (New Zealand), which highlighted differing brain structures in offenders. Early life on-set in antisocial behaviour which continued well into adulthood was termed 'Life course-persistent' offending; and teenage on-set offending which typically fell away sharply in early adulthood was termed 'Adolescent-persistent' offending. Both peaked similarly in late teens/early twenties, but Life-course persistent, whilst falling away, continued well beyond. These two groups had differing brain structures from their fMRI profiles, which opens up debates in physiology, psychology, genetics, sociology, and criminology in seeking possible explanations; and adds further complications to the recent age-crime profiles (McVie 2005: Ezell and Cohen, 2005).

Prevailing methodologies use a variety of predetermined questions which are akin to asking leading questions in a criminal court case and open to confirmatory bias. These methods are strong on statistical interpretation, but as noted above, are less than precise in the way that the domains and the questions can be interpreted, "some items chosen to measure one justice dimension appear more applicable to another dimension" (St-Pierre and Holmes, 2010, p. 1173). What is needed is not just a quantitative but a more nuanced qualitative approach, to be captured via semi-structured interviews, story-telling, or critical incident dialogue; an understanding, in the individual's own words, of exactly how, when, why and to what extent they felt certain procedures, interactions and outcomes were just or unjust, (Hollensbe, Khazanchi and Masterson, 2008: Mikula, Petri and Tanzer, 1990).

2.28 Bodies of Knowledge: A Review

In handling breach cases, management is mandated to adhere to legislative, case law, Acas guidance and such other organisational policy documents as are enshrined in the employment contract. It is this prescription that contextualised my research, however, it was evident in the inductive Phase 2 that breaches by both employers and individuals were apparent.

Understandably due to the difficulty of gaining organisational cooperation, extant CWB research has almost exclusively relied on general workforce surveys, questionnaires, hypothetical scenarios, laboratory studies and the like. In doing so, it has typically encompassed all workplace transgressions from insignificant to the substantial, and many have routinely also included grievances as an added indication of the extent of employee 'conflict'. This holistic view masks the potentially costly and problematic nature for all concerned of invoking disciplinary procedures, and fails to focus on individuals and/or the employment records of those who have been disciplined. *Actual* case history was therefore vital as a body of knowledge in preference to basing this work on generic findings covering all breaches. Extant research proved less than ideal given the aims of this research; for instance Knapp (1964) and Lee (2000) used very small samples of only 36, and 50 respectively, though this was improved by Mulder (1971), and Atwater, Carey and Waldman (2001), where sample size increased to 255, and 163 respectively. Roberts et al.(2007), surpassed this in a 23-years sociological early-life to young-adulthood longitudinal study of 877 subjects, but again whilst evidencing various correlated factors impacting on workplace CWB, failed to highlight any overall scale of offending. It was only in Mulder's (1971) work that, as a proportion of the workforce, an offending rate of 1.3% was noted, for the preoccupation in all the above research was a desire to understand the antecedents affecting CWB.

By contrast and similar to this approach, but without access to subjects, arms-length studies of CWB have been more fruitful in assessing the overall scale of serious offending and Donaldson, (1994) saw that, on average, over any five-year period, about 6% of senior medical staff (doctors, consultants and associate specialists), would be subject to a disciplinary investigation. Comparable evidence from the US by Grant and Alfred (2007) suggests over a twelve-year period, about 5% of physicians face a disciplinary investigation (about 2.4% annually), and given the cost of practitioner medical insurance, worryingly, recidivism is high in any given three-year consecutive period where "Startlingly, more than 20 percent of physicians receiving a medium or severe sanction in period A were subsequently sanctioned in period B" (p.877). The work of Wood, Saundry and Latreille (2014), CIPD (2004, 2007), and Daniel and Millward (1984) complemented this body of knowledge within the UK.

The above contributed to this field of CWB research but could not claim causality, nonetheless they did evidence a range of individual, contextual, and sociological factors. These included psychological factors such as emotional stability, conformity, aggression, self-control, along with contextual factors of organisation size, trade union density, skill level, management style, and sociological items including gender, ethnicity, recidivism, and education level. This contextualised my initial research question (Q1. Abstract), and led me to highlight the gap in knowledge in order to focus principally on the demographics concerned in *serious workplace infractions*, methodologically using primary and secondary data, and arriving at an annual cost to the UK economy.

By contrast with the deductive phase above, the subjective element of first-hand accounts from those involved in breach cases, is inductive and seeks to highlight qualitatively, how subjects experienced, personally or vicariously, formal disciplinary action. This draws heavily on the origins of justice and fairness literature and how organisations interpret and apply formal procedures, and the individuals themselves experience it.

Judgements about justice and fairness are either *normative*, where another comparator is used, or *cognitive* when evaluations may reconcile the matter under consideration. The problem with the former is that the comparator chosen may have little or even no justifiable relevance as a direct comparison (Stouffer et al., 1949). Even personal comparisons with a 'similar' event may prove unrealistic, given situations, the parties involved, and one's own emotions and expectations (Vroom, 1964) and can vary considerably over sometimes very short periods, meaning the resultant justice judgements are not static over time (Fortin et al., 2016). What was once considered fair may become unfair in the light of additional

information, even when information may not have been sought as a comparator, but merely becomes known, for example, finding out a colleague is receiving a higher bonus, or a fellow footballer is on a higher retainer. Comparator details therefore do not necessitate active search activity; a discrepancy in a once-held justice and fairness judgement can arise gratuitously.

In fact, no search at all is required when one has a predetermined mind-set toward a justice or fairness evaluation. *Anticipatory justice* (Shapiro and Kirkman, 2001), E*quity sensitives* (Huseman, Hartfield and Miles, 1987), and *Psychological contract* (Rousseau, 1995), evidence that to a great extent, irrespective of the merits of the case, or whatever comparators may or may not have been chosen, the mind may come 'already made up'. This may be experiential and therefore formed with 'good' reason, but may also arise as a presumption based on piecemeal information and supposition, a sort of deficient bounded rationality (Simon, 1957). There may thus be a less than balanced justice judgement ranging from the altruistic, when forfeiting some benefit, to a hedonistic evaluation seeking to maximise one's returns. The process, by which a judgement is made, potentially spans a time frame from the instantaneous (anticipatory justice), to a heuristic (Lind, 2001), though even this may be from milliseconds upwards, to a more deliberative and researched conclusion which utilises all available information, complete or otherwise, and may take days or months. No process is right or wrong, merely it provides utility for the individual when deciding on that particular matter.

The above body of knowledge is premised on there being an outcome (distributive justice), on which a judgement can be made, typically as in Equity theory, where a balance of input and outcomes are weighed (Adams, 1965). However, research attests that it is not only outcomes that matter regarding justice and fairness, but in some cases more importantly, how the matters leading to the judgement were handled. Procedural fairness (Thibaut and Walker, 1975) was largely recognised as the causal structure or process on which distributive justice decisions are based, a point Rawls (1971) saw as an end in itself, one which "presumes a demonstrated respect for human dignity, for treating people in a humane fashion" (Beugré,1998, p. 21). Various procedural justice models propose differing emphases from the groundwork by Thibaut and Walker (1975), framed on legal resolution which is egoistic, and had five elements, to Lind and Tyler (1988), which had four elements, principally focused on 'voice' and the value-expressive nature of being able to participate in and contribute toward the justice decision, though clearly in neither case were they able to 'control' the outcome. A more widely accepted approach saw Leventhal, Karuza and Fry (1980) publish their six

procedural justice rules of *Consistency, Bias suppression, Accuracy, Correctability, Representativeness,* and *Ethicality*, which bore a close resemblance to Folger and Bies(1989) seven-point model. The thrust in these was offering considerable recognition of the 'rights' of the individual by emphasising truthfulness, feedback, justification of the decision, and requiring adequate consideration of the employee's viewpoint. In doing so, they reinforced the self-worth which individuals hold and this essentially identifies who they are and reaffirms their belief in a just world (Lerner, 1980). This participative opportunity is what Folger et al. (1979, p. 2254) referred to as the "fair process effect", and results in "cases in which greater satisfaction results from giving people a voice in decisions", and is evident even when outcomes can be negative.

The linkage of *Distributive* and *Procedural* rests with the final body of knowledge, *Interactional* justice, a point which Tyler and Bies (1990, p. 91), described as the "interpersonal context of procedural justice". It is the fairness with which procedures are carried out, given employees expect to be treated in a respectful and dignified way. Justice judgements can be centred on an *entity* (a supervisor, manager, group, organisation), or an *event* (shift changes, new policy, redundancies), and are evaluated in large part against the procedural justice model criteria noted above. In this regard, it is largely interactive either directly by personal exchanges, or indirectly by dictate. Handled poorly the consequence can be lack of trust, withdrawal, absenteeism, low job performance, theft, and turnover (Rousseau, 1995: Sheridan, 1985: Greenberg, 1993, a), meaning the potential costs can be substantial. However, correctly carried out with justification and explanation, workers can accept an unpopular smoking ban (Greenberg, 1994), more readily come to terms about lay-offs (Brockner et al., 1994), and accept timely but unpopular feedback about recruitment decisions (Bies and Moag, 1986).

Whilst extant research has markedly increased our understanding of the structural components and dimensions of justice and fairness, it is not without its deficiencies. One failure in the justice body of knowledge is that the favoured method of capturing a subject's opinion, is usually questionnaire-based (Colquitt, 2001), but fails to acknowledge the multitude of *entities* one encounters in everyday organisational life. Lavelle et al. (2007) and their Multi-Foci approach recognised and remedied this dilemma. A further failing, which represents a paradigm shift, is that the new wave of research attempts to appreciate *how* people make such judgements, which is not sequential, firstly procedural, then interactional, and finally distributive. It mirrors more the holistic nature of heuristics, where judgements are made in what Greenberg (2001, p.19) called an "omnibus" approach. Finally, qualitative research using

this omnibus approach particularly concerning serious workplace infractions which invoke a disciplinary procedure is unknown, and certainly one encompassing all strata of levels of persons involved (entities), is new to the justice field.

As a starting point, this Literature Review compared the many research perspectives on the meaning of CWB, and established an all-encompassing definition applicable whilst at work and beyond. The legal aspects of the employment relationship led into establishing what breach behaviours constituted CWB, along with the scale and cost of these infractions. A series of hypotheses which guided this work elaborated on the key findings in respect of four variables which proved to be significantly related in this research to CWB (*gender, age, tenure, absence*). Finally, maturation of the body of research on justice and fairness highlighted the dimensions by which researchers conceptualise the topic, and how a more heuristic understanding is becoming more mainstream. Throughout, the gaps in knowledge have been exposed which this work seeks to address; an overview is shown below (Chart 2.6), and the methodology section, which addresses the philosophy surrounding and driving this research, follows.

CHART 2.6

LITERATURE REVIEW SCHEMA		
Philosophical underpinnings		**Trajectory**
		Legislative Framework ⬇
D e d u c t i v e	[In]Justice-Greenberg Age/Crime Linkages-Farrington Social Learning Theory-Bandura Anomie- Durkheim, Merton Rational Choice-Clark & Cornish Control Theory-Hirschi Ethics-Rest, Jones	CWB Inevitability ⬇ CWB Definition ⬇ CWB Typologies ⬇ CWB Prevalence ⬇ CWB Methodology ⬇ CWB Key Demographics ⬇ CWB Cost ⬇
I n d u c t i v e	Attribution Theory-Heider Bounded Rationality-Simons Fairness Heuristic Theory-Lind Idiosyncrasy Credit-Hollander Psychological Contract-Rousseau Heuristics and Biases-Kahneman Justice-Rawls Contextual Influences-Boise	Early Justice Development ⬇ Distributive Justice ⬇ Procedural Justice ⬇ Interactional Justice ⬇ Overall justice ⬇ Case Outcome ⬇
		Justice Research Tomorrow

3.0   Methodology

3.1 Introduction

This introduction initially gives an outline of the Host employer who, on being guaranteed anonymity, cooperated over a period of about seven years, in making the whole of Phase 1 (quantitative) and about a quarter of Phase 2 (qualitative) research possible. In respecting those guarantees the following paragraph is intentionally imprecise!

The Host organisation is a typical public sector body providing a range of frontline services to the local population (<200k, and <5% ethnic minorities), and whilst many bodies have enthusiastically sought privatisation, this body has approached it cautiously. Only Community Housing had been outsourced prior to the research. As a unitary authority, it continues to provide Social Welfare for children and adults, Environmental Health, Highways Maintenance, Refuse and Recycling, and Leisure Services. Schools provision through Education continues, but the autonomy of schools to become independent by choosing 'Academy' status has seen the number of establishments overseen by the Host reduced. In response to the economic recession and public funding crisis, some central services have sought economies of scale by 'Shared Services' agreements and Finance, IT, and Human Resources are jointly provided in cooperation with another public body. The remaining central services of Economic Development, Planning, Libraries, Museums, Births Deaths and Marriages, as well as Legal remain in-house. Its funding comes from government grants, domestic and business rates, and charges for various services.

This chapter describes my methodology and philosophical mind-set in undertaking the study. Initially, it seeks to clarify the abstract concepts by which researchers understand and make sense of the world around them. Later sections will address the methodology of Phase 1, a longitudinal disciplinary case analysis, which was driven by the research question (see Abstract p.iii)

This is followed by the final Phase 2, a series of semi-structured interviews of all parties involved in resolving disciplinary cases in the Host and other public sector bodies and addresses the final research question (Abstract p. iii).

 The next section examines the philosophical basis underpinning the study, and this chapter concludes with a review of the ethical considerations impacting this research.

3.2 Ontology

Ontology gives direction and is "the starting point of all research, after which one's epistemology and methodological positions logically follow" (Grix, 2004, p. 59), and this chapter follows this structure. It is a philosophical position by which we make sense of the world and our "assumptions about reality" (Saunders, Lewis and Thornhill, 2016, p.127). A more descriptive definition describes it as "claims and assumptions that are made about the nature of social reality, claims about what exists, what it looks like, what units make it up and how these units interact with each other. In short, ontological assumptions are concerned with what we believe constitutes social reality" (Blaikie, 2000, p.8). However, caution needs to register that society and culture may well condition us into a prescribed way of thinking and seeing the world, which the feminist agenda illustrates in the following "a way of seeing is a way of not seeing" (Oakley, 2018, p. 25). As a male researcher, I must declare this potential deficiency and have endeavoured toward impartiality, as I understand it, and the ontological perspectives follow

3.2.1 Objectivism

Objectivism (essentialism, positivism, foundationalism) sees phenomena as external to the observer; where the environment exists independent of the observer it interacts with the individual and conditions the individual (Burrell and Morgan, 1979: Lakoff, 1987). This study concerns social entities and is primarily focused on the individual, and not inanimate objects. To study them in an objectivist's ontology they would have to be measurable, and data quantifiable, reproducible, with a consistency that would lead potentially to a *law* of 'action' and 'reaction', not to mention that the observer would be neutral and value free. Adhering to the objectivist ontology is akin to adopting a natural sciences approach, of measurement, quantification, and statistical analysis, whilst as a researcher not influencing in any way the subjects or data produced. Objectivism pertains more to the initial part of this research and will be described in more detail when discussing Phase 1. Constructionism, however, is an alternative ontology.

3.2.2 Constructionism

Constructionism (empiricism, subjectivism) differs from the natural sciences perspective. It sees a cognitive interpretivist role as the kernel to our interacting with the world. Such researchers are often called antifoundationalists, as they refuse "to adopt any permanent, unvarying (or "foundational") standards by which truth can be universally known" (Lincoln and

Guba, 2005, p. 177). The ontological distinction between *objectivism* and *constructionism* is "the controller as opposed to the controlled, the master rather than the marionette" (Burrell and Morgan, 1979, p.7). This comparison reflects the 'inert' objectivist researcher compared to the 'active' and participant constructionist researcher. Gadamer (1989) sees this construction of knowledge of the social world as being conditional on our prejudices and prejudgements, and the hermeneutic circle on which our understanding rests, akin to Van den Bos et al.'s (1997) Fairness Heuristic Theory, and the 'short-cut' mental processes in making judgements.

> "It is something we undergo, something that cannot be finally controlled by us because our judgements are not our possessions. They are not things that, as it were, we could get around the front of us in full view. They are what we are before we know it, and in being so are also the positive pre-requisites for all our actual understanding and interpretations."(How, 1995, p.47).

It is clear from this that constructionism is far removed from positivist deductive reasoning, and is inductive, and any researcher will have a predilection to their chosen philosophical standpoints (Hood, 2006).

3.2.3 Transformative

Transformative ontologies highlight the deficiencies of other approaches to adequately address the interests of those marginalised in society, and critically to remedy social oppression. It therefore has a political dimension in seeking not only change, but radical change in the lives of minorities, the institutions in which they work and belong, and aims for an 'equalising' of opportunity in their life chances. Those involved are focused on an action agenda aimed at convincing society at large to recognise and remedy the inequality and alienation experienced. It is not the case, however, that those disadvantaged groups are passive and have things improved for them, but that they acquire the knowledge, skills and opportunity to be active ambassadors in their own, and other minorities' interest. It aims at empowerment.

3.2.4 Pragmatism

"Instead of focusing on methods, researchers emphasize the research problem and use all approaches to understand the problem" (Creswell and Creswell, 2018, p. 10). It is an adaptive ontology, almost Darwinian in overcoming obstacles to one's questions, and is favoured by mixed method researchers. These researchers subscribe to both qualitative and quantitative methods as this typically offers the maximum flexibility, "pragmatism opens the door to

multiple methods, different worldviews, and different assumptions, as well as different forms of data collection and analysis" (Creswell and Creswell, 2018, p. 11).

Pragmatism is the stance adopted in this research, and the methodology is the 'architecture' put in place to satisfactorily handle and process the available primary and secondary data, to address the research questions.

Following ontological considerations, the next section addresses epistemology and what constitutes 'acceptable' knowledge.

3.3 Epistemology

Epistemology concerns what we see as constituting acceptable *knowledge*, how it is justified, and in what ways it can be communicated to others, or simply "how we come to know what we know" (Grix, 2004, p. 63).

It sees the truth or falsity of a subject as immaterial. What matters is whether that *knowledge* is accepted and affords *meaning* and *understanding.* Differing philosophies underpin epistemology, namely positivism, interpretivism and critical realism.

3.3.1 Positivism

Positivism holds the world as existing "independent of our knowledge of it" (Grix, 2004, p. 80) and adopts the stance of the natural sciences with the observer deemed to be neutral from that being studied, and this value-free stance requires a "strictly scientific empiricist method designed to yield pure data and facts uninfluenced by human interpretation or bias" (Saunders, Lewis and Thornhill, 2016, p.136). The thrust of positivism is in *explaining* the phenomenon under study, in a cause and effect law-like relationship, giving the opportunity for replication as means of verification, and the facility for prediction. It rejects normative questions about values, trust and beliefs, preferring to deal with absolutes not impressions. This 'detached' positivist epistemology was adopted in the quantitative analysis of Phase1.

3.3.2 Interpretivism

Interpretivism (constructionism, symbolic interaction), unlike positivism, embraces uncertainty which is ever present in the social world. This uncertainty accepts that a single event or outcome, may warrant several viable interpretations, and very unusually have only one unquestionable explanation. This 'causal' linkage which Weber espoused is more suited to the positivist epistemology, though modern interpretivisim rejects this certainty. The researcher

does not exist independent of the subject, and an *understanding* of the social world is only constructed through an interaction with it. The complexity of the social world and the challenge for the researcher is to "enter the social world of the research participants and understand that world from their point of view" (Saunders, Lewis and Thornhill, 2016, p. 141). It is this hermeneutic which is central to interpretivism, when seeking to fully comprehend the social world of the subject, in their particular context and time, without trying to generalise the findings as representative of the whole population. It is particular, focused and in-depth research which relies on embracing language, culture, customs and history as the tools used to construct reality, and gives a deeper *understanding*. It was this interactionist epistemology which guided Phase 2.

3.3.3 Critical Realism

Critical realism (post-positivism, critical naturalism) sits between positivism and interpretivism, but importantly is not discrete but straddles and adopts elements of both. It is a broad research paradigm which sees merit in combining the *explanations* from positivism, with the *understanding* of interpretivism, what May (2001) saw as the 'how' and the 'why' of research. Critical realists are more attuned to Weber in that an in-depth understanding is sought, but one which also seeks to *explain* (foundationalist ontology), believing the use of a natural science approach is equally of merit as interpretivism. Saunders, Lewis and Thornhill (2016, p. 139) uses the analogy of a rugby umpire who is a direct realist giving a decision on the basis 'I give them as they are', a sort of emphatic statement; whilst a critical realist would give an umpiring decision based on 'I give it as I see them!' But being a critical realist, they would accept that the observable (their view) is probably only a part of the contributing factors affecting that judgement. The use of a television match official (rugby), or video assistant referee (football) offers a substantially greater opportunity for the critical realist to be more confident in taking account of varying perspectives on the incident, giving a more rounded critical realist view, but rather than using inductive reasoning, is likely to be more abductive. That is, abduction "involves seeking to identify the conditions that would make the phenomenon less puzzling" (Bryman and Bell, 2015, p. 27), which via numerous camera angles, and past experience, will help solve the 'puzzle' rather than relying solely on preunderstandings. Critical realists emphasise the complexity of the social world with Neuman (2000, p. 77) referring to how "the immediately perceived characteristics of objects, events, or social relations rarely reveal everything"; he advocates a 'depth-ontology', which Saunders, Lewis and Thornhill (2016) notes as a 'layered ontology'.

The above has covered the ontology, and epistemology which sequentially progresses to methodology (Grix, 2004), covering Phases 1 and 2.

3.4 Methodology

Phase 1 was quantitative and driven by the research question noted earlier. The strategy being to examine published research centred on those variables supplied by the Host and build a body of knowledge on each, such that a hypothesis could be developed and tested. An analysis within the data set itself, set against the workforce of which it formed a part, and with extant research and national and international data, afforded a comprehensive deductive comparison. SPSS 24 was the statistical package used. Not all hypotheses were supported and a detailed explanation is included later in Chapter 4.

Phase 2 was a qualitative inductive phase aiming to answer the second research question. The strategy sought, by using semi-structured interviews, was to have at least one person from each stratum in the Host employer, and then as near a 'balanced' sample from a range of other public sector bodies. In total in five categories, a minimum of fifteen interviews was anticipated; via personal contact, and some snowballing, nineteen subjects assisted. Interviews which lasted up to two hours were conducted at a time and place to suit the subject and included the workplace, a cafeteria, their home, and one via telephone. It would be impossible to claim data saturation from nineteen interviews, but in the analysis, many a common theme emerged like occasional good practice, austerity impact, disciplinary lapses, preferential treatment, poor employee relations, and the adverse legacy for the employee of the disciplinary process. Analysis of the transcripts gave an authoritative account in the subject's own words (see Chapter 5) of public sector handling of discipline, and evidenced a 'new' area of research in 'Boundary Conditions'.

The methodological choices in the individual phases of the research will be explained along with a summary combining this work.

3.5 Choosing a Suitable Paradigm

Using the natural sciences as illustrative, Bryman (1988, p.4) defines paradigms as "a cluster of beliefs and dictates which for scientists in a particular discipline influence what should be studied, how research should be done,[and] how results should be interpreted". This Kuhn (1970) referred to as 'normal science'; however, more critically, Bateson (1972, p.314) describes this as a "net—regardless of the ultimate truth or falsity—becomes self-validating".

Kuhn (1970) is credited with introducing the paradigm concept, in which he posits the evolution of research of *knowledge* as increasingly being unable to explain the *anomalies* of research findings. Incrementally these anomalies build to the point where a methodological revolution occurs and "a new paradigm emerges as ascendant and a new period of normal science sets in" (Bryman and Bell, 2015, p. 35).

 This paradigm shift can be seen in the way standardisation of the accuracy by which *distance* has been measured over millennia. Initially 'standardisation' of distance in different cultures was based on the size of body parts, the hand, foot, forearm (cubit) or the perhaps folklore of the distance from the king's nose to the tip of his outstretched thumb. In the 18th.century the metre was defined as one ten millionth of the distance from the North Pole to the equator (though it took about 75 years for this to be internationally accepted). To improve accuracy scientific interferometers were able to measure the wavelength of light (1960) and this now defined the metre. Further refinement about 25 years later saw the metre being defined by how far light travels in a fraction of a second. Thus, from body parts, to the earth, to the wavelength of light and to distance travelled by light, these methodological paradigms have revolutionised our *knowledge* of how accurately we can measure distance. Interestingly the hand is still used today for horses.

Whilst the above illustrates a seismic shift in paradigm, the end product was an *incremental* improvement in accuracy; however, on occasions, a paradigm shift can result in a major shift in our knowledge. Bean (1906) published 'evidence' supporting the supremacy of the whites over blacks by way of their cranial capacity and thereby intelligence. Yet only three years later, Mall (1909) refuted this supremacy theory using a paradigm shift of 'blind' measurement, in not knowing whether the brains being measured were male/female or black/white. These are examples of refinement in our *knowledge,* often by paradigm shifts and occasionally by 'paradigm revolution' (Benton and Craib, 2011).

The paradigm 'wars' and antipathy are on the wane and Maxcy (2003, p.79) saw the truce as "a device for the settling of battles between research purists and more practical-minded scientists". A complex middle ground now embraces qualitative and quantitative research methodologies in a variety of complex paradigms, which at times makes categorisation problematic. That is not to say that "anything goes" (Denzin and Lincoln, 2005, p.10), bricolage is not acceptable, and Seale, Gobo and Silverman (2004) are particularly critical of what they see as a tendency toward this anti-methodology. For clarity is not espoused by all researchers, and in order to keep mixed methods as inclusive as possible of the centre-ground between

positivists and constructionists, Hesse-Biber and Johnson (2013) encourage imprecision of both definitions and terminology. This imprecision is evident in the work of Johnson, Onwuegbuzie and Turner (2007) that analysed 19 variations of mixed method research, with different academics classifying a single piece of research into different paradigms.

Whilst it may mean different things to different researchers, P*ragmatism* best encapsulates this research philosophy in using a mixed method approach.

3.6 Pragmatism in this Research

Pragmatism is an adaptive and creative process which, above all else, is primarily focused on answering specific research questions (Johnson and Onwuegbuzie, 2004), which critics referred to even more strongly as a "dictatorship" (Tashakkori and Teddlie, 1998 p. 20). Biesta (2010, p.97) sees it not in terms of a Kuhn (1970) type of paradigm, or philosophy, but more as a 'tool' where "engagement in the philosophical activity should be done in order to address problems, not to build systems". It is impossible epistemologically to understand the social world unless we interact to some extent with it, and in doing so, we must initiate an iterative and reflexive process. This cognitive activity is a method of 'measuring' where our understanding or knowledge of an entity evolves, until we have a "transformation of disturbed and unsettled situations into those more controlled and more significant" (Dewey, 1929, p. 236). As noted earlier, ontologically my philosophical stance is nearer constructionism than positivism, given pragmatism in social science inquiry accepts the illusiveness of *truth*, and instead notes the findings as epistemologically '*warranted assertions'* (Dewey, 1929). Whilst not claiming to be a critical realist and be seeking societal change, my aim is directed at management and organisations that may benefit from a consideration of the impact assessment from this work to ultimately improve and/or avoid the employee disciplinary experience.

3.7 Mixed Method Research Design

Mixed methods are now accepted practice (Creswell and Plano Clark, 2018) and this is evidenced in findings by O'Cathain, Murphy and Nicholl (2007) that mixed method papers in health related matters commissioned before 1995 comprise 17%, but were at 30% for the period 2000-2004. It is now widely recognised as the third paradigm and is focused on answering the research questions posed, its orientation being towards solving practical problems in the "real world"(Feilzer, 2010, p.8).

Pragmatism was not used as "an escape route from the challenge of understanding the other philosophies" (Saunders, Lewis and Thornhill, 2016, p.143). It is a measured decision that seeks to address the issues being researched, which of necessity entail both qualitative and quantitative data, and being interpretative is ideally suited to the study of organisational life (Tashakkori and Teddlie, 2003).

A critique of the data capture methodologies is in Table 3.1, and Appendix 6 shows the overall structure of the research streams.

TABLE 3.1

Critique of Methodology		
Issue	Phase 1	Phase 2
Authorisation	CEO	Subject
Access	Host employer	Multiple employers
Time frame (approx.)	5 years	24 months
Instrument	Disciplinary case data	Semi-structured interview
Subject	Anonymised	Personal
Subject access	None	Able to withdraw
Subject wanting alterations	Unnecessary	Facility offered
Informed consent	Unnecessary	Needed
Data analysis	SPSS 24	Transcripts
Main Impact	Host employer	Academic/HR
Ethical considerations	Collective	GDPR, HRA, Personal.
Reasoning	Deductive	Inductive
Sample size	263	19
GDPR= General Data Protection Regulations 2018, HRA=Human Rights Act 1998.		

The data capture for each Phase is explained below.

3.8 Phase 1: The Disciplinary Data Survey

Obtaining reliable information on breach behaviour has troubled researchers for decades, leading to the bulk of studies focusing on general workplace surveys and in large part covering *perceived* rather than *actual* breaches (Robinson and Bennett, 1995). Their methodologies usually comprising self-reports, vignettes, interviews, and laboratory studies have largely addressed *low level* breaches. However, this research specifically focused on alleged formal breach of contract issues at the upper end of the seriousness continuum. I see it as almost unique given the difficulty academia has experienced in gaining access to such data. Gaining

the cooperation of the employer was enabled by giving assurance that the organisation would not be identified and all cases would remain anonymous.

Following guidance from my Director of studies I was apprised of the deductive nature of quantitative research, and an extensive literature review shaped several hypotheses (Chapter 2.15, Table 2.7) against which the case data could be analysed (Hafidz , Hoesni and Fatimah, 2012: Wanous, 1992: Hansen, 2003: Eagly, 1987: Kohlberg and Hersh, 1977: Mastrangelo, Everton and Jolton, 2006: Liao, Joshi and Chuang,2004: Hirschman,1970: along with different ONS and international crime data). This laid the foundations for the justice and fairness research and the resulting data were analysed and tested against the various hypotheses using SPSS 24.

Sample size is crucial in ensuring it reflects the population from which it is drawn, and in negotiations with the employer, I was keen to avoid possible errors associated with such methods as random, systematic random, stratified, and cluster sampling (Sarantakos, 2005); as well as the temptation of "doing what is fast and convenient…..Convenience sampling is neither purposeful or strategic" (Patton, 2002 pp.241-242). Ultimately, the Human Resource Management (HRM) staff agreed to supply from case files and personnel records five years' of data, the independent variables can be seen at Appendix 7. There was no 'interpretation' of files, and whilst employees in transgressing may commit more than one offence staff only recorded the most serious 'headline' alleged incident. Given one disciplinary investigation had registered 22 offences, the possible richness of a 'bucket list' approach (Robison and Bennett,1995) was tempting but sacrificed in the interests of concentrating on the *seriousness* of offence. The protracted nature of the survey being longitudinal ensured any annual fluctuations were accommodated. Having had an official role with this public sector body for a number of years either as a committee member, chair, or consultant, it was inevitable that I knew a number of senior staff; and so as to prevent my indirectly identifying an employee from the various demographic data, HRM were asked to exclude any such case. Therefore, I cannot guarantee that 100% of cases were included, though it is expected that any omissions of this kind are minimal. In all, 263 investigations were recorded between 2009 and 2013.

Typical research draws a sample and tests within this sample for correlation coefficients, assessing the relationship of dependent and independent variables to ascertain the extent to which variations in the former are accounted for by the contribution of the latter. With this research, it was possible to extend the within-data analysis by HRM furnishing certain comparative workforce data of the population from which these cases were drawn (the

workforce N= 3,672), allowing a within (data) and without (workforce) comparison. The question of generalisability of these findings to the wider working population posed a problem. Being unable to identify other employers who publish disciplinary data, this research focused attention on professional bodies, which conditionally afford accreditation to their members but like any employer, must occasionally invoke disciplinary procedures where infractions occur. A combination of annual reports, research papers, personal enquiry, and freedom of information requests realised fifteen organisations comprising over 2.2million members. This allowed an external comparison between the professions and the Host employer on gender. Additionally, UK and international crime records similarly permitted a gender and age comparison. Whilst not allowing a claim of true generalisability this did go some way towards examining differing organisations beyond homogeneity towards heterogeneity (Bryman and Bell, 2015).

From the variables analysed those of *age, tenure, gender*, and *absence* proved meaningful in identifying factors, which though not *causal*, were strongly correlated with propensity to breach behaviour. Feedback on the research findings (Oct. 2016) to the Host organisation senior HRM managers, afforded the employer the opportunity to gauge the impact assessment for themselves.

The qualitative Phase 2 followed seeking to establish, by interview, how all tiers involved view justice/fairness in the workplace regarding CWB disciplinary investigation.

3.9 Phase 2 Interviews

The literature review illustrated that despite extensive legislation, case law, and Acas guidance, justice and fairness in the workplace cannot be taken as a 'given'. This phase of research sought to furnish first-hand, subject accounts by those actively involved.

At least three subjects from each stratum of the disciplinary process were interviewed (N=19), employees, managers, HR staff, elected politicians, and trade union officials (Appendix 8). Given these different perspectives, the resulting transcripts contained what some might see as multiple *realities, t*hough that is to use an objective term more suited to positivism, and a better nuanced *perspective* is preferred (Phillips and Burbules, 2000), or *authentic* as (Rock, 1979) termed it.

Ideally, I would have preferred an ethnographic involvement to observe proceedings, and have access to participants throughout a case. However, this proved impossible to arrange and such

a valuable insight was impractical, for as Strong (1980 p. 27) notes "No form of interview study however devious or informal, can stand as an adequate substitute for observational data". Interviews handled correctly have the potential to produce rich qualitative data, " …the most powerful qualitative research technique" but "you can't assume that a person's words are a transparent window. They're like a smoky veiled, dirty window that you're trying to see through" (Roulston, 2014, p.297).

The semi-structured interview format (Appendix 9), using open-ended questions encouraged subject participation and elaboration. Using this format, the process was much less rigid than being *structured,* and open questions lessened the risk of socially desirable answers. Certainly, there is a structure and a range of topics/questions, but greater licence is given to the interviewee to embellish, go off at tangents, and express themselves through anecdotes, stories and the like.

An "active" empathetic role is demanded of the interviewer (Holstein and Gubrium, 1995) to ensure an inquisitive and exploratory exchange takes place; *probing* is key, and was used extensively to try and clear the "smoky, veiled window" mentioned above. Throughout, the aim was to create "a suitably relaxed and encouraging relationship…The interviewer must communicate trust, reassurance and, even, likeableness" (Ackroyd and Hughes, 1992, p.108). A semi-structured format was maintained, but varied slightly with each strata interviewed so as to be meaningful.

In all cases, digital audio recording was used; this greatly facilitated the flow of conversation as opposed to contemporaneous methods. As a contingency at each interview, two recorders were used; these had directional microphones which allowed them to be placed in a discrete position, between, but to one side of the participants so as not to be a distraction. Having a long life of several hours recording and always being fully charged, they proved eminently suitable for typically up to two hours of discussion.

To be fruitful, an interview has to avoid being seen as an inquisition, and has to be centred around an exchange based on trust, reciprocity, understanding, tolerance and a willingness to try and appreciate the interviewee's perspective; ideally a "methodology of friendship" (Kong, Mahoney and Plummer, 2001, p.254). Only in doing so will the exchanges ensure participants are doing analysis, and both parties are engaged (and collaborating in) making meaning and producing knowledge. This stance was achieved by my having known a number of the

interviewees for some years, encountered others in the course of public service and having previously worked in the same organisation with two others.

However, one group's cooperation proved particularly difficult to gain. Trade union officials were expected to be only too willing to discuss matters, but even with assurances of anonymity, it took a considerable time locally, regionally and nationally to accomplish, which as a past trade union representative, I found disappointing. In retrospect, it could have been that my powers of persuasion were deficient, and/or, that being from a senior management position, with many political connections, an inherent distrust played a part in it being seen as a project driven by a management agenda rather than one in the interests of the workforce at large. They possibly feared something of an 'over-reaction trap' (Levitt and March, 1988) fostering excessive curtailment of freedoms of the individual as a means of control.

Before commencing each interview, a wide-ranging general discussion took place so as to catch up with those already known, or to get to know those who were new. This ice-breaker was invaluable in realising someone supported the same football club as myself, came from within a few miles of my original home, or that we had common backgrounds, interests, or acquaintances. Douglas (1985) referred to this as a sort of quid pro quo of openness and an act of good faith to achieve the utmost cooperation. Banister (1999) talks of not being just an observer of the respondents but ultimately oneself; she was able to juxtapose the liminality of her life experience to more fully understand that of the subject. My working life has seen me in roles as an employee, trade union representative, HR staff, manager, consultant and Chair of political panels adjudicating on Appeals; and whilst never having actually been disciplined, I was, nonetheless, the subject of an investigation. These, along with a host of associated experiences often connected with disciplinaries such as familial and health impacts, threats of industrial action, impatience of managers to *resolve* matters (a code by some for dismissal!), political, press and TV interference, all of which I feel equipped me well for being reflexive and more able to 'understand' the respondents' position at whatever level in the organisation. This hermeneutic advantage is what Pinar (1994) saw as bringing the past into the present, which Hertz (1997, p. viii.) expressed as having "an ongoing conversation about experience while simultaneously living in the moment".

Two bi-annual employee surveys provided useful comparison data in setting the organisational context by which to interpret the Host employer interviews. Several models of justice/fairness research aided this comparative work including, fairness heuristic theory (Lind, 2001), psychological contract breach (Rousseau, 1995), group value mode (Tyler and Lind, 1992), and

multi-foci justice/fairness (Lavelle et al., 2007). The number of interviews being small meant the use of Nvivo was not warranted, and instead narrative analysis was used (Saunders, Lewis and Thornhill, 2016). This is not as fine as grounded theory or discourse analysis, where coding and linguistic interpretation have a definite constructivist approach. Instead, it concentrates on the narrative form being *preserved*; there was no deconstruction.

3.10 Ethical Considerations

Ethics refers to "the standards of behaviour that guide your conduct in relation to the rights of those who become the subject of your work, or are affected by it" (Saunders, Lewis and Thornhill. 2016, p.239). My conduct during this study has been guided by my personal values, oversight by the Review Team, NTU research protocols, adherence to the CIPD Code of Ethics, and as a statuary post holder and consultant, compliance with the Localism Act (2011) and the public body's respective codes of conduct.

Having submitted a detailed progress report, and forward plan for this research, the University Research Ethics Committee gave approval in 2012 for the study and transfer from MPhil to PhD. A condition of approval was that a re-submission would be necessary where material changes occurred; but whilst elements of the research have varied slightly, and the expected time scale extended due to a sabbatical, these have been more a scheduling issue, thus secondary approval has been unwarranted.

In self-funding the research, I have been unfettered by any organisational, political or corporate interests (Benton and Craib, 2011), and as the study is intended to contribute to knowledge and inform HRM rather than revolutionising it, I have not been focused on radical societal change like the critical realists. The methodology adopted ensured the GDPR (2018) and the key principles therein were observed. Only relevant information that was not excessive was captured, personal data were only analysed for the specified purposes of the research, and was not further processed or handed onto other parties. Data set statistics supplied by the Host organisation were anonymised and there was no access to the subject or their personnel files.

Walker, Hoggart and Hamilton, (2008) suggest that informed consent is an illusionary process because respondents may not absorb and fully comprehend the explanation presented, and Sin (2005) saw it as a tick-box approach. To counter this, participants were verbally informed at the outset, including being advised that they should refrain from: i) divulging the identity of anyone and ii) particularly omit any illegal conduct as I would be duty bound to report it.

Having answered any questions only then was the subject presented with the written form of consent (Appendix 10), which once read, all agreed to sign. In this respect my stance was at odds with Gans (1962, p. 44).

> "If the researcher is completely honest with people about his activities, they will try to hide actions and attitudes they consider undesirable, and so will be dishonest. Consequently, the researcher must be dishonest to get honest data".

Subjects had the opportunity to refuse to answer any questions, withdraw from the interview at any point, and/or modify their contribution or request it be excluded at any stage up to the point the data was incorporated into the data set. All subjects received the researcher's contact details but no such requests for extraction were received. One interviewee had Asperger syndrome with the absence of a 'filter', which resulted in them having no inhibitions about being honest and expressing their opinions about others. Potentially this could have been a very difficult interview but, in fact, turned out to be one of the more interesting ones given the 'honest' opinions expressed.

In arranging interviews, subjects were invited, should they so wish, to be accompanied by a person of their choosing. Additionally, arrangements were made with the Host organisation that a welfare officer would both accompany anyone requesting support, and if preferred, arrange discrete off-site interview facilities. Interviewees were presented with a £10 Marks and Spencer voucher at the conclusion of the interview, although they were unaware of this at the outset. This position was adopted as both a mark of gratitude for their cooperation, and to ensure their involvement was of their own volition without any monetary inducement.

The anonymity of the Host organisation in Phase 1.0 was further protected by using workforce data which related only to a part of a much larger public body. It should therefore be impossible to deduce, from a workforce population of 3,672, the Host's identity.

Additionally, other security measures included password protected access to computing, back-up storage on site, encrypted storage off-site, and lockable retention of hard copy materials. Audio recordings were only handled by the researcher; they will be destroyed prior to archiving along with such other material as university protocol dictates and in accordance with best practice contained in "The Concordat to support research integrity" (UUK, 2012). All written material submitted to the university, including this thesis, have been open to being scrutinised for plagiarism using the computer programme Turnitin.

3.11 Methodology Summary

I believe the antipathy between positivists and constructionists warrants being confined to history. Mixed method research can rightly claim an alternative paradigm. Long before the 'wars' broke out between these two philosophies Giambattista Vico (1668-1744) advocated the use of multiple perspectives in inquiry; and more recently Fry (1934, p. 136) noted "Time and again the really creative part of social inquiry is deciding how different approaches should be combined to yield the most fruitful results". Mixed method research has realised that creativity which is exemplified in my pragmatic approach, and I now turn to the longitudinal disciplinary case analysis.

4. Phase 1: Disciplinary Case Findings

4.1 Introduction

This section analyses the findings of the longitudinal study of disciplinary cases handled by the Host employer. It seeks to identify any relationship of the case demographics and the workforce as a whole, and uses, where appropriate, other reference sources such as criminal records, professional body data, and Office for National Statistics (ONS) records. The premise on which this is based is that there will be variability within some factors setting the sample of disciplined employees apart from the population from which it is drawn.

4.2 Host Employer

The Host employer has experienced a contraction of services during the recession due to government grant cut-backs, leading to considerable restructuring, joint working, business unit trading and an extensive (for the public sector) redundancy programme. An outline profile of the workforce over the five-year period shows them having an average workforce of: 3672 employees (72% female, 28% male), 2.23% black and minority ethnicity (BME), 4.62% disabled, 49% full time, 51% part time (Appendix 11 shows a more detailed breakdown of the workforce over the 2009/10 to 2013/14 years).

4.3 Data Capture

Historically, the HR section administered, investigated and "prosecuted" all disciplinary cases, but with reduced numbers of central staff, a process of devolution to departments is well established. The administration of justice is therefore a combined responsibility between headquarters HR and line managers, with HR acting in an advisory capacity only. Despite the devolution, central HR remains the repository for disciplinary records, and it is from their records that an anonymised data set of breaches was compiled. Appendix 12 gives a summary of the actual data set figures. A breach of contract was not always the result of any single transgression, and in categorising the breach, HR recorded only the *major* and therefore most serious offence as the breach. Any subsequent disciplinary hearing will, however, have taken all matters into account not just the headline offence. A summary of these 'headline' cases can be seen in Appendix 13, highlighting the type of breach and the seriousness (or not), of the outcome for the employee. It should be noted that whilst the data set comprises 263 cases, not all variables return a count of 263 given there are isolated missing cells in the data set.

4.4 'Within' Data Statistical Comparisons

SPSS 24 was used to compare the variables and all bi-variate correlations are in Appendix 14. This research is not designed to seek *causal* explanations but there are certain within data correlations that are worthy of mention and will be explored in the data analysis. A high negative correlation exists between Pay and Full/Part Time (-.580**) with both males and females having the same direction (-.487**, -.683**). This commonality of direction by way of gender is a feature of other medium correlations, Age and Tenure (.452**), Tenure and Trade Union (-.380**), Tenure and Pay (.334**). By contrast other variables show a conflicting male : female correlation with one gender being positive and the other negative, Age and Full/Part Time (.028), Pay and Trade Union (-.197**), Disciplinary Finding and Occasions of Absence (.021). A positive relationship is where one variable increases at the same time as the other, whereas a negative correlation is where one variable increases and the other decreases.

Research typically aims to deductively examine a range of variables expected to have an impact on the chosen dependent variable, to see if the original hypothesis holds. In this study the chosen independent demographic variables (Appendix 7) were thought to possibly influence the dependent variable, the seriousness of the 'Disciplinary Outcome', which would culminate in any one of nine different findings from 'No Case to Answer' through to 'Retired Resigned' (Appendix 13).

The independent samples T-test; is used to determine the relationship, and compares the mean score, on a *continuous* variable [the disciplinary outcome levels 1-9], for *two* different groups of participants [eg. male/ female, part time/ full/time etc.] Table 4.1 below shows the various comparisons.

TABLE 4.1

T-Tests for RELATIONSHIP of DEPENDENT and INDEPENDENT VARIABLES		
INDEPENDENT VARIABLES (IV)	**Eta-Squared value**	**% variance explained by (IV)**
Male & Female	0.0040	0.40%
Manual/Craft & Professional	0.0237	2.37%
British/Irish & Other	0.0006	0.06%
Able-Bodied & Disabled	0.0227	2.27%
T.U. Member & Not T. U. Member	0.0017	0.17%
Part Time & Full Time	0.0099	0.99%
NB. Cohen (1988, pp. 284-7) threshold values for Eta-Squared:-		
SMALL = 0.01	MEDIUM =0.06	LARGE = 0.14

Table 4.1 above illustrates that if my research were solely directed at explaining the different levels of disciplinary outcomes, it would have been left wanting. The Eta-squared values with the exception of 'Manual/Craft and Professional', and 'Able-bodied and Disabled', are trivial on the Cohen classification, and even these two categories only contribute a 'small' effect, well below the threshold that would classify them as 'medium'. This 'within' data analysis is left wanting. The following therefore explores what relationship, if any, there exists between the data set and the workforce from which it arises.

4.5 Hypotheses Testing

4.5.1 H$_1$: Job Tenure and Age Will be Positively Correlated for Breach Employees

As age increases employees tend to remain in their jobs longer in part due to consolidating careers, and familial responsibilities; meanwhile, in contrast, young workers (16-24 years) move jobs almost twice as often as older employees (Macaulay, 2003), and men more frequently than women (CIPD, 2013). There should therefore be a positive relationship between age and tenure. Charts 4.7 and 4.8 below (data set and workforce scatterplots) affirm the similarity of the two key continuous variables, the only slight variance being a marginally lower intercept and steeper slope in the data set (Chart 4.7).

Chart 4.7 Data Set Y=35.96 + 0.06X

H2 AGE v. TENURE SCATTERPLOT (N=263)

R^2 Linear = 0.204

y=35.96+0.06*x

Subject's age at time of alleged breach

Months employed at time of alleged breach
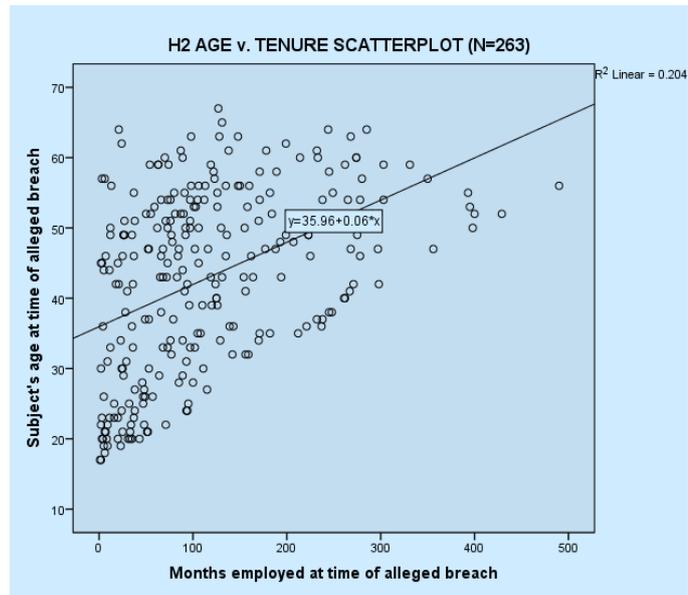
CHART 4.8 Workforce Y= 39.78 +0.04X

WORKFORCE AGE v. TENURE (N=3587)

R^2 Linear = 0.191

y=39.78+0.04*x

Employee Age (veras)

Months Employed

The data set in having a very close intercept and slope compared to the workforce, gives validity that the sample and can be seen as representative of the population from which it is drawn making further analysis possible, and I now consider the case of tenure in these hypothesis.

4.5.2 H$_2$: Job Tenure and Breach are Negatively Correlated or will be of a Lesser Tariff as Tenure Increases

Although the above data set and workforce scatterplots provide a useful general overview, it is important to consider the two in detail to assess if the sample can be seen as statistically significant in representing the workforce across the whole age range. Shown below is Chart 4.9, where, for illustrative purposes, the workforce has been divided into approximately equal groupings by way of tenure to give an almost horizontal graph, and the data set superimposed. This highlights a significant difference between the *expected* (workforce) and *observed (data set)*, which, given the data set contains 100% of cases, cannot be attributed to sampling error.

CHART 4.9

Tenure of Workforce (N= 3587) and Data Set (N=263) Cases Compared (Chi Square = 39.36, @ 7 df, p = 0.00000167)

TENURE (Months)	0-35	36-62	63-93	94-123	124-160	161-223	224-294	295-561
Data Set Cases Observed	61	28	45	32	29	25	29	14
Workforce Cases Expected	33.77	33.16	33.11	32.95	33.03	32.95	32.88	31.14
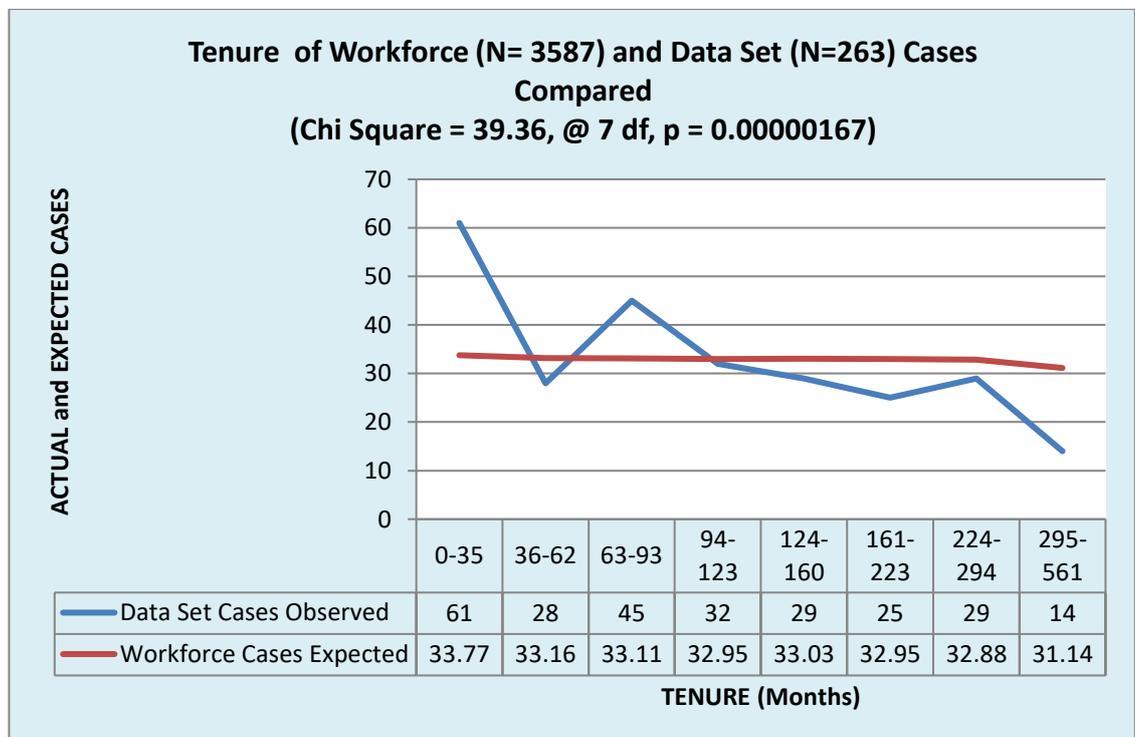
Whilst some variations of data set figures from population are to be expected, the above highlights three tenure categories which are more than 30% outside the population mean: 'new' entrants 0-35 months, 'established' employees 63-93 months, and 'veterans' 295-561 months. I have used these categories to highlight the differences rather than relying on a basic conception of tenure as being 'new' up to 3 years, with all others 'veterans' (Morrison and Vancouver, 1997). Without the benefit of psychological profiling and or interviews with those concerned, I can only speculate that the first two categories of excess (0-35, 63-93), may be due to a combination of factors such as inadequate 'sheep dip' induction, and weak social

bonding within groups; and the under-representation of the 'veterans' (295-561) possibly reflects their more conformist characteristic. However, the statistical analysis shows the distribution to be one that is unlikely to be put down to pure chance, with the 'p' value being well below the 0.05 level.

New entrants to an organisation take time to undergo induction, familiarise themselves with the work, colleagues, systems, and expectations of the employer (Van Maanen and Schein, 1979), and it can take a considerable time before this heightened period of uncertainty at the outset is dissipated such that the employee is fully socialised (Wanous, 1992). Timescales can vary enormously, but the longer the employee is in post, generally the more conversant they become with all the requirements of working with that employer, and their age clearly also increases, which Kohlberg and Hersch (1977) would suggest might lead to more considered and ethical judgements and therefore behaviour. However, exceptions to this positive ethical *judgement : behaviour* link can be found in turbulent times (Morris et al., 1996), but notwithstanding this, in general, with increased tenure, less counterproductive work behaviours (CWB's) should arise, or at least if they do arise, they should be of a less serious nature.

Earlier Chart 4.9 showed the data set distribution based on the horizontal (X) axis split 'evenly' into bandings of about 460 employees/category (3587 in total) giving a 'straight' line graph. As a secondary check, the same data *observed* and *expected* is analysed in Table 4.2 (below) this time in periods of 6-year intervals. It shows that the distribution of cases is markedly displaced from that to be expected from the workforce composition, clearly placing tenure as being associated with having considerable variability for propensity to CWB. However, this is not reflected throughout the tenure range (with 0-74 months over-represented and 289-561 months under-represented), each contributing around 45% to the variance in Chi Square value (Appendix 15 contains the corresponding chart). This illustrates an excess of disciplinary cases for tenure up to 6 years of service, with a break-even point at around 12 years, and thereafter a decline in numbers, which supports the initial aspect of H_2, of a general decline in offending as the years of service increase. Whether it is the roughly 8-year threshold of Chart 4.9 above, or the 6-year threshold of Table 4.2, this group of short service employees warrant added support to steer them away from a propensity to commit CWB. Clearly CWB has a negative relationship with tenure.

TABLE 4.2

Workforce v Data Set Tenure Distribution (Chi Square = 25.56, @ 4df, p = 0.00003871)			
Tenure (Months)	**Approximate Years**	**Data Set (Observed Cases)**	**Workforce (Expected Cases)**
0-74	**0-6**	108	77.56
75-144	**6-12**	77	77.53
145-216	**12-18**	32	42.90
217-288	**18-24**	31	32.95
289-561	**24-46**	15	34.14
Totals		263	262.98

The remaining part of Hypothesis H_2 also raises the question of whether or not the seriousness of the breach is negatively related to tenure, the assumption being that the more the employee is socialised and integrated into the organisation, the more they will be minded to avoid a transgression, and thus avoid a loss of all that employment, both for personal self-identity and familial considerations, affords.

Shown below (Chart 4.10) gives the progressive seriousness of the disciplinary findings along with the average tenure of cases in each group, compared to the workforce mean (150 months). Statistically satisfactory numbers of cases appeared in each category from NCA to Dismissal (31, 65, 32, 27, 26, and 75 respectively). The data set of 263 has been reduced to 257 due to 1 case being unresolved, and 5 case outcomes using Settlement Agreements where a "negotiated" rather than an imposed outcome, finalised the employee's departure.

CHART 4.10
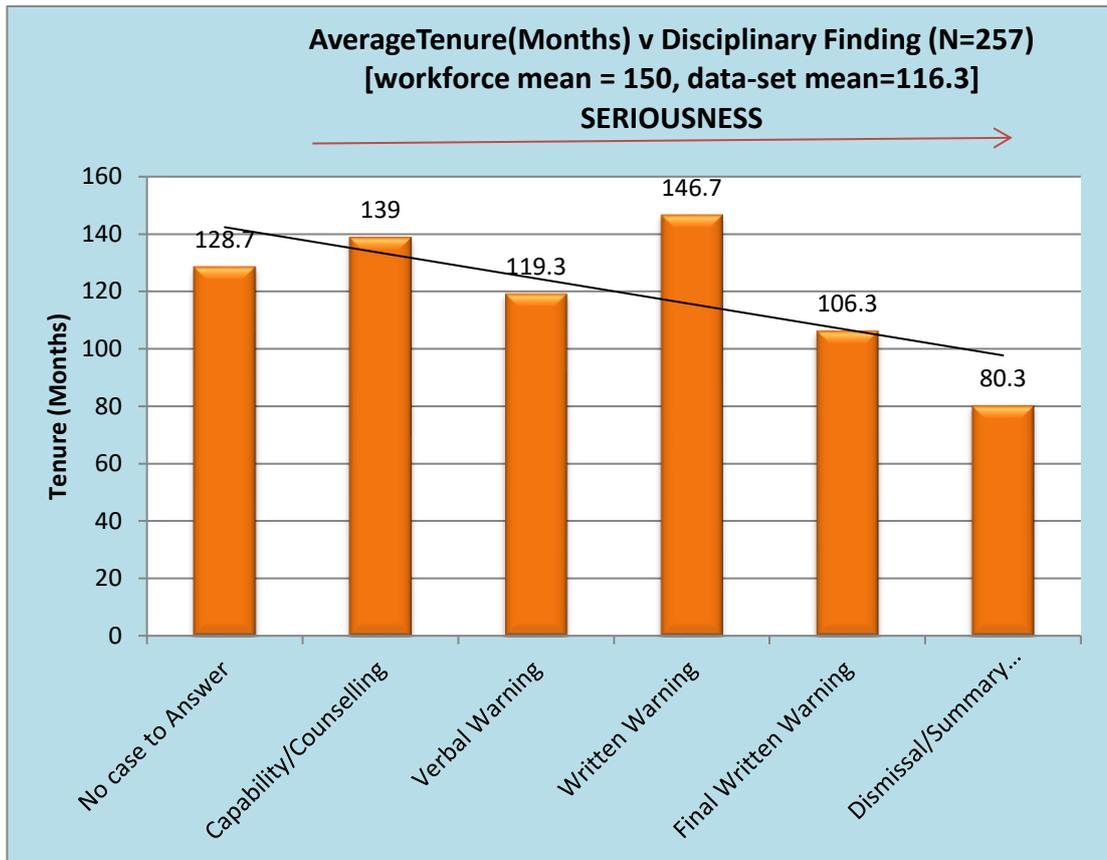
As the seriousness of breach increases, the mean tenure is seen to decreases, a finding that is consistent for both men and women. I have no comparative data with which to test this distribution, however, it would be an exceptional sampling error to find that extracting 257 cases from the workforce produced a mean of 116.3 months, which is appreciably below the workforce mean of 150 months. Even more unusual would be that each category mean within that distribution was below 150 months. I have therefore tentatively to conclude that seriousness of breach and tenure are negatively related. The above figures are *means* and whilst these are consistently below the workforce figure (150 months), the range of tenure in each sanction varies widely (NCA=2-395, C/C=2-429, VW=21-298, WW=5-400, FWW=1-490, and D, SD, and R/R=2-298).

The different gender composition for each offence is given in Table 4.3 below.

TABLE 4.3

GENDER COMPOSITION and TENURE WITH EACH TYPE OF DISCIPLINARY OUTCOME (N=257 Cases)						
	No Case to Answer	Counselling/ Capability	Verbal Warning	Written Warning	Final Written Warning	Dismissal, Summary Dismissal, Retired/ Resigned
Male	24	36	27	22	21	43
Female	8	29	5	5	5	32
Total	32	65	32	27	26	75
Average Tenure(Months)	128.7	139	119.3	146.7	106.3	80.3
NB. Workforce mean tenure (months), Males =168, Females = 142, Overall = 150.						

Looking critically at the above H_2 hypothesis, although the trend line (Chart4.10) shows a decline as the seriousness of offence increases, it may be argued that the four outcomes up to 'Written Warnings' are not too dissimilar from the overall mean tenure of 150 months; indeed the 'Written Warning' mean is 146.7 months, and even though all categories are below the workforce average, it still possibly casts doubt on the hypothesis.

In plotting the number of cases against the quartile distribution of tenure in the data set a dual picture emerges (Chart 4.11 below). This clearly suggests a contrasting approach as to the number of cases as tenure increases, for there appears the existence of a dichotomous mind-set. *Minor offences* steadily rise as tenure increases, possibly indicating a degree of indifference and detachment on the part of the longer serving employee, a preparedness to 'express' themselves, allowing oneself a degree of impulsivity, to take liberties. The assumption being that their position will not be at risk, it may be a calculative rational choice theory judgement (Clark and Cornish, 2017) which is utilitarian. For *Major offences,* by contrast, which possibly lead to dismissal, a more self-regulatory concept of control theory (Hirschi, 2017) may be more applicable, because people generally do not aim to be dismissed. Though people having a psychological disposition of low self-control "engage in noncriminal acts equivalent to crime" (Gottfredson and Hirschi, 1990, p. 92) as well as crime itself, and suffer from a reduced capacity to fully comprehend the impact, they can be reckless. However, if this were the case, major offences would occur throughout the tenure range, instead of falling away. It would seem, as a result, that as tenure increases, and unavoidably age as well,

Kohlberg and Hersch's (1977) ethical maturation may counter the 'pleasure seeking' and immediacy of succumbing to these serious transgressions.

CHART 4.11

Chart Title: Tenure Quartile v. Investigations(n=257)
(Minor= NCA,C/C, VW, WW)
(Major = FWW,Dis, Sum. Dis, Ret/Res.)

Y-axis: Number of Investigations
X-axis: Tenure Quartiles (months)

	1-37 months	38-92 months	93-170 months	171-490 months
MINOR CASES	27	39	44	48
MAJOR CASES	39	25	21	14
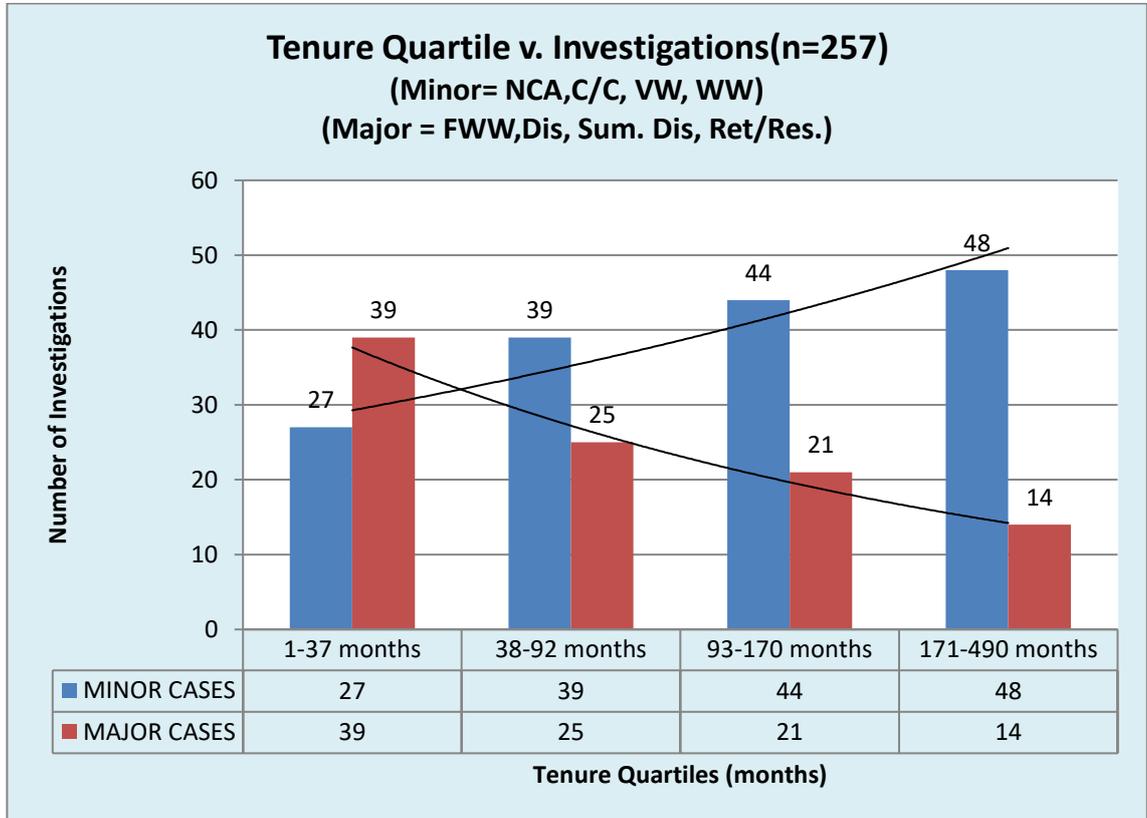
What is clear in analysing the data in these two quite different ways (Chart 4.10 and 4.11) above, is that both point to greater tenure having a negative relationship to seriousness of offending. Chart 4.10 showing a 'step-wise' transition between *'Minor'* and *'Major'*, because it cannot be assumed that across the *whole* range of tenure that offences will decline. Being critical it could be that plotting the first four categories (NCA, C/C, VW, and WW) not a slope, but a straight more horizontal line would be appropriate, though still well below the workforce mean, but still showing a distribution comprising two parts, thus the step-wise' analogy. However, by contrast the distribution in Chart 4.11 offers a more gradual transition between the two categories as the trajectories diverge. Analysing the quartile distribution in Chart 4.11, *if* there were no difference in offending between the shorter and longer tenure groupings, the quartile figures would be comparable in each category, which they are not. With increased tenure there does appear to be a drop-off in propensity to commit *'Major'* offences, and conversely an increase in 'Minor' transgressions. A divergent distribution of this kind gives a Chi Square value of 32.03, @ 7df, with p <<0.0005, indicating a strong significant difference

from that expected by random sampling. In examining the *'Minor'* group, the numbers increase and almost double over the tenure range (27 – 48 cases), whilst by comparison the *'Major'* group falls away (39-14 cases) to about a third over this range of tenures. The statistical significance of the 'p' value being so low is due mostly to the *'Major'* cases falling away so sharply, given the *'Minor'* group proved to be only just significant with a 'p' value of 0.05. I have to conclude from this that the second part of hypothesis H_2 is confirmed in that as tenure increases the tendency to commit serious breaches of conduct does decrease. This trade-off of serious offending in favour of lower tariff breaches suggests some sort of 'calculative' decision making, and would warrant further research to better understand this inherent resolution of individual conflict in long tenured employees. Nonetheless, as Chart 4.2 above shows, despite this trade-off, all the while as tenure increases the rate of offending does indeed decline. Thus both aspects of the hypothesis are substantiated.

Chart 4.10 was an aggregated analysis of the data set tenure means by way of each disciplinary outcome. Chart 4.11 then used a quartile differentiation of the data set to show the *'Minor'* and *'Major'* classifications which emerged from Chart 4.10. A third and final comparison is now made with particular reference to the workforce average tenure (150 months), highlighting the cases above and below this threshold (Table 4.4 below), again split into *'Minor'* and *'Major'* (akin to Robinson and Bennett, 1995). From this concluding analysis it again establishes that as tenure increases, the seriousness of offence tends to reduce.

TABLE 4.4

Outcome Distribution as Tenure Increases (N = 257)								
Tenure (Workforce Mean = 150 months)	Minor Offences				Major Offences			
	NCA	C/C	VW	WW	FWW	D	SD	R/R
Cases **Below** Workforce Mean	20	42	23	15	21	25	4	34
	100				84			
Cases **Above** Workforce Mean	12	23	9	12	5	4	1	7
	56				17			
NB. If tenure had no effect on the distribution, there would be approximately equal number of cases above and below the mean in both 'Minor' and 'Major' categories, which is not the case.								

Table 4.4 demonstrates that for offences below the workforce mean, cases fall into the *'Minor'* and *'Major'* categories (100 : 84 respectively), that is, even though reduced in numbers the *'Major'* cases still constitute 84% of the *'Minor'* offences, or expressed differently have been reduced by 16% (100 to 84). Contrasting this in the longer tenure category above the workforce mean, the *'Minor'* offences are now lower at 56 cases compared to 100, with *'Major'* offences down to 17 or about 30% of the 'Minor' cases, which is equivalent to a 70% fall from the 56 figure.

Hypothesis H_2 is therefore supported in that a negative relationship exhibits between propensity to commit CWB and tenure. In addition by aggregated tenure means (Chart 4.10), by quartile distributions (Chart 4.11), and by workforce comparison (Table 4.4) the seriousness of offending also reduces as tenure increases. Thus both aspects of the hypothesis H_2 are supported.

The increasing use of flexible working, part-time and zero hours contracts and the mobility of labour, should tend to lower the tenure profile ; though this may well be countered by older employees having to work longer due to the upward movement of the retirement age, with many working past this watershed to try and maintain their standard of living. Those working aged 65 and over have doubled in the last decade alone (Padilla, 2011), and with it there are pressures for the older worker comprising not only *wealth*, but also *health* and *caring* responsibilities. The tenure profile of the UK workforce, including this public sector body, is therefore likely to change over the next decade. I now turn to Hypothesis H_3.

4.5.3 H_3: Manual/Craft Employees will be more prone to a Breach than Administrative/Professional

The work of Ford and Schroeder (2011) highlights the preeminent importance of education in adolescents and young adults in moving them away from offending behaviour. This was seen to be the case over and above other major life course events like marriage and employment, and particularly so for individuals with a record of delinquency. In an operational setting Minton (2011) observed that higher educated employees committed fewer offences, and had fewer complaints made against them. The premise of this hypothesis is that Administrative/Professional workers will tend to be the higher educated of the two groups and less deviant.

Unfortunately, the Host employer was unable to furnish summative workforce data for comparison so only *within* data set results by gender can be shown. A detailed breakdown of type of offence is shown in Appendix 16, the key points being:-

Attendance:- Manual/Craft employees are almost three times as likely to breach attendance rules compared to Admin/Professional staff. Possibly the Admin/Professional group reflects a greater societal conformity, and professional membership compliance which accompanies increased educational exposure 'high' status roles at work and in society (Minton, 2011: Deshpande, 1997). These figures relate to disciplinary investigations, and indicate Manual/Craft as a group compared to Admin/Professional, are more inclined to be associated with absence which is considered by the Host to be questionable given their conduct warranted investigating more often and may indicate possibly a lower degree of 'attachment' to the organisation. No gender difference is evident regarding overall days absent, though mean absence levels for Manual/Craft are 60% higher, possibly reflecting what might be muscular skeletal injuries commensurate with the increased physical nature of their work. Absence is addressed later at H_9.

Criminal:-Manual/Craft were twice as likely as Admin/Professional staff to commit offences which could be prosecuted via the police and Crown Prosecution Service. Males commit double the breaches compared to females which will be reflected in H_4 below.

IT Misuse:- No offences of this type were committed by Manual/ Craft employees probably being a question of access to computer facilities which is almost exclusively an Admin/Professional preserve. As for gender, females commit around double the offences compared to males, again possibly due to the numbers of females to males having access to IT facilities and it being a predominantly female workforce (72%).

Health and Safety:-Manual/Craft employee work traditionally involves exposure to physical activities, and machinery, often in environments where risk assessments are more of a prerequisite. These workers compared to Admin./Professional employees were more likely to breach health and safety provisions by about a factor of two. Males committing about double the offences compared to females.

Dereliction of Duty stands out in that almost three quarters of the workforce are female, yet on Dereliction in the data set they comprised only about a quarter, suggesting males whether Man/Craft or Admin/ Prof, are the more inclined to dereliction offences. Chi Square 71.28, @1df, p = 0. This gender element will be addressed fully in the next section.

For all other categories, Interpersonal, Sexual, and Theft/Defrauding, there was no appreciable difference between Manual/ Craft and Admin/ Professional employees, and for some, the cell counts were considered too low to be confident in any calculation. Overall, in the absence of authoritative workforce comparison data Hypothesis H_3 cannot be verified.

4.5.4 H₄: Females will be Under-Represented in Breach Cases

Being a female dominated workplace it would be expected that the data set of breaches might closely reflect this; however, the workforce composition and data set figures are vastly different by way of gender (Table 4.5 below). This shows cases in the data set for males (67.3%), and females (32.7%) suggesting an offending rate of about 2:1; this does not accord with the profile of the workforce, which, when adjusted reflecting the predominantly female composition gives a ratio/1,000 employees of male : female offending of 5.4 : 1. Gender clearly is a factor in this Host employer's disciplinary management of the workforce, and its subsequent administration of workplace justice.

Table 4.5

GENDER COMPOSITION WORKFORCE v. DATA SET		
	Workforce (N = 3672)	**Data Set (N = 263)**
MALES	27.6%	67.3%
FEMALES	72.4%	32.7%

Being longitudinal over a five-year period, such a disparity cannot be explained by sampling error (Chi Square = 205.09, @ 1df, p = 0). It is clear that gender, at least for this employer, plays a fundamental part in breach cases. Even with such a result being statistically categorical it was important to check on the gender profile in each of the five years studied to rule out aberrations. Chart 4.12 below sets out the longitudinal profile with a consistent excess of male offenders in each year, reinforcing the consistency and validity of the male in offending.

CHART 4.12

Percentage Investigations/year by Gender
(Chi Square 219.98,@9df,p=0,)
(N=263 cases yr.1 to 5 = 47,47,54,57,58)
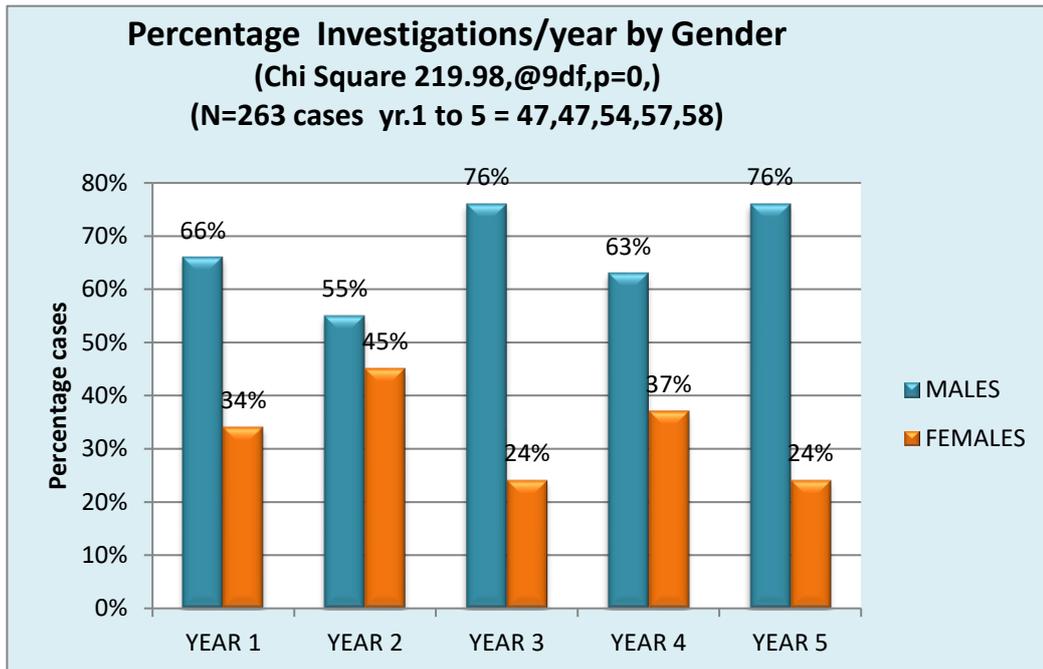
This employer has a male dominated disciplinary case load, what then of other comparators?

4.5.4.1 Gender and Professional Bodies and Crime Comparisons

If gender is so fundamental in this employer's results, it raises the question of whether this might be reflected in other occupations, the problem being that employers do not generally publish this sensitive data. To gain such an insight, a survey of professional body disciplinary records sought this information from annual reports, web sites, personal enquiry, academic papers and Freedom of Information requests. One deficiency in this methodology is that these were all professional bodies where membership required accreditation and some recognisable educational attainment; in contrast the Host, like many in this public sector, has appreciable numbers of unskilled, semi-skilled, and professional employees. Nonetheless, a comparison is felt preferable to none.

Appendix 17 shows that for in excess of 2.2m workers, covering 15 professional bodies, the male offender again dominates (the legend to Appendix 17 highlights the data source along with the respective Chi Square values). The three main bodies where the extent of offending is almost that of parity,(Bar Standards Board, Office of Judicial Complaints, and General Dental Council Dental Care Practitioners) still produce a male excess per thousand over the female of between 30% and 75%, and this can increase markedly in other professional bodies. These results point strongly toward there being generalisability in the workplace offender being

predominantly male, irrespective of the level of education, qualification, and profession and/or training.

This gender offender propensity of the male is reflected in the UK crime statistics (Appendix 18), and international criminal investigations (Appendix 19).The *gender offender* ratio is illustrated below (Table 4.6) showing a composite of Host, professional bodies, UK crime, and international crime figures.

TABLE 4.6

THE GENDER OFFENDER			
DATA SOURCE	APPENDIX	SAMPLE (N)	MALE : FEMALE RATIO
Host Employer		263	5.35
Professional Bodies	17	2,223,152	4.65
Cautions (England & Wales)	18	3,098,300	2.89
International Offending	19	54.8 million	5.51

For the Host employer, in proportion to the workforce, gender numbers show men to be the subject of a workplace disciplinary investigation in excess of five times more often than women. This clearly highlights the critical role that gender plays in the rate of breach of contract cases, and warrants wider research to afford scope for a better understanding. This however, would best include a variety of contextual and psychological variables in order to begin to focus on antecedents which would preferably require the personal input of data subjects.

Having established the importance of gender in CWB, it is advisory to offer a cautionary note. Not all research in this field has established significant CWB gender differences. For Avery, Mckay and Hunter (2012) it was age, not gender in retailing which was correlated with less retail shrinkage, though their sample was not balanced in that it was disproportionately female. Countering this with a more gendered sample were Ghiselli and Ismail (1998), who established males as the more prolific offender in food retailing, committing more theft and theft of a higher value than females. Whilst both offer differing results, they relied on a self-

report methodology, and highlighted a whole range of offences by way of seriousness and therefore reflect more the Robinson and Bennett (1995) typology approach, rather than this research with its sole focus being on formal contractual breaches warranting disciplinary action and involving only *actual* cases. This research is more in accord with real-world methodologies, drug use (Mangione and Quinn, 1975), hospital doctor deviance (Donaldson, 1994), and global fraud survey (PwC, 2016).

I now consider the relevance of age as a variable and CWB from the Host employer.

4.5.5 H$_5$: Age and Breach are Negatively Correlated, or will be of a Lesser Tariff as Age Increases

As age increases so does an individual's innate ability for moral reasoning (Colby et al., 1983: Kohlberg and Hersch, 1977) and, along with acceptance of societal and employer norms, marriage and familial responsibilities, the incidence of breach should reduce. Though, while attaining higher levels of ethical conduct, incidents of CWB testify that activity below one's potential ethical developmental level is always possible.

An analysis of the data set age profile against the mean workforce profile over the five years produced a notable disparity as displayed in Chart 4.13 below. The excess of those under 25 years of age is the major contributor to the variability of the data set from the workforce, accounting for over 80% of the variance in Chi Square value, and is most unlikely with p=0. While the histogram shows all 6 age categories, with only two entries in the 65 and above age group, this low cell count has been combined with the 55-64 category, making it a new 55 and above cell. The Chi Square calculation has been based on this revised cell to give only 4 df, rather than 5df. It shows the younger worker (under 25 years of age), to be considerably more prone to being the subject of a disciplinary investigation following a breach than any other group.

This conflation of the age groups 55-64 years and 65 and above is portrayed in Table 4.7 below which shows the annual likelihood of an employee facing a disciplinary investigation:-

CHART 4.13

Investigations by AGE, Data Set (n=263) v Workforce (N=3672)
(Chi Square =45.95, @4df, p<< 0.0005)

Age Categories (Years)	less than 25	25-34	35-44	45-54	55-64	65 & above
DATA SET NUMBERS	34	40	51	84	52	2
WORKFORCE EXPECTED	12	39	58	87	60	7

Data Set v. Workforce numbers
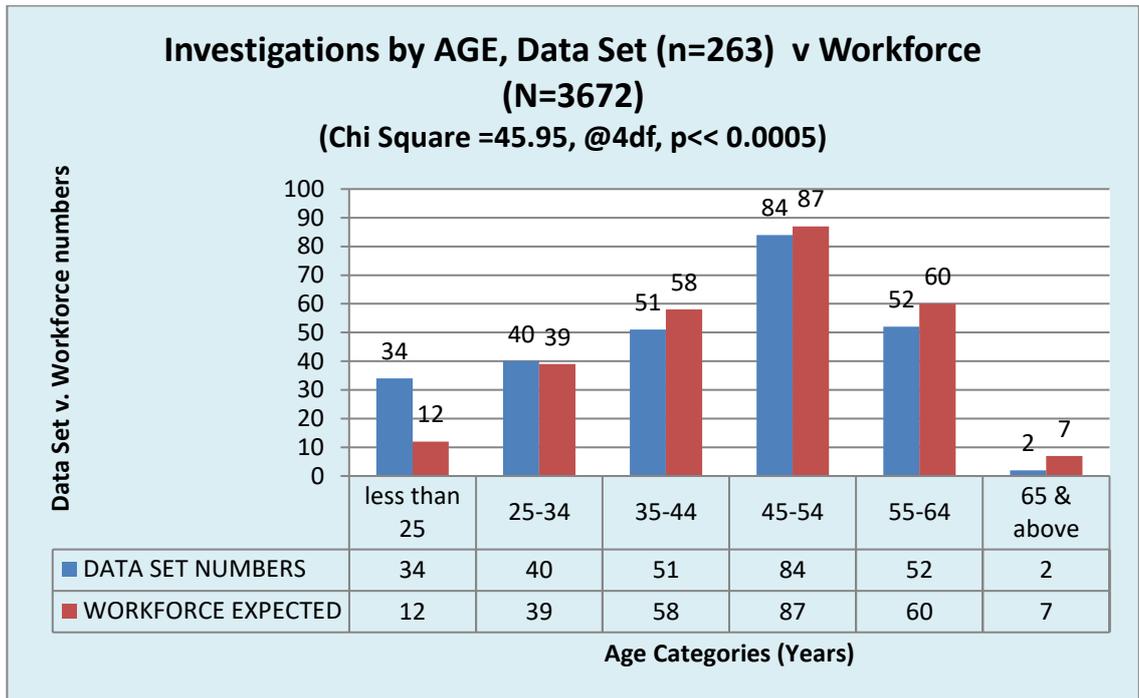
TABLE 4.7

	Probability of Offending/Annum by Age Group					
		Age Group				
		17>25	25-34	35-44	45-54	55+
A	Workforce by age group (N=3591)	119	530	780	1216	946
B	Investigations by age group (N=263 over 5 years)	34	40	51	84	54
C	Average cases/year (B ÷5)	6.8	8.0	10.2	16.8	10.8
D	Probability of employee facing investigation (C÷A) x 100=%	5.7%	1.5%	1.3%	1.4%	1.1%

From Table 4.7, the younger worker(17>25) can be seen as approximately four times as likely to be the subject of a breach investigation compared to the majority of the workforce, suggesting perhaps that they are less risk averse and less socialised in the employment context

and thus more prone to misbehaviour. A sharp drop in offending can be seen in the 25-34 age group, with a very gradual continuing decline thereafter.

In conflating the two older age groups, it masked the fact that over the five-year study, only two cases were investigated in the 65 and above age group. This is clearly a low cell count particularly given that there are on average 101 employees in this category. This should have produced a data set figure in this cell of not 2, but 7. This may be due to *disciplinary avoidance*, where rather than being accountable for their *alleged* transgression, they resign almost immediately before formal proceedings are served knowing that the misconduct investigation will be circumvented, and they have the assurance of an income of sorts in their state and/or occupational pension. Only two individuals chose to remain in employment and allow the process to run its course. It is important, however, to ensure that these results, irrespective of the statistical significance, are not mere aberrations in the data. This is an area in need of further research.

4.5.5.1 Age and Offending

Sociological and criminological explanations for adolescent and young adult offending patterns may, in part, be reflected in the Age-Crime Curve (Farrington, 1986). McVie (2005) produced, by age (10 years to 60 +), an analysis of the number of cautions issued by English courts during 2002, which is reproduced in Appendix 20, though I have excluded data on the pre-employment age group given that they would not be comparable to my data. This shows a peak of offending in the late-teens age group, which falls away quite dramatically and gradually levels out during mid-life. A comparison of cautions by McVie (2005) and the data set results (Chart 4.14 below) show a similar exponential curve lending credence to the Age-Crime Curve having some relevance in the employment arena, notwithstanding that the infractions in McVie (2005) are *criminal*, whilst the data set comprise both *civil* and *criminal* offences. Age is the unifying factor.

CHART 4.14

% Population Cautioned (England ,2002) v. Workplace Disciplined/annum by Age

Age Group (Years)	18-20	21-24	25-29	30-39	40-49	50-59	60+
CAUTIONS IN ENGLAND %	1.33	0.72	0.44	0.19	0.12	0.05	0.01
CONTRACT BREACHES %	16	4	1.46	1.55	1.25	1.33	1.05
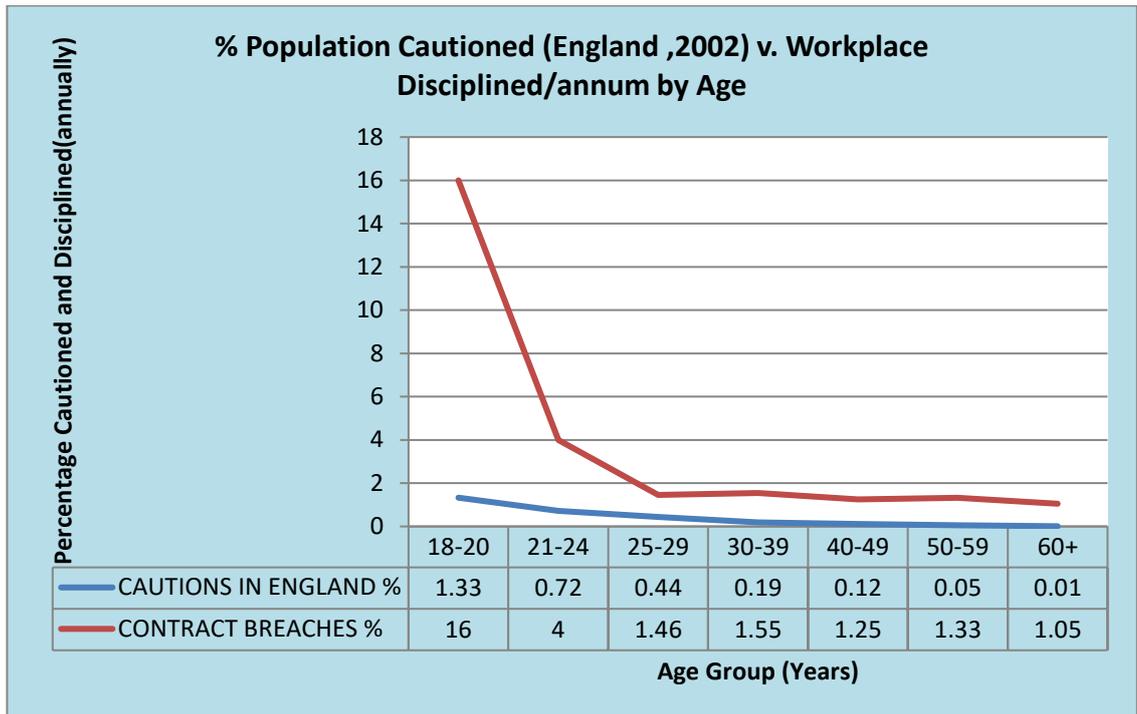
It should be stressed that this profile of misconduct weighted to the younger worker cannot be seen as generalizable in all workplace settings. Quite the reverse is evidenced within the medical profession. Appendix 21 sets out the results from the General Medical Council (GMC, 2013) which illustrates that far from younger age groups being a relevant factor, other explanations are needed, which the GMC is as yet unable to fully explain (for possible explanations see Latif's (2001) study of pharmacists. This conflicting picture is further illustrated following a Freedom of Information request to the Nursing and Midwifery Council (NMC, 2014), and analysis of their data (NMC, 2012) which showed their distribution of Investigatory Orders to be an extensive *under-representation* at lower ages (up to 29 years) and moderate excess in the age group 40 and above. For the NMC (2012) data, the Chi Square value was 78.319, @ 2df, p=0. So, between my data set, the GMC, and the NMC, three age profiles are evident suggesting possibly there are contextually dependent characteristics of variability specific to particular workplaces and/or professions.

Hypothesis H_5 also asserts that whilst age will show some variability, a negative relationship should see the seriousness of offence decrease as age increases. In order to ensure sufficient cell numbers for each disciplinary outcome, the age groups have been combined and Appendix 22 contains this data showing a relationship, however, this is weak (Chi Square 21.03, @ 11df, p = 0.054). Hypothesis H_5 is therefore supported significantly by way of age being a key

variable but not by way of a decrease in the level of seriousness as age increases. It would appear that despite increasing age being associated with greater moral development (Kohlberg and Hersch, 1977), older employees nonetheless are as likely as their younger counterparts to commit serious breaches of conduct.H_5 is therefore only partially supported.

I now consider breaches of Information Technology (IT).

4.5.6 H_6: A Breach of IT Protocols Will be predominantly a Younger and Male Preserve

The use of IT to business is fundamental, but as well as being vital in the economy of today, it also has a down side because of excessive and inappropriate use (cyberloafing).Greenspan (2004) cites illicit use of IT by employees of up to five hours per week, which Ramayah (2010) notes costs US business around $759 billion annually. Garrett and Danziger (2008), found men more than women, and high-status employees in general, enjoyed cyberloafing at work particularly for leisure interests. Many organisations have policies and regular training in place to prevent excessive/unauthorised use, but its elimination is probably impossible, and Block (2001) notes it as 'beneficial' in escaping from work stressors. However, the more responsible employer with comprehensive well-being programmes is unlikely to seek elimination, accepting that some (appropriate) freedoms bolster the individual's self-identity, and well-being.

In total there were only 23 cases of this type of breach (Table 19 below), thus any analysis must be indicative rather than definitive (Appendix 12). Taking the "younger" employee as those <35 years, the excess of observed cases by those under 35 years of age (comparing A:B in Table 4.8), with the resultant under-representation of older workers gives a Chi square = 4.34, @ 1 df. and p = 0.037, suggesting age would appear to be significant in predicting IT misuse. The first part of Hypothesis H_6 relating to age, bearing in mind the sample size, would therefore be only tentatively supported.

TABLE 4.8

Profile of IT Breach Cases by Age.(n = 23)					
AGE Group(Years)	**Workforce**		**Data Set**		
	Numbers	Percentage	Observed (A)	Percentage	Expected (B)
Under 35	649	18.073	8	34.783	4.157
35 & Above	2942	81.927	15	65.217	18.843
Total	3591	100%	23	100%	23

Hypothesis H_6 also suggests that gender will play a part with males being the more likely to offend, given they tend to be more risk taking. Table 4.9 below displays a marked differences in the data set v. workforce with males accounting for 12 of the 23 cases yet only comprising around a quarter of the workforce, Chi square =7.03, @1df, P = 0.008. It would not be expected to have 52% of such breaches attributed to males who make up only 28% of the workforce; gender therefore is potentially seen as a key variable in this type of offence. However, to be categorical in this assertion, I would need an audit from the Host employer by gender of employees who had access to IT facilities; in the absence of this and a low cell count I therefore assume the result to only be tentative at best.

TABLE 4.9

Profile of IT Breach Cases by Gender (n = 23)					
GENDER	**Workforce**		**Data Set**		
	Numbers	Percentage	Observed (A)	Percentage	Expected (B)
Male	987	27.485	12	52.174	6.322
Female	2604	72.515	11	47.826	16.678
Total	3591	100	23	100%	23

Given the sample size Hypothesis H_6 may be valid, but further studies are warranted, and I now turn to Hypothesis H_7.

4.5.7 H₇: Ethnic Minorities and the Disabled Will be Under-Represented in those being Disciplined

This hypothesis stems from the proposition that minority groups of any persuasion will generally seek, more than most, to 'fit in' with whatever workgroup they encounter (Liao,Joshi and Chuang, 2004), and this is particularly so for new entrants.

Whilst the BME make up just over 2% of the workforce (Appendices 11 and 23), this is less than half the ethnic population of working age population in the locality of the Host employer; and that is despite the Host organisation being seen as an employer of choice in the area. The reasons underlying this are outside my remit and will not be taken further, but from an equalities viewpoint, they are worthy of consideration if the organisation wishes to be representative. BME's in the data only contributed 7 cases.

For those registering with the employer as disabled (this is discretionary), a figure of just over 4% (Appendices 11 and 24) saw 12 cases recorded.

The sample size of BME and disability cases combined mirrors the workforce (Appendix 11), as do other variables like age and gender of this group suggesting, either individually or when conflated due to the low numbers, that there is little variability from the norm.

There is some variability from the workforce in that disciplined BME tenure averaged only 68 months, the lowest in any category when compared to an expected 150 months in the workforce, but given this is only relevant for 7 cases, which is two counts above the minimum recommended (5) for each cell in SPSS, this may possibly be considered relevant but not reliable.

However, that cannot be said for absence, where the returns are disproportionately high for both BME and disabled being between four and five times above the workforce norm. This is mainly due to two (BME) and three (Disability) cases respectively being in excess of 100 days, which has skewed the average values given such low cell counts. One factor which could possibly account for some of the disabled excess might be if some of it is attributable to their disability, which some employer's record separately, though the data on this is unavailable. In all other respects there is minimal variability and thus Hypothesis H₇ cannot be established with such low cell counts.

4.5.8 H₈: Acts of Aggression and Sexual Offences Will be Predominantly a Male Preserve

This is premised on the characteristics of male socialisation being goal oriented, competitive and aggressive, and steered by family, friends, gangs and significant-others, in both an active and passive way; Gamson, et al. (1992, p.374), notes, " a wide variety of media messages can act as teachers of values, ideologies, and beliefs and …can provide images of interpreting the world whether or not the designers are conscious of this intent". This development of an identity of masculinity is one of being strong, risk averse and controlling. Before the age of 16, a typical American youngster will have witnessed on TV and other media about 13,000 murders (Merriam 1968), largely committed by males. As a result, Milkie (1994, p.376), identified this influence in that adolescents had developed a view of sexual aggression and violence as a "stereotyped, yet glamorised, version of masculinity".

These offences in the Host include, but are not limited to physical assault, verbal and inappropriate communication and or behaviour, making serious false allegations, molestation, use of sexual imagery, and explicit electronic communication. A summary of the variables (interpersonal, and sexual) where there is a notable variation are shown in Table 4.10 below. The age of employee is not statistically significant compared to workforce data.

TABLE 4.10

Aggressive and Sexual 'Breaches' (N=50)				
	Interpersonal (38 cases)	Sexual (12 cases)	Overall (50 cases)	Workforce (N=3672)
AGE (Mean)	47.8	40.7	46.1	46
GENDER (Male)	24 cases	10 cases	34 (68%)	28%
(Female)	14cases	2 cases	16 (32%)	72%
BME	1 case		1 (2%)	2.23%
DISABILITY	4 cases	1 case	5 (10%)	4.62%
TENURE Overall Mean (Months)	122.87	82.67	113.22	150
TENURE (Male)	Male (34 cases)		107.76	168
TENURE (Female)	Female (16 cases)		124.81	142
Outcome:- No Case to Answer	5	0	10.00%	11.70%*
Capability/Counselling	13	2	30.00%	24.53%*
Verbal Warning	4	1	10.00%	12.08%*
Written Warning	6	1	14.00%	10.19%*
Final Written Warning	3	0	6.00%	9.81%*
Dismissal	2	2	8.00%	10.94%*
Summary Dismissal	0	3	6.00%	1.89%*
Retired/Resigned	5	3	16.00%	15.47%*
Settlement Agreement	0	0	0	1.89%*
Duration of case (Days)	62.0	48.1	58.64	50.69*
Suspension (Weeks)	2.08	4.0	2.54	-
Mean Annual Absence (Days)	25.42	13.83	22.64	10.66
Occasions of Absence (Annually)	1.74	1.33	1.64	1.18
NB. * Entries use data set comparators (N = 261)				

As evidenced in other hypotheses, the male offender dominates (28% of the workforce, but 68% of these breaches) giving the Chi Square as 40.84, @ 1df, p= 0. Disabled offenders appear twice as frequently as expected, but given the cell count was only five, this has to be considered inconclusive.

Employee **tenure** by way of gender appears appreciably below what would be expected from a random sample (data set male and female tenure =107.76, and 124.81months respectively) compared to the workforce means of (males = 168, and females 142 months). It is the male who shows the greatest variation from the mean, with a clear weighting toward low tenure, females being more evenly split,. Chi Square = 8.529, 3df, p = 0.036. Comparing the 'overall' and 'workforce' categories shows little variance suggesting uniformity in the way justice is dispensed whatever category of offence is involved.

Absence in Table 4.10 above is noticeably above that seen in the workforce both for days lost at 113% excess, and occasions 39%, however, absence will be covered in Hypothesis H_9 in the following section.

Hypothesis H_8 is supported and fits in with the traditional male stereotype, though it should be noted that females also appear but much less so in both categories: *interpersonal* (12 cases) and only (2) *sexual offences*. The last of the Hypotheses, H_9 follows.

4.5.9 H_9: Breach of Contract Employees Will have Above Average Absence Rates

Absence from work in the case of genuine illness is unavoidable, but not all time off work can be so categorised. Whether genuine or not, the cost to employers is considerable. CBI/ Pfizer (2013, pp. 7 -13) produced annual UK figures of it costing the economy £14billion, averaging 5.3 days per employee (private sector = 4.9 days, public sector = 6.9 days), highlighting 160 million days in total. The median cost of absence in 2012 was £622 per employee per annum. "A serious concern to employers is the perception among some employees that taking days of paid 'sickness' is an entitlement, the equivalent of an addition to annual leave", which CBI/Pfizer equate to about £1.7billion overhead to the UK economy. The ONS (2014) also note females were 42% more likely to have a spell of sickness than men and these gender differences will be covered later.

 Research into CWB and absenteeism has established that, whether genuine or not, it has been statistically related to a variety of other costly practices. Absence has been associated with aggression, theft, property violations (Marcus et al., (2002), alcohol and drug use, sub-standard

work, inappropriate verbal exchanges, unsafe working (Gruys, 1999), confrontational behaviours, physical and psychological withdrawal (Lehman and Simpson, 1992) and others. In summary, "individuals who exhibit tardiness, absenteeism, and misuse of time at work are those who are also more likely to steal from their employers, use drug and alcohol, do poor-quality work, and engage in unsafe behaviours" (Ones and Viswesvaran, 2003, p.220).

4.5.9.1 Days of Absence

A comparison of the data set and the workforce (Table 4.11 below) highlights a disproportionately high average absence by disciplined employees, notwithstanding those having no absence (80 cases), suggesting such a variance from the population is significant. Even removing what might be considered outliers, for those absent for 100 days or more, the mean is still approaching 30% above the workforce figure (10.66: 13.63).

TABLE 4.11

ABSENCE OVERALL and GENDER (Days Annually/Employee, N=263)						
ABSENCE	DATA SET			WORKFORCE*		
	MALE (N=177)	FEMALE (N=86)	OVERALL	MALE	FEMALE	OVERALL
A Mean working days lost	22.6	23.4	22.86	10.62	10.68	10.66
B Days absent in cases where employee attendance was noted as the **only** factor.	47.7	46.0	47.2			
C Working days lost with "B" removed.	18.5	20.1	19.0			

NB. 1) Entries at B) account for 14% of cases but 28% of days lost.

2) Additional to B) absence is a feature in a further 21% of cases.

3) Zero absences were returned in 80 cases (56 male, 24 female).

* Average days lost annually per full time equivalent during years 2011/12, 12/13, and 13/14.

In the data set there appears to be no appreciable difference by way of overall absence and gender, only a marked variability from workforce average absence levels. Taking the CBI/Pfizer, (2013) annual cost of absence per employee as £622, with a workforce of 3,672, this suggests

an annual absence on-cost to the Host of about £2.3million. However, the CBI/Pfizer figure is based on an average of only 5.3days/ employee, but with the Host's level being twice that (10.62), potentially around £4million is the likely impact.

4.5.9.2 Periods of Absence

The above (Table 4.11), which considers overall absence (days/employee/year) by gender, is the principal way of monitoring average absence. Within these data one alternative is to monitor the *periods* of absence given many national surveys differentiate between *short-term* and *long-term* sickness.

Chart 4.15 below shows the percentage of total days of sickness absence in each of the periods identified for the data set and workforce. The data set figures display a marked under-representation in the 0-7day period, which is reversed for the 61+ day period.

CHART 4.15
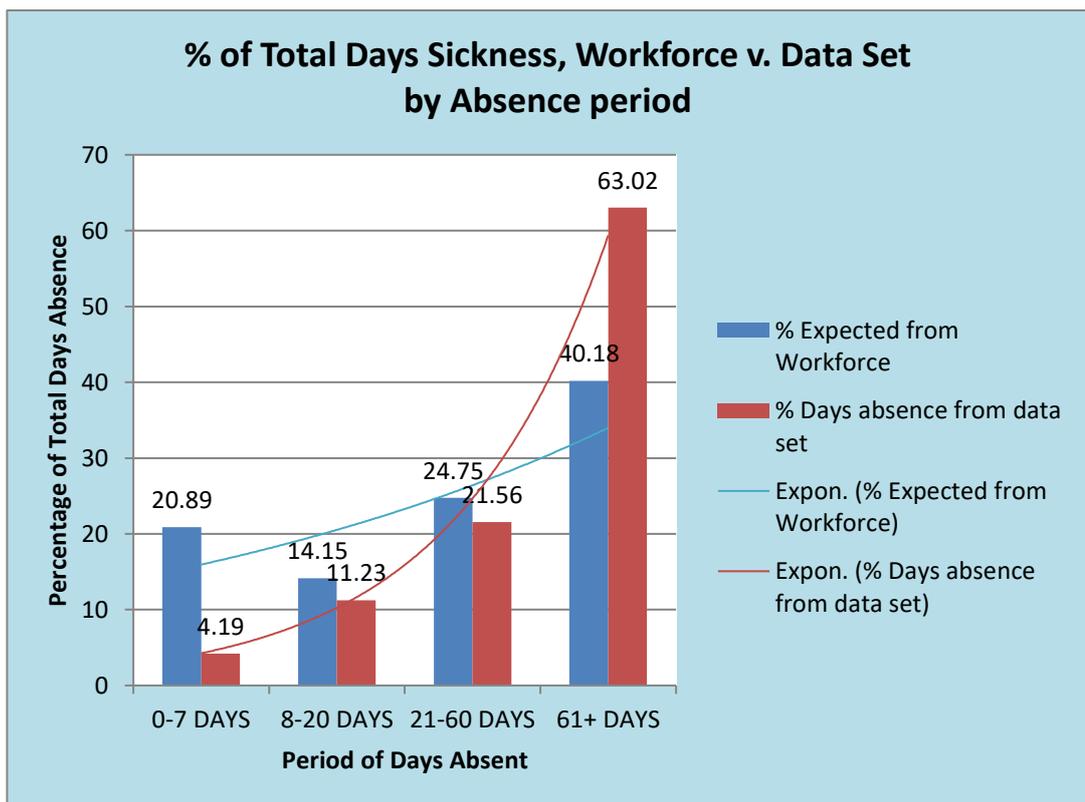
The chart, like previous examples, shows major discrepancies at either end of the distribution. Data set employees take far fewer short absences (0-7 days) than is evidenced by the proportions in the workforce as a whole. Indeed some 80 cases in the data set had not taken any absence in the twelve months before the date they were formally notified of an alleged

offence. At the other end of the distribution (61+ days), the reverse is the case with a large excess of longer-term absence. From the data set of 263 cases, the top 10% (26 cases) of long-term absences account for 57.3% of total time lost, with clearly the remainder (90%, 237 cases) accounting for 42.7% of sickness. This distribution cannot be explained by pure chance, as Chi Square is 76.08, @ 3df, p = 0. This suggests the Host employer may well benefit from a more active and focused occupational health involvement in the management particularly of long-term sickness. Without this involvement they run the risk of absence being seen, as McHugh (2002) colloquially referred to it, like a viral infection, with the potential to spread.

Explaining the disparity is not a simple process, and cannot be adjudged as a sampling error, for the cell counts in both 0-7, and 61+ days categories is substantial. It could be that the Host employer just has an unhealthy workforce compared to the rest of the public sector (where absence rates are about two thirds of the Host), or to the private sector (where absence levels are about half), which is unlikely. Research has noted the role of numerous factors in contributing to absence, for example job stress (Jackson and Schuler, 1985), workplace incivility (Anderson and Pearson, 1999), bullying (Keashly,2012), organisational justice (Barling and Phillips, 1993), alcohol/drug use (Gruys, 1999), lateness (Koslowsky et al., 1997), theft (Hunt, 1996), the big five personality factors (Salgado, 2002) and many others. Authoritative explanations are not easy, and the complexity of gaining an understanding of any *causal* model can be extremely wide ranging (Mastekaasa, 2000, 2004). All I am able to do is point to a glaring variance from the workforce data, which is clearly costly to the employer, disruptive to service provision, an imposition on non-absent staff and which warrants *urgent* action.

 The question arises then as to how these results of periods of absence sit against other comparators, namely the UK economy. National figures (CIPD 2013, p. 5) note the profile of public service absence across the UK economy as having two major components: short-term (up to 7 days), and long-term (4 weeks or more). Please see Table 4.12 below, suggesting perhaps an "acceptance" in the Host employer of prolonged absences as being "normalised". Whether short- or long-term absence, time off work not only causes major problems for service delivery, creates frustration among colleagues who have to provide cover, but it also inevitably incurs costs for the employer. In not successfully addressing absence, irrespective of the period concerned, or the legitimacy of it, the additional costs have to be borne through taxation and local council tax rates. To put it in perspective nationally, by bringing the public sector absence in line with the private sector "…closing the gap could save the exchequer more than £1.2bn a year (CBI/Pfizer, 2013, p. 7).

TABLE 4.12

Percentage Comparison of Total Days Absence (%)		
	Short-Term (Up to 7 Days)	Long-Term (4 Weeks or More)
UK Public Service	49	33
Workforce	20.89	64.93
Data Set	4.19	84.58

4.5.9.3 Absence Gender Trajectories

Whilst the overall absence by gender is remarkably similar for the data set and the workforce (Table 4.11 above), the question of how this varies compared to the national picture is worthy of examination. Annual absence levels in the UK economy for both men and women are generally in decline, but female morbidity continues to surpass that of men (please see Chart 4.16 below, ONS, 2014).

CHART 4.16

% of UK WORKING HOURS SICKNESS ABSENCE by GENDER
(1993-2013 incl.)(ONS. Feb. 2014)

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
MEN	2.7	2.5	2.6	2.5	2.6	2.4	2.6	2.5	2.5	2.4	2.5	2.3	2.2	2.2	2.1	2	1.9	1.8	1.7	1.7	1.6
WOMEN	3.8	3.6	3.8	3.6	3.8	3.6	3.7	3.5	3.5	3.5	3.4	3.3	3.1	2.9	3.2	3.1	3	2.8	2.6	2.7	2.6

Years (1993-2013)
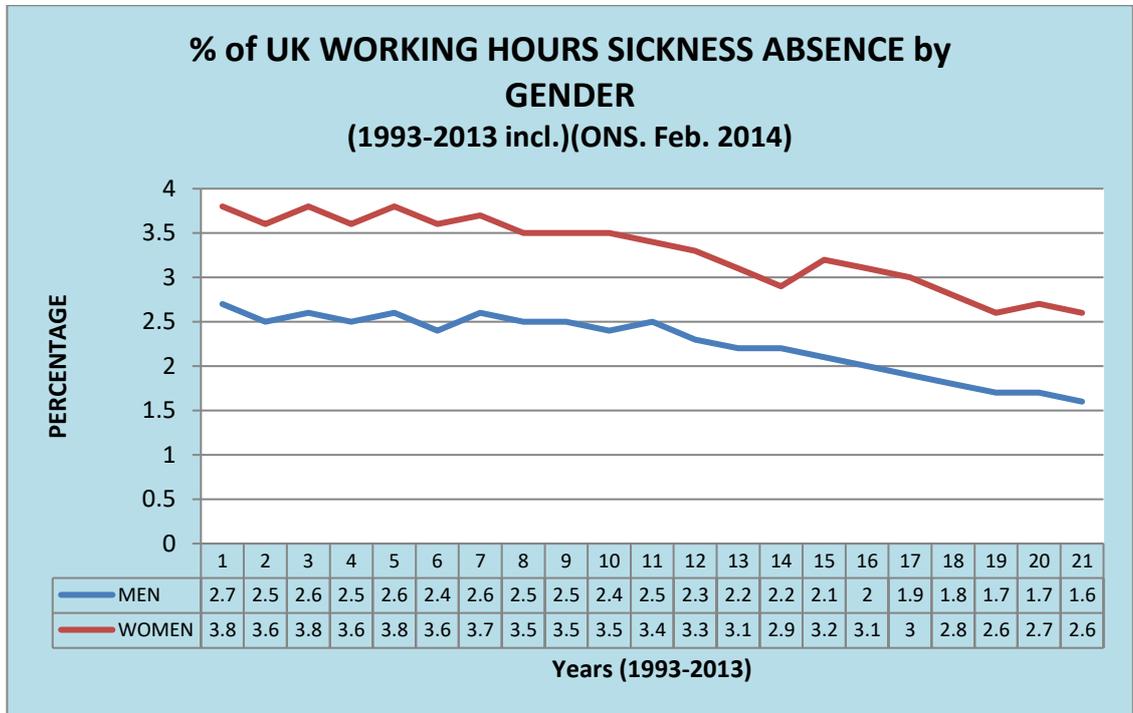
As welcome as a decline in absence is to the UK economy, what is of concern, however, is that despite both levels of absence reducing, the *ratio* of female to male absence in the economy is actually increasing (Chart 4.17 below).

CHART 4.17

% of UK WORKING HOURS SICKNESS ABSENCE by GENDER (1993-2013 incl.)FEMALE/MALE RATIO(ONS Feb. 2014)

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
RATIO	41	44	46	44	46	50	42	40	40	46	36	44	41	32	52	55	58	56	53	59	63

Years (1993-2013)
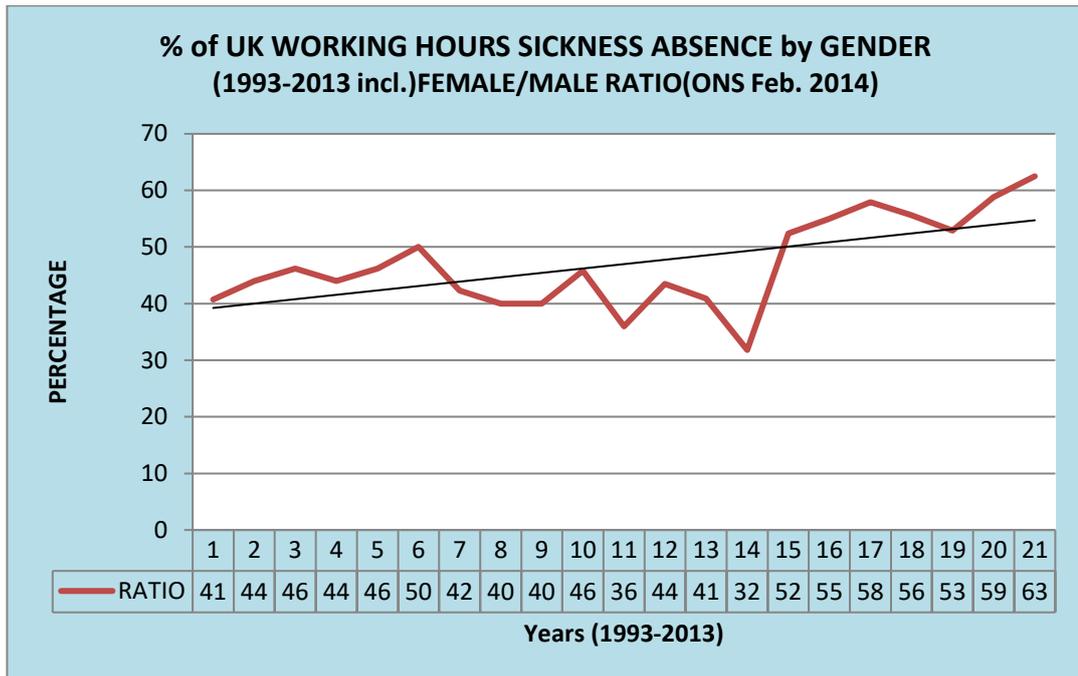
Surprisingly with UK annual direct costs to the economy of absence being around £14billion (CBI/Pfizer 2013, p. 11) it would be expected that the major body concerned with employment issues (CIPD) would wish to monitor gender differences. However, not only do they not, but they have no plans to do so. Yet if "Women were 42% more likely to be off work due to sickness than men" (ONS, 2014, p.15), and in Finland "Women had 46% higher risk for self–certified sickness absence than men" (Laaksonen et al. 2007, p. 1); even accepting gender differences in pay, the "on-cost" of the female workforce is not something that should be managerially or academically overlooked.

 Internationally this same female excess is well established with a few exceptions, Luxembourg, Slovenia, and Spain (Barmby, Ercolani and Treble 2000); and whilst the remit of this study is not focused on *causal* matters, one explanation for there being no real difference in overall gender absences for the Host employer may rest on the fact "that men as well as women tend to have higher absence rates in occupations or workplaces numerically dominated by the opposite sex" (Mastekaasa, 2004, p.2262). Similar findings have been found by Tsui, Egan and O'Reilly (1992), and Evans and Steptoe (2002). Brummelhuis et al. (2016) studied the reason co-workers gravitate to have similar levels of absence, and explained it by a combination of social learning theory (Bandura, 1977), and social exchange theory (Blau, 1964). A key factor was whether the group relationships were economically or psychologically based and the extent of social integration. If male absence in the Host employer is comparable

to the female, rather than being about 40% lower, it suggests that there has been some 'drift' where new inflated norms are now 'accepted'. It should also be remembered that this Host employer's absence figure (10.66 days) is considerably above the overall public sector level of 6.9days.

4.5.9.4 Absence and Gender Morbidity

This increased morbidity in females is not a feature across the whole age spectrum, but is one that manifests itself particularly in middle age where it exceeds considerably that of males, and the data set returns mirror the national picture very well (Chart 4.18 below).

CHART 4.18

Workforce days Absent by Gender by Full Time Equivalent (FTE) 3 years 2011 to 2014

Absence/FTE(Days)

Mean = 10.68

Mean = 10.62

Age Groups(Years)	under 25	25-34	35-44	45-54	55-64	65 & over
MALE	8.95	8.22	8.21	10.72	4.56	10.8
FEMALE	4.21	7.12	8.32	13.47	13.11	11.19
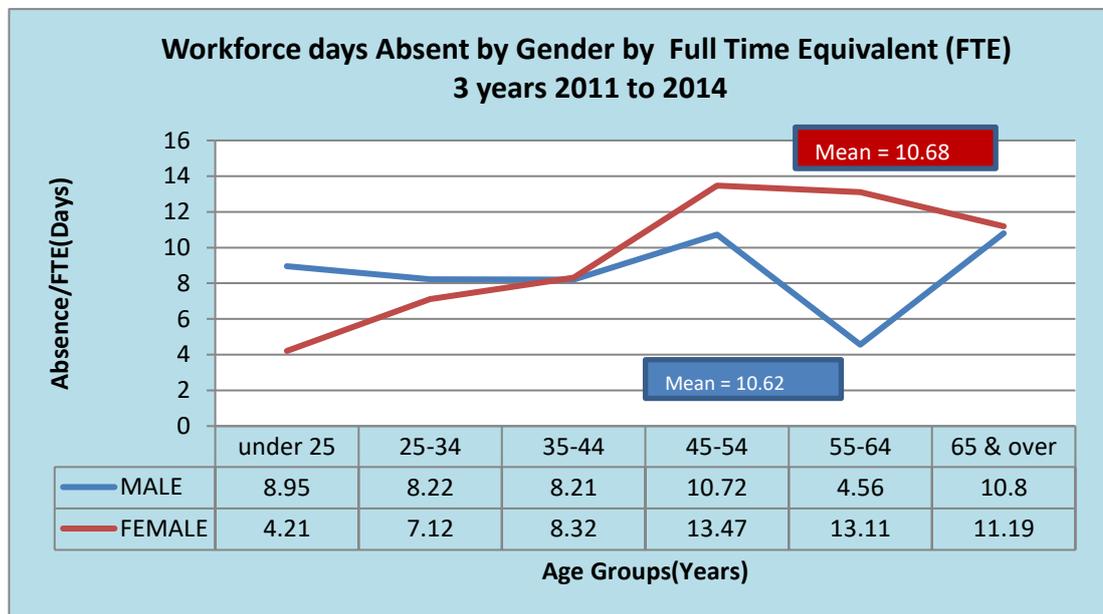
4.5.9.5 Absence Frequency

There are no accepted benchmarks available with which to examine the *number* of occassions of absence, for not only the duration of absence but also the frquency of absence can have cost and service delivery implications, as well as causing major conflict in the workplace. It is generally seen as dysfunctional even when the absence is legitimate on health grounds (Harrison and Martocchio, 1998: Patton and Johns, 2012). The data set showing occurances, is in Table 4.13 below.

TABLE 4.13

Data Set Occasions of Absence by Age Group.			
Age Group (Years)	Workforce Numbers (A)	Occassions of Absence	Expected Occassions from Workforce Numbers (A/B)xC
Under 25	166	97	25
25-34	538	118	80
35-44	812	78	120
45-54	1218	188	181
55-64	837	63	124
65 & over	101	1	15
Totals	(B) 3672	(C) 545	545

The data above highlights a positive variance in the number of absences particularly in the under 25's, but also in the 25-34 age group, and a negative variance in the 35-44 group, and 55 years and over. An excess of this magnitude in the groups concerned is quite dramatic. It suggests employees who commit CWB and are up to the age of 24 may be considered 'very unreliable', and a little less so but still 'unreliable' are the employees in the 25-34 age group. In contrast with this the 35-44 age group, and 55+ employees are exactly the reverse (presenteeism perhaps). It is only the 45-54 employees who return an expected figure proportionate to the numbers in this age group in the workforce as a whole. The Chi Square value is 283.301, @5 df, p = 0; a distribution of this kind is most unlikely to be a false result, setting this data set as being distinct from the workforce in terms of patterns of absence.

Taking overall figures, broadly consistent results surfaced between males and females who had time off, which averaged around 3 occasions in the year prior to their disciplinary investigation. Similar findings also emerged in that about 30% of each gender had no absences at all. These overall results for occasions of absence all indicate the workforce seems to have become 'homogenised' as far as sickness is concerned, with few differences between genders. This is quite contrary to the national comparitors.

Breaking down these overall figures by way of gender produces somewhat different results which are masked in the overall data. Appendix 25 gives the overall and gender split-figures

and displays a number of over- and under-representations across the age ranges. In the under 25, and 25-34 age groups, both sexes have considerably more occasions of absence than would be expected from the numbers of each gender in the respective workforce age categories. This, by way of gender, mirrors the first two findings in Table 4.13 above, showing there to be an excess of occasions up to the age of 34 years. The remainderof the gender age distribution is generally showing an under-representation compared to what is expected, most notablly by male 55 and over employees. Analysing occurances by gender therefore has, again, largely reinforced the commonality of the genders. In this repect, data from the *occasions of absence* closely reflects that for *days of sickness absence* albeit they are measuring absence in two quite different ways.

During the feedback session to the Host employer, the issue was raised regarding those employees with no absence, and whether this was an indication of their increased commitment to the organisation compared to other regular absentees who may be disaffected. If it were so, it may be summised that their misdemeanours might possibly not be as serious as others. Whilst there are minor differences in the numbers of cases in the various outcomes, these are not statistically significant and the outcome profiles are very similar.

Hypothesis H_9 has therefore been strongly established in respect of i) overall absence levels and by gender, ii) period of absence, and iii)occasions of absence.

4.5.10 Contextual Review

The data set analysis highlights several aspects of variability from expected norms, which raises the question of how representative this employer is of the economy at large. A national survey by CIPD (2007) gave useful comparator data with which to examine the extent of ‘conflict’ as the CIPD term it. In Table 4.14 below the Host employer and national figures are compared for both grievances and disciplines which are under- and over-represented respectively.

TABLE 4.14

Annual 'CONFLICT' CASES NATIONALLY (Expected) v. HOST EMPLOYER (Actual) (Excludes No Case to Answer)				
FINANCIAL YEAR	**GRIEVANCES**		**DISCIPLINARIES**	
	ACTUAL	EXPECTED[*1]	ACTUAL[*3]	EXPECTED[*2]
2007/8	3			
2008/9	10			
2009/10	8	12	42	11
2010/11	9	12	46	10
2011/12	4	12	43	10
2012/13	3	11	48	10
2013/14	0	10	51	9

[*1] CIPD (2007, p. 19, @ 1case: 323 in public sector).

[*2] CIPD (2007, p.20, @ 1 case : 364 in public sector).

[*3] Excludes cases where no futher action was taken, as the national figures
concern employees actually disciplined.

It would be expected that with disciplinaries being four times higher than the national average, it would point to this employer being overly punitive in its administration of workplace justice. Industrial relations should be problematic and relations with the trade unions and employees troublesome, in which case the number of grievances would also be anticipated to be excessive. This is quite the reverse, though one critical explanation might be that such is the disengagement by the workforce that they feel it is not worthwhile even bothering to raise a grievance. During the review period, public sector finance has been squeezed, and whilst this has not manifested itself in increased industrial disputes, Table 4.14 above illustrates that the annual rate of disciplined employees has increased. However, taking account of the decrease in workforce over this period (approx.16%), and the rise in numbers of disciplinaries annually from 42 to 51, there appears to have been a 'sea change' in either employee propensity to misbehave, or the employer's willingness to instigate breach proceedings. The graph (Chart 4.19) below illustrates the considerable increase in disciplinary activity and shows the change along with other parameters with 2009/10 as a base.

CHART 4.19

Host Employer Overall Disciplinary Investigations
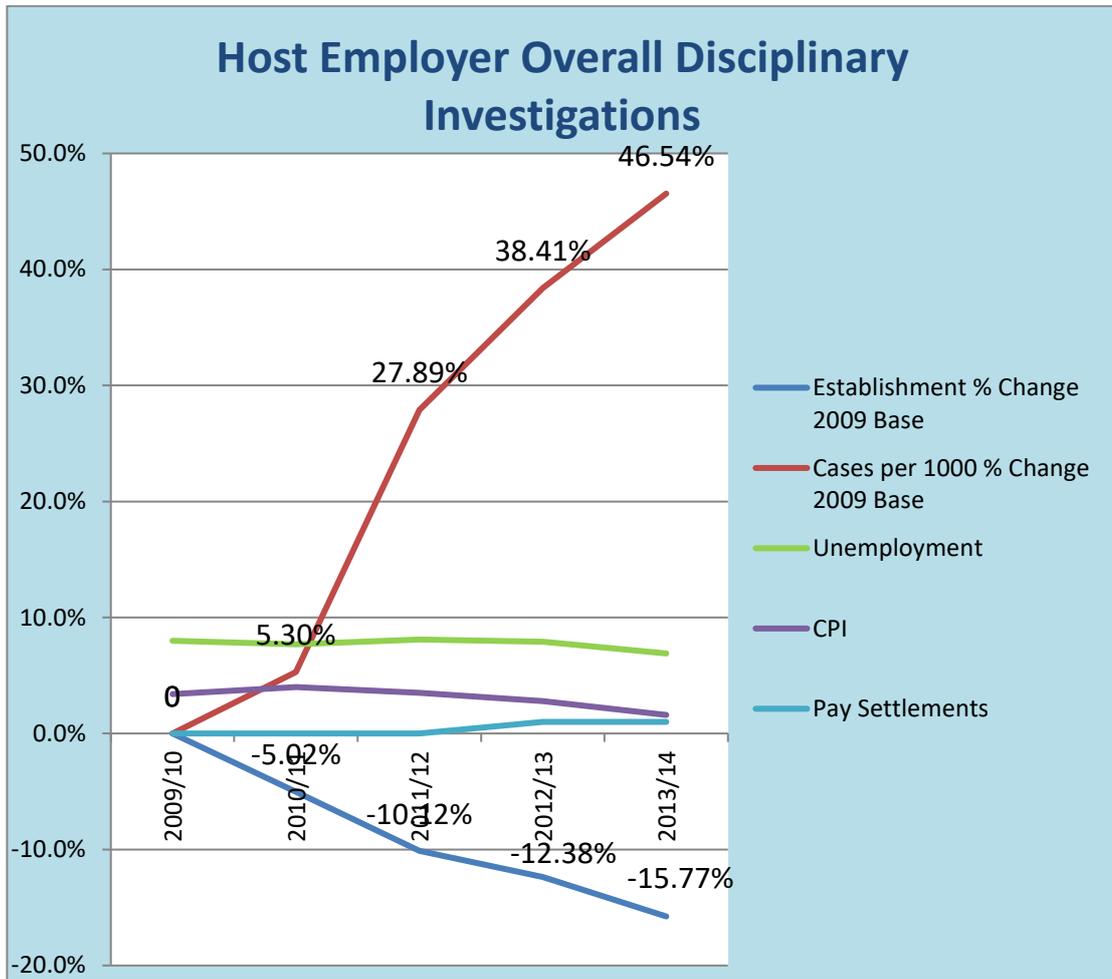
The above analysis only covers some of the variables listed in Appendix 7; those not covered pertain more to procedural justice and will be carried forward to Phase 2 which focuses on the administration of organisational justice as seen by those involved.

4.6 Summary

A statistical t-test analysis of key variables thought possibly to have a bearing on the variability of the outcome of the disciplinary process failed to realise significant results. Even assuming a cummulative effect (Table 4.1), at best only about 5% of the variance in outcome could be explained by the variables chosen, and the bulk of this comes from two variables one of which has far too low a cell count. It must therefore be concluded that these variables do not account for any significant variance in the dependent variable (seiousness of offence). To try and avoid the complexity of accounting for contextual influences which can be considerable, future

research might focus on those infractions which are, in the main, guided solely by the moral compass of the individual (Criminal, Interpersonal, Theft/Defrauding, and Dereliction). These categories would have furnished about two thirds of all Host transgressions, and using psychological factors such as locus of control, Machiavelanism, the big five etc., it may be possible to establish meaningful mediating or moderating varaiables concerning the seriousness of offence, which this work failed to do.

The hypotheses ($H_1 - H_9$) have not always been supported; however, enough significance has been had from various comparison data to assert that variability of certain characteristics is likely evident in breach employees, and this sets them apart from the population from which they are drawn. Future research in this field should aim to monitor, and have comparative workforce (in-house) and other data available, for example psychometric results, selection test data, annual appraisal information, education, ethical surveys and workforce attitude data. This work has shown that variables such as age, tenure, gender, and sickness absence of employees subject to disciplinary investigation may display significant variabilty from the workforce, and are worthy of further exploration and ideally HR and line management intervention to remedy. A summary of the hypotheses' key findings can be found in appendix 26.

This work I see as helping to bridge the knowledge gap in extant research by: i) using actual documented case data, it favours behaviour rather than mere decision making (Appendix 27), ii) in capturing the full spectrum of CWB rather than focusing on one specific type,iii) using the workforce as the comparator in preference to sophisticated statistics, and iv) providing feedback to the Host employer to afforded them the opportunity to impact as appropriate within house. Any limitations of my research will form part of the conclusion.

The qualitative Phase 2 is next.

5.   Phase 2: Justice and Fairness: Host and Others' Justice Procedures

5.1 Introduction

 Phase 1 of this research focused on examining the demographics of the employees subject to formal disciplinary action. This section is twofold, initially, it analyses the Host employer administration of the justice procedure using the data captured in Phase 1. It then summarises from semi-structured interviews, the personal accounts of individuals from the Host organisation and a range of other public sector bodies. It begins, however, by setting out the new reality the public sector faces in light of a decade of austerity.

5.2 The Public Sector in Context: A Reshaping

This research coincided with the UK economic recession, and the largest changes in the public sector since the introduction of compulsory competitive tendering legislation (1980). The commercialisation theme persisted, and has been supplemented by wresting Education Services out of public sector control (2010), coupled with sizeable and progressive budget cuts thereafter. For the Host organisation this has necessitated the closure of offices and relocations, hot desking, major restructuring and delayering (42 senior posts down to 9), negotiating Shared Services Agreements with other public sector bodies, and establishing a commercial focus on certain services to provide an income stream. During this time the workforce terms and conditions have seen nil, or minimal annual pay rises, the imposition of increased pension contributions, and delayed age retirement, along with other 'incidental' cut backs such as a 25% reduction in mileage allowance.

This transformation to a flatter more 'lean' and productive organisation is not without its costs, and research suggests that it is the workforce that bears the brunt of these new initiatives. In achieving this leanness, organisations are "imposing excessive workloads on employees ('management by stress'), rather than through true efficiencies" (Handel, 2014, p.88). Work by Clinton and Woollard (2012, p.9) in the early phase of the economic recession points to some of these costs being higher levels of stress, absence, presenteeism, workforce discontent, and suggests "organisations are failing to deal with primary sources of staff grievances…HR continues to significantly underestimate the incidence of bullying and harassment", a point that came across strongly in a number of interviews which are included later in this chapter.

Numerous factors can potentially impact the veracity of a disciplinary investigation, and the key variables of *resources* and *investigator attributes* were seen in this research as contributory factors in establishing an unbiased investigatory account. Public bodies have limitations on their freedom to raise revenue locally through asset sales, service charges and local rates, and have seen "reduced spending on services by 24% (2009-2010 to 2016-2017), twice that of local government in Scotland and Wales (11.5%, and 12% respectively)" Gray and Barford (2018, p.554). As a result, there has been a refocusing in favour of statutory rather than discretionary services. Staffing numbers (full-time equivalent) have reduced by approximately a third between 2010 and 2018. The impact has varied across the country but such was the consequence for Northamptonshire County Council that in 2018, it "issued a section 114 notice, and effectively declared itself bankrupt" (Gray and Barford, 2018,p. 557), and central government replaced the local politicians on the Executive and took over all budget responsibility.

The public sector accordingly is striving to maintain the range and quality of services despite reduced staffing. Inevitably this has led to increased pressure on staff given service cuts have tended to be scaled back *less* than the budget decrease, meaning for those employees remaining they are being asked to be more productive. Littler, Wiesner and Dunford (2003), in a cross-cultural study, showed that in major restructuring, there were some improvements to be expected, but overall middle managers in particular, and the workforce at large, saw a decline in morale, commitment, promotional opportunity, job satisfaction and motivation. This is a picture reflected in the work of Holbeche (1998), Jones (1998), and Worrall, Cooper and Campbell (2000), in UK, US, Australia, New Zealand, and South Africa giving some validity to the adverse impact of this scale of and time frame for restructuring; for those remaining, the *survivor syndrome* essentially led to an increase in job insecurity. The likelihood is that there is then an awakened interest in seeking alternative employment given that the psychological contract (Rousseau 1995), if not broken, may have been severely strained; and as Littler, Wiesner and Dunford (2003, p.227) note worryingly, "burnout, reduced organizational commitment…and even increases in white-collar crime". This could well have been instrumental in the increase in offending evidenced in Phase 1, which even if not 'crime' certainly was counterproductive behaviour. They also point out (p.226) that 'flatter', 'leaner', 'fitter' organisations are the stated aim, but evidences that, taken too far, this biological metaphor could be 'anorexic'. The burden employees face is recognised in the latest CIPD (2019, p.4) report on workplace health and well-being: "Heavy workloads remain the most common cause of workplace stress, but this year an increased proportion blame management

style". It is this duality of workplace demands and management style that form the basis of this narrative.

5.3 Host Employer: Distributive Justice Outcomes

This section reviews the Phase 1 data from a justice and fairness perspective. In all, 262 cases were finalised during the five-year period, giving the outcomes shown in Table 5.1 below (this was highlighted earlier in Appendix 13). Some 12% of investigations resulted in there being no case to answer, 57% had some sanction imposed, and the remaining 31%, saw their employment terminated. Each of these categories requires examination.

TABLE 5.1

Host Employer Justice Administered (N=262)											
	Disciplinary Finding										
	Seriousness ➡										
Offence	**NCA**	**C/C**	**VW**	**WW**	**FWW**	**Dis**	**SDis.**	**SA**	**R/R**	**Total**	**%**
Attendance	3	5	5	4	5	8	1	0	5	36	13.74
Criminal	3	6	8	4	1	1	0	0	2	25	9.54
IT Misuse	1	3	2	1	4	2	0	1	9	23	8.78
Interpersonal	5	13	4	6	3	2	0	0	5	38	14.50
Sexual	0	2	1	1	0	2	3	0	3	12	4.58
Theft/Defrauding	4	10	2	1	6	9	0	0	9	42	15.65
Health & Safety	2	7	4	2	1	0	0	0	0	16	6.11
Dereliction	14	19	6	8	6	5	1	4	8	70	27.10
Totals	32	65	32	27	26	29	5	5	41	262	100
Percentage	12	57				31					

5.3.1 No Case to Answer (12%)

There is no published data on cases which have been investigated but ultimately quashed as there being 'No Case to Answer'. However, these 32 cases reflected the composition within the data set by way of gender (24 male, 8 female), age (44.5years), and tenure (128.7 months), but with a relatively low cell count of females (8 cases), and it must be discounted despite the 'p' value being zero. The main point of concern for the employer would be that 13 of these investigations involved employees with more than 10 years of service, who must have been thoroughly inculcated into the organisation, yet their conduct warranted investigation.

The numbers in each category are generally small, but 'Dereliction of Duty' (14 cases) having the most entries saw an even greater proportion of males being investigated than the data set as a whole (86%, compared to 67%), with a workforce of only 28%. This suggests that for this particular type of transgression, males are appreciably less compliant and even though cleared as a result of the investigation, they nonetheless allowed their conduct to be questioned, though the numbers are too small to draw firm conclusions.

5.3.2 Disciplinary Investigations Short of Dismissal (57%)

Just over half (57%) of investigations saw the imposition of varying sanctions without the need to terminate employment. In general, they reflect the gender composition of the data set, though with female offending more than the male in the two categories of IT breach (6 females, 5 males), and theft (10 females, and 9 males). It is impossible to know how serious the IT breaches were, and whether they bordered on the criminal, but this employer clearly chose not to sever the employment relationship, perhaps viewing them as 'minor' or first-time offences. What is a little surprising is the 'acceptance' of the 'theft/ defrauding' cases where no termination has resulted. The question of integrity in the public sector is often seen as a fundamental requirement, when many employers would, almost without hesitation, have severed links, and by comparison the Literature Review contained cases of theft where quite 'small' sums had warranted dismissal. A range of examples from the Host are noted below where this employer has allowed employment to continue:

> Paid employment whilst signed off sick; Falsifying a sick note; Allowing public to use facilities without paying; Falsifying time sheets; Claiming mileage when not at work; Making fraudulent mileage claims; Stole money from floats; Undertaking personal business whilst at work; Excessive personal use of the telephone.

The above are examples of a single infraction, yet a number of these and other cases actually involved multiple offences, and despite this the employer appeared to be very accommodating in showing 'understanding'. This may be indicative of the employer's inability to correctly train and induct the employee, or that they are a very compassionate organisation, or conversely a reflection of a very tight skills gap locally. Without knowledge of the individual posts involved, which the data protection restriction prevented, it is impossible to answer this point. However, with another employer, a number of these descriptions would almost certainly have resulted in dismissal.

5.3.3 Disciplinary Investigations: Terminations (31%)

The seriousness of these cases saw 29 employees being dismissed with notice, 5 summarily dismissed, and 41 choosing to resign/retire, a further 5 negotiating a 'Settlement Agreement'. Many of these cases reflect the earlier examples where the employee remained in employment; however, these must have been considered substantially more serious, or may have been linked with other offences (note the data capture records normally only the headline offence), and they may have had previous disciplinary sanction periods still operative.

5.3.4 Demographic Comparisons: Gender

Table 5.2 below shows the distributive justice outcomes by gender.

TABLE 5.2

Distributive Justice Outcomes by Gender (N=262 cases, Males=177, Females =85)		
Offence Type	Male (N=177)	Female (N=85)
No Case to Answer	24	8
Capability/Counselling	36	29
Verbal Warning	27	5
Written Warning	22	5
Final Written Warning	21	5
Dismissal	17	12
Summary Dismissal	5	0
Settlement Agreement	4	1
Retired/ Resigned	21	20

Table 5.2 above indicates a few notable differences in outcomes in the various categories. Females tended to receive proportionately fewer 'Capability/Counselling' results than do the males, given their overall numbers in the workforce (expected values M=18, F= 47). Similarly too, 'Retired/Resigned' sees females having disproportionately lower numbers of cases compared to the general workforce (expected values M=11, F=30). In both instances Chi Square values show these as statistically significant, (C/C $p \ll 0.0001$, and R/R $p=0.0004$). A critic of the Host disciplinary system might suggest that females are treated more leniently

than males in having only a 'Capability/Counselling' judgement imposed rather than a higher tariff one, akin to Bellizzi and Hasty (2002) where gender differences in disciplinary matters saw female transgressors receiving less severe treatment. Alternatively and equally as plausible given extant research on females being less likely to offend (Phase 1 results), and it could be that when they do, on average, the offence is of a less serious nature and thus warrants this judgement. Yet paradoxically, 'Retired/Resigned' figures being almost equal numerically, suggest quite a different scenario. Whilst females are under-represented in respect of their workforce numbers (p=0.0004), in respect of the data set, 23% of all female cases chose R/R against only 12% of males. Expanding this further and conflating D, SD, SA, and R/R where infractions were so serious that a termination resulted, 41% of data set females compared to only 27% of males left their employ. This contradicts the proposition that when females commit an offence it will generally be of a less serious nature.

The explanation for the difference probably owes more to the willingness of the female to voluntarily sever the employment relationship, rather than any inherent propensity to commit serious infringements. Examples of some of the types of offence which led to severance are:

> Theft of stock, diesel, and monies; fraud; misuse of assets; mileage and subsistence discrepancies; breach of sickness provisions.

It should be noted that many of these appear to duplicate the list of offences above, for which the Host allowed employment to continue. In the absence of information on this, I assume it may be the result of a difference in scale, a repeat offence or other mitigating circumstances.

The remaining categories in Table 5.2 show that sanctions short of dismissal are dominated by the male, but with such a low cell count for the females it would be wrong to assess them individually. Instead combining VW, WW, and FWW, obviates the cell count problem and gives a value of p= 0.003. This again reinforces the stereotypical male offender regarding these types of justice cases.

5.3.5 Demographic Comparisons: Number of Disciplinary Cases

The distributive justice outcomes leading to severance, if excessive, reflect poorly on any employer, given the resource implications, reputational damage, and cost of replacement. However, this has to be set in the context of the employer as a whole and the 80 cases in Table 5.2 (above) are also shown again at Table 5.3 below, which accrued over a five-year period, meaning on average about 16 cases/year resulted. Taken against an average workforce of

3,672 employees, this equates to around 0.4% or about 1 departure for every 229 employees, and given the spread of ages and variety of duties, despite the cost, this may not be considered too problematic. However, the number of formal disciplinary cases over the five years, extracting those where there was no case to answer (262-32 = 230), is also in Table 5.3 below. This gives an average of 46 cases of formal disciplinary investigations and Hearings each year, where culpability had been established. On average this equates to about one case for every 80 employees, which reflect very poorly compared to the CIPD (2007, p.19) national public sector survey which suggests not 1:80, but 1:364 as an average. Questions therefore need to be asked as to why this organisation has a disciplinary record about four times greater than expected.

TABLE 5.3

Distributive Justice Outcomes by Gender and Offence Type (N=262)						
Seriousness						
Offence Type	No Case to Answer		Sanction Applied		Termination	
	Male	Female	Male	Female	Male	Female
1 Attendance	2	1	14	5	9	5
2 Criminal	3	-	16	3	1	2
3 IT Misuse	1	-	4	6	7	5
4 Interpersonal	2	3	17	9	5	2
5 Sexual	-	-	3	1	7	1
6 Theft/Defrauding	2	2	9	10	9	10
7 Health & Safety	2	-	12	2	-	-
8 Dereliction of Duty	12	2	31	8	9	8
	24	8	106	44	47	33
	32		150		80	

Some categories stand out as high frequency, with interesting comparisons between the 'Sanction' and 'Termination' groups. In the absence of actual detail from the Disciplinary Hearings, I can only assume that the difference, for example, for 'Attendance' between a 'Sanction' and a 'Termination' is one of degree and/or frequency. Possibly one good point regarding the welfare of employees is that, whilst there were breaches of 'Health and Safety',

these cannot have been seen as so serious as to merit a termination, suggesting perhaps a 'safe' working environment, although one case referred to the "misuse of poisons"! The mean annual absence of 'Sanctioned' employees facing an 'Attendance' disciplinary was 27 days, compared to 78 for those 'Terminated'.

Interpersonal (interactional) also had a large number of cases which, in the main, ended in a warning of some sort as opposed to termination by a factor of 4:1. Unexpectedly, 'Criminal' offences seldom resulted in termination by a factor of 6:1, which suggests the organisation may be somewhat tolerant of this behaviour, or it may be deemed of little import (by management), and relate to such things as "speeding, not wearing a seat belt, setting fire to someone's belongings". Overall, Table 5.3 highlights the distributive justice outcomes over the five-year study, which will be particular to this organisation, and cannot be seen as generalizable to others.

It is worth noting that almost half of the 'Terminated' employees had absences below that of those of the 'Sanctioned' group, but had taken unauthorised absence, which this employer clearly takes very seriously. In Table 5.4 below, the evidence on absence suggests it is the order of magnitude that is the defining criterion in distributive justice outcomes, with 'Terminations' (78days) being almost three times more likely than only having a 'Sanction' imposed (27 days). The 'No case to Answer' category stands out as an anomaly (33 days), which may be explained by the sample only comprising 32 cases, though it does appear, that *frequency* of absence may be impacting on these decisions, given there is a gradual rise in occasions as seriousness increases.

TABLE 5.4

Annual Days Absence and Frequency of Absence				
Distributive Justice Outcome	Days Absence		Absence Frequency	
	Mean	Range	Mean	Range
NCA (N=32)	33	0-64	1.8	0-7
Sanction (N=150)	27	0-111	1.9	0-9
Termination (N=80)	78	0-257	2.1	0-10

I now turn to the time taken processing cases.

5.3.6 Host Employer: Procedural Justice 'Delays'

The above identified the distributive justice outcomes, but makes no reference to the length of time taken to progress a case (procedural justice), which is time taken from first notification to the employee, to a decision at a Hearing or the employee voluntarily leaving. "Delays too often defeats justice" Dyson (2015, p.1) and this raises the issue of what might be considered 'reasonable'. Should a case go before an Employment Tribunal, the latest figures suggest an average wait of around eight months (2017), with the government accepting this needs some remedy, in that they are trying to recruit around fifty more circuit judges to speed up the process. Since no one monitors how long it takes to finalise a case, this aspect of procedural justice is largely unknown, but for this research the Host did furnish this primary data on each case (Chart 5.1 below).

CHART 5.1

Case Duration (N=261)
(Working days from formal notification to disciplinary Hearing)
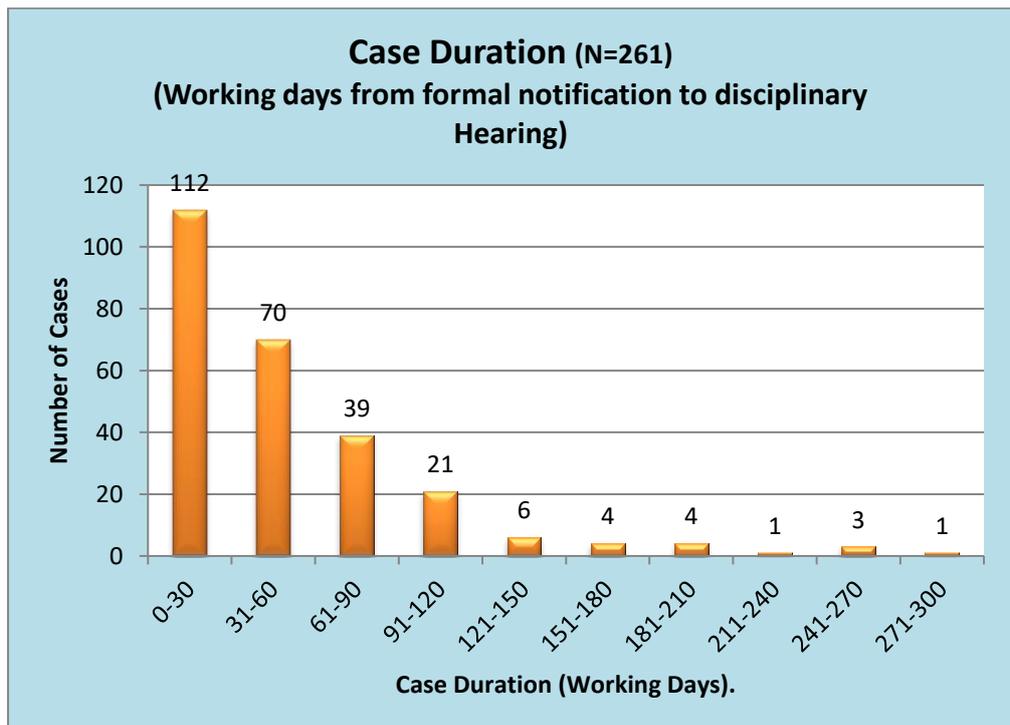
This employer's record over the five-year study period suggests a reasonably judicious procedural justice process, with the percentage of cases heard at a Hearing in 2,3,and 4 months (70%, 85%, and 93%respectively). A handful of cases, for unknown reasons, do extend too far beyond six months, which I used as an 'acceptable' benchmark where cases are reasonably complex; indeed, a Member of the Executive noted "…it should be done and

dusted within six months". Some investigations will be relatively straight-forward, particularly where the evidence is unequivocal, the employee owns up to the transgression, or where they resign. In these cases, the duration is likely to be short, and is reflected in Chart 5.1 above. Examining the type of offence with the duration of the disciplinary process, there is no statistically significant difference, whether it be a problem of Attendance, IT misuse, Interpersonal, Theft etc., no one type of offence takes an unexpectedly long or short time to process. There appears therefore an even-handed approach to procedural justice regarding the *type* of alleged offence.

Analysing the dataset regarding the seriousness of the offence, some differences, albeit not statistically significant, do appear. Table 5.5 below shows the case outcomes against the duration of the disciplinary process.

TABLE 5.5

Case Duration Quartiles (Working Days) v Case Outcome (N=260)										
Duration (days)	**NCA**	**C/C**	**VW**	**WW**	**FWW**	**D**	**SD.**	**SA**	**R/R**	**Total**
0-17	10	27	1	1	3	5	0	0	19	66
18-38	11	20	10	2	2	9	1	0	7	62
39-64	6	6	12	10	11	8	1	3	8	65
65-290	4	11	9	14	10	7	3	2	7	67
Total	31	64	32	27	26	29	5	5	41	260
NB. NCA=No case to answer, C/C-Capability/Counselling, VW=Verbal Warning, WW=Written Warning, FWW=Final Written Warning, D=dismissal, SD.= Summary Dismissal, SA=Settlement Agreement, R/R=Retired/Resigned.										

In the case of minor offences where the outcome requires no or only minimal intervention involving capability, or counselling, procedural justice is expedited largely in up to 38 days. This possibly suggests a 'proportionate' approach to the allocation of resources for the investigation, and resolution of the case as early as possible. In these cases, it would have been hoped to see the cases taking 39-64 days, and 65-290 days, having considerably fewer investigations, given the consequences of the alleged offence not being too serious. Unusually

the 'C/C' cases saw an increased number in the latter category; nonetheless the employer would, on the whole, appear to be processing justice in a 'reasonably' timely manner.

In contrast to this, the terminations of employment as shown in Table 5.5, show a significant unexpected almost even distribution of total cases in each of the duration categories. The key to this anomaly is in the large numbers (N=19) who retire or resign within 17 days of being informed they are to be formally investigated. This is a decision made not by the employer but by the *employee*, who, faced with the prospect of being held to account, chose not to face any sort of inquisition, thus exercising their prerogative (R/R) of 'control' or 'voice' in the process. This 'self-determination' is exhibited throughout the range of days taken to investigate, with both males and females returning approximately equal numbers in each of the duration categories (11-8, 4-3, 3-5, 3-4, male to female respectively). Clearly many choose to exit of their own accord, though 3 individuals (2 males and 1 female) stayed in employment and only resigned after 157 days or more. They possibly chose to 'tough it out' to see what evidence was forthcoming, and to afford added time to seek alternative employment whilst still on payroll.

The whole data set comprised 86 females, and only 20 of these females (23%) were prepared to sever (R/R) the employment relationship, whereas of 177 males, only 21 (12%), did similarly. From the interviews later, it was felt that males compared to females were more 'confrontational' and wanted their day 'in court'. Meanwhile females, in contrast, tend to be more emotional and may wish to avoid the embarrassment of a disciplinary; it may also possibly reflect the traditional secondary nature of the female earner who might be less reliant on their income with respect to family needs. Clearly this is speculation with no empirical evidence to substantiate it.

Without any clear requirement in law to action things expeditiously, this may be seen by the a dilatory employer as a licence to progress matters as and when they see fit, rather than expediting procedures to a resolution. The time taken from notification to resolution of a case can materially affect the well-being of the employee, and if compounded by a lack of feedback during the process, this will only exacerbate a feeling of injustice and isolation, particularly in the case of suspension.

Table 5.6 below shows the mean duration time and range of each investigation outcome. As might be expected, with increasing seriousness of the offence, the average investigation times increased from 6 to around 18 weeks. This positive relationship of rising duration falls away

with 'Resigned/Retired' outcomes (37 days), which is the result of a number of employees choosing to sever the relationship probably well before detailed investigations are completed. Some 20 employees severed their employment within only a four-week period after being notified they were under investigation, and 7 of these did so in the first week. Conflating the cases by way of seriousness, a clear positive relationship exists with NCA averaging 36 days; all other offences short of dismissal (C/C, VW, WW, and FWW) averaged 52 days, and termination cases (D, SD, and SA) averaged 71days. This suggests the consequences of dismissal, and the attendant possibility of an ET, may procedurally call for a greater burden of proof and attention to detail, though without access to case files this is conjecture. Thus, it would appear there is a positive relationship between duration and seriousness of offence, with the exception of those cases where the termination decision rests with the employee in Retiring/Resigning.

TABLE 5.6

Procedural Justice Duration v. Distributive Justice Outcome (Working Days)					
Case outcome	**N** (N=260)	**Mean** (Days)		**Range (Days)**	
				Minimum	**Maximum**
NCA	31	36	36	0	172
C/C	64	33		1	261
VW	32	59		10	248
WW	27	78	52	10	199
FWW	26	63		3	137
D	29	64		13	290
SD	5	93	71	36	150
SA	5	91		60	157
R/R	41	37	37	0	215
	Mean	51			

As a secondary check on procedural justice, the *type* of offence was analysed to see if any urgency was evident in how quickly certain matters are progressed (Table 5.7 below). Whilst the overall 'Duration' varies about the mean of 51 days, there appear no types of offence which differ markedly, though it is striking that the range can extend to over a year. Unless

there are *exceptional* circumstances, unnecessary delays run the risk of there being procedural *injustice* (see *RSPCA v Cruden* [1986], and *Marsh v Ministry of Justice* [2017]), which could possibly hinder employee relations.

TABLE 5.7

Procedural Justice Average Duration v. Offence Type (Working Days).				
Offence Type	**N** **(N=260)**	**Mean** **(Days)**	**Range (Days)**	
			Minimum	**Maximum**
Attendance	36	48	1	248
Criminal	24	38	1	117
IT	23	45	0	215
Interpersonal	38	62	0	290
Sexual	12	48	9	130
Theft/Fraud	41	43	1	261
Health & Safety	16	53	5	116
Dereliction	70	56	0	269
	Mean	51		

Evidently some cases take longer than others, which is reflected in the range, where a clear split is evident in five types of offence exceeding 215 days or more, while the remaining three categories have a maximum of 130 days. It would suggest that greater urgency is placed on 'Criminal', 'Sexual', and 'Health and Safety', given these, in general, are often dismissal cases. That is not to say the remainder are not, but it may be that they are inherently more complex and sensitive issues to investigate.

The concept of justice, in the legal sense, is that it should be dispensed without fear or favour and apply equally to all, and yet in employment management often apply justice and fairness differentially. Indeed, the work of Hollander (2012) evidences the preferential treatment meted out to individuals where they have accrued special dispensation from a group, because of their particular contribution to the group/organisation. This could be because of distinguished service, critical knowledge, ownership of the company, specialist skills and the like such that they are allowed licence to deviate from common standards of conduct which others are obliged to follow. This *idiosyncrasy credit* may mean they receive not only

preferential benefits but also less severe sanctions in a disciplinary situation. The Audit Commission (2010) notes the very preferential terms typically obtained by departing public sector chief executives of up to three times their annual salary, noting such inequalities weakens the perception of justice felt by others less fortunate.

Host employer severance terms will be examined next to see if anything approaching an *idiosyncrasy credit* applied, in relation to the level of pay, and by assumption, seniority.

5.4 Host Employer: Justice Judgements and Pay

The Host employer (N=3,672), furnished pay details over the five years which can be compared to the data set (N=259). Chart 5.2 below shows the comparison. The data set Observed (N=259, coloured blue) are set against that which would have been expected from the pay distribution in the workforce as a whole. In the category 'Up to £9,999', an under-recording in the data set, of 55 cases compared to an expected 89, is evident. A similar under-recording difference was also evident in the latter categories of £25,000 and above. Whilst the *idiosyncrasy credit* suggests favourable treatment for some, typically for the higher salaried (£25,000 and above), the under-representation of lower waged employees may well indicate that in this organisation other factors are at play in their favour.

This under-representation of lower waged employees (up to £9,999) might be construed as this group being less inclined to commit transgressions, being more 'rule-bound', or conversely that the organisation is possibly more 'understanding' of their behaviour and less inclined to commission an investigation. This stark difference of 55 cases as opposed to 89, which accounts for about a third of the Chi Square value (χ^2 = 38.26, @6df, p<<0.001) would warrant further investigation in any follow-up study, as would the discrepancies in the remaining pay categories perhaps examining other variables beyond this research.

CHART 5.2

Pay Categories Data Set(N=259) v. Workforce (3672)
(Chi Square = 38.266, @6df, p <<0.0005).

	DATA SET OBSERVED	DATA SET EXPECTED
Up to £9,999	55	89
£10,000 - £14,999	67	49
£15,000 - £19,999	62	39
£20,000 - £24,999	31	25
£25,000 - £29,999	16	18
£30,000 - £34,999	14	22
£35,000 and above	14	17
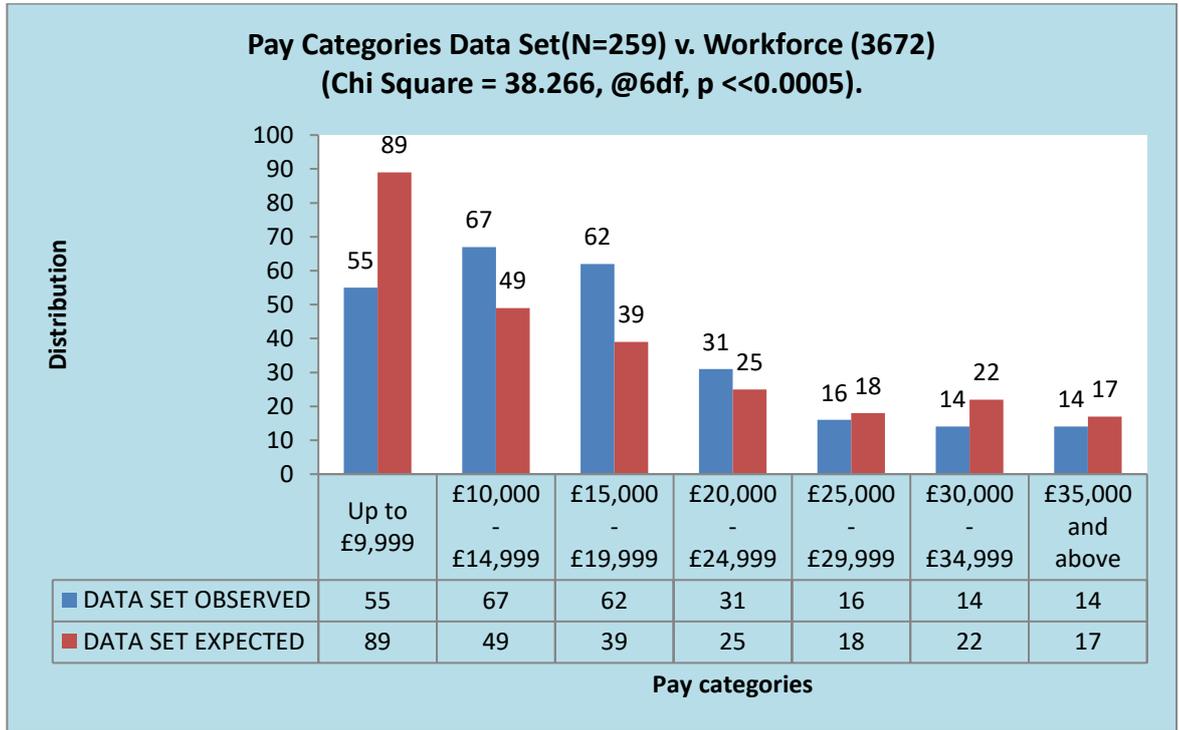
Income distribution from Chart 5.2 above is given in Table 5.8 below, showing the workforce and data set percentages.

TABLE 5.8

Workforce Annual Pay Distribution v Data Set (N=workforce 3,592, Data Set 259)							
Pay banding	To £9,999	£10,000- £14,999	£15,000- £19,999	£20,000- £24,999	£25,000- £29,999	£30,000- £34,999	£35,000 and above	Total %
Workforce %	34	19	15	10	7	9	6	100
Data Set %	21	27	24	12	6	5	5	100
Observed Data Set Cases	55	67	62	31	16	14	14	Total 259
Expected Data Set Cases	89	49	39	25	18	22	17	Total 259

Combining the first two pay groups up to £14,999 in Table 5.8 above, to give a 'low' pay category, and setting it against the combined groups £15K and above, the data set compared

to the workforce is only just significant at Chi Square 3.971, @1df, p=0.046, suggesting the data set *overall* is broadly representative of the workforce.

Keeping these same 'low' and 'high' pay categories, a quite different picture emerges when examining the offence type as can be seen in Chart 5.3 below.

CHART 5.3

Disciplinary Cases by Offence Type and Pay Dsitribution
(N=259, 122 below, and 137 at or above £15,000)
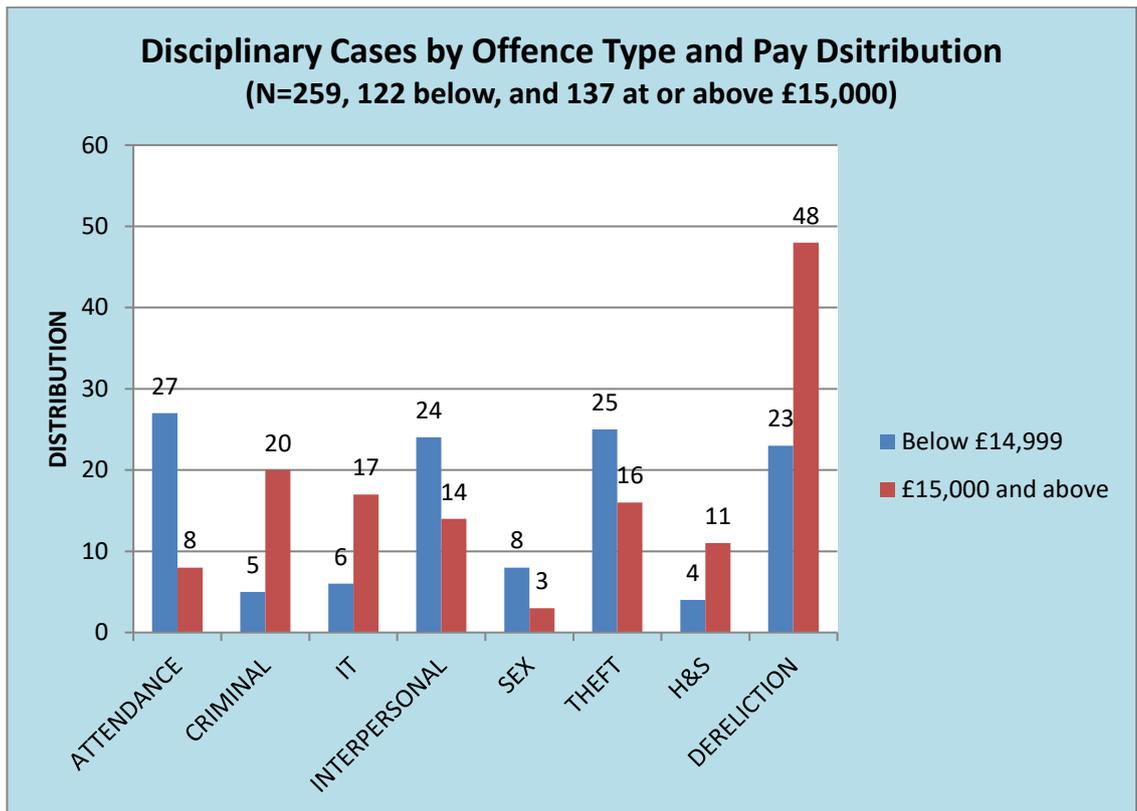
Within this distribution, it can be seen that there is a marked disparity in certain types of offence. Many of these differences can probably be explained by contextual factors, like type of work, access to IT, and typically the lower paid in doing the more manual jobs may suffer more muscular skeletal injuries. In redrafting Chart 5.3 into tabular form (Table 5.9 below), we clearly see the observed and expected against each type of infraction. Granting licence that contextual characteristics will differentiate some of the categories, I suggest that 'Criminal', 'Interpersonal', 'Theft' and 'Dereliction' are comparable. Not directly, but in the sense that all employees should know the basics of right and wrong, civility, and complying with reasonable requests.

Table 5.9 below, therefore, shows those 'comparable' offences, which are masked by the overall data set at Table 5.8 above. Taking these categories highlighted as being primarily

influenced only by the ethical and moral compass of the individual, a Chi Square value of 25.567, @ 7df, p = 0.0006, suggests, for these types of offence, at least with this data set, there may be factors differentiating the behaviour of lower and higher paid staff. This fine detail was masked in the earlier tabular results.

TABLE 5.9

Offence Type:- Actual v. Expected Distribution by Pay Category				
	Observed Cases		Expected Cases	
Offence Type	To £14,999	£15,000 and above	To £14,999	£15,000 and above
Attendance	27	8	19	16
Criminal	5	20	13	12
IT	6	17	12	11
Interpersonal	24	14	20	18
Sex	8	3	6	5
Theft	25	16	22	19
H & S	4	11	8	7
Dereliction	23	48	38	33
Total	122	137	138	121
	N=259		N=259	

The existence of any *idiosyncrasy bias* toward the higher waged cannot be substantiated by way of preferential treatment in distributive justice outcomes. There is, however, clear evidence that this data set exhibits notable lapses of personal conduct by lower and higher waged groups, the most notably differences being in the 'Criminal' and 'Dereliction' categories, and further work is needed to tease out possible antecedents as contributors to these anomalies. The other two categories of 'Interpersonal' and 'Theft' are more aligned.

5.5 Host Employer: Suspensions a Neutral Act?

The ability of an employer to suspend an employee is usually enshrined in the 'Statement of Particulars', but if not, it will be incorporated in the 'Contract of Employment', which in its totality encompasses all other essential terms pertaining to working with that employer. This contact, in appropriate cases, allows the employer to take action against and employee in the

interests of the business, and this interest is best served if "The exercise of disciplinary powers is a corrective function, not punitive",(Selwyn 2004, p.331), and is proportionate.

A decision to suspend is usually not taken lightly and not just because of cost, though this is not always the case; for *Gogay v Hertfordshire County Council,*[2000], rushing in to suspend was considered a 'knee jerk' reaction, because no preliminary investigation had been done, and additionally the dismissal, on unproven allegations, resulted in psychiatric harm to the employee, the employer being held liable. Additionally, alternatives to suspension must always be considered where this is practicable, and this would be considered easier for large organisations compared to SME's. Suspension would normally be used where relationships have broken down, there is a risk of the employee interfering with the investigation, perhaps causing further problems, or the allegations appear extremely serious.

The onus is on the employer not to unnecessarily delay the investigation, although at times this may prove unavoidable due to employee illness, or representation availability. Published data on suspensions is extremely rare given that, just like disciplinary information, organisations view it as confidential. An outline of the Phase 1 data set is below in Table 5.10.

TABLE 5.10

Suspended Employees by Gender and Offence Type			
	Male (N=33)	Female (N=17)	Total (N=50)
Attendance	4	1	5
Criminal	3	1	4
IT Misuse	2	2	4
Interpersonal	3	2	5
Sexual	2	1	3
Theft/Defrauding	6	6	12
Health & Safety	1	0	1
Dereliction	12	4	16
Sub Total	33	17	
		Total	50

Phase 1 data set showed absence by gender as being broadly equal, at around 23 days/year, or roughly twice the workforce average (11days/year), and the absence rate for those suspended

at 21 days/year, closely mirrored this. Overall, about twice the number of males were suspended compared to females (33 cases to 17, or roughly 2:1), and this ratio corresponds with the gender proportions of the data set which are about 2:1, suggesting an equality of attitude to suspension from the employer, though, with a limited sample, it is hardly conclusive. With all categories having relatively low cell counts, it is impossible to draw firm conclusion on each type of offence.

Of greater concern from a justice viewpoint is that, of the 50 suspensions, 7 ultimately proved there being 'No Case to Answer'. This could indicate an over-willingness to suspend when the issue in question is not certain, and being a very large employer, temporary redeployment would normally be possible; and whilst no one has a crystal ball at the outset of such cases, a preliminary assessment may have avoided at least some of these cases, some of which took an unusually long time to resolve as Table 5.11 below illustrates. There is no particular type of offence in which suspension is automatic, but 'Sexual', Theft/Defrauding', and 'Dereliction', have a tendency to lead to suspension compared to other categories.

TABLE 5.11

Employees Suspended with ultimately a ' No Case to Answer' Finding (N=7)							
Weeks Suspended	2	6	12	15	24	34	Total Basic Salary Cost
Number of Cases	1	2	1	1	1	1	(Excludes On-costs, or Cover)
Basic Salary Cost	£654	£2,658	£8,076	£5,190	£3,240	£18,292	£ 38,110
NB. The mean suspension was 14 weeks.							

These seven suspensions, on average, lasted over three months and up to eight months before one employee was exonerated. I am not privy to how complex these seven cases were to investigate, or the resources that were allocated to them, but, a potentially avoidable cost suggests the wheels of justice possibly turned too slowly on these particular occasions.

The duration of suspension has seldom been studied, but three reviews provide some scope for a 'basic' comparison. Guffey and Helms (2001) reviewed the US Internal Revenue Service (IRS), for the year 1991, and 358 suspensions arose from a workforce of 132,249 (0.27%). My data set gave 50 cases over 5 years (10/year), from a workforce averaging 3,672, (0.27%).

Dismissals annually from the IRS were 0.19%, compared to 0.44% in the Host data set, meaning at least by this comparison, possibly, IRS staff would appear to transgress less seriously when deviant, and/or the employer was less punitive.

A second comparison can be made as to how justice is administered with suspended employees, in a Tax Payers' Alliance (2011) Freedom of Information (FOI) request to public bodies in the UK Midlands, covering the previous two years. An extract in Appendix 28 shows the duration and individual costs, onto which have been included the Host figures. This shows justice in the workplace can take an inordinate length of time, just under four years in one case, and a brief summary of the report is below at Table 5.12.

TABLE 5.12

Suspended Employees Tax Payers' Alliance Key Findings (2009/2011).	
Public Bodies Responding	69
Cost of Suspended Employees	£8m.
Termination of Employment	47%
Longest Suspension	950 working days
Criminal Proceedings	21 cases
Highest Individual Salary Payment	£176,733
Leicester City Total Days Lost	16,000
Average Suspension	76 working days.
TA Average Suspension Cost	£8,145
Data Set Average Suspension	71 working days
Data Set Average Cost	£6,009

The Host employer, when compared to the TA findings above, appears comparable on the average figures, but avoids the excesses of extremely long suspensions evidenced in the TA findings. Thus, judgements about justice/fairness, whilst being subjective, are better set in the context of others, much like distributive justice concepts in deprivation theory which rely on the referent. Whether real or imaginary, the feelings about [in]justice/[un]fairness, be they individual (Crosby and Gonzalez-Intal, 1984) or group perceptions (Rhodebeck, 1981), cannot be taken as definitive or stable (Crosby and Gonzalez-Intal 1984: Fortin et al., 2016). Indeed the range of 'understanding' of what justice/fairness means (Appendix 29) shows it to be

complex and include elements of process, outcome, law, ethics, information, morality, consistency, integrity, proportionality and more and little wonder evaluations can vary between individuals presented with exactly the same case.

A third source of suspension data can be had from the House of Commons Committee of Public Accounts (HCCPA, 2004), which reviewed the use of NHS suspensions. These estimated the NHS annual cost at around £40m, with suspensions averaging 47 weeks for doctors, and 19 weeks for other staff. Between April 2001 and July 2002, there were 1063 suspensions; of 206 doctors, 60% left their employ, and of 857 other staff, 56% also left. With each doctor's exclusion averaging £188,000, delays can be expensive, and five cases studied, which still had one to resolve, had already cost £2.5m.

The NHS appears too willing to initiate suspensions, "Trusts have tended to rush to exclude clinicians with insufficient initial investigation….In analysing thirtysix cases referred to it, the National Clinical Assessment Authority was able to identify thirty cases where there were alternatives to suspension" (HCCPA p. 12).

If this sample were representative of all doctor suspensions, noting each one averages £188,000, the saving to the NHS by a more measured approach would be around £26m. Suspensions for clinicians averaged one in 700 (0.14%), which was seen as too high (HCCPA Ev1). Yet whilst accepting the 'rogue employee' is an exception but nonetheless plays a part in the data, overwhelmingly the concentration for an explanation within the NHS is upon *group dynamics.* "…a dysfunctional clinical team would be a source of danger to the patient…a lot more emphasis is placed upon the team and the organisational environment in which they are working rather than simply concentrating on the individual alone". (HCCPA Ev2).A comparison of the data is shown below at Table 5.13.

TABLE 5.13

Organisational Suspension Comparisons		
	Employees Leaving Following Suspension (%)	**Suspension Rate Compared to Workforce (%)**
Host Employer	44	0.27
TA Survey	47	------
NHS Clinicians	60	0.14
NHS Other Staff	56	------
Internal Revenue Service	--------	0.27

The above suggests that the Host employer, despite being perhaps too inclined to initiate suspensions (like the NHS), does allow a slightly greater percentage to remain in employment than the others. One trade union convenor commented that they saw a suspension as equivalent to the judge donning a black cap before passing the death sentence, but the Host figure of 44% suspended employees leaving suggests 56% stay in employment. It may have been the case that the trade union convenor had a particular employer in mind, but this Host offers a better than evens chance of continued employment. There is mention in the HCCPA that inter-personal and inter-group relations can be a significant factor, and where personalities and professional doctrines clash, it may have proved 'pragmatic' to approve a severance package rather than try to rebuild fractious working relationships. Whether this is just or fair must rest upon a subjective judgement by those involved, but however the suspension is handled, the NHS and other employers must avoid the examples like that of Dr. Bridget O'Connell who was suspended for 11 years and left her employ, and Dr. Raj Mattu who was suspended in 2002, returned to work in 2007, but was subsequently sacked in 2010 whilst ill in hospital. In 2016, Dr. Mattu received £1.22m compensation. The damages reflected the impact dismissal had on him but also the bullying and intimidation involved. Justice prevailed, but it was a very long and costly process, with a considerable period of suspension.

Suspensions can impact adversely on the employee. As was commented upon in a recent ET case of *Mills v East Sussex Healthcare NHS Trust* (2300298/2017, para.41) "The impact of suspension is not to be under-estimated either", and quoting Lady Justice Hale in *Gogay* [2000]:

"I appreciate that suspension is often said to be in the employee's best interest; but many employees would question that and in my view they would be right to do so. They will frequently feel belittled and demoralised by the total exclusion from work and the enforced removal from their work colleagues, many of them will be friends. This can be very damaging. Even if they are subsequently cleared of the charges, the suspicions are likely to linger…".

Only if suspension is used judiciously will procedural and interactional justice be evidenced, and the resultant distributive justice outcome be more likely to be acceptable (Thibaut and Walker, 1975).

Suspension is deemed to be a *neutral* act, "It should always be made clear that suspension is not an assumption of guilt and is not considered a disciplinary sanction" (Acas, 2019, p.19). Acas (2019) mentions the suspension being for a "brief" period, and similarly Selwyn (2004) notes that where outside bodies are involved in the investigation the suspension may "possibly go for weeks or months" (p.333). Both of these sources imply employers should avoid any unnecessary delay and thereby an injustice, which raises the issue as to how just and fair an example of 54 weeks (Host employer), or nearly four years (TA) would have been seen by the employee concerned. The cautionary point from Acas (2019, p. 18) is that "If suspension is unreasonably prolonged it may then be open to the worker to take action for breach of contract, or in extreme cases to resign and claim constructive dismissal".

It is not only the duration of suspension that is germane, but also the terms attached to it. This *ostracising* from work, when work is to many their defining self-identity, far from being a *neutral* act, I suggest , irrespective of the legal texts pronouncements, is felt by many, particularly when the matter drags on, to be a very real and damaging part of the disciplinary sanction process. It is a process, which is made all the more difficult where they subsequently return to work, but are prevented from discussing the matter with colleagues. As Sheridan (2019) noted of her brother who committed suicide the day after being suspended, he had:

"worked for an organisation whose aims he passionately believed in, and to which he had devoted most of his adult life. His friends and social circle were all connected to his work. His suspension cut him off not only from his employment, but his way of life" (p.16).

The above summarises the administration of justice in the Host employer, and the concluding qualitative section addresses the personal accounts of those directly involved in the process.

Of the different organisational strata, as a reminder, the following abbreviations have been used: P=Politician, M=Manager, TU=Trade Union, HR=Human Resource Manager, E=Employee. Underlined quotes indicate the interviewee strongly emphasising that point.

5.6 Semi-Structured Interviews: An Outline

The impact of austerity was outlined in the introduction to Phase 2, and this section focusses on the personal accounts of those involved at all levels of the disciplinary process impacted by these changes. The accounts have been structured to correspond with the justice facets currently being researched, *anticipatory, interactional, procedural, distributive,* and *overall*. It concludes with a new dimension which I have termed B*oundary Conditions,* involving a 'gate-keeping' stage where management decide whether to invoke, or not, formal disciplinary procedures.

5.7 Anticipatory Justice Accounts

Anticipatory justice (Shapiro and Kirkman, 2001), or Justice expectations (Bell, Wiechmann and Ryan, 2006), are the conditions, contextually (both current and in the past), which shape the mind-set of the individual to be predisposed towards a given justice and fairness judgement. In the current research, interviewees recalled examples from their present and former work experiences to illustrate how both personal (experiences) and others (vicarious) helped shape their anticipatory justice judgement. This section elaborates on the consequences of the public sector contraction, and restructuring, with the common feature being increased workloads and a management style which is impacting on employee perceptions of workplace stress (CIPD, 2019).

Having worked in a given department for an employer for over a decade, and throughout this time been a trade union representative, it is likely an individual would form a 'sound' view of how just and fair this employer was. Yet, having stayed with the same organisation, and taken on an employer-wide trade union remit, a diametrically opposite anticipatory judgement emerged:

> 1. (TU) "I was a rep. [Trade Union for 12 years] before I became a Convenor 8 years ago, and when I've come into this, it's as if I'd had blinkers on; now the blinkers have been removed and there's a big wide world out there, just within the [public body]…it was a big eye opener, a big eye opener."

A similar account from a different trade union about this same employer noted:

> 2. (TU) "I was under the impression it [employer] was very fair, open, honest,…PHEW! Let's just say it still blows my mind the stuff that I hear on a daily basis; it's completely different, it's a nightmare."

The first representative recalled how their previous 'halo effect' they perceived of the employer, had been shaped by a Director who, in operating remotely from the main public body, had a constructive and consultative approach toward the trade union involvement. Then having relocated to headquarters, overseeing employer-wide trade union responsibilities, their anticipatory justice perceptions had been radically reformed in three respects. Initially and contextually, it was clear that departments had an appreciably different attitude towards employee conduct and the use of disciplinary procedures (silo effect), as demonstrated above. Secondly the use of procedures was not uniform for staff within a department; there appeared to be one rule for senior staff, and another for the remaining workforce (hierarchical differentiation). Thirdly there appeared to be an element of self-interest by, and in the interests of, senior management, who chose to use or not use existing policies and procedures pertaining to themselves, particularly regarding issues where they themselves were beneficiaries. This idiosyncrasy credit (Phillips, Rothbard and Dumas, 2009), creates an image of a divided workforce, where comparable justice and fairness decisions, and not just in disciplinary situations, are illusionary for the majority:

> 3. (TU) "It's a two-tier system, absolutely."

> 4. (E) "They [management] were quite happy for you to 'break' the rules in their favour but not in yours, and if something went wrong, you're in for a disciplinary."

> 5. (TU) "They are all in each other's pockets. The managers take care of the managers, and woe betide you if you are on the front line, forget it, they have no say, no rights; it's disgraceful the way people are treated, it's an us and them, yes 100%."

Occasionally, it may not be preferential treatment because of hierarchy, but more whether you are an in-group member or not:

> 6. (E) "Operative [brother of manager] took a vehicle one weekend to move house, took it outside [geographic area] and got into a crash, no action taken. If anyone else had done that they would have been sacked straight away."

This example was the result of familial relationships, but in-group preferences and out-group discrimination could potentially relate to mere interests, as one example cited was of an employee being given exceptional working hours flexibility by way of his support for a particular football team (*lateral differentiation*), it being denied others. Even randomly assigned in-group and out-group studies have shown strong subject biases evidenced by fMRI scanners: "In-group biases in neural processing occurred within minutes of team assignment" (Van Bavel, Packer and Cunningham, 2008, p.1131), meaning apparent bias does not have to result from an extended relationship, merely 'belonging' to that group may be beneficial, though clearly a multitude of other explanations are possible.

Even within a department, there was not always uniformity as to how such matters were progressed (personal differentiation). The personal attributes of the individual manager may leave an anticipatory impression that justice will or will not materialise:

> 7. (E) "The management were great, the supervisors, area managers,…then they took this new management on and he was a complete arse hole, absolute, he was one of these, this is how it should be done, you do it, that kind of thing; didn't even look at the consequences."

> 8. (TU) "I walked in to the room and…and as soon as I saw who was sat in the Chair, I saw who was the HR and I said to myself 'well I'm losing this one'."

Whilst individual managers and their personal attributes can engender an expectation of justice and fairness, organisations too can influence this in a negative way by creating a collective workplace atmosphere, which is counter to, and inhibits the ability of the employee to speak up or raise concerns (voice). Traditionally, speaking out has been the role of trade union representatives, but large numbers of workers are not members and consultative structures effectively disenfranchise them. This oppressive regime can be inhibiting:

> 9. (E) "I think there was an element of, if we raise our heads above the parapet on this we will lose our jobs."

> 10. (E) "I think it's the fear of if you step out of line, or if you shout too much, or shout the wrong things,…you're not going to be here[dismissed]."

One option for the organisation to empower all employees, and not just the trade union members, is to conduct workplace surveys, which two of the public bodies did. One public body recently tried this as a new initiative, but only did one survey and scrapped the idea

according to the trade union because of the extent of criticism management received. The other public body runs the surveys bi-annually and one manager questioned its usefulness:

> 11. (M) " [employees] Are not sure how confidential that process is, and they are not sure of what the outcomes will be and they don't comment adversely because it impacts upon their manager, and they [staff] don't see it contributing very much at all. Once the survey data is there and presented, I think it is manipulated and spun in a way to say that everything is fantastic [impression-management]."

All sizeable public bodies have Joint Consultative Committee arrangements; thus, the trade unions are integrated into the formal policy and procedure formation process. The trade unions emphasised their role as being primarily focused on ensuring justice and fairness for their members. However, effectiveness from both management and the trade unions was seen as less than ideal in ensuring fairness throughout:

> 12. (M) "[Consultation] has been chipped away at, and their [trade union] is so isolated now it is a tick box exercise unfortunately in developing policy."

> 13. (M) "They [trade unions] have been almost squashed, and pushed into a corner, "please don't get involved, or if you do just sit in our pockets" and the consultation element of that is that we're not going to step out of line too much or else we will have no influence whatsoever."

> 14. (TU) "The issue of [tape] recording of interviews [disciplinary], they won't provide us with copy [tape], but we keep asking…and there have been instances of things that were said in the meeting were not in the transcription."

The above suggests a process of attrition may have weakened the trade unions' ability to fully represent the interests of their members, and thereby ensure fairness for all. In part, this may be a result of representatives being employees seconded to the trade union role. These individuals typically will be full-time employees, seconded for a number of days each week to trade union activities. However, in undertaking both roles they are potentially conflicted, for whilst striving to hold management to account and occasionally even pursuing litigation, they may nonetheless have a career which could be blighted as a result. It has been remarked that a particular public service was in the habit of removing the 'threat' posed by a trade union representative who was too effective, by promoting them into a management role, where the element of control was greater, though one representative resisted this temptation. A politician noted the sacrifice some of them pay:

15. (P) "…It's harder for them for career progression and promotion, there is possibly a trade-off."

16. (TU) "[Promotion] I'm not interested in climbing any ladders, or building bridges to further my career; this lady is not for turning, you can dangle baubles in front of me but no, it's not for me. I'm here purely for the members."

Ensuring justice and fairness can be problematic when management and trade unions are diametrically at odds, and many examples illustrated the impotence of the unions by being bound by the limitations of *consultation*, rather than *negotiation*. However, there were excellent examples of joint working, for instance by 'off the record' discussions to 'understand' each other's position prior to a Hearing, albeit they would still be minded that the Chair's decision was beyond their control. Collaborating with the trade union on difficult ill-health retirements, and a Director who so valued the input of a particular trade union representative, and appreciated that they could discuss in confidence *possible* structural changes even before extending the idea to a wider management forum. Thus, justice and fairness doesn't always have to be delivered following confrontation. A collaborative stance is possible, but this is heavily reliant on trust (Lind, 2001), and reciprocity (Korsgaard, Roberson and Rymph, 2010), and as one trade union representative noted, when you have these types of collaborative industrial relations work becomes "sublime".

Having an image of being a good employer can be an excellent means to becoming an attractive organisation and employer of choice (Highhouse, Thornbury and Little, 2006); however, the image and reality may not always align:

17. (TU) "I did have the impression that they were a good employer. They have a good front, they put on a good face. You look at the intranet and you see "We value our staff", "We want to look after their well-being". And we get behind the scenes, it's all a show. We [trade unions] see other than that, they talk about flexibility and helping their staff, and flexible working. Yet I see my colleagues just hitting brick walls trying to ask for these things, and for me and it's in relation to disciplinaries, there's corruption within the [public body]."

It would be remiss not to mention those positive examples where confidence in the employer replaced criticism. A case was recalled where the individual had been dismissed and subsequently lodged an appeal. At the Appeal, the individual was reinstated, his line manager was ordered to undergo retraining, and was subject to a Capability Procedure, and certain staff within the section concerned were dealt with as a result of bullying their colleague. In this case, the 'background' of fraught ill treatment was not mentioned in the Disciplinary File, but

surfaced following in-depth questioning by Panel Members and an extended adjournment to gather additional evidence. This certainly appeared to bolster the trade union assessment of the fairness of this employer:

> 18.(TU) "I work really close with HR, so rather than appearing to be from opposite sides we are acting like a joint referencing process…I was at a meeting [investigatory] a few months ago and I was about to correct the manager, when HR intervened to raise the very same point."

The above examples highlight general dispositions about a future (justice) event, but a cautionary note must accept that a person's feeling toward how fair the organisation/ manager/supervisor are likely to be could be variable over time or indeed incorrect. "One of the most robust findings in the psychology of prediction is that people's predictions tend to be optimistically biased" and "People also appear to be more optimistically biased under conditions of greater uncertainty" (Armor and Taylor, 2013, pp.334, 338 resp.). Thus in disciplinary situations, where the outcomes may generally be classed as negative and uncertain, even when exonerated, an over-confident justice judgement anticipating not only the outcome but the whole process may be too assured.

Therefore, being optimistic, one might expect perhaps a final written warning, when in reality a finding could be dismissal. Similarly, with procedural and interactional justice, the individual being an *entitled* (Huseman, Hartfiled and Miles, 1987) might expect an influential involvement, or *high voice* input (Tyler, Rasinski and Spodick, 1985), though too much *voice* can be counterproductive (Peterson, 1999). However, disciplinary procedures are generally very prescriptive, and the individual will only be called upon as required, and even the number of witnesses they request may not be sanctioned. As a result, an over-optimistic disposition is, on average, unlikely to be realised, meaning whatever the finding of a disciplinary, a sense of dissatisfaction may well prevail. This tendency to over-optimistic dispositions can vary over time with distal evaluations being more optimistic than more proximal ones, but even the more proximal ones are still generally over confident (Gilovich, Kerr and Medvec, 1993).

Anticipatory justice, whilst affording some indication of the confidence the employee has in the employer, is at best only indicative, and much more research is required to test this optimistic tendency in possibly career and life changing disciplinary situations.

I now turn to *interactional justice* which, as one of the three dimensions, plays a pivotal role in justice and fairness judgements.

5.8 Interactional Justice Accounts

The workplace and the working day are filled with interpersonal contacts covering all aspects of organisational life, and often many very personal issues. The exchanges come in verbal, written, text, and postural form, that is, any actions that convey some message, whether intentioned or not, to some other party. Traditionally, research has studied exchange theory as that of a supervisor or manager mistreating subordinates. The exploitation of labour runs through many leader-member exchanges, and is the predominant form of injustice resulting normally from a power differential between parties, for example, supervisor-employee, manager-supervisor, Director-CEO.

The public sector continues to reshape itself in response to the austerity constraints, with resource issues and the increased pressure the workforce is under having a material impact on workplace relations and the justice and fairness experience of staff. Line management play a pivotal role in this, and the following accounts attest to instances of managers having interacted with subordinates in a less than ideal way:

> 1. (E) "and if you go to the trade union I will make it the worse for you [Manger 'threat' to an employee]."

> 2. (E) " I remember one morning where I complained about people driving the wrong way in the one-way [depot] system, and there had been a few near misses. I told the supervisor and he said 'Shut the fuck up and go sit in the canteen.'"

> 3. (E) "So I was told to go to see a senior manager and I was made to stand in the naughty corner, and I kid you not.
> 'Do you want a tea and a biscuit?' [asked by one manager].
> 'No he's not having tea and a biscuit, just stand there' [comment by senior manager], and left me stood there for half an hour in the corner."

These encounters may have been a reflection of the pressures management were under at the time. Braverman (1998) wrote about the "degradation of work" in the quest to control labour, and the above suggests this degradation also extends to a disrespect and denial of justice and fairness for the individual. This could have been merely how these particular managers perform, and it raises the question of possibly an excessive use of power, where the manager feels an entitlement, and over-confidence in handling staff. A negative trait such as this runs the risk of becoming entrenched (Bandura, 1999), but can also be positive where behaviours are commendable via 'trickle-down' (Mayer et al., 2009), when subordinates emulate higher

tiers of behaviour, though exercising self-perceived power-distance in an elitist way can still be evidenced with some managers:

> 4. (TU) "Not long ago, I had one of the investigators [senior managers] try to give me a dressing down, but I'm a representative at law; it's a statutory role. Some of them seem to think they out-rank you."

> 5. (P) "She is dictatorial in management style…[with an] expectation that staff and members will be subservient." [That was a similar conclusion that a government inquiry came to, in respect of one of the public bodies associated with CSE].

Action by senior managers, whether good or bad, helps shape the industrial relations climate affecting the entire workforce. Employees try to reduce uncertainty (Lind, 2001), and it is incumbent upon senior managers to provide stable and consistent direction, and not to be unpredictable, and even worse duplicitous. However, they do not always succeed:

> 6. (HR) "Industrial relations climate in the public bodies that we deal with very much depends on the person in charge. Some are Maverick and will take quite a hard line. I can think of one who is very hard really, but face-to-face with an employee they are brilliant at making it <u>look</u> as though he is being very supportive. Yet in the background he's saying: 'Right let's get rid of her as quickly as possible', and sometimes doesn't give people a chance to defend themselves."

> 7. (M) "We have to remember that senior managers have the power to do things that look legal."

> 8. (M) "When you look at when they closed [my unit] down in [date], the <u>day</u> after being told it was going to be open for the next 2 years."

Inconsistency can also be lodged against any tier of management, but occasionally it may be unintentional, and be more reliant on differing accounts being given to differing people:

> 9. (HR) "Occasionally you can be challenged because of inconsistent [HR] advice, and yes on the face of it, can look like inconsistent. But it's more about what was that person told…and what was the other person told, did the stories change. You're not dealing with science where if you put those two chemicals together you get that reaction. Yes we do have those kinds of employees."

> 10. (TU) "Clients[employees] don't always listen to advice, they come to you for advice, select the bit they want, and then go and ask somebody else, and they put certain bits together and ignore the bits they don't want. I need the full SP of what you did, not the sanitised version of it. If you give me the sanitised version I'll give you the sanitised advice which will be useless to you."

Getting other than the sanitised version can be problematic for the investigator and trade union representative, and one representative commented that with a particularly evasive member, it took about two hours of questioning before the full story emerged. This can be the case in Hearings and Appeals when deficient investigations are uncovered. One such investigation involved an employer engaging two ex-police officers to investigate a case. This appeared to a trade union official to be 'overkill' given the alleged offence, and set back trust in this employer from the trade union perspective given their investigative style and uncovering a historical (expunged) offence:

> 11.(TU) " [investigatory meeting] I chip in if I can get away with it, these [two police officers] wouldn't let me, so I must have adjourned about 30 times and they were getting really fed up. And they went back to the employee's record saying he had another offence about 10 years previously. I got the investigation stopped. They [management] were very fair and agreed to stop it."

> 12. (P) " [Chairing Appeal case] This was one where you get a 'gut feeling', he was not quite as he should have been,…I had to <u>dig</u> because I didn't trust this guy. It wasn't nice."

The ability to take part or influence matters of justice and fairness pertaining to oneself is exercising 'voice'. This use of *voice* (Thibaut and Walker, 1978) is generally thought of as a positive act, though the extent of its influence in overall justice and fairness judgements is variable. Far from the relationship between voice and satisfaction of fairness being linear, Peterson (1999) saw it being an inverted 'U', such that greater satisfaction occurred up to a point, but thereafter declined; meanwhile Paddock et al. (2015), considered it more an 'S' shape where rather than falling away, beyond some referral point, justice satisfaction increased but at a very much slower rate. The two differing approaches raise the question of how much *voice* is best, particularly so when any voice is denied. This nil voice situation pertains to disciplinary situations which are deemed to be confidential throughout and after the case. It is often clear to staff that something must have happened if a colleague is suddenly absent (suspended or dismissed), or if they request time away for personal reasons (to be interviewed), but are not allowed to discuss it:

> 13. (M) "It's not just difficult for that individual, and all the other staff, because you [management] can only explain so much, and once they are off the premises [suspended or dismissed] I think they tend to forget they have gone [except for picking up their workload]."

> 14. (M) "I think it's harder when disciplined employees remain in the workplace, people want to know. It's difficult for the managers not to give

information whatsoever to appease folk, and for their relationship with the employee if they initiated the disciplinary."

So, whilst *voice* is, to a large extent, encouraged throughout the process, it is frowned upon in respect of open discussion. This leads me to question in many HR texts the claimed role workplace disciplinary systems are said to have in wider workforce compliance. Given matters are, in the main, not widely discussed, the bulk of accounts reaching the workforce will be suppositions, and rumours, which may or may not have been embellished.

Organisations, at times, require leaders to act decisively in making policy decisions in the interests of their strategic aims. In the public sector, staffing is usually by far the greatest resource, and managing it strategically, particularly in a recession, is critical. Whilst in example 6 above the manager may have acted deceitfully, they were at least prepared to make a decision, which is not always the case, particularly where there are strong ties between the parties. Occasionally, for the benefit of all concerned, they may need 'nudging', in this case by a HR consultant:

> 15. (HR) "Most people who go into [a type of work] are 'socialist' by nature, they want to help society, and make things better for the world. So, part of the job like sacking people doesn't come easily, and they will always try and deal with things with a quick word. It can be me [HR] who is pushing them toward formal procedures because a quiet word has fallen on deaf ears [too often]."

Whether the employee under investigation is suspended or not, they are still employed, usually on full pay, and as two managers strongly emphasised, the employer has a 'duty of care' towards them. Too often it seemed from the interviews, once suspended, this duty of care merely seemed to ensure they made themselves available for investigatory interview. From personal experience, I can vouch for the fact that if the job, your profession and life style are valued, being investigated is a very stressful experience. In my case, I was not suspended, and had the full support and feedback of my Director as the investigation progressed; but given it was instigated by the Chief Executive, potentially my support would have been outranked. Thankfully this was not necessary as there was no case to answer, but for about two and a half months, the stress was considerable. If people are genuinely their best resource, employers must act upon this duty of care and provide feedback as their case progresses, on organisational changes, access to training, occupational health and involvement in any workplace consultation, which is critical in extended periods of suspension:

16.(P) "I don't think we care enough about people, people's feelings, and for me I don't think there is an understanding of that fact."

Leventhal, Karuza and Fry (1980) suggest bias suppression is fundamental in a person being able to reach a balanced justice judgement. Several excellent practices were illustrated, by using only trained investigators from departments other than that of the employee under investigation, using investigators from another part of the country, always citing paragraph numbers from the respective policies in any correspondence, and automatically offering the employee occupational health access. The following exemplifies this accommodation:

17. (P) "[Unrepresented employee at Appeal gave a very long-winded account] "I'm going to have to shut her up because we need to progress" [comment to fellow Panel Members]. So having let her say her piece, she was guided by Members to stick to the facts---she didn't understand the system."

18. (HR) " Be extremely careful if someone is on their own, and be more thorough in their questioning…perhaps give a little bit more leniency if they're on their own than we would if the 'union rep. was there."

However, occasions can arise where bias suppression fails:

19. (M) "I met with a [public body] solicitor and [afterwards] they sent me a statement to sign and I've still got it. And I ring this guy up and say 'I didn't say any of this, this is completely wrong, I am not signing this, I will change it all, but this is not what I said'.'"

20. (E) "A witness…[to an investigation] when he got the minutes they'd changed what he said, so he said,
'Well that's not what I said.'
'So , well you lied then.'
'No that's not what I said.'
'Well we'll have to look at you for lying.'
He jacked it in there and then [walked off the job]."

21. (TU) "Sometimes they [management] are dreadful like they are QC's and they're not they're just managers. Some get a real power-buzz, and also as being known as a 'tough employer'. That's why people don't rock the boat and just keep their head down."

Bias suppression may be evident by an investigator's due diligence, though outright intimidation, whilst hopefully rare, does exhibit:

22. (M) "They hacked my computer you know, and accidentally sent me an email telling me they had done it. They've [management] come at me with everything and anything."

23. (TU) "They've now got a person in charge of HR who is an accountant, with no experience, and the new HR person had remarked to staff 'I've got my red dress on today so be very afraid', and she sacks people on the spot and gets away with it."

24. (HR) "My difficulty in working with this person [Investigator] was in <u>retaining my professionalism </u>[breakdown in trust due to the manager's actions]."

Examples of bias and intimidation offer little assurance that justice and fairness will be served, and even more so when those in authority fail to tell the truth. This may occur through a lapse in concentration or a failure of memory, though it was made clear that in the case of CSE, numerous tiers of managers, in more than one organisation, appeared to have no, or minimal recollection of being aware, despite having had written and personal updates of the situation; there appeared to be something verging on corporate amnesia. This was a position that one manager described as being "fundamentally defensive". This was compounded by a number giving evidence under oath to a government inquiry:

25. (M) "So it became about jobs and reputation, and the fact that nobody told the truth, they all swore an oath, but nobody told the truth, and yet us that were telling the truth were accused constantly of lying."

This failure to tell the truth was instrumental in an employer losing at an ET (again under oath), when managers had repeatedly refused to accept that weekend working was discretionary and not mandatory, having insisted on turnout:

26. (E) "Management still sat there and said Saturday working was voluntary, and insisted that if everyone was unwilling to work that was OK. Yet he was a supervisor who had refused time off."

Accepting there are good examples of interpersonal justice practices in many public bodies, nonetheless, the above point to there being too exchanges, too frequently, which are less than reputable. Whilst Leventhal, Karuza and Fry (1980) set out the rules to foster justice and fairness, a trade union representative rather succinctly noted one key criterion which would have avoided many of the pitfalls highlighted above:

27. (TU) "If you start chasing the person [in a disciplinary] you lose sight of the objective."

It is this subjectivity of focus of "chasing the person", that has been instrumental in many examples of injustice and unfairness.

Next I consider how the disciplinary process is conducted in terms of procedural justice.

5.9 Procedural Justice Accounts

People care about the outcomes (distributive justice), but are not indifferent to the process that achieved them (procedural justice), which is almost counterfactual, given the egoistic nature of early equity theory. The seminal work of Thibaut and Walker (1975), Leventhal, Karuza and Fry (1980), and Folger and Bies (1989), emphasised the procedural prerequisites if outcome decisions are to be seen as fair, which Lind (1995, p. 88) highlighted the importance of process as "judgements of the fairness of procedures will rest far more on impressions of status recognition, benevolence, and neutrality gleaned from interactions with authorities than on evaluations of the outcomes or likely outcomes of those interactions".

A demotivated much reduced remaining workforce having seen numerous colleagues depart, far from breathing a sigh of relief in their fortune at still being employed, are tasked with picking up the pieces of much of the service delivery previously completed by others. This pressure is recognised by both trade unions and management in increasingly fractious employee relations, and its impact on employees under investigation can be considerable; as one trade unionist remarked regarding the stress employees experience, "No end of employees are at the doctors because of depression, temazepam", and the fractious employee relations can be seen in the workplace conflicts below:

> 1.(TU) "I think bullying in the workplace, I've never seen anything like it in my life…it's people and a lack of training,…a lack of understanding of basic principles of working with people."

> 2. (TU) "Very often if people have done a daft thing it comes about because of a long period of bullying, and that is at epic proportions, and that's a really important point. In all the years that I've been doing this [trade union] that is what I've found and it's everywhere."

> 3. (M) "I think a lack of resources is the principle reason [bullying], but fundamentally we just cannot get on with everybody. The bullying culture is prevalent in many, many places."

Far from management being indifferent to bullying and harassment mentioned above (Clinton and Woollard, 2012), and the possible disciplinary investigation that may follow, a senior manager reflecting his duty of care noted:

> 4. (M) "As a manager, you instinctively know whether you need to be into a process or not; we are very strong in our duty of care, and we will do all we can to avoid going into a process if it can be resolved, but at the end of the day you have a

responsibility to get them the help they need, and they will hopefully come out the better for it."

A point that another manager from the same organisation saw as possibly a reflection of the new schism between HR and line managers was as follows:

> 5. (M) "I think they [HR] are too quick to put the whole model of procedure over the situation."

This is further supported by a colleague noting:

> 6. (M) "HR need to be more mindful of the pressures managers are under in terms of having to reduce staffing."

Jenkins, Winefield and Sarris (2011), note the consistent findings about the "devastating health effects workplace bullying has on targets and bystanders and the negative financial implications for organizations" (p. 33). If the delayering and downsizing is credited with such 'on-costs', it is incumbent on organisations to factor in these unintended consequences, though seldom is this the case; the focus too often is on expediency of cost savings, without any contingency for such unintended staffing consequences, or marginal re-layering as is often required.

However, the above comments point to a perceived difference in mind-set between HR and line management with a view to HR being 'rule-bound', and inclined to formalise matters when line managers may prefer other (informal) resolution (Maier and Danielson, 1956: Wood, Saundry and Latreille, 2014). This willingness to invoke procedures is probably driven by HR being more cognisant of potential ET implications than the line manager. It points to the inherent tension within organisations, between departments, professions, and hierarchies, where even the politics which Soussan (2008, p.182), attributed to Ambrose Bierce by seeing it as a clash "of interests masquerading as a contest of principles", may, in a very real sense, surface in the public sector where the Executive is comprised of politicians. These tensions are ever present, and are heightened in times of appreciable cut-backs.

Contextual factors have clearly played a part in the administration of justice. In responding to budget cuts, staffing numbers have been reduced. Additionally, HR, as a central function in many establishments, has been almost decimated, with the resultant devolution of many responsibilities passed to line managers. The Business Partnership Model has seen a growing emphasis on generating income from external clients, along with a more advisory role on disciplinary matters leaving line managers to investigate and process cases. HR, with its knowledge of policies and practices, expertise in employment law, Employment Tribunal

handling, and close industrial relations links with the trade unions has traditionally been responsible for disciplinary matters, leaving line managers to manage; but this is no longer the situation in many organisations. Some of the effects can be seen in the comments below:

> 7. (HR) "There is reduced capacity of the individual given the task [investigating] is in addition to their day job."

> 8. (HR) "The reduced resources in HR hasn't helped staff to fully support some of those [employee and investigator], with the rigour that is needed."

> 9. (M) "We did have a HR advisor then…the HR advisor was available right through the investigation, attended all the interviews, typed all statements up, and helped me know what I needed to say at the Hearing…with budget cuts they just can't do it now."

> 10. (M) "There really is no HR left in the city."

Not only have reduced resources been a consequence of austerity, but it has had procedural implications in terms of staff substitutions:

> 11. (HR) "A large number of HR staff were made redundant and so now there is hardly anybody left, and those that are, happen to be lower level and of less experience."

> 12. (TU) "It's about saving money, they are cutting back on experienced staff, there is massive ageism in [public bodies]…get rid of Doris because she's got 25 years-service in and at top of her [salary] range, and bring in a young one."

Departments have been tasked with producing year-on-year budget cuts. Inevitably, given staffing is the principal cost header (one manager stating it being 90% of their budget), it has produced, counterintuitively, an 'acceptance' of underperformance, and may have contributed to the Host having a heightened disciplinary rate (Littler, Wiesner and Dunford, 2003) compared to national figures. It has to be appreciated, however, that the CIPD (2007) national figures represent the pre-austerity downsizing, which most accept as starting in 2007/08. The Executive have necessitated continually reduced staffing numbers to meet budget cuts and may, in some instances, see restructuring as opportune:

> 13. (TU) "they [managers] have got tougher as the years have gone on, because they have had political pressure put on them…they are obviously trying to get rid of a bit of dead wood."

However, managers appear desperate to hang on to as many staff as possible, even the less productive ones:

14. (M) "[Budget cuts] in itself might lead to a tendency not to challenge misbehaviour or inappropriate behaviour or poor performance, because if the outcome is that the officer is lost, you might not get permission to fill that post. So, you almost get to a position of saying if 70% or 60% is good enough, I know I'm not getting what I should get out of them, but it's better than getting nothing."

In other examples of an acceptance of sub-optimal performance, an HR consultant cited a case of a second-tier post holder having under-performed for a couple of years, before being taken to task; and a trade union official recalled having agreed severance terms for an individual who had been a disruptive influence and "…quite a nasty person actually", for a number of years. Whilst the examples of tolerance can be attributed pragmatically to budgets constraints, other explanations might include individual psychological factors such as the halo effect (Thorndike, 1920), which Fisher and Lovell (2009),refer to as the halo and horns heuristic, an idiosyncrasy credit Phillips, Rothbard and Dumas (2009) even a relational group-value explanation (Tyler, 1994), or just weak management.

Employers are duty bound to have some semblance of even-handedness when dealing with alleged employee transgressions. Yet it appears that this consistency (Leventhal, Karuza and Fry, 1980) of approach to justice and fairness, in the dash to implement cost savings, is being jeopardised by a fragmentation of disciplinary standards. A cohesive corporate approach to disciplinary issues, previously driven and 'owned' by Human Resources is evolving into a disparate mix of varying standards. This is largely the result of the demise of central HR (which is a discretionary service), and in some cases the elimination of it altogether, with the service being bought in at the cheapest price possible. The differentiation of attitudes towards justice and fairness within the same employer has, for many, materialised:

15. (P) "We had silos and got rid of them, but they are back again now."

16.(HR) "I think the perception in [department x] is that you need tighter management,…I think they believe if they don't control the workforce in that way they will lose control."

17.(TU) "Two instances I've dealt with recently, both cases involved explicit images on mobile phones; one manager dealt with it by management counselling, the other dealt with it in a disciplinary."

18. (TU) "There is now a proliferation of HR consultancies, and they vary from being very professional in protecting employees from over-zealous head teachers…or whatever they call themselves these days, to others who simply want to escalate

things because if you have a case and you spend a lot more time on it, you get a lot of that [padding out]."

19.(P) "We have a new Chief Executive and there's too much of this choosing to apply or not apply procedures as they see fit, or at least it seems that way."

It would be wrong to suggest that restructuring was the only cause of differing disciplinary standards, for idiosyncrasy credit (Phillips, Rothbard and Dumas, 2009), does appear to be evident, even by one central HR professional commenting:

20.(HR) "Hierarchically possibly if you have someone at a senior level it could well be that you would not use formal [disciplinary] procedures, where for a more junior position you would; and departmentally we do [vary] as well."

This preparedness to confer preferential or at least discretionary treatment on senior posts did possibly exhibit in the Host employer, given that all five cases of reaching a Settlement Agreement were only granted to 'senior' employees, all of whom fell within the top 19% by way of full-time earnings.

Organisations are an amalgam of not only tangible things like resources, but intangible personalities and politics, many of which surfaced during interview. These personalities and politics inevitably combine to create a culture with justice and fairness implications. When someone, presumably from management, overnight gains access to an employee's office and without notifying the employee removes a series of files, this is likely to leave an impression that any justice with that employer and certainly in any disciplinary system will be hard won. However, when compounded by someone accessing their computer, and generating fictitious emails implicating an employee, this undermines all the Acas (2015, b) guidance and renders any hope of justice and fairness illusionary. This was not an example from some Marxist state, but a twenty-first century large public body, who never admitted to, or explained the act, and were insistent that no police reporting was necessary (though it was discussed in Parliament). Thus politics, reputational and philosophical ideologies can have an impact, a stance that at times can possibly be counterproductive, and where justice and fairness may be sacrificed:

21. (TU) "Branch officers are motivated by ideology; they are not in any way remotely concerned if the employee is culpable. Their ideology tells them the processes are unfair from the outset so they go in all guns blazing."

22. (M) "[Managers] give people so many chances, or deal with it informally, so by the time someone does something again, they [management] are sick of it and want rid of them."

23. (TU) "We do have branch officers whose ideology is more important than if the member remains in a job or not; it's the old 1960's [turbulent industrial relations]."

This question of objectivity has to be integral not only to the investigation, but also in the entire proceedings of the disciplinary Hearing and its subsequent finding. As with Uncertainty Management Theory (Lind, 2001), and the psychological contract (Rousseau, 1995), trust lies at the heart of these processes, in that despite 'voice' being within the purview of the employee, to a large extent and particularly if they are not represented by a trade union, they are at the 'mercy' of management. The following are indicative of a failure of trust in various parties:

24. (TU) "Answer the question and only the question, then shut up, don't feel the need to fill the space [advice to employee being investigated]."

25. (E) "She did it the old fashioned way [contemporaneous note taking] and said 'They are not going to get away with this, we will defend you'…"and I never heard from them again. I'd had quite a good relationship with [name], and she wouldn't return any of my calls, or emails [a position that was repeated by other civil servants]."

26. (E) "I left [public body] under a Settlement Agreement,…management said they hadn't done anything to me, …I was being bullied and harassed and I'd got loads of evidence, honest two files full of it…my breakdown…nearly three years, but the [public body] failed to comply with some aspects of the Settlement Agreement. I wrote to [Chief Exec.], not to HR, noting the Director of HR's actions were effectively continuing the bullying and harassment, and got an apologetic letter from [Chief Exec.] confirming this."

27. (P) "But I don't trust her [Chief Executive]…I know I could not speak freely with her…she doesn't reply to emails, and is dictatorial in management style…an expectation that staff members will be subservient."

If people enter the disciplinary process with unrealistic expectations, (*anticipatory justice* Shapiro and Kirkman, 2001, or *entitled mind-set,* Huseman, Hartfield and Miles, 1987), it would be immaterial how fair and just management procedures were, the employee would likely arrive at the inevitable (in)justice/(un)fair judgement. The following are procedural justice deficiencies:

28. (M) "We have one regional trade union rep. who is totally objectionable,…he advises his members badly in our view, he gives them [employee] the impression from the way he bumps and thumps the table that they have a valid case when maybe they haven't, and that raises the employee's expectations."

29. (M) "In their enthusiasm to fight the case for the member they [trade union] don't always analyse the case properly and create expectations."

30. (TU) "Clients don't always listen to advice; they come to you for advice, select the bit they want, and then go and ask somebody else, and put certain bits together, and ignore the bits they don't like. I need the full SP of what you did, not the sanitised version."

31. (TU) "Nine times out of ten the problem is caused by the person you are representing,…and because you're representing them, when things go wrong [disciplinary outcome] it's your fault."

Whilst this *silo effect* in departments is largely the result of change brought about by cost saving restructuring, other change resulting from the ballot box, in the political composition of the Executive may also contribute to this differentiation. Member involvement, given their role is a strategic one, only impacts personally at the Appeal stage, though comments below suggest the end-game played by Members often sees them influencing matters preceding this. This *political seepage* is strictly ultra-vires, as the Executive have no mandatory involvement in the day-to-day affairs of public bodies, yet it is evident in places, but not tolerated in others:

32. (M) "We are very clear, Members have <u>NO</u> role in the way policies and procedures are enacted on a case-by-case basis. Within [public body] it is an officer responsibility."

 33. (M) "The political pressure unfortunately in this [public body] regardless of what has gone on in the past, and regardless of the individual, I'm sorry, <u>politics</u>!"

34. (M) "One thing that has become ever more visible is the use of confidentiality agreements, especially where politicians are involved. We've had one or two recently where the individual has just 'disappeared', with a confidentiality agreement and a back-hander [money], and told effectively, keep your mouth shut. We will give you a reference…but ultimately if you do not resign you will be dismissed. Effectively taking these cases outside the disciplinary process and I'm not sure senior officers really want to do that."

This 'tolerance' of political seepage only occurs if the Chief Executive is complicit, and from experience I can vouch for one CEO who would never allow such political interference. The role of the politician at Appeals is deemed to be impartial yet some have cast doubt on even this impartiality:

35. (HR) "[Appeals] the only problem I have with Members is with their independence, we have a political party in control, there is a tendency from [some Members] to be employee centric."

36. (M) "[Appeals] I think that depends on who is in power. The political right have a greater, more aligned view on the management perspective rather than the employees' perspective. On the political left there is more of an employee perspective and trade union understanding…along with more of a questioning of policy and procedure."

37. (TU) "[A public body] is ruled by a [a certain political party]; they are very difficult to deal with, they have quite a hard-nosed approach. Not the managers, they are fairer lower down."

This latter example, noting a schism between the Executive and line managers, is not to say that, as a rule, Appeals will be politically tainted, though one trade union representative noted that such was his close relationship with the Chair of a political party, that he was invited to name the politicians he would like to have on a forthcoming Appeal of one of his members. Despite the above, politicians as the Executive do provide a level of independence in Appeals divorced from any unreasonable management influence. Yet one public body has totally removed this element, and Investigators, Hearing Chairs, and Appeal members all comprise management within the same department occupied by the alleged transgressor. This is a point of contention that the trade unions accept, to some extent, may be unavoidable in small establishments, but not in this employer having several thousand employees. That this has been introduced only recently, having previously had the Executive involved in Appeals, they see this as a continued bone of contention.

Investigators are tasked with establishing a 'find of fact', on which a judgement can be made as to whether formal proceedings are warranted. Approaching this task with impartiality, devoting the necessary resources, and ensuring the findings can be justified are the stated aims. However, it is clear that downsizing has had an impact, not least in allowing a number of highly experienced and professionally competent individuals to leave:

38. (P) "We got rid of vast amounts of expertise in the last restructuring, and several areas are the worse for it."

39. (M) "There is not as much good will around of investigating officers…there are some issues about quality. People are trying to do this work in addition to their normal duties, and they are not necessarily trained."

40. (M) "So the quality is sometimes from poor to satisfactory; my aim is to ensure they get up to satisfactory but we are not in a position to insist they are excellent. They have to be able to withstand any challenge: is it balanced, is it fair, is it proportionate?"

Training would clearly help, and one organisation used outside solicitors to deliver this for all investigators, which was compulsory. Those choosing to use internal resources for training possibly left something to be desired with comments like those below suggesting it may be only partially successful. Meanwhile, others provided no training whatsoever, which may be adequate if investigators are particularly able, though with increasingly remote HR for guidance and support, this is less than ideal:

41. (TU) "[Training] is imperative, I think that anyone who sits that side, we [trade unions] are highly trained, they should be and they're not. It's peoples' lives it's not just a career."

42. (HR) "The other situation I don't like is when other allegations come in and the investigator has not brought them [employee], back in to be interviewed. So I have to insist that they cannot ask them [at the Hearing] about them."

43. (HR) "The reduced resources in HR hasn't helped staff to fully support some of those [investigators] with the rigour that is needed."

Having the resource to investigate, and the expertise to carry out an objective inquiry, is still no guarantee that the finished result will be bias free, and here, numerous examples attest to there being some partiality, rather than impartiality:

44. (M) "[breach of procedures] the public sector are often the worst culprit, even though they have all those structures, policies, procedures, staff training. There is something about them that is fundamentally defensive…I think the more people you have in a structure, and the more regimented it is, the less humane it becomes."

45. (HR) "The Head of HR put great pressure on me to come to certain findings, which were not borne out by the findings. I remember not particularly trusting this chap and sending him the report in Word [Microsoft], which I've never done since, and he sent it back saying he had changed the font which he didn't like. BUT on inspection he had also changed some of the findings."

46. (TU) "The employer wants a certain view to prevail. I don't care if people say it's not the case, I know it's the case, because I've seen them descending like a pack of hounds on individuals…that's what it's like when you're sat there."

Organisations compared to the individual have enormous resources at their disposal. These can be used to get to the heart of a matter, or less ethically for intimidation and obfuscation, where procedurally justice and fairness become meaningless:

> 47. (TU) "Downside of management is they have no empathy, in the main, it's intimidation [the process], you might as well be in court."

> 48. (E) "[Investigatory interview] They tried to exclude Henry [my solicitor] from the meeting, saying it's not appropriate to have legal representation, and you should have told us you were using legal representation, it's not appropriate." [policy allowed a 'friend']

> 49. (E) "Management still sat there [ET]. He was lying, he was lying, he was red as a beetroot, fluffing with his glasses." [despite being on oath to tell the truth]

> 50. (M) "They raided this place [small public body], they turned up unannounced and searched it, and emptied cupboards, went through paperwork, found nothing at all. You name it and they've done everything they possibly can." [intimidation]

Despite the above examples, there was proof that some organisations take procedural justice and fairness seriously, in always ensuring investigators, Hearing Chairs, and Appeal Panels are trained and independent of the department concerned. For some, training is compulsory and repeated bi-annually. In one example, the revision of the Grievance procedure was agreed with the trade unions, but only after the input from individuals who had been subject to it, and they propose to do similarly with the disciplinary policy. Many cases can be difficult for all concerned whatever the outcome, but handled correctly, the employee is more likely to accept the findings if they feel the process was just and fair (Thibaut and Walker, 1975):

> 51.(HR) "You can get to the end of a disciplinary and the outcome be dismissal, but depending on how you deal with it and issue the sanction, and whatever conditions go with it, can play a big part in how much further down the litigation route someone goes."

Whatever the veracity of the procedural process, ultimately this leads to a distributive justice outcome, and these considerations follow.

5.10 Distributive Justice Accounts

Blau (1964) conceptualised two aspects of distributive justice: *economic exchanges* which are contractually based, and *social exchange* regarding "favours that create diffuse obligations, not precisely specified ones, and the nature of the return cannot be bargained about but must be

left to the discretion of the one who makes it" (p.93). The key difference in Blau's, *social exchange* and Rousseau's *psychological contract*, far from the outcome being "left to the discretion of the one who makes it;" is that, in a disciplinary situation, a *contested,* or *negotiated* outcome is reached. Employees and or their representatives have the power to play an active part which potentially can fundamentally shape how the decision makers reach a judgement.

In disciplinary situations, the role of the trade union is typically portrayed as confrontational, in going head-to-head with management. However, this is not always the case, and particularly so when there is a collaborative and trusting relationship between the parties, both of whom are prepared to work 'pragmatically' so as to furnish a resolution to often long-standing problems:

> 1. (M) "If that justice outcome takes into consideration <u>all</u> that has gone before then you will achieve something that is just, and balanced, and correct, at that time". "We came to a 'deal' of a Settlement Agreement…in this case the trade union was aligned with [public body], and their difficulty was in selling it to the employee. The outcome at the end of the day suited everyone, but I doubt if we'd have got there without the help of the trade union."

> 2. (TU) "Last week agreed a settlement with [public body] which meant she could leave, they could get rid of her… They would give her a decent reference and [£x], I thought that was a good settlement."

> 3. (TU) "Not everybody that is taken down a disciplinary path is a bad person, some of them are. One of the options is to resign, and my job becomes on what [severance] terms, so the lorry driver who nearly killed someone, you don't like doing it, but you do."

The example at 2 above, in ridding the workplace of a powerful and intimidating bully, served the rest of the staff in that unit well; they had endured this behaviour for years. It also had the added advantage, given the matter could only be approved at a senior level, of requiring the unit manager underwent further training to prevent any reoccurrence. A point a member of the Executive at a different public body noted that at Appeals, "Quite often we have recommended that managers receive retraining as a result of what we have heard". Though this does, however, suggest an inherent deficiency in some management, allowing such practices to persist before the Executive intervene, and perhaps explains why managers do not relish going to Appeal because their very own management style will be exposed. However,

improving working relations is one of the benefits of such actions, and whoever is involved, the disciplinary experience can have a lasting and salutary effect beyond the affected employee:

> 4. (TU) "The work we [trade unions] do has an intrinsic value, because what we do is empowering for the employee. If you are any good you empower them almost exponentially. I've seen employees go from nervous wrecks to a really proud robust person again, because I've equipped them to do it."

> 5. (M) "From experience, an individual who ultimately receives a final written warning, that individual's performance went down. No bloody wonder, I think we tend to forget that."

> 6. (E) "The money wasn't worth the hassle; I'll tell you that much, do you know what I mean. It doesn't come anywhere near to what I should have got for the impact it had on my family."

> 7. (M) "Had there been previous examples it would have been easier, but the case and situation was unique. In a way I walked away from the Appeal after the Director had dismissed them, I felt dismissal was inevitable,…but then I almost thought, I just felt empty, I felt that is this justice? It was going to happen, I thought there was no justice to it but there was no other outcome."

Interviewees, and particularly the trade unions, viewed the disciplinary process in the main as unsatisfactory and retributive, and comments like "getting rid of dead wood" emphasised the point, where dismissal was concerned. In more than one public body, they noted that even if the employee remained in employment, there was a tendency to see job satisfaction and productivity fall away, leading to a higher than normal turnover rate in the year following a case compared to non-disciplined staff. Unfortunately, without access to individual case files, a point required so as to ensure confidentiality, I was unable to examine this point, though it would be worthy of scrutiny as an element of workforce metrics monitoring. However, for some, the experience may tend more to the rehabilitative, where careers are put back on track:

> 8. (P) "A member of staff had been sacked, but management had been very heavy handed, and they [employee] should have been on a final written warning. Appeal committee saved him his job, and the individual since has progressed and continues to work for [public body]."

Though in one case, however, an employee with no case to answer was left with quite disconcerting doubts about himself and management several years after the investigation:

9. (E) "It made me doubt everything I did---I feel uncertain about myself---can I believe anything they [management] do?"

Disciplinary issues are usually the preserve of the employer, but occasionally resolving an issue rests with an outside body, such as an ET or the Ombudsman. The first of the following examples concerns an individual who was disciplined by an organisation and left, yet years later, even though working for another employer, who just happened to be financially supported by the first organisation, appears still to be on their 'hit list' as the subject of an ongoing investigation currently approaching its third year. The employee described this to me as intimidation and reported the matter to the Ombudsman, and thankfully the current employer, despite the threats of reduced funding, is being very supportive (for now!). The second example was a manual operative who had a back injury emanating from work duties, and requested a different vehicle so as to alleviate the pain whilst in the driving seat. He took the employer to an ET, and despite supportive occupational health reports, management was reluctant to switch the operative to a similar vehicle which had much improved suspension and seating. However, distributive justice was eventually realised once the employer's barrister fed back the conversation, the ET was curtailed; and a replacement vehicle was allocated:

10. (M) "We made 13 complaints to the Ombudsman and they ruled in our favour in every one of them, everyone, but they've got no teeth. So, one of the things that [public body] had to do was apologise to me. So, they did and then they continue [attrition]."

11. (E) "I put in a tribunal claim and their barrister approached me in the street which he shouldn't have done saying ,
'You'll never win, what do you want from this?'
'I don't want a single penny, I just want them to change my route or give me another truck.'
'What that's it, that is all you've asked for?'
'Read all the minutes' This had gone on for a year, for 6 months they'd even had me litter picking, they sent me litter picking in the snow. So it was like a punishment."

This individual at 11 above had brought a number of safety issues to the attention of management, many of which had been met with profanities, to the point that he was being shunned by other workers who possibly labelled him as a 'trouble maker'. This public body, in managing absence, have a 'trigger point' system where accruing a certain number of days/occasions of absence over an 18-month period invokes formal warnings. Being close to,

but below the trigger point, the employee was minded to avoid any absence which would activate the policy. He worked as a driver and had other operatives as part of his crew:

> 12. (E) "A crew member came in with sickness and diarrhoea and I said he would have to go home because if I caught it [and was off sick], it's going to throw me back in [to a trigger point breach of the sickness policy].I got it and was straight back in…'There's your formal warning'…it seems basically tough shit. They didn't adjourn or anything like that and these are formal disciplinaries. HR was not present and no minute taking or anything which I couldn't understand."

> 13. (E) "I was getting into my vehicle and it was icy, and slipped on the ice and jarred my shoulder and put it out…they wrote up the investigation without even coming to the scene, and said I should have been wearing grips for your boots. These [grips] were only to be used in deep snow and packed ice otherwise they were dangerous on normal footpaths. I got fast tracked through physiotherapy, and cortisone injections, in the meantime I'd got disciplined for time off [12 above]. [Subsequently needed surgery and took 8 weeks off work].That's when I got the formal-warning for my sickness. In the disciplinary they raised that I had not been wearing 'grips'. And I said 'Hang on a minute, there's your safety information, you're not supposed to wear them.' They said, 'We're not here to look at that, we're here to look at your sickness.' They gave me a formal-warning there and then [no adjournment] so to me they already had their minds made up. What they said in the letter was they don't believe they are related, the operation and the accident."

In such cases, normal practice would be that industrial injuries would be excluded from any 'trigger point' calculations, as appeared to be the case in this same organisation, where pregnancy related absences were also excluded.

This apparent antipathy toward this employee was not isolated; the common link with another case may well have been an active trade union role and a preparedness to hold the organisation to account at the Health and Safety Executive, VOSA, and ET's:

> 14. (E) "They'd [management] been in trouble with VOSA[Vehicle Operator Services Agency], they'd done exactly the same to another driver. They bullied him out, he was a 'union man, and he did go to VOSA and they got crucified by VOSA…court case etc. They bullied this guy that much that he had a heart attack and took early retirement."

> 15, (E) "One trade union rep. who was promoted stood it for a year and jacked it in to go back driving vehicles, because he couldn't take the shit from above, and the way they [senior management] treated him."

> 16. (E) "A lorry driver up at [depot], and this colleague dragged her out of the way of a vehicle otherwise she would have been killed. After that this guy started pestering

her, saying 'You owe me', blackmailing her for sex. She put in a formal complaint and went off sick. Management went round to her house and said 'Look can you drop this because it will look bad on the [public body]'. She said 'No'. They took her to a disciplinary for sickness and stuff, and she said 'Hang on a minute you have been bullying me, these officers have been round to my house'. 'No we haven't unless you've got a witness.' 'Well yes I've got a witness.' 'Well the only witnesses we'll hear are witnesses that work for." [public body]

Despite the employee at 13 above classing himself as an out-group worker, where other colleague's barley involved him in banter and general conversation, once dismissed he suddenly became in-group and contactable. Ex-colleagues, in the knowledge that he was intent on going to an ET, and as an expression of 'voice' which they felt they were unable to express in house, undertook to ring him and send photos of issues in the workplace that they considered unsafe and or illegal.

The examples above are, in the main, by trade union representatives, or employees who are union members, and raise the question as to what are the distributive justice implications for non-union members. Being represented by trained personnel, in addition to offering reassurance, may ensure a more professional defence and thereby a lesser disciplinary tariff. One legal professional experienced in criminal courts, but who is also a trade union representative, noted that whilst they may not get everybody off, they certainly mitigate the finding, a point I was unable to substantiate in Part 1 within the Host employer. Nonetheless, in arriving at a distributive justice judgement, differing consideration may be given to non-union employees compared to those professionally supported:

> 17. (P) "So we do have compassion in a sense for the individual if they are representing themselves, in case they do not have the weapons at their disposal, whether it be in their own ability, be it in their vocabulary, or in analysis or preparing a statement."

> 18. (P) "I hate Appeal cases that haven't got a trade union rep."

The above accounts should not be seen as inevitable; many appear to have been brought about by a combination of restructuring as a result of austerity, even greater demands on employees and an antagonistic management style that has evolved; and to some extent been aided by HQ central services being partial. From personal experience, I have seen such demeaning workplace cultures change merely by the appointment of the 'right' calibre of leader, meaning that remedial action is possible:

20.(E) "I can't praise the old management enough; they were great to work for because they'd done the job, and they'd not ask you to do anything that they wouldn't do themselves. Then all these office jockeys came in."

21.(HR) "Three [CEO's] in 15 years, [the new CEO acted], his[disruptive employee] attendance has been very poor but improved dramatically during the monitoring period…at the end he left via a Settlement Agreement."

Investigations into employee conduct and organisation practices, whether in-house, or conducted by an outside body, will, if well intentioned, strive to achieve as objective a 'finding of fact' as is possible; and throughout, they are reliant on the cooperation of parties involved. Whether at one end of the spectrum concerning possibly less serious issues such as poor time-keeping, or the other extreme investigating infant deaths, the process is largely the same, though clearly the burden of proof will gravitate to 'beyond reasonable doubt' in the latter example.

This preparedness to be impartial, which is not only a moral requirement but also one with legal implications, has been sadly lacking in too many cases, with repercussions for all concerned. Organisations therefore have a choice to make, not only as to whether to investigate (Boundary Condition) which I will address later, or effectively 'window-dress', and commission a less than competent investigation, as the diagram below illustrates (Chart 5.4) where a CURSORY approach is commissioned. Deciding not to investigate produces an INFORMAL RESOLUTION with management having a 'quiet word' and the transgressor not having any formal documentation recorded. It may also culminate in NEGOTIATE where, due to the gravity of the issue, management and employee 'agree' a Settlement Agreement. Even when deciding to formally investigate this also gives options to the employer. They may choose either of the extremes CURSORY or THOROUGH depending on their judgement about the total ramifications of the alleged offence, both these leave open their option to NEGOTIATE as and when the matter warrants 'closure'. This could be during or at the conclusion of those two investigatory routes which the dotted lines portray:

22. (M) " I could see straight away was that I was being asked to sabotage the data. '[name] this is going to fundamentally change the data and it's going to paint [public body] in a completely different light'…[superior replied] 'when the Director of [public body department] gives you an order you follow it'. And I remember thinking at the time 'Bugger me I didn't know I'd joined the army.'"

Whilst interviewing a whistleblower manager at the heart of the child sexual exploitation scandals; they were clear that such was the denial by organisations that this sexual exploitation was happening, that the Government commissioned investigator, whom the interviewee knew well, was appointed to disprove the 'unfounded' allegations, the intent being a CURSORY 'window dressing' closure of the issue. Thus, if this view is correct, an intended CURSORY investigation became THOROUGH (Chart 5.4 'red arrow' below) as the compelling evidence mounted. They recalled their dismay at the lengths the public body went to in order to ensure a CURSORY approach when taking a phone call from a colleague:

> 23. (M) "I remember her ringing [name] and I saying 'we've been told to shred documents' which left [name] and the interviewee visibly upset.'"

CHART 5.4

Boundary Condition Options

ALLEGED INCIDENT

Optional Outcome   'Boundary Condition'

CSE Investigative Change?   INVESTIGATION?

NO   YES

INFORMALLY RESOLVED   NEGOTIATE   CURSORY   THOROUGH
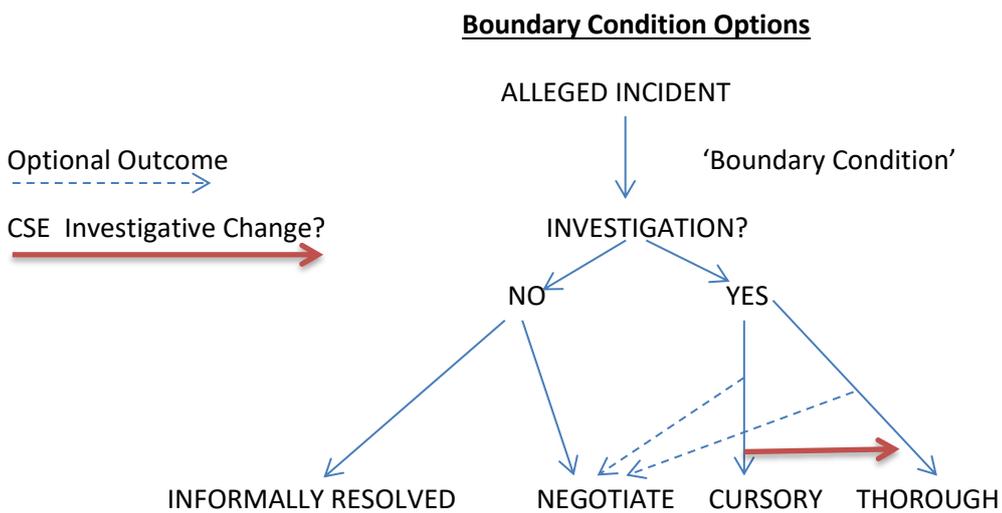
To illustrate that even when extremely serious incidents arise, organisations may still favour a CURSORY 'window-dressing' as opposed to a THOROUGH investigation. A large public body even though fatalities were involved, can be seen in the following comments along with some of its consequences; this stance appears to have been to protect the organisation and the professions involved (GWMH, 2018, pp. vii,viii):

> 23."they [patient relatives] have been repeatedly frustrated by senior figures".

> 24."their[patient relatives] quest for truth and accountability has had an adverse effect on their own lives".

25. "how difficult it is for ordinary people to challenge the closing ranks of those who hold power".

26. "it is a lonely place, seeking answers to questions that others wish you were not asking".

27. "The anger is fuelled by a sense of betrayal. Handing over a loved one to a hospital, to doctors and nurses, is an act of trust".

28. "…there was a disregard for human life and a culture of shortening the lives of a large number of patients by prescribing and administering 'dangerous doses' of a hazardous combination of medication not clinically indicated or justified".

29. "[patient relatives]…were consistently let down by those in authority—both individuals and institutions. These included the senior management of the hospital, healthcare organisations, the General Medical Council and the Nursing and Midwifery Council. All failed to act in ways that would have better protected patients and relatives, whose interests some subordinated to the reputation of the hospital and the professions involved".

Whilst the dimensionality of justice, whether it be three or four components, has proved valuable in gaining a better understanding of how different variables act singularly or together, this de-construction of justice does not reflect *how* justice judgements are made. To understand this heuristic theory is the key, and rather than de-constructing, a conflation approach is a better reflection, and this is considered in the next section regarding the concept of *overall justice.*

5.11 Overall Justice: An Omnibus Concept

After a long period of justice dimensionality research, Greenberg (2001 p. 19) noted, "It is time to pull them together and look at justice the way individuals do; as an omnibus concept not separate pieces". Philosophically the concept of *overall justice* has contrasting origins; Leventhal (1980) saw it as a combination of both procedural and distributive *judgements*, supported by Lind and Tyler (1988 p. 135), who actually used the term "overall justice judgements". Lind (2001) saw it not as a judgement of the combined dimensionality, but *experiential,* including reflecting past encounters. Leventhal's is more calculative, weighing the attributes of each, whereas Lind's is heuristic. Finally, Colquitt and Shaw (2014) saw it as a vicarious judgement about the way the entire workforce was treated. The term *overall justice* has other competing titles, namely "total fairness" Tornblom and Vermunt, (1999), "systemic justice" Beugré and Baron (1997), but each essentially takes a holistic approach.

When conducting the semi-structured interviews, it is this omnibus concept of justice that subjects recounted. The experiences cited range from recent to a distal seventeen years, which for the latter examples, suggests a stark impact on memory in terms of being be able to recall so vividly such encounters. Events recalled from distant memory and the more proximal accounts have not been differentiated; the language used was taken as 'concrete' and 'contextual', irrespective of time lapse (Liberman and Trope, 2008).

The use of *overall justice* is a natural progression from dimensionality considerations, because it has been shown in longitudinal studies that the salience of certain dimensions can change over time. Job applicants may place an emphasis on *procedural justice*, but after being appointed will find, in the absence of any meaningful interpersonal contact during the application process, that *interactional* takes precedence as they get to know their colleagues and supervisor. Ambrose and Cropanzano (2003) found that initial procedural justice importance was replaced by distributive justice one year later. Heuristics for Lind (2001) note the primacy of initial judgements such that secondary information (dimensions) may be diluted or discounted. Uncertainty Management Theory (Lind and Van den Bos, 2002) dictates the initial judgement should be stable, unless overwhelming evidence or change intervenes. The work of Holtz and Harold (2009) showed that justice evaluations of both the supervisor and the organisation varied by almost a third over a period of only four weeks, and Fortin et al. (2016) similarly note variations over time. As a trade unionist noted about the disciplinary procedure which he saw as highly charged, and could be "dynamic", and "emotional", where one's judgements about the process and the people can vary, particularly so in one case he recalled which had been ongoing for about two years.

In fact, much of the literature on justice is premised on a 'steady state' concept of the organisation, which is fact organisations are not, they are dynamic, with ever changing people, products and policies (George and Jones, 2000). Thus, in one example in this research, what was a "brilliant" place to work, changed rapidly with the replacement of a management structure that knew little about the duties involved, and appeared to have a minimal concern for out-group staff. In this particular case, a dictatorial, policy-driven management style completely changed *procedural, interactional* and *distributive* dimensions for the workforce; and only latterly, with some key personnel changes have they seen elements of a just and fair organisation re-emerge.

Additionally, with ever more cosmopolitan workforces, cross-cultural differences in justice judgements are a feature, with the work of Kim and Leung (2007) highlighting the variability across the US, China, Korea, and Japan, in that different dimensions are more or less salient in evaluations of overall justice. It is perhaps an extreme example, but one UK registered company in one sector of the hospitality industry comprises (N=558 employees) 28 nationalities, and only 2% are from English-speaking countries. Added to the contextual and cultural variability, we also have the personal characteristics where psychologically, mood, emotions, and relationships can all change over time, and even from day to day.

Taking an omnibus view of justice offers a more 'stable' option, in preference to the dimensional instabilities, but in doing so accepts that dimensional refinement will be lacking. That is not to say a concern for dimensionality is avoided, for the work of Nicklin et al. (2014) illustrate that this approach is not an either/or approach, for their work clearly identified overall justice as an independent construct beyond the existing dimensions. However, independent did not mean unrelated, for in two studies they found that "overall justice perceptions are more likely generated from the specific justice dimensions not the other way round" (p.264). Thus, whilst individuals may make heuristic evaluations (Lind 2001), it may be the invisible hand of dimensions that 'guide' this judgement. Considerably more work is needed to clarify this proposition, however, as too is the issue of whether it is the questionnaire structure that 'forces' a particular outcome, for as Folger and Cropanzano (2001 p. 38) note, about sequential issues, an "extreme judgement about any one segment might color someone's overall reaction to the entire sequence". Overall justice measurement has been seen as a combination of an *individual perspective,* and one of representing the *collective workforce,* the former the result of actual experience, the latter due to a vicarious assessment on the workforce.

Many of the earlier examples highlighted deficiencies, but there were several good practices in operation where overall justice judgements were positive, particularly where it appeared the trade unions had an active, authoritative and valued presence by the employer:

> 1. (TU) "That interview was perfect; the investigator only asked about six questions, and HR asked me to confirm I thought the proceedings were fair."

> 2. (TU) " We have a very good relationship with HR, and even when things go wrong, it's not normally malice, it's stupidity…you get these managers [investigators], and it looks like they are acting badly, but they have rudimentary training."

3. (TU) "[Employer] Brings someone [investigator] from another part of the country to process a case and ensure impartiality…I'm sure that might have been because we had just beaten them at a Tribunal."

4. (M) "I've been a trained solicitor for 16 years, and well qualified to take on investigations, particularly as other managers and staff didn't want to touch them."

5. (M) "I think we have been lucky, the trade unions particularly from personal experience are very good…they certainly have their uses."

6. (HR) "One member of staff has an investigative background [used to interviewing under caution]."

Whilst this research is structured on the use of formal procedures, the following section concerns whether or not any formal process is enacted (B*oundary Conditions)*. This research found this aspect was in need of substantial further scrutiny, given what appeared to be evidence of a differential approach to the 'gate-keeping' of justice.

5.12 Boundary Conditions: The Antecedents or Avoidance of Justice?

It became clear during the research that, though the disciplinary system is prescribed by internal organisational policies and procedures, within the framework of employment legislation and Acas guidance, value judgements by management at the outset decide whether or not the formal policies are used (Chart 5.4 above). How these decisions are reached, by whom and on what criteria such issues are judged warrant mention, given this is just as much a reflection of workplace justice and fairness as is the actual disciplinary system itself.

One tenet of Leventhal's criteria is *consistency* which implies an even handedness. However, over time, organisations invest considerable resources into many employees' personal and career development, and it would seem counterintuitive to apply the same sanction for a given offence, to a long-serving employee compared to a new entrant where this mutuality of obligation and investment had not been fostered. This differential justice application is recognised in employment law, where in a redundancy situation, it is acceptable to retain the long-serving employee, at the expense of one newly appointed under the Last in First Out (LIFO) guidance. As one trade unionist commented, "I get people who will say 'It's a fair cop' and admit to it [offence], but they have been there 30 years and that should count for something."

Many of the quotes previously indicate a lack of consistency, and even bias where favouritism has been suggested, and in making these 'boundary' judgements, management appear to flout many of Leventhal's criteria. However, research on this gate-keeping aspect into the disciplinary system is left wanting.

In the interest of capital, management must keep the production process in motion, which, along with a host of other pressures, means these judgements are not a formality, particularly where the production is a continuous one. The case of disciplinary action by management at the Grangemouth oil refinery in 2013 against the Unite convenor Stephen Deans, which shut down 10% of UK fuel supplies due to strike action, would not have been taken lightly. However, it does highlight that 'boundary' decisions concerning disciplinary action can have ramifications well beyond the mere alleged offence.

Noted in the earlier section were several factors which impacted distributive decisions, and these same factors are potentially evident in 'boundary ' considerations of gender, dyadic composition, status, procedural adherence, personal relationships, in-groups and production targets, (Bensman and Gerver (1963): Bowles and Gelfand (2010): Brett, Atwater and Waldman (2005): Cole (2008): Dalton, Todor and Owen (1987): Egan, Matvos and Seru (2017): Fandt, Labic and Urich (1990): Fragale et al. (2009): Schiller, Baumgartner and Knoch (2014).

Boundary decisions offer management the option of a Nelsonian 'blind-eye' which runs the risk of the questionable behaviour becoming accepted practice; which Dunlop and Lee (2004 p. 67) note the risk that "the bad apples do spoil the whole barrel". This stark prediction has never been more prophetic about the organisation itself, and the consequences of inaction in the wide spread recent findings of child sexual exploitation (CSE). Newcastle, Keighley, Rochdale, Rotherham, Peterborough, Oxford, Bristol, Aylesbury, Huddersfield, Manchester, Telford, Derby, and Barnsley (to date) have all seen inaction as the antecedent of unimaginable harm to children. Individuals at all levels and the organisations themselves chose not to intervene and the following personal accounts highlight the consequences. The familiar proverb that 'All it takes for evil to prevail is for good men to do nothing' rings true in the following accounts from managers at the heart of one of these public bodies who were subject to disciplinary action, and is evidence of exactly what Dunlop and Lee (2004) feared.

The interviewees regularly furnished evidence of CSE, along with other 'intelligence' of those persons, locations, addresses, times and vehicles involved, and additionally gave

presentations of their findings to management in the organisations responsible. Yet an air of indifference prevailed:

> 1. (M) "I remember going to a Child Protection Review Conference, and the Police officer said 'I don't think we should be here because this child was happy to have sex with all these men.'"

> 2. (M)"I realised in that moment that while [public body] wanted the acclaim…they had all the brochures and beautifully produced policies, they didn't have the slightest intention of addressing the issue; it [management attitude] was pretence, it was all about reputational damage."
> 3. (M)"Nobody's been investigated in [public body] but me [whistleblower]."

> 4. (M) "No! Women Police officers were worse than the men [no empathy]…not all police officers were bad, you look at [name] he was an unsung hero, he believed in me, he went out…and got the evidence, and his male officers were fantastic, but they'd got a good leader, an empathetic male leader."

> 5. (M) "There were all these dialogues about, 'Oh she's only a child prostitute.' 'She went there of her own accord.' 'What did she expect to happen?' 'She was aware of the risks.'"

Combined with this indifference there was a cultural dimension and a fear of not rocking the multi-cultural boat which, together, brought about the petrifaction of management:

> 6. (M) "There was a real fear of disturbing community relations, I think [public body], is the only place I've worked in where there was positive discrimination…I think the deference to people from the Asian community exceeded the treatment of white British people."

> 7. (M) "By not wanting to rock the multi-cultural boat, which was said over and over again,…it's not about being racist, it's about being factual, and there's a significant number of people that were abusing our children were from a Pakistani background."

The organisations responsible were not passive observers of this mounting evidence, and in addition to clandestine removal of files, planting incriminating evidence, closing the section which uncovered the evidence, and terminating employees they also sought to intimidate:

> 8. (M) "She [name] was in the end shifted, and the [charity] had basically been told [public body] will not fund your work if you keep asking these kinds of questions [about CSE]."

9. (M) "Police…did a [newspaper article] saying whoever this person [whistleblower] was had caused damage to this town; not one of those major organisations[police and public body] looked outward and tried to find out who was hurting our children, that's the bit that got me angry."

10.(E) "[A police officer the interviewee knew flagged her down in her car]'You better watch your back, I hope your tyres are OK, I hope your brake lights are working, I hope your MOT', and I said 'Is this some kind of wind up?' and he shrugged and I drove off."

11. (E) "These two uniformed bobbies approached me, and said 'Are you [name]?' and I said 'Yes I am.' [they replied] 'You're not welcome in this town, you better watch what you say.' and then the thing they said to me was, their exact words were 'It will be a shame if the men like these [child abusers] found out where you live.'"

The consequences of inaction have been profound in that part of the country in which this public sector body sits. The personal cost to the victims can only be imagined, and it is only now with the judicial system in action, over a decade later, that they are beginning to experience the semblance of any justice. However, one victim 'T' who had endured years of abuse from the age of 11 years felt the ordeal of working with officials and giving evidence was the hardest thing she had ever done, and another victim similarly had to contend with being on the stand for eight days whilst being cross-examined by eleven barristers during one of these prosecutions. One family moved overseas to protect their child. A father discovered his daughter was at an address, on finding her, and in the ensuing arguments, he was arrested for using racist language against the males present, and no action was taken against the abusers. Another father of a victim was so incensed by the failure of the police to protect his child he joined the National Front in protest rallies, it being the only way his 'voice' could be heard. An officer of the Crown, whilst prosecuting a case in a period of forty-eight hours received 17,000 racist and abusive emails, had police protection and an alarm fitted in his house, and was advised it was too dangerous to allow his children to walk to school. In the words of one victim who was the client of an interviewee, this boundary condition of indifference and unwillingness to act led to ramifications for many others and for her personally the consequences which 'T' noted:

12. [Victim of CSE]"I felt alone, ashamed of myself, degraded and hurt.---this was made more believable because the people you are supposed to put your trust in are the very people who allowed me to feel it was my fault---I was well aware that [Police] thought they had no duty of care towards me and my family---[public body,

and Police]---didn't seem to care. One thing I have learnt from the whole thing is that being silent is what made this town become such a mess". (Publication 'X').

However, it was not just the abused children who suffered:

13. (E) "By the time I went off sick, I was very, very ill, there is no doubt about it, probably quite close to having a nervous breakdown. It was the cumulative effect of all the trauma, and looking back I definitely did have secondary trauma."

14. (E) "[I was] Sat on this plane; a teenager I didn't know was reaching over and touching me and saying 'Are you OK?' and I didn't realise I was crying because it [newspaper publication of official report years later] re-opened it all."

15. (E) "I had so many nightmares…I went to meet [name], and I'd not been back to [public body] for years, and I genuinely couldn't remember where the office was and that's somewhere that I drove to every day" [residual trauma]."

16. (M) "Within a space of six months [name] and her family had to move six times(Publication Y)."

A Boundary Condition of inaction prevented these CSE cases, and others throughout the UK, being pursued, and those responsible being held to account legally or at a disciplinary. Indeed, gaining access to accurate information led one government report to note:

"This is not the first case in which it has been alleged that files of information relating to child sexual exploitation have disappeared. The proliferation of revelations about files which can no longer be found gives rise, whether fairly or not, to public suspicion of a deliberate cover-up" (HoCHAC, 2014,p. 6).

Whilst having a record of disciplinary incidents provided by the Host employer (Phase 1), there is no information as to comparable Boundary Condition judgements of potential cases which did not progress to a formal investigation; though I doubt any would have had such a profound and lasting effect as the CSE cases above. Research in general into matters of workplace discipline involving first-hand accounts, from a qualitative viewpoint is left wanting, and deserves further attention, as too do 'Boundary Conditions', where this field of inquiry is barely, if at all, established. I now turn to the research summary.

6. Research Summary

6.1 Introduction

This research has evidenced examples of both employer and employee failing to honour their contractual obligations. From Phase 1, covering employee transgressions, only those variables which proved significant will be summarised here (tenure, gender, age, and absence), the remainder having low cell counts or inconclusive findings can be seen in Chapter 4. This is followed by the qualitative Phase 2 interviews largely explicating several employer failings giving rise to the justice and fairness perceptions of the parties involved and this is structured around the dimensions and theories of justice.

6.2 Phase 1 Demographic Variables: Tenure H_2

H_2: Job tenure and breach are negatively correlated or will be of a lesser tariff as tenure increases

It was clear that the months employed within the organisation had a direct bearing on the likelihood of committing an offence. Evidence from (Chart 4.9) showed a striking variation in some tenure groups from that expected based on the workforce population. New entrants particularly (0-35 months) were roughly twice as likely to be investigated as their numbers in the workforce would suggest, and taken as a whole, short tenure employees (up to 93 months) accounted for 70% of the Chi Square value and must be seen as having an increased likelihood of committing CWB. Beyond this threshold of 93 months, offending still continues but at a gradually reducing rate. Alternative analysis of this data (Table 4.2) shows a threshold of six-year tenure indicating the start of the 'drop-off' in offending, thus, whether it be eight-years', or six-years' tenure, this low tenure group are more inclined to CWB. The extreme of long tenure, employees of 24 years and over offending rates are less than a quarter the rate compared to the 0-35 month entrant (Chart 4.9).

In both analyses from a high peak of offending in low tenure groups, this drops away sharply, and once tenure exceeds about seven years, offending rates tend to be at or below what is to be expected of the workforce generally, but all the while gradually decreasing thereafter. So, while offending still occurs in people beyond seven years' tenure, it is below that which might be expected given their numbers, and in tenure of around 18 years and above it falls away again, so that once 24 years is reached, it is an exception. Although criminologists record 'Age' and not 'Tenure', their trajectory of criminal offending (McVie, 2005) mirrors the workplace

offending closely, from adolescence onwards, and corresponds in sociology with the increasing stability of life-course events (Levinson, et al. 1978). However, as to be expected, tenure and age are positively related because as tenure increases so must age, (Pearson correlation of 0.452, @ 0.01significance, Appendix 14).

By the law of averages, the longer a person is employed, the more likely they are to be exposed to the chance of offending. A 10-year serving employee would have only half the opportunity of offending compared to a 20-year occupant, and a quarter that of a 40-year employee, all other things being even, akin to the half-life of radioactive decay. The data set gave offending rates at 10, 20, and 40 years (+/- 1year), as 24, 11, and 2 offences, which is hardly an exact half-life representation, but is a social science 'loose' approximation.

Therefore, if we forfeit *actual* rate of offending, in favour of *rate of offending per year of service,* far from a gradual decline, the rate of offending falls away more sharply. Rather than total tenure in the detail above, the 'per year of service' thus has a material probability on the likelihood of offending as Chart 6.1 below demonstrates. This highlights the critical nature of the work to be done, particularly in those first few years after appointment, where induction, socialisation, ongoing training and mentoring are all essential components of inculcating the organisational norms expected. This rate of decline mirrors even more closely that in the Age/Crime curve (McVie, 2005).

CHART 6.1

DATA SET OFFENCES PER MEAN MONTHS of SERVICE
(NB. 0-35, 36-62, etc. are months of service corresponding to Chart 9)

	0-35	36-62	63-93	94-123	124-160	161-223	224-294	295-561
MEAN YEARS of SERVICE	1.46	4.08	6.5	9.04	11.83	16	21.58	35.67
OFFENCES PER MEAN YEAR of SERVICE	41.78	6.86	6.92	3.54	2.45	1.56	1.34	0.39
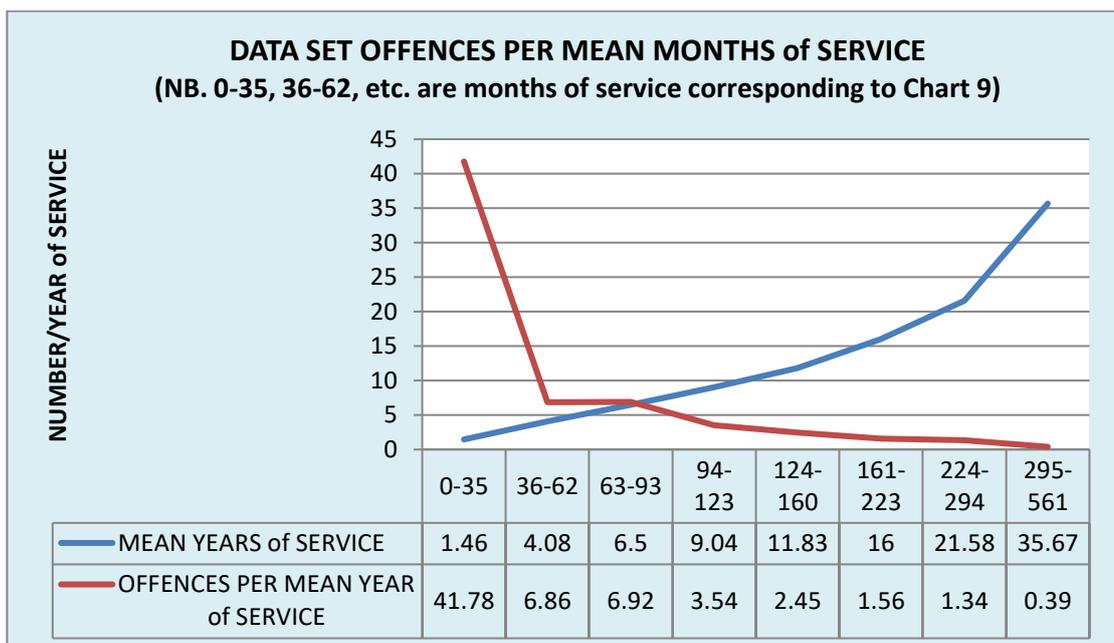
The second part of H_2 hypothesised that as tenure increased the seriousness of offence would decline. This inverse relationship was demonstrated earlier in Charts 4.10 and 4.11. A workforce mean tenure of 150 months is almost double that of those being 'Dismissed', 'Summarily Dismissed', or 'Resigning/ Retiring' at only 80.3 months (N=75). Similarly too with the high tariff findings of Final Written Warning (N=26), the mean tenure was only 106.3 months. Taken as a whole, each category of finding from 'No Case to Answer' to those leaving, every group returned an average tenure below the workforce mean, and being a longitudinal sample of all cases this ruled out sampling error and points to tenure as being material. This is demonstrably the case for high tariff findings, but to a lesser extent for all other categories; the probability of this happening by chance gave Chi Square 21.085, @4df, p=0.0003, leading to the conclusion that tenure is a critical variable regarding the seriousness of offence from Final Written Warning and above, at least in this employer. This was also demonstrated in Chart 4.11 with longer tenure employees transitioning away from high tariff offences to less serious breaches, substantiating the second part of hypothesis H_2.

Whilst not part of the hypothesis, the research question does raise the issue of the 'type' of transgression, and in regard to tenure, the distribution showed some minor anomalies. Problem areas of 'Attendance', and 'Health and Safety', show low tenure being over-represented, suggesting perhaps a deficiency on the one hand of the employee to comply, and additionally for the employer a possibly less than ideal recruitment, induction and socialisation process, in failing to stress the critical nature of both these aspects. However, 'Dereliction of Duty', contrasts with this in low tenure groups being investigated only half as frequently as longer serving staff. This point to the newer entrant being more rule-compliant, whilst longer serving employees, perhaps more familiar with the organisational practices and the individuals therein, may be prone to taking liberties. Nonetheless, if new starters are indeed more compliant, their committing more health and safety offences runs counter to this. This dichotomy, I surmise, may rest with the employer, due to a lack of adequate training rather than any innate employee tendency to offend in the 'Health and Safety' category.

Tenure therefore not only by way of likelihood to offend, but also in relation to the seriousness of the offence, demands that organisations pay particular attention to the assimilation of new recruits, and at all costs, avoids the one-off 'sheep dip' of an induction. New entrants clearly require some oversight well beyond the initial few weeks or months.

Despite much research, particularly into ethics and decision making, where gender has proved inconclusive, in this CWB research, gender proved to be the most striking independent variable. The following section elaborates.

6.3 Phase 1 Demographic Variables: Gender H₄.

H₄: Females will be under-represented in breach cases

The Host employer was a female-dominated establishment, with a gender ratio of females: males (72.4%: 27.6%), but an offending ratio in the data set of females: males (32.7%:67.3%). The dominance of male offending was evident in each year in the longitudinal study, meaning overwhelmingly males were the archetypal transgressor (Chi Square= 220, @ 9df, p=0). This propensity for male offending was examined in professional bodies largely in this country, but also abroad, and the male, as the gender offender, was evident in each profession having collectively over two million members. This male dominance was reflected in UK and international criminology statistics, which collectively establishes the male as potentially a 'high' risk employee compared to the female. Wimbush and Dalton (1997, p.756) note "employee theft accounts for about 70% of businesses losses and 30% of business failures", and with the public sector becoming increasingly commercial, greater care needs to be taken to ensure males, in particular, and, of course, females do not contribute to the above statistics.

Sociologically with the emancipation of women in the West, their increased prevalence in the workforce not only in numbers but also hierarchy, and with the equalisation of familial responsibilities, there is a philosophical assumption that gender will increasingly become amorphous. The result being little gender differentiation in many aspects of management research. From my working, and life experience including these research findings, I can only conclude it is a long way off; however, with the movement towards recording 'non-binary' or other terminologies, or just not recording gender at all as an option to the traditional male, female dichotomy (Australia, Canada, Denmark), in the meantime, research into gender is likely to become even more complex.

With males offending disproportionately more often compared to females, this raised the question of whether a similar disparity was evident in the type of offence. The different categories of offence, 'Attendance', 'Dereliction' etc., in the main showed a non-significant variation from what would be expected given the overall numbers in each gender. Only on the 'Theft' variable was there significance with females accounting for about a third of the data set, but being guilty of 52% of offences (Chi Square 7.4, @1df, p=0.007). It cannot be assumed

that females have a proclivity to steal, given that the total number of cases was only 42, and the likely explanation is that there work in general affords more *opportunity* for theft, rather than any innate inclination to steal compared to males. Overall, the problem for the Host organisation is that the rate of offending/year/thousand males or females is demonstrably weighted toward males (average cases male=34, female =6). Considerable attention is warranted to not only address this almost 6:1 ratio, but also the overall numbers which are well exceeding national figures for the size of workforce (CIPD, 2007).

In addition to tenure, and gender, 'Age' proved to be relevant in relation to workplace offending, as the following indicates.

6.4 Phase 1 Demographic Variables: AGE H$_5$

H$_5$: Age and breach correlate negatively or will be of a lesser tariff as age increases

Just as new recruits (H$_2$ tenure) to an organisation are prone to offending, so too are young employees. Those aged 24 or below are four times more likely to be offenders than other age groups (Chart 4.13, Table 4.7, and Appendix 30). The data set clearly shows a marked excess of young offenders, and whilst not all offences are criminal, the distribution accords (like tenure) with the Age/Crime curve (McVie, 2005: Farrington, 1986). Whilst this is so in the Host employer, it cannot be taken as generalizable, for in two professions it is the older age groups which are in excess (GMC, and NMC). In neither case, as yet, have the professions established clear reasons for this.

It has been speculated that older employees are the ones who 'know the ropes' and by implication, the ways around them as with fraud (PwC 2011). In clinical care, professional arrogance may occasionally play a part where surgeons perform unapproved surgical procedures by falsifying their qualifications, or for the exercise of hedonistic power producing monitory gain (Sudip Sarker, 2018, and Ian Patterson, 2017, jailed for six, and 20 years respectively). In each of these examples, individuals were long serving and 'older' employees typically in excess of 40 years of age. However, in each of these examples, as with many workplace transgressions, inescapably there had been organisational failures. Failings in the fastidiousness of the recruitment process for Sudip Sarker, would have identified his misrepresentation and avoided an estimated £2million pound compensation to patients; and Ian Patterson's case can, in part, be laid at the door of the NHS and private hospitals, who chose not to act sooner (Boundary Conditions) despite concerns from fellow medical staff (estimated compensation £30m). Organisation and oversight deficiencies in banking can, in

part, be blamed in allowing undetected rogue transactions and inadequate audits (Nick Leeson at Barings Bank, 1995). Thus, while individuals are culpable, organisations should not escape scrutiny for being at least contributory if not complicit.

In the Host employer's disciplinary figures, older age groups were under-represented, which would be expected (Kohlberg and Hersch, 1977); some may have chosen to leave rather than face an investigation, but without further evidence the reasons are unclear.

The second part of the age hypothesis was that such offending as did occur in older employees would be of a less serious nature than that among younger employees. This proved not to be the case; offending in older workers saw no 'drop-off' in seriousness of offence, and Hypothesis H_5 was only partially substantiated.

The remaining variable to be examined is 'Absence', which all organisations monitor, and which if not 'managed' can prove costly, disruptive and 'contagion' like (Brummelhuis et al., 2016).

6.5 Phase 1 Demographic Variables: Absence H_9

H_9: Breach of contract employees will have above average absence rates

Absence at around £14 billion/annum is a major cost to the UK economy (CBI/Pfizer, 2013), and organisations seek to minimise it wherever possible. It was monitored in this study by *total days of absence* and *occasions of absence* per annum.

Total days of absence for the Host's workforce averaged 10.66 days/annum, which far exceeds both national figures in the economy and those in the public sector (5.3, and 6.9 days respectively). This employer's absence on-cost (CBI/Pfizer, 2013), is around £2.3 million/annum, which, if brought down to the public sector average, would yield a saving of about £0.8million; and this may be why, sometime after my research feedback (October 2016), they introduced a 'trigger points' initiative as a means of becoming more proactive in managing absence.

By contrast data set absence (22.86 days/year) was excessive at just over twice that of the workforce (10.66 days /annum), despite 80 of the 263 cases having no absences. This was illustrated in Chart 4.15 and Table 4.11, which compared workforce and data set periods of absence, and clearly shows the data set having an under-representation in 0-7, 8-20, and 21-60 day categories, with a huge excess in the 61+ days of absence. This saw a Chi Square value of

76.08 @3df, p=0 and such a disparity from the workforce numbers could not be the result of chance; clearly other factors are in play. The two extreme differences of absence 0-7 days and 61+ days contributed the bulk of the statistical disparity (98%), but of the two, it is the long-term absences in the data set which will be of greater concern to the Host. As mentioned previously, average workforce gender absences (male =10.62, female = 10.68) are similar, as are data set figures (Male =22.6, Female = 23.4), and this gender similarity continues in the long-term category (61+ days) where the mean age is identical at 45 years, and average absences are very close (males = 120 days, females = 106 days) reinforcing my view that regarding absence not only the data set, but the workforce as whole, appear to be 'homogenised'.

 Work by Mastekaasa (2004), Brummelhuis et al. (2016), Markussen et al. (2011), attest to various factors *other than health* which can impact absence. Factors such as receiving full pay whilst sick, work-group gender balance, the employee's physician, work group cohesiveness, divorce, task interdependency and wealth, are all examples, some of which are noted in Chapter 4, and could possibly be impacting. Markussen et al. (2011) do register one aspect of absence, however, which sits at the borderline between perhaps a critic's view of absence provisions as being too generous, and a contrasting compassionate view that sees it as 'entitled'; they note "the recovery rate rises enormously just prior to the exhaustion of sickness insurance benefits" (p. 277). Without any detailed knowledge of the data set individuals, I am unable to ascertain what might be the major contributory factors in this employer, though long-term absences (61+ days) are critical in this data with only 13% of employees accounting for 63% of total data set time off. This potentially adds weight to the body of research which is "consistent with the idea that female dominated workplaces develop norms that are more tolerant towards sickness absence" (Mastekaasa 2004, p. 2261).

For both males and females, the overall level of absence in the economy has been declining over the last twenty years, but the lack of any comparable figures from the Host employer prevents any detailed analysis going back that far, although, during the last three years of this study, the overall level by gender has been recorded and has remained stubbornly level. The morbidity of females exceeds that of males, yet the CIPD choose not to report or monitor it, which I consider less than satisfactory, because in extant research, this can be marked and in the region of a 40% difference (ONS, 2014: Laaksonen et al.   2007), which Patton and Johns (2012) note "Overall, the finding is pervasive over time and place" (p. 151). Given Host gender absence levels are about equal (Male = 10.62, Female = 10.68 days /annum), if only

the male absence was to be reduced by this 40% to bring it into line with national gender differences, it would yield annually approximately a £0.26million saving, and that would still leave the female absence at about twice the national public sector figure.

The pattern of workforce absence varies with age (Chart 4.18), with males tending to have an excess over the females in younger age groups, whilst females mirror the national picture outstripping males in middle age. There is no anatomical reason for the male excess in age groups up to about 30years, but females do possibly have genuine biological (health) and sociological (familial) reasons during their life cycle.

It is not only the extent of total absent days that causes problems for the employer but the fact that those attending have to cover, and the frequency of absence is also an impediment for all concerned. Table 4.13 displays the data set by age showing that younger employees, up to the age of 34 years, have a disproportionately high number of occasions of absence compared to their respective numbers in this age group in the workforce. This group accounted for almost 80% of the Chi Square value 283, @ 5df, p = 0. Shown in the previous section was the finding that employees below the age of 25 years had a propensity to commit CWB about four times greater than other ages. This absence data regarding frequency only compounds this, compared to other ages; those aged up to 34 years are about three times as likely to be *frequent* absentees. The younger employee therefore merits special attention.

In view of the above hypothesis, H_9 was supported, but it cannot be said that *all* employees had above average absence rates, when clearly about 30% of the sample had no days off. The focus therefore is on the younger employee. Thus, Hypothesis H_9 is only partially supported.

It should be stressed that the above cannot be seen as *causal,* they are individual variables associated with cases of deviance, and they give management and the trade unions an opportunity for constructive intervention, if they are minded so to do.

6.6 Contextual Review

The extent and pace of change for the Host and the whole public sector during this research has necessitated previously unimagined reforms. This turbulence may well have contributed to the scale of CWB within the Host, which annually averaged about one case per eighty employees, compared to the average 1:364 (CIPD 2007, p. 20). Added to this, Chart 4.19 illustrates that over this period, a 16% contraction in the workforce has seen a significant rise in cases/thousand employees which, in the final year of the research saw this ratio rise to 1:66.

At this level I see it as approaching dysfunctional to both organisational interests and industrial relation generally.

Chapter 4 made reference to the statistical bi-variate correlations between the variables being monitored (Appendix 14), which aimed to identify linkages with the seriousness of disciplinary outcome. The most telling of these was a -0.207 value between seriousness and 'Tenure' which in Cohen's (1988) classification is considered 'weak'. Yet this negative linkage, which is significant at the 0.01 level, corresponds with the findings of H_2 that those committing the most serious offences are indeed low tenure employees (Chart 4.10), and whilst not strictly applicable across the whole range of offences, this is nonetheless ratified at Final Written Warning and above.

Further statistical T-tests sought to establish if singularly or together a range of independent variables could account for the variance in the dependent variable, the level of disciplinary sanction. No single variable proved decisive, and collectively they appeared to only just meet the 'medium' threshold (Cohn, 1988) in explaining just over 6% of the variance in outcome. However, one of the main contributors (disability) displayed a low cell count, thus these variables cannot be said to have any strong linkage to outcome.

We now have to consider the role functionaries play in handling disciplinary issues. The following section addresses the administration of the disciplinary process by the Host employer.

6.7 Phase 2 Workplace Justice: A Reality Check?

Public sector bodies vary enormously in size, philosophy, Executive oversight, and service provision, so any detailed comparison would be problematic. What is common, however, is that they all employ hundreds if not thousands of staff, bound by the constraints of the same employment legislation. This summary concerns this commonality, but will evidence a range of management cultures, which by their actions help illustrate the disparate nature of workplace justice and fairness.

6.8 Phase 2 Host Employer: Distributive Justice Outcomes

The Host employer provided a range of variables which shed light on that organisation's administration of justice, with outcomes comprising 'NCA', (12%), 'Sanction', (57%), and 'Termination' (31%) respectively (Table 5.1). 'No Case to Answer' (12%) saw about three quarters of the employees having over five years of service, and by the time of the incident,

they must have been fully socialised and conversant with organisational requirements; their appearing in the data set may reflect more a state of 'mindlessness' or disengagement from the organisation to allow their behaviour to be so brought into question.

For cases where a sanction short of termination resulted (57%), the key factor is that none of the 150 cases apparently warranted dismissal. Despite the public sector being fastidious in portraying itself and its staff as bastions of integrity, and exemplars of ethical conduct, yet 'falsifying a sick note', 'making fraudulent mileage claims', and 'stealing money', have all, in my experience, led to terminations but clearly not so here. The Host may have been particularly understanding, but this runs the risk of such behaviour becoming 'normalised', and would be problematic at an ET if a similar future case were to lead to a dismissal. Additionally, females, it might be argued, when offending, tend to commit less serious offences because of their dominance in the least serious outcome category: 'Capability/Counselling'. This outcome for females was the highest in any of the categories and represented 34% of all female cases, compared to 20% for males. However, it could be that disciplinary judgements for the female tend to be more lenient (dyadic composition, Dalton and Todor, 1985). Similarly too, the female is over-represented in the 'Retired/Resigned' category, where the female is more inclined to voluntarily resign (24%) compared to the male (12%). For those choosing to 'Retire/Resign' there is no difference in age between the genders, and only four of the 41 cases involved employees who were 60 years or over, thus only a small minority would have access to their State pension. The mean tenure of females, however, was 92 months, compared to the males at 64 months, and both 'Capability/Counselling' and 'Retired/Resigned' are statistically significant as exceptional distributions in the data set ($p = 0.018$), and workforce ($p = 0$) and would benefit from further research.

Where the nature of the offence led to termination 'Theft/Defrauding' and 'Dereliction of Duty' were the major causes, with almost equal numbers by gender, though the cell count being relatively low numerically, this was not considered statistically reliable enough to calculate Chi square values.

6.9 Phase 2 Host Employer: Procedural Justice Case Duration

The Host employer acts expeditiously in completing around 65% of cases within 10 weeks. It is inevitable that complex investigations will take longer, and can be exacerbated by health issues and availability, though this should never be the reason for unnecessary or protracted delays. The quartile distribution of case 'Duration' shows about half of the 41 cases of

'Retired/Resigned' chose to leave within the 0-17 day period. In the main, these were short service employees with average tenure of 69 months, compared to the workforce of 150 months, (data set mean of 116), and this clearly contributed toward a reasonably low average data set figure.

Of concern from a justice viewpoint were the three cases where two took almost six months and the other a year to find there was 'No Case to Answer', or two others of minimal consequence 'Capability/Counselling', which averaged nine months. From testimony in Phase 2 of this research, it is clear that delays of this order are concerning, and must have been for the individual who was suspended for 34 weeks. Despite these issues, the Host's use of suspensions faired favourably against other public bodies in the TPA survey, and the overall duration of disciplinary cases was not excessive.

6.10 Phase 2 Host Employer: Distributive Justice and Pay

The question as to how fairly justice is applied, by way of the hierarchy and lower ranked workers was examined by comparing the pay structure of the Host's workforce and the data set. Extant research suggests there may be preferential treatment afforded to higher status employees (Hollander, 2012), which disciplinary results might reflect.

Lower paid employees (up to £9,999), in the data set were appreciably under-represented compared to the workforce; these employees comprised a few full time trainee posts, the majority being part time. Higher paid employees (£25,000 and above), were similarly under-represented in the data set, and comprise essentially full time posts. The intervening pay range (£10k-£24,999), by contrast, shows an excess in the data set. These disparities can be seen in the Table 6.1 below.

TABLE 6.1

Conflated Pay Categories Data Set (N=259) v. Workforce (N=3672)			
Results	Pay Banding		
	To £9,999	£10,000-£24,999	£25,000 and above
Data Set Observed	55	160	44
Data Set Expected.	89	113	57

The data set distribution compared to the workforce is most unlikely to have happened by chance, with p<< 0.0005. If there is any idiosyncrasy credit toward senior staff in their not being disciplined as frequently or as harshly as expected, this benevolence is also reflected in the lowest pay banding. With this employer, I have to conclude no such clear 'preferential' treatment exhibits, and if any meaningful dispensation is granted it appears almost as an inverted 'U' relationship, with both extremes benefiting. Explaining this distribution may comprise several factors for example, part-time staff who dominate the bottom banding may, in seeking to achieve full-time employment, strive exceptionally hard to ensure they are compliant. Middle banding employees who are predominantly full-time have achieved that status and may become more blasé towards rules and procedures. High earners, almost exclusively full time, with above average salaries and pensions, have a considerable equity tied up in their resultant life-style investments (human capital theory), and may be more risk averse when it comes to transgressions, though without further research, this aspect cannot be substantiated.

Pay data was also examined to see if any higher (£15,000 and above) or lower (up to £14,999) categories displayed any differences by way of the *type* of offence committed. Chart 5.3 earlier showed the various offences investigated, with both 'Attendance', and 'Dereliction' having disproportionate 'over', and 'under' representation of cases respectively.

'Attendance' saw low paid compared to higher paid employees having comparable cases of 27:8, rather than the expected workforce count of 19:16 (Chi Square 7.368, @ 1df, p. = 0.007) indicating significant differences unlikely to have arisen by pure chance. On average, 'low paid' had around 44 days' absence in the year before the investigation, and 'high pay' 60 days. It would appear that despite the low paid tending to be the more physically demanding jobs, it is the high pay groups who, on average, are poorer attenders; even extracting the very long periods of absence (100 days or more) from each group, high earners still exceed the low paid by 32 days compared to 23. Absence levels of this order of magnitude being well above the workforce norm (10.66 days) indicates the need for considerably more interventionist management and an occupational health role, and an earlier resolution of those exceedingly long absences, which in five cases amounted to the equivalent of 4 full-time posts.

'Dereliction' of duty similarly saw a major difference between high and low paid groups (48:23, instead of the expected 33:38), again very significant (Chi Square 12.739, @ 1df, p. = 0.0004). An employee choosing not to obey reasonable policies, procedures and instructions should, irrespective of the contextual factors, be no different between the pay groups; all are expected

to honour their contract. Other differences are evident in the types of offence, but these are likely to have more impacting contextual explanations. The average age of up to £14,999 and those above was 39 years, and 47 years respectively, thus age is not too materially different. Tenure by contrast is 88 and 126 months respectively, which could prove relevant, but earlier work showed 'low tenure' as being the more likely transgressor which appears not to be the case here. This aspect would need further research.

The categories of 'Criminal', 'Interpersonal', and 'Dereliction' are factors less influenced by contextual issues and depending more on the moral compass of the individual. Taking a composite of the three when compared to the workforce gave a Chi square is 24.685, @5df, p = 0.0002, indicating further research might focus more on the psychological components rather than demographics to provide a fuller explanation.

6.11 Phase 2 Host Employer: Suspension a Neutral Act?

The use of a suspension, if it is not to be seen as part of a punitive regime, has to be used judiciously and managed. In large organisations, the scope of avoiding suspension, by temporary transfer, or arranging alternative specific work, should ameliorate the need to have employees on payroll but sitting at home. The host employer, in suspending 50 employees out of a total of 263, suggests that if investigated, employees had a one in five chance of being suspended, which I find too draconian for a large employer, and this may indicate the absence of a preliminary investigation prior to formal notification.

Given the number of investigations overall there is no single type of offence which might be seen to automatically lead to a suspension (Table 5.10), suspensions occurred across all categories and neither gender appears to be treated disproportionately. Individual cell counts are too small to draw any clear patterns, but suspensions tended to reflect the male dominance in the overall data set.

The use of suspension by the Host may have occasionally been an over-reaction to an alleged offence, given 7 of the 32 'No case to Answer' judgements had employees suspended for an average of 14 weeks, at a payroll cost of £38,000 (excluding any on-costs or temporary cover).

Suspension per se, despite one interviewee evoking the following image: "I always say if they suspend you it's a black cap job" [referring to a judge before passing the death sentence], does not automatically presuppose dismissal. A comparison of different public sector bodies highlights that whilst suspensions are generally seen as indicative of a potentially serious

offence, dismissal should not be taken as a foregone conclusion; across the range of bodies only around a half of judgements resulted in severance (Table 5.13). In fact, the Host was slightly better than this at around 44% dismissals after suspension.

That the Host and others possibly use suspensions too readily in the absence of a satisfactory initial investigation, and without the attendant 'duty of care' expected of an employer as to the welfare of the suspended employee, is borne out in testimony:

> 1. (M) "It's not a good situation for the individual, the [public body], or their colleagues; it's almost like 'The elephant in the room' but we are not going to talk about it. The difficult bit is the imposed silence."

The complete life-style change imposed by a suspension cannot be under-estimated, and particularly the adverse impact on the physical and mental well-being of the employee; employers have a duty beyond merely gathering the facts of the case and must embrace their responsibilities in 'managing' the absent employee rather than ostracising them.

This research has employed the three factor dimensionality of justice (*Procedural, Interactional* and *Distributive)* in preference to the four factor model. It reflects my concern that the division of *Interactional* into *Informational* and *Interpersonal* would have posed considerable problems in analysing the personal testimonies. These testimonies convey a twenty-first century account of the UK workplace, as seen by individuals at all levels across a range of public sector bodies.

6.12 Anticipatory Justice

Noted earlier was the potential for previous experiences, even prior to one's current employment, to predispose decision making regarding justice judgements. The interviewee accounts cover both current and distal workplace experiences.

It is clear not only organisations, but also the role people play within them, can change for better or for worse. Even before joining an organisation, impressions are formed as to how just and fair it may be: "very fair, open honest", which on joining became, "…It's completely different; it's a nightmare". Having worked in an organisation for several years that was considered to be a good and fair employer, a change of role within that organisation gave rise to a sea change of perception: "Let's just say it blows my mind the stuff I hear on a daily basis, it's completely different; it's a nightmare". This change of perception occurred not because the person had been radicalised, for they were already a departmental trade union steward of some years standing, but because their *role* changed from being concerned with a single department (silo), to being the union convenor working across the whole, very large

organisation. That organisation had separate 'silo' mentalities which were allowed to coexist at the expense of a unified corporate approach to the handling of disciplinary cases.

Where structural and management changes occurred, these prompted a reappraisal by the employee of the anticipatory justice predisposition, given new people became key players. "The new management really turned…HR are supposed to be impartial…it became clear that they weren't; they would make it fit however management wanted it" or, in another case "They took this new management on and he was a complete arse hole, absolute." However, change can be for the better, particularly where the chief executive is concerned: "They are very much committed to justice and fairness and that's been a drastic improvement", or in another example, "…them being committed to equality and diversity and even whistleblowing has represented a culture change."

These positive comments are encouraging, but have to be balanced by a member of the Executive who remarked regarding their chief executive, "But I don't trust her…but I know I could not speak freely with [name]…I wouldn't dream of going up there with an issue…I think there are too many cosy cliques, these silos"; Interestingly this was in reference to hierarchical silos, not departmental. The effectiveness of a new Chief Executive may appear limitless, yet some have described it as a tick box exercise to say you achieve greater gender balance having a woman in a senior position, yet in practice it was stated this same organisation is still run by the 'old boys network'. This suggests that appointments, particularly at the top, can beckon change, but not in all instances will it be positive, and it may have limited effect in others.

Public bodies covered by this work had access to in-house HR support or appropriate contractual arrangements, and as a result, can be seen to be 'mature' employers cognisant of employment legislation, and modern employee relations practices. The problem evidenced was the tendency, on occasions, to ignore, or pay little regard to these requirements. On a constructive note, one employer habitually reviewed complex disciplinary cases with key managers to give a "lessons learned review at all stages of the process", and this same employer had canvassed the views of employees who had been through the grievance procedure, to see, in consultation with the trade unions, how improvements could be made.

Less constructively from an anticipatory justice perspective are examples where there appears to be oppression of the employee "…the charity sector but they are worse than many other employers because they treat people like shit." The unwillingness to accept employee 'voice', contrary to the constructive grievance policy consultation example above, is where "I think its

fear of if you step out of line, or shout too much, or shout wrong things…you're not going to be here", or "if we raise our heads above the parapet on this we will lose our jobs", or " they wanted us to wee in …those bottles you get in hospital, I don't want to be in a cab while someone is pissing in that." Possibly with a view to reducing challenges from the workforce, one employee mentioned "If you're a shop steward, the [public body] will promote you so that the employee doesn't have a voice", reinforced in one organisation "…because they treat you like shit."

The application of policy can also shape anticipatory judgements, for instance when someone has a mastectomy and is off work, but receives a final written warning due to the 'trigger points' in line with the absence policy. Yet someone who is having problems with her pregnancy sees that all those absences are excluded from the absence monitoring. As one employee remarked, "I know people who have got cancer who have been disciplined, and to me that's where the policy isn't fair."

Management practices help shape anticipatory judgements, as with the over-night clandestine removal of files where research was furnishing data that the organisation didn't wish to believe, to which a manager affected remarked "This is a stich-up an absolute stich-up." Budget pressures and resource implications have had an impact, where the willingness to accommodate under-performing or problematic employees is being addressed. The employer has "… got tougher as the years have gone on…they are trying to get rid of dead wood, the people who are trouble", though counterintuitively deficient and problematic staff are being tolerated for fear of losing the post altogether. This willingness to 'tackle' these issues might be seen as a genuine responsibility of management, but when taken to excess, organisational practices, far from being constructive, are felt to be coercive. Approaching someone to dissuade them from giving evidence to a government inquiry, threatening to reduce funding unless people fall into line, or even giving someone two days to accept an offer of a relocation without telling them what role they are likely to play all show a scant regard for the dignity of the individual. These coercive effects of management practices can stretch far beyond the employee, and in testimony impacted on a partner working some considerable distance away, outside the public sector, which ultimately meant they left their job and retired much earlier than planned. Greenberg (2010) wrote a book "Insidious workplace behaviour", and the examples interviewees recounted strike me as being equally insidious, and worthy of inclusion.

Being even-handed with the way employees are treated is a fundamental responsibility of management, and whilst this does not literally mean treating everyone the same, glaring

differences beyond the bounds of 'reasonableness' only fuel anticipatory justice misgivings. Across very large organisations, with increasingly remote central guidance and support from HR, and a weakening corporate cohesion, it is understandable that 'silos' will develop different 'standards'. A feeling of an 'us and them' culture can develop where employees see themselves as being treated differently than management, or because of who you know in management, or which in-group you belong to. One employee remarked, "management are quite happy for you to break the rules in their favour but not in yours, and if something went wrong, you're in for a disciplinary." This and similar instances were recalled regarding taking out vehicles in an un-roadworthy condition. Management "are all in each other's pockets. The managers take care of the managers, and woe betides you if you are on the front line…it's an us and them, yes 100%." Gender discrimination was felt towards the stance taken by one employer in favour of the male section of the workforce, who were heavily unionised and prepared to strike, compared to the lack of consideration given to women in other sectors of that organisation, who were less organised, mainly part-time and in vocationally caring roles.

Trust, whether in the immediacy of reciprocity when time frames are short, or in future considerations, the ability to place faith in the actions of another, is a fundamental of organisational life. When this faith is misplaced often the psychological contract is breached, and anticipatory justice judgements may be adversely impacted. Going to a one-to-one meeting with your manager, and taking a tape recorder, proved necessary when the manager, unbeknown to this fact, remarked ”…well I'll deny any knowledge that I've said anything like that to you." This inability to trust management to be impartial saw one manager advise another manager who was probably facing a disciplinary, "…I can see the way this is going to go you know, and if I were you, I would take a copy of everything", or another colleague who commented "we've been told shred documents." This same inability to trust saw another employee, the night before their disciplinary, hand in all his keys and other belongings, knowing that the result would be dismissal, a decision that was ultimately proved wrongful at an ET. The effect of a disciplinary process on the well-being of an employee can be significant, and the person as well as the investigation warrants attention. An employee who had a particularly problematic experience, even though proven as 'No Case to Answer', several years later remarked to me "Do they [management] trust me now, I'm not sure and can I completely trust them now?"

Thus, the employee, in being exposed to a variety of workplace policies, practices and encounters, and along with prior experiences, either consciously or otherwise, may find

themselves predisposed to making justice judgements on matters strictly beyond the merits of the situation presented. The next section addresses many of the interactional encounters which shape justice judgements.

6.13 Interactional Justice

Structural/personnel changes are a feature of organisational life, sometimes seeing unqualified appointments as when an accountant took charge of HR, and sought to intimidate staff by remarking "I've got my red dress on today, so be very afraid." Ensuring appointments are made on merit is vital but "…people get promoted to senior positions on their respective professional abilities, without having any capability as a manager of having interpersonal skills", which can lead to "…the biggest issues are with Academies and Head Teachers, because they are so young and lacking in experience." Along with structural change, there have been resource cuts in all public bodies covered in this work, essentially culminating in reduced staffing, with increased workloads, and a tendency to being 'expected' to be willingly working unpaid extra hours to keep abreast of service demands. However, this increased pressure, and in some cases despite flatter structures, increased micro-management, appears to be taking its toll of employee experience of bullying; "I think a lack of resources is the principle reason, but fundamentally we just cannot get on with everybody. The bullying culture is prevalent in many, many places." However, if you are able to make the right appointments with an open and cooperative mind-set, "If you can get good industrial relations between HR and trade unions… positivity and productivity flows into all kinds of issues; life becomes sublime."

Having a respect for and acting ethically towards people should not be an optional management extra, yet in a number of examples, even the common courtesies appear to be missing. The practice of announcing redundancies is best handled in private and in person, and there have been cases in the press where this has been done by text, but "they literally sort of said, you've got a job, you haven't, you've got a job, and they went down the line like that." Bullying was noted above as a consequence of structural resource pressures, yet "it's people and a lack of training…a lack of understanding of basic principles of working with people", and a disciplinary can often arise "because of a long period of bullying, and it's at epidemic proportions…and it's everywhere." Appointing inexperienced or ill-informed staff to investigate can be counterproductive, particularly if they have a superiority complex. "…I had one of the investigators try to give me [trade union convenor], a dressing down, but I'm a representative at law, it's a statutory role. Some of them seem too think they out-rank you." Another thought "…sometimes they are dreadful like they are QC's…some get a real power-

buzz, and also being known as a tough-employer." Inexperience can play a part where the investigator "escalated the matter into a formal situation instead of dealing with it in situ", and these investigators don't always appreciate how complex and changeable the process can be because "…it is not linear it is dynamic, you've got interactions going on all the time." Additionally, managers, investigators and trade union representatives, are put under pressure irrespective of what accepted policy or procedure dictate, "[Chief executive] is dictatorial in management style…an expectation staff and members will be subservient", which was the case recently when a Government Inquiry noted that unusually, there was a clear subservience in one public body towards senior management, and by this same organisation toward the police.

Treating staff differently can be divisive, particularly where it borders on favouritism, or is unwarranted, and can manifests itself in verbal exchanges. "Shut the fuck up and go sit in the canteen" was one example, and another less directly offensive but more hurtful, and degrading, and an exercise of a power differential (distance), was "No, he's not having tea and a biscuit…just stand there", and the senior manager left the employee standing in a 'naughty corner' for half an hour while he continued his discussion with a colleague in the same room. A female Chief Executive called an early morning meeting of a number of female managers given her laudable desire to see further progression to even the gender balance. However, they were sworn to secrecy and were expected to be at their desks at the normal time. This ploy leaked out and put back trust in both the female managers and the Chief Executive for some considerable time. It is expected that people at whatever level will be honest in their dealings, but honesty cannot be taken for granted, as with the denial of the manager in the surreptitious recording of a meeting, or as in a far more serious example "…the fact that nobody told the truth; they all sworn an oath, but nobody told the truth, and yet us that were telling the truth were accused of lying"; or, alternatively, telling an author of a report that you have just altered the font, when in fact you have actually changed the recommendations.

Being able to trust those with whom we interact is critical, yet too often the other's actions and/or comments undermine this. "They hacked my computer you know, and accidentally sent me an email telling me that it had been done", and management making notes of investigative meetings saw one employee hand his notice in having been accused of 'lying', because he disagreed with the transcript. Another manager, having been investigated by a solicitor, who would have been conversant with evidential requirements, refused to sign off a transcript saying "I didn't say any of this, this is completely wrong. I am not signing this, I will change it all but this is not what I said", and thereafter took a recording device with her whenever she met

that individual, even though that individual continued with contemporaneous note-taking. Honesty is one thing, but when honesty means a manager tells you he is intent on getting rid of you, and unless you resign, management will set you targets that you are unable to achieve, this borders on coercion, which left the employee unable to trust anything management subsequently did.

It might be said that trusting the employer is crucial, and not just if an employee intends to stay within an organisation, for even after leaving, the spectre of the old employer can surface in the guise of a reference, with its possible adverse implications, or 'searching one's office' whilst working for another body, seeing third parties apply pressure via police officers on the beat, and intimidating a partner via a friend of a friend network even though they worked for a quite unrelated company some distance away.

In addition to interactional justice implications, how procedure is enacted can impact justice judgements.

6.14 Procedural Justice

The ability to play an active role in one's own defence (voice), largely irrespective of the outcome, and provided the procedures are fair, is seen as equating to a *just* experience. Having 'a day in court' is typically seen as encapsulating the need to be heard, which of itself is seen as fulfilling the need for just and fair treatment. Several factors can influence this as the following illustrates.

Change to structures and personnel can impact on perceptions of justice. The widespread practice of contracting out HR has resulted in a proliferation of varying capabilities, and some "…are very professional in protecting employees from over-zealous [directors]", yet others seem more focused on the revenue they can generate, and they "simply want to escalate things because if you have a case and you spend a lot more time on it, you get a lot of that [padding out]." Much reduced central HR services, with an increased external income stream focus, has meant "HR hasn't helped staff to fully support some of those [investigators] with the rigour that is needed." Indeed, such was the urgency of cost cutting that an Executive Member noted, "We got rid of vast amounts of expertise in the last restructuring, and we are the worse for it." However, structural change is sometimes the result of the ballot box where local politicians are elected to serve as the public body Executive. Over this Executive, management have no 'control', but it can raise some issues with its attendant questions of impartiality: "The only problem I have with Members is with their independence; we have a political party in

control, there is a tendency from some Members to be employee centric." However all change is not bad "…we want the informal aspect to be reflected in the disciplinary policy", and "restorative work ongoing, aiming to bring an openness to working, dialogue,…which will help employees understand why things are being done." Something which may not have helped, and which was beyond the control of any organisation, was the nation-wide implications an executive Member bemoaned regarding the fact that "Employment Tribunal fees have been the death knell of justice and fairness."

How policies are implemented can have a fundamental effect on justice judgements. Applied sensitively, mindful of their potential impact, it can ensure the employee is not disadvantaged, or left, as one interviewee commented, "…it scars them for life, particularly if they have been suspended." The calibre of investigator and the quality of their investigation have given cause for concern. "HR appoints the managers [investigators], but 75% of the time they are no good", "Some …have been useless, but it's to do with a lack of understanding, or a knowledge of what you are doing rather than malice." Unfortunately, seldom are they specifically trained, and this is compounded because "…they do them [disciplinary investigation] once in a blue moon." This was explained by HR as "…it's just a resource issue. I don't think it's a good idea", and one manager commented, "So, the quality is sometimes from fair to satisfactory, but we [HR] are not in a position to insist on excellent." Whilst these deficiencies appear evident across the spectrum of interviewees, it appears not all organisations are minded to insist on investigator training, albeit one organisation did, yet this was described as a 'tick box exercise' by the trade unions. One other good example had bi-annual training, provided by external legal professionals, which was mandatory for any investigator; thus, the prospect of just and fair proceeding was felt more likely, though even they admit they could possibly do more from a well-being perspective with the admission, "I think we tend to forget how difficult it is for the person going through the disciplinary", and more than one manager emphasised their "duty of care" in this respect.

Representation, whether that is by oneself, with a colleague, or with a trade union steward, can be problematic. For the unrepresented employee, the formality of procedures can be daunting, particularly if they are less educated and/or not confident in both researching and compiling a defence, as well as delivering it (normally vocally). Here credit must go to both HR and the Executive who make adjustments for this: "We are not going to be so hard on this issue because you have not got a representative who is banging on the table." Though, for those who are represented, the question of how effective their representation is can be a

factor. A union representative from a legal background, I deduced, enjoyed the disciplinary challenge saying "I have an extremely simple formula, I use the employer's processes to the letter, and it ensures HR and any investigator avoids using 'leading' questions so as to prevent self-incrimination."

This resource issue can go to the very heart of a justice and fairness evaluation, particularly when the process drags on. An Executive Member considered, "if you put the right resources into it, it should take no more than six months; it's not fair on the individual, their colleagues, and has a knock-on effect in departments regarding capacity." This contrasts with a manager's account, albeit not at the same organisation, that "I've had two interviews [disciplinary], up to now [in two years], and I recorded the second one. And I've just got to the state of 'Oh well just get on with it.'". However, delays cannot always be seen as the responsibility of HR or management and as a trade union representative admitted "…in some cases the member is not playing ball", though legislation does afford the employer the right to progress matters where unreasonable delays are evident, however, this appears to be an exception.

This inability to trust the employer came through on a number of occasions, particularly when producing transcripts of investigatory interviews, yet the use of audio recording is still not common. Some felt the use of recording should be adopted as it focusses the mind before any interview, and by keeping a 'copy recording' as a master, ensures that any transcript can only be challenged where a section may be a little inaudible. This would avoid the instances recounted of concealing a recorder in a top pocket, leaving a device in the room recording proceedings when the employee had adjourned, and as in the case which was dragging on to two years, placing the recorder in front of the investigator, even though they were intent on taking only contemporaneous notes. In fact, one of the subjects had this recording experience at a police station having been interviewed under PACE a few years before regarding work issues.

Irrespective of how the interview itself is conducted, the question posed by one manager regarding trust and the whole process was "Does the employee *ever* think they are going to get a fair hearing?" which another manager saw as "They will delve deep if they want rid." This ability to trust is not helped when, as in the section above, transcripts appear which do not reflect the interview, or management refused to let a trade union representative have time off to accompany an employee at an ET, and then they had to issue a subpoena; or management tell you that you're gone [dismissed], even before an investigatory interview, or you are advised that "we will defend you" but you never hear from them again. Impartiality is the

bedrock of the process. It has even been suggested that trust in impartiality can be misplaced because, "The employer wants a certain view to prevail. I don't care if people say it's not the case, I know it's the case, because I've seen them descend like a pack of hounds on individuals", or they choose the composition of an Appeal panel to "deliver the desired finding."

Fairness judgements about procedural justice can be impacted by numerous factors well beyond the parties involved, and the next section considers those factors which were felt to impact distributive justice judgements.

6.15 Distributive Justice

Disciplinary findings in the main are the 'equitable' outcome from the formal procedure, with all parties contributing to a just and fair decision. However, occasionally changes to structures or the people involved are handled 'outside' the formal procedures, seeking to protect reputations and avoid adverse publicity; as one manager recalled, regarding a whole section: "Instead of listening to the very real safeguarding concerns [public body] just shut them down [Dismissed them and paid compensation]." For it is very easy for management to propose cuts, and restructured services as a way of 'resolving' a difficult issue. Where procedures have gone to Appeal, managers are sometimes loath to have their practices examined by the Executive, because when a person's livelihood is at stake, the employee is likely to reveal any deficiencies which they see as contributory. This could uncover a lack of induction or training, favouritism by management, safety breaches and the like, or just plain poor people management. Deficiencies like these came out in two cases where "Quite often we have recommended that managers receive retraining as a result of what we heard", or in another case where the Appeal overturned the dismissal and "---put the line manager on a capability procedure to show how severe we thought it was, and then onto a retraining process after that." So, Appeals can be as 'threatening' to the employee as to management, and certainly can potentially blight the career prospects of all concerned, which may have been instrumental in one organisation restructuring by excluding the Executive altogether from any disciplinary involvement.

The application of policies and normal disciplinary practices can sometimes be prevented from running its full course by the employee resigning, and here the involvement of a trade union official can be invaluable for, "Not everyone that is taken down a disciplinary path is a bad person, some of them are,…my job becomes on what [severance terms]." The trade union

steward may not approve of the actions of the employee, but "… you don't like doing it but you do." Or the person who "was prone to being a bully, quite a nasty person really", achieved distributive justice via a financial settlement, though the real beneficiaries were the employees; which, for example in this latter case, was made all the more easy by the admission by management that they had 'allowed' this person's troublesome behaviour over a number of years. It could be argued getting rid of a problem employee by paying them off isn't ethical, but it is an imperfect world where the benefits to the organisation of a 'clean break' can seem preferential to a protracted and uncertain period of capability and retraining monitoring. Having access to trade union representation did not evidence itself in the statistics by way of achieving, on average, a less severe finding; this was not supported in my research findings, even though a trade union representative thought otherwise and was beneficial to the employee, "…we do not always get people off, but we certainly mitigate cases." Wider research would be welcomed on this.

Differential application of the disciplinary system is inherently unfair, yet we have admissions that even within the same employer, different 'silos' operate differently. Though one manager felt that changes in the Executive (political oversight) brought with it different philosophical insights, "Depending on who is in power, the political right have greater view on the management perspective rather than the employees' perspective." This does not bode well for consistency at the Appeal stage which is normally, but not always, the preserve of the Executive; but it also may have a trickle-down effect (Mayer et al., 2009), in influencing senior managers, which may cascade further down. In contrast, one Executive Member noted, "I have not detected any variance at the political level", and personally I have always instructed Members when chairing Appeals "To leave their politics at the door." That is not to say that all distributive judgements of disciplinary cases are impartially arrived at, and the role of those hearing a case can sometimes appear similar to the role of a referee, steering a course between two competing sides, which, at times, can seem as a David and Goliath encounter. One manager made over a dozen complaints to the Ombudsman because of the 'unreasonable' treatment they had received from an organisation, and the Ombudsman's ruling was to uphold every complaint, "[the public body] had to do was apologise to me. So they did and then they continue [attrition]." As one trade unionist noted "They [public body] are out to crucify you, oh yes", and from a gendered perspective "…men want to get even." Another saw one public body has "…a hit woman who they use for investigations, and she gets a kick out of proving people are terrible, now that's OK, but it's not really independent." An employee, having felt he had been shabbily treated on being sacked, took his case to appeal

and on to an ET, but made sure he reported the employer for all the breaches whilst operating the fleet of vehicles; in fact, his ex-work colleagues continued to send him evidence of these breaches after he had been dismissed. This 'getting even' is a regular consideration, and possible contributory factor in employees having information and/or intellectual property (material and/or political) with which they are able to 'agree' severance terms, allied to a non-disclosure (SA) . This battle between the two parties can continue even after severance, with the employer, continuing to pursue the employee for possible past misdemeanours, trying to enforce confidentiality agreements, imposition of restrictive covenants, having an input on any employment references, threatening to withhold funding to bodies employing the past employee, even searching the new employer premises, and stretching this punitive influence beyond the public sector into the private sector. This is the real world where all organisations are not as benign as portrayed in the standard management texts. Distributive justice judgements can be impacted by numerous contextual factors, many cases are complex, and can have considerable implications for both employee and employer, and one manager expressed the difficulty of just such a case:

> 1."(M) "Had there been previous examples it would have been easier, but the case and situation was unique. In a way, I walked away from the Appeal after the Director had dismissed them; I felt dismissal was inevitable…but then I almost thought, I just felt empty, I felt that is this justice? It was going to happen, I thought there was no justice to it but there was no other outcome."

The different dimensional components comprising justice judgements (*Procedural, Interactional, and Distributive)*, have been the mainstay of research for the past quarter of a century. However, the more recent conception of *Overall Justice* is felt to more accurately reflect exactly how justice evaluations are made. The following addresses this change of emphasis.

6.16 Overall Justice

The deconstruction of justice research into its varying dimensionalities has been fruitful in our understanding of the interactions between its components, but a growing body of evidence suggests this may not be how we arrive at justice judgements. Philosophically, it resembles the argument about which comes first, the chicken or the egg. Bearing in mind heuristics (Lind, 2001), judgements can be made in milliseconds; the question for research to answer next is whether we form Dimensionality judgements first in a matter of nanoseconds, on which, we subsequently form, in milliseconds, the overall justice judgement. The alternative is if these positions are reversed and overall judgements come first and are then 'substantiated' by

Dimensionality considerations. So, having made a first 'impression', any subsequent information may "be reinterpreted and assimilated to be congruent with the existing general fairness judgement" (Lind, 2001, p. 70).

The most likely means of solving this, outside current methodologies which rely on sophisticated statistical analyses, is by a paradigm shift to fMRI work, in seeking to clarify in which direction the arrow points (Chart 6.2 below):

CHART 6.2

Dimensionality Heuristic Linkage?

DIMENSIONALITY $\longleftrightarrow$ OVERLL JUSTICE

In addition to researching the above, if heuristics display a primacy toward initial judgements, research also needs to be conducted into the sequencing of questions in questionnaires. For instance, if an early question is instrumental in forming a particularly positive or negative judgement, like in Colquitt's (2001) justice questionnaire, where there are twenty questions in total, can the subject mentally approach each subsequent question with an 'open' mind, having initially possibly been rating issues at the 'tail end' of a distribution.

I see overall Justice as the focus for future research, but not as an alternative to Dimensionality, but complementary, for as the work of Nicklin et al. (2014) suggest, it may exist as an independent construct.

Overall justice I see as a reflection of reality in how justice judgements are made, and the following section examines the Boundary Conditions, which are antecedents to any decision to implement or not, the formal disciplinary procedure.

6.17 Boundary Conditions

A failure of management to fulfil their contractual and moral obligations, or deal appropriately with unacceptable behaviour, is a dereliction of duty. Evidence presented earlier testifies to management knowing of, but doing nothing about bullying and intimidation for a number of years, which must have had an adverse impact on those affected, and which was so widespread that both management and trade union subjects believed it to be evident. Workplace failings such as these were evidenced by Dalton (2018, p.28), who specialises in coaching women who have been sexually harassed, and in one organisation where Boundary Conditions applied, "One client had 24 complaints against a gentleman who is still in post, with

no action taken". This favouring of inaction saw one organisation implicated in this research, and numerous public bodies throughout the land, by not fulfilling their statutory duties, it resulted in thousands of young lives being blighted in the most horrific way imaginable by child sexual exploitation (CSE). All because of inaction, where management chose not to intervene due to petrification, indifference, resource scarcity, political correctness, other target priorities, or a mistaken belief that it was outside their remit.

It was telling that, despite copious reports and regular intelligence information presented to the police by one of the Interviewees, the police chose not to intervene in numerous alleged child sexual abuse and rape cases. However, on receiving intelligence from one of the victims, about an officer who was allegedly confiscating drugs in police raids, but only handing in part of the haul, whilst getting the victim to sell the remainder, two police officers the next day came to take statements. This stark contrast illustrates that there can be a difference in 'accepting' a responsibility to intervene, despite both CSE and police officer theft requiring a statutory, and dare I say it, a moral response. Given the nature and scale of abuse, it is all the more surprising that neither Misconduct in Public Office, nor a breach of the Police Oath of Attestation (POoA), have been invoked to hold accountable some of those responsible for allowing these crimes against children. Particularly in that a 'holder of public office' whilst not being specifically defined, has seen legal action taken against individuals over the centuries including: constables (1703), police officer (1979), local authority employees (1995), and local councillor (2004). Additionally, in respect of the Police the (POoA), compels officers to serve the Queen:

> 1. "…with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people…and preserved and prevent all offences against people and property…discharge all the duties thereof faithfully according to law".

Reflecting this apathy regarding any interest in the experiences of the victims, an account from a manager recalled:

> 2."one meeting where a child protection officer clearly either did not know or disregarded the law in relation to sexual offences and children, referring to a child of 12 raped by multiple perpetrators as being 'happy to consent to have sex' with her abusers". (Publication X).

The Chief Prosecutor, reviewing the police video tapes interview of one victim recalled:

3."Girl A. The look on her face as she spoke of being raped repeatedly by a gang of men was heart-rending, but the thing that really stood out to me was an officer's indifference". (Afzal, 2020, p. 157).

Boundary Condition failures had implications not only for the victims which, almost twenty years on, some are still living with, and one of the manager interviewees graphically relayed their personal experience of its assault on their professionalism and health:

4."I was ignored and later serious orchestrated attempts were made to cast doubt on my integrity and the validity of my work. I was put under pressure to suppress some of my data and present my research findings in a way that showed [public body] in a different (more positive) light". (Publication X).

5."The strain of not being able to help many of the children I encountered took a toll on my health and I left [public body] temporarily defeated". (Publication (X).

However, having left, but in doing so having acted in good faith and relayed all the available evidence to the parties involved, hoping someone would act upon it, this individual recalled:

6."It is difficult to describe the anguish that came with the realisation that this [intention by the organisations to address CSE] had never happened, and that my research and warnings to the Chief Constable and Directors of Service downwards had instead been ignored or dismissed". (Publication X).

Similarly a police officer recalled:

7. "[operation name] was a full-on major incident investigative team when I went off work. I came back…and the job had died a death. It had gone, fizzled out, shut down. Gone, I couldn't believe it. I was incredulous…Who was dealing with this kind of crime? Nobody. It was being buried." (BBC, 2017).

The father of a victim recalled his disbelief at police inaction even when evidence had been produced:

8. "I knew that knickers had been recovered and I knew that DNA evidence had been recovered, and basically the semen of one of those animals was in her knickers. It's the smoking gun, that's caught red-handed, simple as that, and I don't think that any sane human being could disagree…How did the semen get there? It was the CPS [Crown Prosecution Service] who dropped it [the case]. I was totally devastated." (BBC, 2017).

However, other evidence regarding a 14 year old victim which had lain unused in police property for years saw a police officer comment:

9. "Retaining the foetus without [victims name] consent or knowledge hadn't just been illegal, it was highly questionable and immoral, and I was shocked to my core

that anyone could ever have considered it ethical to do this without even speaking to the family." (Publication Y).

Having been reported missing from a care home one victim recalled a police officer visiting the property:

> 10. " Me and the other girl were pushed to the side of the bed, naked, no clothes on, and a police officer came to the side of the bed. I recall locking eyes with that police officer and he said 'there is nobody here' and he left." (BBC, 2015).

An ex-police officer in a different police area to that of my interviewees, in dispelling the notion that there was little evidence to mount a case for the prosecution commented:

> 11. "Oh my God! We had mountains of evidence." (Oliver, 2017).

Whilst Boundary Conditions of inaction gave rise to these CSE problems, after the sheer length of time since these particular public bodies' failings were exposed, the victims have seen some of the perpetrators of CSE imprisoned, but as yet barely any action has been reported regarding institutional members, be they police officers, or civilians. Could it be we are witnessing some sort of collective immunity? Or it not being in the public interest!

My contention is that not only aberrations of behaviour, on which this work has primarily focused, but inaction (Boundary Conditions) of others, can both be prime causes of individual and organisational corruption, a corruption that may have dire consequences for individual employees, the organisation itself, and those beyond.

Boundary Conditions can be seen as the acid test of justice and fairness in an organisation, an area that warrants considerably more research attention.

6.18 Concluding Comment

This justice research has shed light on the scale of workplace infractions, the type of incidents involved, the variables warranting further attention, and the administration of justice in a range of public sector bodies. It has contributed to our understanding in both a qualitative and quantitative way, and most importantly has established that the 'window dressing' of ostensibly 'good' employers may bear little resemblance to the realities for those who work within them, a view that is adjudged by more than just the trade unions. However, whilst justice and fairness are critical in so many aspects of social and organisational life, and as important as I have seen it in matters of discipline, as a concluding remark, a cautionary note must acknowledge the comments attributed to Greenberg:

"The suggestion that justice is an omnipresent concern of people in organizations is misleading….Justice might always be a potential concern, but the potential will only materialize sometimes" (Ambrose and Arnaud, 2014, p.79).

7 CONCLUSION

7.1 Introduction

Robert Mark, on being appointed to head up Scotland Yard in 1972, is reputed to have said he "wanted to arrest more criminals than he employed." This is a sentiment reflected in most organisations, but with many public bodies having several thousand employees, this is a forlorn hope. Ackroyd and Thompson (1999) bemoan the "sanitised accounts" of organisational behaviour in HRM texts, and emphasise CWB should be seen as endemic, and not an aberration. It is this endemic aspect on which this study has focused.

7.2 Phase 1 Contribution to Knowledge

Unlike Robinson and Bennett's (1995) typology which classified offending into the two categories of 'Minor' and 'Major', this work used only actual cases and covered the full spectrum of tariffs, giving an invaluable insight into organisational breach behaviour and its justice and fairness consequences. Such detail is unprecedented. Whilst the scale of offending in the Host employer was only about 1.4%, this was seen as excessive compared to the other findings (CIPD, 2007). However, an economy wide more authoritative national picture produces by Wood, Saundry and Latreille (2014), saw the scale being 7.7%. As a result, the UK economy is carrying a heavy burden of approximately £2.8 billion/annum as an on-cost in dealing with disciplinary issues (p.31 and Table 2.6), and this excludes overtime, and temporary and permanent staff replacements. A concerted focus on reducing disciplinary cases by a modest 10% would realise a quarter of a billion pound benefit to the economy, but would also obviate almost forty thousand employees losing their jobs.

From the hypotheses (Table 2.7) driving this phase of research the demographics of *Age, Tenure, Gender* and *Absence* have all proven to be statistically significant independent variables regarding propensity to commit CWB and are summarised below. The other variables of ethnicity, disability, status, hours worked, and trade union membership, were covered in Chapter 4, given they proved not to be significant.

AGE:-Overwhelmingly the younger employee (<25years of age), had an offending rate about four times that of all other age groups (Chart 4.13, Table 4.7). This heightened level of offending fell away sharply in the 25-34 age group, and thereafter shows a very gradual decline right up to post-retirement. All ages from 35 years upwards were under-represented in the data set, these employees still offended but in all cases at a rate below that that would be

expected given their numbers in the workforce as a whole. This research gives clarity to other imprecise findings which have only concluded a negative Age to CWB linkage associated with 'younger' employees (Hollinger, Slora and Terris, 1992: Henle, Giacalone and Jurkiewicz, 2005: Lau, Au and Ho, 2003). There is a clear negative correlation between age and propensity to commit CWB, however, the hypothesised decline in the seriousness of offence as the employee aged was not proven; even older, more mature employees are just as liable to commit high tariff offences as are their younger counterparts contrary to Kohlberg (1969). Hypothesis H_5 was therefore only partially supported but bore a striking resemblance to the Age/Crime curve from criminology (McVie, 2005: Farrington, 1986). However, this proximity to a criminal offending profile cannot be taken as generalizable, given that of the NMC and GMC exhibit a latter on-set of offending which characterise their individual distributions. This suggests such profiles, and the on-set of peak offending may be contextually dependent on variables such as industry type, profession, size, unionisation, gender, BME and other factors akin to some of the findings in Wood, Saundry and Latreille (2014). Organisations could benefit from monitoring their on-set age offending profile.

TENURE:- Low tenure employees (35 months) on average are twice as likely to offend as their workforce numbers would suggest, and conflating all groups up to 93 months they averaged a 30% 'excess' of transgressions over that expected (Chart 4.9). Tenure groups beyond this threshold, tend to be under-represented in the CWB cases, with the level of offending, similar to age, continually declining thereafter (Table 4.2). As hypothesised with increased tenure the seriousness of offending, on average, declines (Chart 4.10, 4.11 and Table 4.4). This indicates that with added years in service the process of socialisation, the maturation of the individual and a realisation of the potential costs associated with serious offending being dismissal, employees are more 'measured' in their behaviour akin to rational choice theory (Clark and Cornish, 2000). Duffy, Ganster and Shaw (1998) saw a three –way linkage between job satisfaction, positive affectivity (PA), and tenure, and despite high (PA) being a welcomed attribute in employees showing enthusiasm, being active and alert, this can lead to frustration and CWB if the demands of the job are dissatisfying. The task for the employer therefore rests not only to accommodate the new entrant (low tenure), but also to 'stretch' long serving (high tenure) employees who have mastered the workplace demands, ideally by job enrichment and other motivational initiatives, and at all costs avoiding mere job enlargement, which to an already disaffected employee is likely to be less constructive. Boswell et al. (2009) demonstrated clearly the 'honeymoon' and 'hangover' effect as new entrants are assimilated, and this work corresponds closely with their findings, but suggests a slightly longer 'key

dysfunctional' period of around 3 years within which deviance is likely to be at its peak. Longitudinal studies well beyond a single year (Boswell et al., 2009) would help clarify this point, as would an ongoing evaluation of the extent of socialisation given this materially affects the 'hangover' trajectory.

GENDER:-The Host was a female dominated workplace (72.4%), but in contrast the exhibited only 32.7% of data set cases. Overall the rate of offending by females compared to males was 1 : 5.4, with the male having an excess of offending over that of the female in each of the five years of the study. Unquestionably the archetypal gender offender is the male, and was reflected in an extensive and diverse range of professional bodies, and whilst the ratio of female to male offending varied in each profession, all exhibited a male dominance. This same gender picture was reflected in both UK and international crime data. These overwhelming findings point strongly to them being generalizable, but as a cautionary note I will see them only pointing to it being so! This has to be balanced by the possibility that the female may be more 'calculative' and 'covert' in the types of dysfunctional breaches compared to the male, and thus be less inclined to be held to account (Zapf et al. 2003: Bjökqvist, 2018), for as Edwards and Greenberg (2010 b, p.311) note in respect of one type of CWB "in reality, men and women engage in workplace bullying with equal frequency". Paradoxically if true this questions the gender role theory (Edwards and Greenberg 2010,b) of the male being aggressive and the female nurturing, but only because the female may be more measured in their passive aggressive behaviour and less likely to appear in any statistics. Whilst no significant gender differences have been a feature of many research findings (Chan and Leung, 2006: Forte, 2004), which only explored matters to stage 2 of Rest's (1986) model; this work extended mere ethical decision making to stage 4 of Rest' (1986) model and the behavioural consequences. The conclusion being that females compared to males, whatever the level of tariff 'No case to Answer', 'Sanction short of dismissal' or 'Termination' (Table 5.3), were demonstrably less deviant ($p = 0$ in each category), and as a result these findings accord with Gilligan (1982) and Fox and Lituchy (2012) in differentiating the two, and I am minded to view the 'sameness' in the gender debate as being premature regarding deviance.

ABSENCE:-The striking finding of the Host's disciplinary absence records was that the mean data set absence of employees investigated was double that of the workforce as a whole, and the workforce as a whole was almost double that expected nationally. Thus data set absence was around four times that within the economy (Appendix 31). Compounding this was the almost identical level of absence by gender in both the data set and workforce, when

nationally males typically have around 40% fewer days off (ONS, 2014: Laaksonen et al., 2007). This 'drift' may be as explained by Mastekaasa (2004, p. 2262) "that men as well as women tend to have higher absence rates in occupations or workplaces numerically dominated by the opposite sex", possibly explained psychologically by social cognition theory (Bandera, 1999) where the interaction of self-efficacy, the actions of others and environmental factors combine, in this case for males to have elevated absence behaviours. Absence by gender has become homogenised. Whatever the explanation, the Host carried a disproportionately high labour cost with long-term data set absence (Table 4.12) excessive at about 150% higher than the UK public sector. In addition the reliability of employees to attend work points to the under 25 years as particularly, but also those up to the age of 34 years as poor attenders. Thus the overall levels, the periods, and the frequency of data set employee absences point to attendance being significantly related to likelihood of CWB. However, a caveat to the above is that the data set also contains 80 cases of nil absence, accordingly 30% of employees investigated could be classed as 'good attenders'. Thus whatever the findings of this research which is based on *average* figures, in conclusion I have to agree with Ones and Viswesvaran (2003) that absence is associated with the *likelihood* of committing CWB, but to generalise to all employees would not be warranted. This gender disparity should not be 'overlooked' by management, academia or the professions, and intervention and support are to be advised, for it is unlikely for example that large numbers of males in the Host have a congenital illness. Intervention to re-establish a 'realistic' overall level of absence, and an 'acceptable' gender differential is imperative. I remain to be convinced that the 'trigger point' system of early monitoring will achieve the full benefits sought.

All aspects of the first research question have been addressed ie. the scale, type and demographics which proved relevant, and I now turn to the qualitative findings of Phase 2.

7.3 Phase 2 Contributions to Knowledge

This research highlighted not only in the Host, but in many other public bodies a 'fragmented' and at times an inconsistent application of the disciplinary process. The fragmentation being more evident in larger public bodies, particularly where central functions like Human Resources had been devolved to line managers. A decade of austerity with its accompanying budget reductions had necessitated this divesting of responsibility, but almost without exception was accompanied by insufficient support, guidance, training or resources to ensure line managers were a) competent and b) consistent. This fragmentation led to a silo mentality operating across departments, each operating quasi-corporately but in reality as a distinct

variation of the previous standards set by a unified central core. As an Executive Member noted "We had silos and got rid of them, but they are back again now" (Chapter 5.19, quote 15).

In addition to the findings into the administration of justice by the Host, the three key conceptual contributions from this research which are impediments to justice and fairness are *Structural Differentiation, Hierarchical Differentiation*, and *Boundary Conditions.* These aspects will be considered in turn.

7.3.1 Host employer and the Administration of justice

The Host's attrition rate of departures following an investigation was around 31%, which was lower than other comparators. However, within this a perceived 'leniency culture' saw several cases avoiding dismissal when, for the type of offence, other employers would have terminated (5.3.2). This unexplained potential 'leniency culture' situation was also reflected statistically (p<<0.0001) in that 34% of females received a low tariff (Capability/Counselling) outcome compared to only 20% of males. With Retired/ Resigned outcomes the gender imbalance was reversed (p << 0.0004) with females twice as likely as males to severe the employment relationship (5.3.4).The former probably linked to gender differences and the dyadic composition in disciplinary Hearings (Dalton and Todor, 1985: Bellizi and Hasty, 2002), and the attribution style of the usually male manager hearing a case (Green and Mitchell, 1979); the latter to economic and familial responsibilities. Aggregating cases similar to Robinson and Bennett's typology (1995) into 'Minor' (NCA, C/C, VW, WW,) and 'Major' (all other tariffs) so as to maximise cell counts and avoid any criticism that numbers may be less than ideal, but by contrast differentiating by gender, the outcome distribution is statistically significant (χ^2 = 212, @ 3df, p = 0). Accordingly gender as an independent variable notwithstanding the contextual influence, must be taken into account when considering the *range* of justice outcomes.

The use of suspensions by the Host averaged about one in five cases, with neither type of breach nor gender predominating. However, a suspension rate as high as this from a very large employer with potentially alternative temporary redeployment arrangements available, possibly indicates insufficient preliminary investigation before such decisions are made. On average suspended employees enjoy a better than even chance of avoiding termination when compared to other employers, though this, far from being a positive sign, may in fact reflect a 'rush' to suspend and the 'leniency culture' mentioned earlier.

The Host, as a way of avoiding a full-scale disciplinary investigation, occasionally used Settlement Agreements (6% of terminations) in allowing some employees to negotiate an exit, but this only exhibited in high earners. This facility was never available to lower waged employees, and allowing someone facing 22 alleged breaches (anomie?) to negotiate their exit, appears to be overly generous when many employers would have insisted they face the full consequences of their actions or just resign!

In the Host, the types of infraction occurring most frequently were *Attendance, Interpersonal , Theft/Defrauding, and Dereliction of Duty,* which together accounted for over 70% of all cases (Table 5.1). With the exception of *Attendance* which may have a genuine and unavoidable occupational health/morbidity element, the remainder are potentially more the preserve of line management and HR to influence. Here, better recruitment, induction, mentoring and socialisation of the new entrant can play a valuable part, as can training supervisors and line managers in fostering, by almost daily contact, an inclusive, motivated and cohesive workforce.

In trying to exclude the job related influence of the workplace in offending, those categories which I consider least contextually influenced, *Criminal, Interpersonal*, and *Dereliction*, are principally affected by an employee's concepts of right and wrong, civility, and willingness to following reasonable instructions. For 'Dereliction' and 'Criminal' transgressions higher pay groups (Chart 5.3) dominated exceeding that to be expected in the workforce; but for 'Interpersonal' the reverse was the case. Whilst workplace contextual factors impact generally on offending, pay may be a factor in the *type* of offending, where personal psychology, motives, emotion, and ethicality frame the disposition of the individual and correlate in this research to breach behaviour of a specified *type* ($p=0.002$).

Irrespective of the type of offending, it was the overall scale that gave cause for concern, particularly the rate of increase over the length of the study (Chart 4.19, Table 4.14). This may be a reflection of the workforce being under pressure (general strain theory, Agnew, 2001) and generally being dissatisfied with the new work demands (Colley, 2019: Hirschman, 1970: Vardi and Weiner, 1996), which was a point widely mentioned by interviewees, with possibly its attendant linkages to propensity toward dysfunctional behaviour (Chen and Spector, 1992: Fox, Spector and Miles 2001). However, one manager was adamant that the organisation was in his opinion, too keen to roll out the disciplinary process (chapter 5.9, quote 5), and given these figures I am leaning to that view rather than seeing it as purely employee centred.

In managing the disciplinary process, the Host generally did not unduly delay proceedings, managing to complete about 93% of cases within four months (Chart 5.1), though this expediency will have been greatly assisted by those choosing to leave, they having done so on average in just five weeks. The less serious 'No Case to Answer' category overall had the lowest time to completion and a positive linkage of duration to seriousness is shown in Table 5.6, which would be expected.

7.3.2 Phase 2 Qualitative Findings

The backdrop to this research is a decade of austerity, numerous restructurings, re-formulation of services, devolution of central services, income generation, shared services agreements, redundancies, zero or near zero pay increases, relocations, hot-desking and efficiency drives. As a consequence, interviewees at all levels believed its impact on staff was not always positive (Handel, 2014), and was noticeable in terms of levels of stress, bullying, and a reduced willingness to contribute organisationally (OCB) beyond their specific job.

Against this picture of a workforce under strain, the following highlights the key qualitative findings categorised loosely into *Structural/People Changes, Management Practices/ Policies, Demarcation/Differential Treatment,* and *Trust*. These categorisations are not mutually exclusive; there are clear overlaps with some elements. Examples of 'good practice' were evident in some organisations, and on some elements of practice, but no single body could be held up as exemplary. Justice and fairness were a bricolage, some elements more patchwork than others.

Structural/people changes had widespread impacts. Flatter structures and wider spans of control de-professionalised some senior posts, reducing motivation and generalising duties, with little or no recompense. The extent of change, increased workloads and the threat of yet further staff reductions has tended to make employees myopic, in focusing purely on their specified job with little willingness to accommodate other responsibilities. To an extent, this climate has quelled the workforce in many places into an apparent apathy, where 'keeping your head down' is now customary, and in one large organisation, even the trade union seemed to be moving in this direction. Justice and fairness requires an impartiality and objectivity if they are to be realised, with independent entities undertaking investigations, Hearings, and Appeals, yet one large body had recently restructured processes to 'contain' all aspects within the same department in which the disciplinary incident arose. They abandoned the previous structure which had independent Members of the Executive, a point I was told

was to bolster the power of management and seek to distance the politicians and trade union influence. It was expressed that this body tended to promote into management able yet problematic trade unionists as a means of minimising resistance. Organisations devolving disciplinary responsibilities to line managers have largely abdicated culpability, and a failure to provide sufficient and/or ongoing training or appropriate oversight only compounds the disparate and fragmented application of justice and fairness across the organisation, which reinforces the 'silo' mentality. Great care is needed in contracting out HR so appropriate skills are available and 'padding out' of investigative work is avoided. Some creditable examples of out-sourcing were felt to be effective, but it can be difficult to build up rapport and trust if there is no control over who is allocated.

Management practices/ procedures were firmly established in all public bodies involved. However, whilst being imposed too readily in some instead of alternative and/or informal resolution, in others often instigated from senior management or the investigating officer, they were less prescriptive. This was to the extent that, on occasions, what was being proposed was a breach of those very policies or a breach of law. It is a requirement of public bodies that in exercising their statutory duties, they do so in accordance with the law, and ideally in accordance with the ethical standards within society at that time. However, when police, public bodies, charities, faith leaders and civil servants are all made aware of child sexual exploitation (CSE) over a protracted period, yet refuse to take action to protect those vulnerable children, *Boundary Conditions* prevail, and implementation of the law is seen as discretionary.

 Demarcation/differential treatment was evident in every public body studied. In the better organisations, and one with a change of CEO, old habits of treating one group more favourably than another were becoming outdated, and a more inclusive and genuinely consultative regime was emerging. In others, demarcation lines appeared to be drawn between senior management and the workforce at large (*hierarchical differentiation*),and whilst espousing the workforce as being their greatest asset, a point reflected in promotional material, this seemed not to be carried out in practice. In all the large organisations covered, a differential application of justice and fairness prevailed across departments (s*tructural differentiation*); in part, this was because disciplinary cases were handled according to 'locally' perceived standards given the remoteness of central support from HR and/or legal.

 Compounding this were the widely varying capabilities of the appointed officer to investigate and action disciplinary cases. Some were experienced lawyers or investigators, but others had

neither specialisms in this work nor training; in one case where the trade union representative was himself a lawyer, it was not uncommon for the trade union to be providing corrective oversight. Selecting the right investigators and training them is therefore warranted. It should be compulsory and of sufficient quality to engender a willingness and confidence in investigators, and should include joint working and/or shadowing prior to their official involvement, including attendance at an ET, to set the process in context should things progress that far. Additionally, appointed persons must be adequately resourced in terms of time and advice to ensure justice and fairness is not compromised, by the investigation being 'fitted in' around their normal duties. Thus, there was evidence of *structural differentiation* across the silos, and *hierarchical differentiation* given senior management benefiting from idiosyncrasy credits.

Trust and the fundamental social dilemma (Lind, 2001) are at the heart of disciplinary investigations, and how and to what extent the employee cooperates in the process. Certainly 'voice' is a fundamental element in reaching a justice and fairness judgement, but too often the events and behaviour of supervisors and managers toward individuals predisposed the employee to form a negative anticipatory justice belief. This was a belief that was built on being on the receiving end of profanities, treated differently to colleagues, lied to, instructed to use illegal machinery, belittled, subject to surreptitious overnight removal of files Appendix 32), having fictitious incriminating emails planted, having a letter of dismissal passed across a table at the very first meeting with management, altering reports without telling the author and the like. The primacy of these anticipatory judgements, even before the initial disciplinary interview, is held to rest on previous interactional encounters, typically with persons in authority and, in this respect, it is the day-to-day contact between the employee and the 'entity' that is paramount. Being duplicitous behind an employee's back, yet understanding and sympathetic in person, is a recipe for poor industrial relations particularly when it becomes common knowledge. It is one thing to present evidence to senior management of CSE, even though they failed to act upon it, yet to find police officers and others intimidating and ostracizing the authors and their family outside the work environment is reprehensible, even threatening to pass on to the criminals one's home address, thus little wonder one subject was so traumatised by this that their new house has been fitted with alarm buttons and a 'safe' room, all because of Boundary Condition failures. When a manager advises a colleague "I can see the way this is going to go you know, and if I were you, I would take a copy of everything", it speaks volumes about the level of trust in senior management. The above suggests an unprofessional and ethical climate void, which is all the more debilitating

organisationally and for the individual, when managers in positions of power, use that power to excess.

Organisational attitudes to, and consistent handling of disciplinary cases saw justice and fairness being described as good in some cases, but tending not to be for the larger bodies (8-10k employees) . Even a Member of the Executive at one of these gave themselves an 'eight out of ten' assessment despite being the recipient of a national award as an employer of choice. Here too and in other comparably sized bodies, the silo effect and structural and hierarchical differentiation applied. If anything it was the smaller (<1k employees) public bodies which could claim to be more consistent in applying an equitable justice and fairness disciplinary procedure, but still with appreciable deficiencies. In these medium sized bodies, there was a detectable 'authority' attached to the trade union representatives, still confrontational, but nonetheless a credible and generally constructive adversary, which in two cases saw them invited to assist in playing an active part in updating policies above that normally seen in traditional JCC consultation. In very small (<300 employees) public bodies, justice and fairness appeared more something critically influenced not by the existing policies and procedures, but by the disposition of the key entity, be that the CEO, Director, HR, or General Manager, where personalities both positive and negative dominate. Irrespective of organisation size, and even though it was noted that austerity was allowing them to "get rid of dead wood", counterintuitively, there is evidence of *problematic and/or under-performing staff retention*. In the larger bodies, where the Executive set policy and budget constraints, such staff may be 'tolerated' for fear of losing the post altogether should a disciplinary lead to dismissal, and this 'dead wood' becomes 'drift wood' which the manager is clinging onto. In the very small organisations, it appeared more the reluctance and uneasiness of management over a period of time to confront and challenge the dysfunctional employee which saw these individuals still being retained. This tolerance of under-performance and dysfunctional behaviour was apparent in a number of bodies, reflecting a weakness of management which, in one example, had been tolerated for about three years. However, this tolerance appeared to dissipate to the point of intolerance, not such that the individual would be held to account, but so that a threshold effect emerged with management 'distancing' where they just wanted rid (Folger and Skarlicki, 1998), with as little contact with the employee as possible and typically by restructuring or redundancy. This appeared often preferred to actually tackling the issue via capability or disciplinary.

A *silo effect* was noted where previously corporate synergy existed, but reduced core services and devolved responsibilities were enabling what seemed like satellite operations of semi-independent bodies scattered around an emaciated central core. With this devolution of power and a growing mind-set of independence from the centre, disciplinary procedures and the interpretation of policy are becoming increasingly 'localised', leading to varying standards which I have termed *structural differentiation,* and which may ultimately prove problematic at an ET. The equity with which not only discipline but other terms and conditions are applied, despite this 'satellite' tendency, does appear to have some consistency in that senior management allow themselves advantageous treatment which is not enjoyed by the majority of the workforce; this 'us and them' approach (McHugh, 2002) I view as *hierarchical differentiation.* There was some evidence of *Lateral Differentiation* where privileges had been afforded workers allegedly because of familial and/or other 'in-group' like-minded interests, though given these appeared to be isolated rather than widespread, I have not addressed them in this work.

Quite disturbing evidence emerged of breaches of policy, morality and the law, where there was an abdication of responsibility and a total failure of management to act (*Boundary Conditions*). This inaction and its catastrophic effect on victims, their families, services and the communities exemplifies the importance of understanding the threshold between allowing events to continue without intervention (informal), and taking some action to intervene (formal). This drove two interviewees to whistleblowing. After failure in relaying harrowing accounts of the scale and effect of child sexual exploitation (CSE) of some years standing had resulted in nothing but the offending being allowed to continue, they saw themselves having no alternative, but sadly like many facing this predicament they paid the price. In the locality concerning these testimonies the impact is an expected eight-year ongoing police investigation, and a sizeable class action against one of the bodies responsible, which, like several others effectively turned a blind eye toward CSE, and its impact.

This work representing real-life accounts in preference to self-report and laboratory studies, fills a gap in knowledge on CWB and justice and fairness where other methods regarding actual behaviour may be said to lack validity.

7.4 Limitations and Future Directions

This research is limited by being public sector focused, and cannot lay claim to being representative of the UK workforce. In this respect, Wood, Saundry and Latreille (2014), and

CIPD (2007) noted variations in conflict rates between public and private sector, industry types, trade union density, and organisation size, though minimal attention has been paid to SME's given their disproportionate numbers at ET's (Harris, Tuckman and Snook, 2009). These gaps should all be addressed to build an authoritative account of CWB and workplace justice and fairness.

The relationship between the three or four justice dimensions and overall justice is still fertile ground for exploration. Whether the dimensions are antecedent and the building blocks leading to an overall justice judgement, or whether overall justice, like a heuristic is formed first and the dimensions follow is unclear (Patel, Budhwar and Varma, 2012). This evolutionary point warrants attention preferably by fMRI design, which could shed light on not only justice and fairness Dimensionality/Overall Justice linkages, but would begin to clarify the primacy claims of heuristic theory (Lind, 2001), and explore the sequential nature of questionnaire design (Folger and Cropanzano, 2001).

Finally, in the course of employment, the HR profession amass a wealth of employee information both qualitative and quantitative, and they must be proactive and 'mine' this data to identify linkages to CWB and OCB for the benefit of the organisation and employee alike. Thus, greater use of metrics is recommended including establishing an on-set age/tenure offending profile to direct interventions. Workplace conflict involving both discipline and grievances warrants a greater presence in practitioner courses, with investigatory training being compulsory. Authors of HR texts must accommodate more fully this "dark side" of HR practice (Punch, 1996: Furnham and Taylor, 2004: Giacalone and Greenberg, 1997: Ackroyd and Thompson, 1999) if practitioners are to be fully prepared for the world of work, with an ET attendance as integral.

This research identified the concepts of S*tructural Differentiation, Hierarchical Differentiation and Boundary Conditions,* which were seen as impediments to justice and fairness. The use of Settlement Agreements exclusively for high wage earners (idiosyncrasy credit, Hollander, 1958) and preferential treatment of and by the hierarchy is divisive; a point one interviewee termed "corruption", which when considering these very people are the ones adjudicating at disciplinary Hearings, and in one organisation even at Appeal. "The jury passing on the prisoner's life may in the sworn twelve have a thief or two guiltier than him they try" (Shakespeare, 'Measure for Measure' act 2, sc.1, 1.17).

Boundary Conditions, represented a concept that I had not foreseen at the outset, but proved to be the most harrowing to discuss with those at the heart of CSE, and which have had the most profound impact across the land. This, in many ways, is the acid test of justice and fairness, and has to be 'mainstreamed' ethnographically if we are to more fully understand how Boundary Conditions (informal), sits alongside disciplinary procedures (formal) in dispensing workplace justice. Designed to include both 'informal' and 'formal' situations, it would add greatly to our understanding of moral disengagement (Bandura, 1999), the stability of justice and fairness judgements over time (Fortin et al., 2016), and the influence of multi-foci encounters on such judgements (Lavelle et al., 2007) as well as facilitating triangulation. It might also clarify the efficacy of trade union representation in disciplinary hearings, a point which proved inconclusive in this research.

It is crucial that in doing this, we forfeit general workplace surveys in favour of subject accounts for, "Researchers can gain a deeper insight into justice and fairness by listening to and analysing people's narratives of injustice" (Shreeve, and Shreeve, 1997, p.90). A 'quiet' revolution is needed in how we address workplace transgressions, in a preparedness to only use procedures when *absolutely* necessary, even though this may be contrary to HR ideology which is risk averse and always understandably minded to an ET possibility. Yet the work of Hook et al. (1996) attests to the 'flexibility' line manages and staff preferred in resolving workplace discipline, a fact that Wood, Saundry and Latreille (2014, p. 33) evidenced:

> "In both high discipline and high grievance workplaces, more positive views of both employment relations and the fairness of employers were found where the key principles of the Acas Code were not always adhered to…In fact, more negative views of employment relations and fairness were found in workplaces in which there was consistent adherence to the key principles of the Acas Code of Practice."

Perhaps the quest for justice and fairness and the true expression of 'voice' is not as formulaic as the HR profession has led us to believe!

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Y (2019). For information contact the researcher.

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APPENDIX

APPENDIX 1

Always follow the Acas Code of Practice on disciplinary and grievance procedures. It may be helpful to consider mediation at any stage.

Take informal action wherever possible

Issue resolved- action complete.

Note: check policies and procedures are up to date.

Take formal action

1. Establish the facts

2. Notify employee in writing

3. Hold meeting

4. Allow the employee to be accompanied

5. Decide action

Inform employee of result

1. No penalty *

2. Verbal warning *

3. Written warning *

4. Final written warning*

5. Dismissal or other sanction

Conduct or performance fails to improve sufficiently = **take further action**

Provide employees with an opportunity to appeal

Conduct or performance improves = **action complete**

Employee dismissed

	Examples of Corporate Maleficence (outside the scope of this research)	
Year	Organisation	Issue
1957	Chemi Grunenthal	Thalidomide marketed without test data on pregnant women.
1967	B. F. Goodrich	Aircraft brakes and misrepresented test data before release.
1979	Metropolitan Edison	Three mile island nuclear disaster in part due to incompetent safety controls.
1991	BCCI(Bank)	Illegal money laundering on an industrial scale.
2001	World- wide cartels	Price-fixing in electrical switch gear components.
2007	British Airways	Price fixing of fuel on long haul routes.
2007	Glass manufacturers	Price fixing throughout Europe.
2009	103 Building firms	Anti-competitive contract bid rigging.
2012	GlaxoSmithKline	Illegally marketed drugs, and withholding test data.
2013	Johnson & Johnson	Financial inducements to physicians to prescribe their drugs.
2013	Motor manufacturers	Price fixing uncovered, in some cases of over 10 years.
2013	Ranbaxy USA Inc.	Manufacture and distribution of adulterated drugs.
2014	Electrical manufacturers	Price fixing on high voltage electrical cabling.
2014	E. On	Door-step and telephone selling tactics to switch suppliers.
2016	Truck manufacturers	Operating a cartel.
2018	Royal Mail	Breach of competition law.
2018	Pinsent Masons	Lack of due diligence in auditing.
2019	Google	Breaching privacy laws.
2019	Post Office	Prosecuted 700+ sub-postmasters knowing the Horizon computer system was faulty.
2019	Standard Chartered	Fined for money laundering.

Some Competing CWB Terminologies		
Antisocial behaviour	Employee deviance/misconduct	Organization-motivated behaviour
Corporate misconduct	Interpersonal deviance	Production deviance
Corporate illegality	Misconduct	Workplace aggression
Counterproductive behaviour	Noncompliant behaviour	Workplace conflict
Counterproductive work behaviour	Organizational deviance	Workplace deviance
Counterproductivity	Organizational misbehaviour/misconduct	Workplace deviant behaviour
Deviant behaviour	Organizational political behaviour	Workplace incivility
Dysfunctional work behaviour	Organizational retaliation behaviour	

APPENDIX 4

Fairness/Justice Model
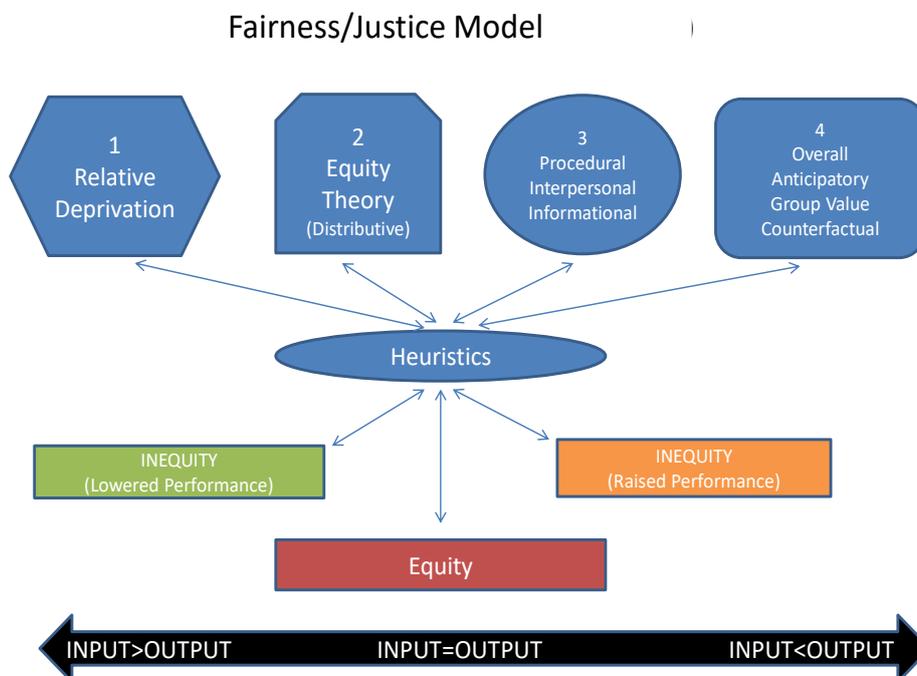
APPENDIX 5	OVERALL JUSTICE : MEASUREMENT QUESTIONNAIRES			
AUTHOR/S	ORIGIN	QUESTIONS	LIKERT POINTS	FOCUS
Ambrose & Schminke (2009)*	Originator	Q 1,2,3,4,5,6.	7	Justice dimensions , supervisor ratings
Nicklin et al. (2014)	Ambrose & Schminke (2009)	Q1,2,3,4,5,6	5	Overall justice as independent construct
Aryee et al. (2015)	.. ..	Q1,2,3,4,5,6	7	Justice and organizational change
Bobocel (2013)	.. ..	Q1,2,3,4,5,6	5	Constructive & destructive orientations
Cojuharenco et al. (2011)	.. ..	Q 1,3,4	7	Unfair treatment past and future
De Roeck et al. (2014)	.. ..	Q1,3,4	5	CSR & organizational identification
Whiteside & Barclay (2013)	.. ..	Q1,2,3,4,5,6	7	Employee silence & overall justice
Jones & Martens (2009)	.. ..	Q1,Q3,Q6	7	Senior management team focus
Holtz & Harold (2009)	.. ..	Q1,2,3,4,5,6	__	Supervisor focus & longitudinal
Johnson et al. (2009)	Beugré & Baron (2001)[&]	12 questions	5	Leader-member exchanges.
Kim & Leung (2006)	Kim (2004)	Equivalent to Q1,3,4	7	Cross cultural

* Perceived overall justice (POJ)

- **Q1=Overall I am treated fairly by my organization.**
- **Q3= In general I can count on this organization to be fair.**   **Personal experience.**
- **Q4= In general the treatment I receive around here is fair.**
- **Q2= Usually the way things work in the organization are not fair. (Reverse scored).**
- **Q5= For the most part, this organization treats its employees fairly.**   **Vicarious workforce experience.**
- **Q6= Most of the people who work here would say they are often treated unfairly. (Reverse scored).**

[&] Perceived systemic justice

   Comprises 12 questions: (6, concerning job decisions; 1 each on compensation system, culture, disciplinary action, decision consistency, and 2 about overall fairness).

MIXED METHOD DESIGN
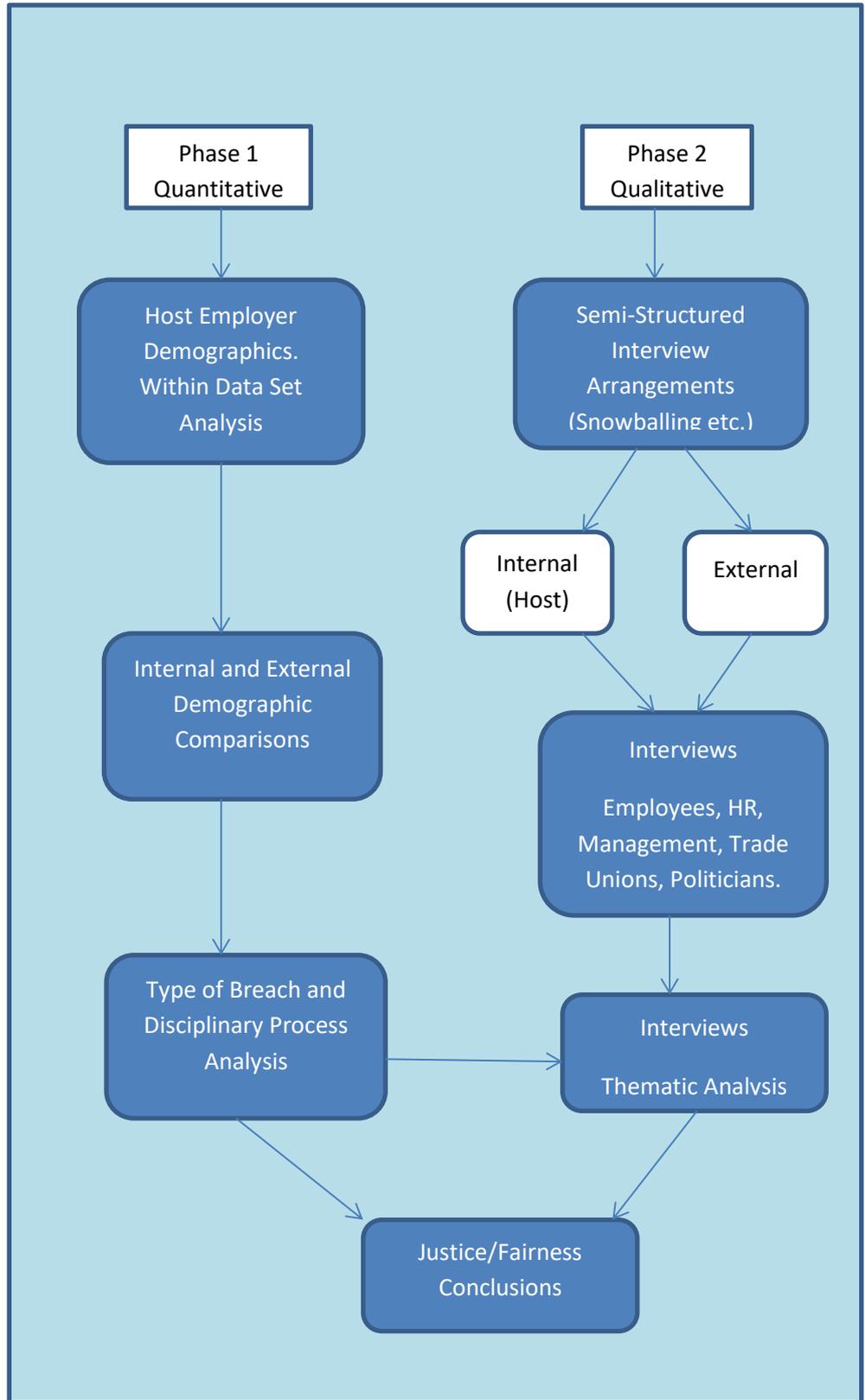
Disciplinary Case Variables being Monitored.		
EMPLOYEE	**DESCRIPTION**	**EXAMPLE**
'DEMOGRAPHICS'		
AGE	In whole years at the time of the alleged misbehaviour.	23
GENDER	Male (M) or Female (F). For employees undergoing transgender-reassignment that recognised at time of alleged "misbehaviour".	M
ETHNICITY	Whether White-British or Irish =1 Other =2	1
DISABILITY	If formally notified to the employer. Yes (Y) or No(N)	N
TENURE	Months employed by the authority at the time of the alleged "misbehaviour."	45
STATUS	Whether Manual/Craft (M) Admin/Managerial/Professional (A)	A
UNION MEMBER	Member of a trade union at time of alleged "misbehaviour". Yes(Y) or No (N).	Y
HOURS	Full Time (F/T) or Part Time (P/T). For annualised hours take the average weekly hours.	F/T
PAY	Approximate annual pay including allowances to the nearest £1,000.	23k
DEPARTMENT	That which is in place following the revised structure of 2011.	Adult Social Services.
PROCESS		
OFFENCE	That of which the employee has been formally notified.	Smoking in a restricted area.
OUTCOME	Finding of the Disciplinary Hearing or Investigation should there have been seen as "no case to answer".	Final written warning.
APPEAL	Finding of the Appeal Committee. If no appeal enter (N).	N
DURATION	Number of days from formal notification to final outcome of the internal procedure.	32
SUSPENSION	Weeks on suspension before final outcome of internal procedure and/or dismissal. For Summary Dismissal enter 0.	32
SICKNESS 1	Number of working days lost in the 12 months preceding the date of formal notification of the alleged "misbehaviour".	16
SICKNESS 2	Number of occasions of absence in the 12 months preceding the date of formal notification of the alleged "misbehaviour".	5

APPENDIX 8

Semi-Structured Interviews: Subject Profile (N=19)					
	Responsibility/Remit	Male=M Female=F	Sector		Experience (yrs.)
			Public	Private	
Politician	Cabinet member	M	#		10+
	Member	F	#		20+
	Member	M	#		8+
Manager	Freelance consultant	F	#	#	10+
	Administration/Politics	M	#		20+
	Social care	F	#		20+
	Legal	F	#		10+
	Head of Service	M	#		20+
Human Resources	Head of Service	F	#		7+
	Freelance consultant	F	#	#	20+
	Internal consultant	F	#		20+
Trade Union	Workplace rep.	M	#		20+
	Regional convenor	M	#	#	8+
	Workplace rep.	M	#		20+
	Regional Convenor	M	#	#	12+
	Regional convenor	F*	#	#	2+
Employee	Marketing	M		#	20+
	Information Technology	M	#		10+
	Environmental	M	#		10+
NB. Two Managers from above also provided personal disciplinary accounts. F*Additional 8years previous experience as workplace representative.					

APPENDIX 9   **Semi-Structured (Non-Judgemental) Interview Question Format(Employee)**

Question	Topic	Purpose and additional prompts
	Familiarisation by Introducing myself, background, aims	To relax interviewee, reassure them about confidentialities, advise them of ability to not answer any questions and/or terminate at any time.
1	Please tell me about yourself, background, interests, job, tenure etc.	
2	What impression did you have of this employer prior to joining?	To see what preconceived ideas existed and how fair the employer seemed.
3	On joining how were you treated by HR, Line Manager/s, and Colleagues?	Assessing the introductory phase into this employment/job, and whether they felt genuinely appreciated/inclusive within the new workforce.
4	How satisfactory was your induction/on the job training?	
5	How have you been rated in recent annual performance appraisals, and how fair do you feel the process was?	Stability of this indicator up to point of transgression, opportunities for improvement where necessary, how fair was process.
6	Having been in post some time, how, if at all, has your impression of how fair the employer is and has it changed from when you started?	Did view of employer (agent or entity) change over time to see whether they identify with the organisation or its senior figures, and why.
7	How good are industrial relations generally in the organisation?	Organisation climate with cohorts and organisationally as backdrop to "incident".
8	Would you please describe the incident giving rise to disciplinary?	Set scene as to type and possibly seriousness of incident.
9	Do you have knowledge of other cases of any type of misconduct prior to or since your own incident?	Asses extent of knowledge, and views as to how fair those cases were handled.
10	Who and how were you notified that you were to be investigated, and please take me through the whole disciplinary process?	Oral/letter, its content, and overall impression.

10ctd. Story- telling of emotions, feelings, fairness impressions of each stage of the process:-

Suspension/temporary transfer and proportionality to alleged offence.

Importance of guidance (particularly for non TU members) from HR and Welfare.

- Notification

Fairness, notice, rearrangements, representations, adjournments, transcripts, voice during fact-finding etc.

Stability of fairness impression, overall feelings in face of changing circumstances.

- Fact Finding

Case preparation with TU's, mitigation, and knowledge of other outcomes.

- Case Preparation

Assess expediency of process, timescales, support during this period.

Effect on health, family, colleagues, supervisor relationships.

- Hearing

Procedural/informational/interpersonal justice leading to Hearing.

Comparator outcomes, mitigation, witnesses and planning for Hearing.

-Outcome

Procedural, Informational and interpersonal justice, representation, voice, and improvement suggestions, hierarchy involved etc.

Timescale, how relayed, explanation or excuse, distributive justice.

11 Considering the case presented was the outcome fair? Why, when formed, was it anticipatory.

12 Did you appeal, was the case handled fairly and if not why not? If used, who was involved, how was it, and if not why not.

13 Prior to the disciplinary had you any intentions to leave the organisation, and what are your intentions now? Intention to leave prior to, during, subsequent to process.

14 What key improvements could be made to the whole process? All four justice dimensions.

APPENDIX 10

INFORMED CONSENT to INTERVIEW

"Justice and Fairness in the Workplace -A Disciplinary Case Analysis in the UK Public Sector."

(PhD. research conducted by Wayne G. Harvie under the direction of Professor Colin Fisher, Dr.Alan Tuckman, Dr. Jeremeˊ Snook, Dr. Konstantina Kougiannou Dr. Valerie Caven, and other independent academics at Nottingham Business School - Nottingham Trent University).

Signing this form means that you agree to the following:

I am over 18 years of age and of my own volition agree to take part in this research and understand:

a) the purpose of the research and that I may be asked about issues sensitive to me, and that

b) participation is voluntary and that I have the right to withdraw my consent.

c) I do not have to give reasons for my withdrawal.

d) I have a right to refuse to answer any questions that I feel uncomfortable with.

e)   My responses are **anonymous,** confidentiality will be observed **a**nd that all data will be kept securely.

f)   I may withdraw any information that I have given up until such time as it is analysed.

g)   I agree to the interview being digitally- recorded knowing it will be destroyed at the end of the project.

Name of Interviewee (please print)……………………………………………………..Date……………………..

 Signature………………………………………………….

Name of Researcher………Wayne Harvie   Date…………………..….

 Signature……………………………………………………

APPENDIX 11			HOST EMPLOYER FIVE YEAR WORKFORCE DATA											
YEAR	WORKFORCE NUMBERS	GENDER		BME	DISABILITY	AGE BANDINGS							FULL TIME	PART TIME
		FEMALE	MALE			<25	25-34	35-44	45-54	55-64	65+			
2010	4020	2895	1125	87	176	202	605	966	1279	873	95	2002	2018
2011	3818	2771	1047	80	180	181	560	875	1263	848	91	1865	1953
2012	3613	2631	982	77	170	130	531	784	1220	848	100	1756	1857
2013	3522	2521	1001	86	167	149	506	741	1183	829	114	1739	1783
2014	3386	2441	945	80	156	167	490	692	1148	785	104	1670	1716
Total	18,359	13,259	5,100	410	849	829	2692	4058	6093	4183	504	9032	9327
Mean	3672	2652	1020	82	170	166	538	812	1219	837	101	1806	1865
Percentage (%)		72.22	27.78	2.23	4.62	4.51	14.66	22.10	33.19	22.78	2.75	49.18	50.82

APPENDIX 11

Not Confidential - Internal

APPENDIX 12

DATA SET CHARACTERISTICS (N = 263)				
VARIABLE	**N**	**MEAN**	**STANDARD DEVIATION**	**COMMENT**
AGE — MALE (Range 17-67)	177	42.79	12.86	
FEMALE (Range 20-65)	86	43.24	12.97	
OVERALL	263	42.94	12.88	
TENURE — MALE	177	118.31	103.86	
FEMALE	86	112.08	81.47	
OVERALL	263	116.27	97.00	
PAY — MALE	175	17.57	7.94	
FEMALE	84	14.98	9.82	
DAYS ABSENCE — MALE	177	22.59	42.75	
FEMALE	86	23.42	39.96	
OVERALL	263	22.86	41.78	
ABSENCE OCCASIONS — MALE	177	1.94	1.95	Due to missing cell data not all entries will record N=263
FEMALE	86	2.31	2.36	
EHNICITY	British/Irish	Other	Missing	
MALE	171	5	1	
FEMALE	84	2		
DISABILITY	No Disability	Disabled		
MALE	167	8	2	
FEMALE	84	2		
UNION MEMBERSHIP	Member	Non Member		
MALE	74	81	22	
FEMALE	41	29	16	
	MALE	FEMALE		
WORKING HOURS — Full Time	146	42		
Part Time	31	44		
OFFENCE TYPE	MALE	FEMALE		
Attendance	25	11		
Criminal	20	5		
IT Misuse	12	11		
Interpersonal	24	14		
Sexual	10	2		
Theft/Defrauding	20	22		
Health & Safety	14	2		
Dereliction of Duty	52	19		
OUTCOME	MALE	FEMALE		
No Case to Answer	24	7		
Counselling/Capability	36	29		Five cases went to appeal but no outcomes were varied as a result.
Verbal Warning	27	5		
Written Warning	22	5		
Final Written Warning	21	5		
Dismissal	17	12		
Summary Dismissal	5			
Retired/Resigned	21	20		
Settlement Agreement	4	1		
WEEKS SUSPENDED	MALE (33)	FEMALE (17)		
Average	12.64	16.59		
Range	0-54	0-42		
Mean (including no suspension)	2.36	3.28		
	Male	Female		
APPEALS	3	2		

APPENDIX 13

OFFENCE	DISCIPLINARY FINDING									Total	%
	JUSTICE ADMINISTERED (N = 262)										
	Seriousness ⟶										
	NCA	C/C	VW	WW	FWW	Dis.	SDis.	SA	R/R		
Attendance	3	5	5	4	5	8	1	5	5	36	13.74
Criminal Offences liable to prosecution	3	6	8	4	1	1	0	0	2	25	9.54
IT Misuse	1	3	2	1	4	2	0	1	9	23	8.78
Interpersonal	5	13	4	6	3	2	0	0	5	38	14.50
Sexual	0	2	1	1	0	2	3	0	3	12	4.58
Theft/Defrauding	4	10	2	1	6	9	0	0	9	41	15.65
Health & Safety	2	7	4	2	1	0	0	0	0	16	6.11
Dereliction of duty	14	19	6	8	6	5	1	4	8	71	27.10
TOTALS	32	65	32	27	26	29	5	5	41	262	100
Percentage (approx.)	12	57				31					

NB. NCA=No Case to Answer, C/C= Counselling/Capability, VW=Verbal Warning, WW=Written Warning, FWW= Final Written Warning, Dis.= Dismissal, SDis.= Summary Dismissal, SA= Settlement Agreement, R/R= Retire/Resigned.

APPENDIX 14 — Pearson Correlations PHASE 1

	VARIABLE	MEAN	STANDARD DEVIATION	N	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1	AGE	42.94	12.875	263	1														
2	GENDER	1.33	.470	263	.017	1													
3	ETHNICITY	1.03	.162	262	-.047	-.015	1												
4	DISABILITY	1.95	.210	261	-.064	.076	.036	1											
5	TENURE	116.27	96.995	263	.452**	-.030	-.084	-.133*	1										
6	TRADE UNION	1.49	.501	225	-.234**	-.100	.003	.114	-.380**	1									
7	FULL TIME or PART TIME	1.29	.452	263	.028	.350**	.105	.018	-.186**	.063	1								
8	ANNUAL PAY	16.69	8.677	259	.252**	-.137*	-.052	.009	.334**	-.197**	-.580**	1							
9	TYPE of BREACH	4.94	2.528	263	.196**	-.022	.060	-.004	.072	-.142*	.045	.132*	1						
10	DISCIPLINARY FINDING	4.25	2.672	262	-.119	.073	-.025	.082	-.207**	.041	.101	.030	-.097	1					
11	APPEAL OUTCOME	0.10	.801	263	-.025	-.019	-.021	.028	.020	-.034	.066	.055	.090	.101	1				
12	CASE DURATION	50.69	49.512	261	.038	-.047	.036	-.090	-.033	-.074	.068	.001	.059	.088	.119	1			
13	WEEKS SUSPENDED	2.66	7.637	263	.095	.057	-.011	.077	.038	-.023	.060	.154*	.084	.161**	.112	.322**	1		
14	ABSENCE (ANNUALY)	22.86	41.784	263	-.029	.009	.073	-.150*	-.020	.017	-.052	-.028	-.132*	.038	-.018	.145*	-.029	1	
15	ABSENCE (OCCASSIONS)	2.07	2.111	263	-.245**	.080	-.006	-.054	-.111	-.082	-.094	-.118	-.209**	.021	-.031	.083	-.040	.359**	1

**Correlations significant at the 0.01 level (2 tailed).
* Correlations significant at the 0.05 level (2 tailed).

Cohen (1988, 79-81) Strength of relationship

Small r=0.10 to 0.29

Medium r=0.30 to 0.49.

Large r= 0.50 to 1.0

APPENDIX 15   Tenure variability in Data Set Cases (N=263) v. Workforce Expected cases (N=3591)
(Chi Square = 25.60, @5df, p = 0.00003819)
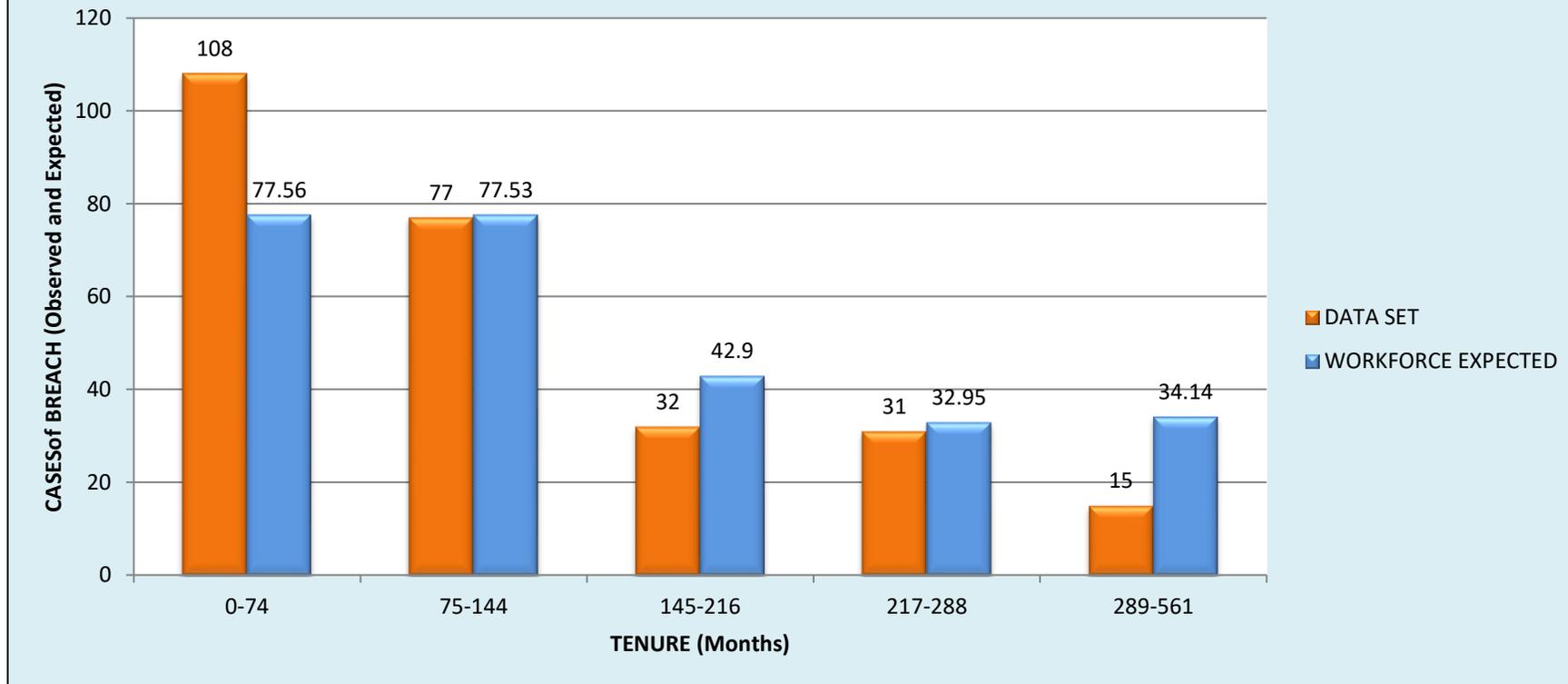
APPENDIX 16	ALLEGED MISDEMEANOURS for MANUAL/CRAFT (M/C) and ADIMISTRATIVE/PROFESSIONAL (A/P) EMPLOYEES																		
		MALES						FEMALES						COMBINED					
		CASES			PERCENTAGE (%)			CASES			PERCENTAGE (%)			CASES			PERCENTAGE (%)		
ALLEGED BREACH		M/C	A/P	Total	M/C	A/P	Total	M/C	A/P	Total	M/C	A/P	Total	M/C	A/P	Total	M/C	A/P	Total
1	ATTENDANCE	21	4	25	23.86	4.49	14.12	3	8	11	14.29	12.31	12.79	24	12	36	22.02	7.79	13.69
2	CRIMINAL	14	6	20	15.91	6.74	11.30	1	4	5	4.76	6.15	5.81	15	10	25	13.76	6.49	9.51
3	IT MISUSE	0	12	12	0	13.48	6.78	0	11	11	0	16.92	12.79	0	23	23	0	14.94	8.75
4	INTERPERSONAL	9	15	24	10.23	16.85	13.56	5	9	14	23.81	13.85	16.28	14	24	38	12.84	15.58	14.45
5	SEXUAL	4	6	10	4.55	6.74	5.64	1	1	2	4.76	1.54	2.33	5	7	12	4.59	4.54	4.56
6	THEFT/DEFRAUDING	7	13	20	7.95	14.61	11.30	6	16	22	28.57	24.62	25.58	13	29	42	11.93	18.83	15.97
7	HEALTH & SAFETY	10	4	14	11.36	4.49	7.91	0	2	2	0	3.08	2.33	10	6	16	9.17	3.90	6.08
8	DERELICTION	23	29	52	26.14	32.58	29.38	5	14	19	23.81	21.54	22.09	28	43	71	25.69	27.92	27.00
	TOTAL	88	89	177	100	99.98	99.99	21	65	86	100	100.01	100	109	154	263	100	99.99	100.01

APPENDIX 17	Handling of Potential Breach Cases annually by Professional Bodies								
Professional Body	Total Members	Average Annual Cases	MALE (M)			FEMALE (F)			Ratio M:F (A/B)
			Members (No.)	Number of Cases per Year	Cases/1,000 Employees (A)	Members (No.)	Number of Cases per Year	Cases/1,000 Employees (B)	
General Medical Council (GMC)	245,915	242	141,383	205	1.45	104,532	37	0.35	4.14
General Teaching Council Wales (GTCW)	38,835	41	9,960	23	2.31	28,875	18	0.62	3.73
Social Care Council (SCC)	79,032	25	18,177	16	0.88	60,855	9	0.15	5.87
General Teaching Council England (GTCE)	445,306	163	112,594	113	1.00	332,712	50	0.15	6.67
General Optical Council (GOC)	12,070	78	5,225	50	9.57	6,845	28	4.09	2.34
Nursing & Midwifery Council (NMC)	671,668	4,407	67,167	970	14.44	604,501	3,437	5.69	2.54
Solicitor Regulatory Authority (SRA)	129,780	2,823	70,081	2,070	29.54	59,699	753	12.61	2.34
Bar Standards Board (BSB)	15,000	677	9,780	499	51.02	5,220	178	34.10	1.50
Police Officers/Workers (P/W)	240,330	35,352	141,119	26,674	189.02	99,211	8,678	87.47	2.16
Office of Judicial Complaints (OJC)	3,621	13	2,742	11	4.01	879	2	2.28	1.76
Royal College of Veterinary Surgeons (RCVS)	18,095	14	8,240	12	1.46	9,855	2	0.20	7.30
Association of Chartered Accountants (ACCA)	154,337	583	84,885	508	5.98	69,452	75	1.08	5.54
General Dental Council Dentists (GDC)	39,209	48	22,066	42	1.90	17,143	6	0.35	5.43
General Dental Council Dental Care Practitioners (GDCP)	60,421	8	6,022	1	0.17	54,399	7	0.13	1.31
Canadian Professional Licensing Authority (CPLA)	69,533	61	47,282	56	1.18	22,251	5	0.22	5.36
TOTALS	2,223,152	44,535	746,723	31,250	41.85	1,476,429	13,285	9.00	4.65
Host Employer	3,672	52.6	1,020	35.4	34.71	2,652	17.2	6.49	5.35

		Legend to Professional Body Data above	Chi Square Value @ 1df.	Value of p
1	GMC	Membership extract from "Summary: The state of medical education and practice in the UK: 2012". Gender cases are for Panel Hearings from Fitness to Practice. Fact Sheet 2011 Gender.	73.364	0
2	GTCW	Membership extract from "Annual Statistics Digest March 2011". Historical annual gender cases kindly supplied by GTCW from 2001 to 2013. Only five years 2006/7 to 2010/11 used to correspond with data set period.	19.915	0.0000081
3	SCC	Membership extract from "Raising Standards: Social work education in England 2008-9". SCC. Gender cases from SCC web site "Hearings" (Feb. 2006-March 2010).	23.74	0.0000011
4	GTCE	Membership and gender cases from Page, D. (2012) "Teacher misbehaviour: an analysis of disciplinary orders by the General Teaching Council for England". British Educational Research Journal. i, pp. 1-20.	167.379	0
5	GOC	Membership and gender cases extract from "Equality and Diversity Monitoring 2009. Report of the Registration Department". General Optical Council (GOC).	13.756	0.0002081
6	NMC	Membership and gender cases extract from "Nursing and Midwifery Council: Annual Fitness to Practice Report 2011-2012" (NMC). Note gender extrapolated from known incidents to cover those cases submitted where gender was unidentified (approx. 27%). Age data supplied following a Freedom of Information Request.	706.347	0
7	SRA	Membership and gender cases extract from" Diversity Monitoring Statistics 2011".	424.492	0
8	BSB.	Membership and gender cases extract from" Report on Diversity of Barristers Subject to Complaints 2013".	21.599	0.0000034
9	P/W	Membership extract from Dhani, A. (2012) "Police Service Strength. England and Wales, 31, March 2012."Home Office Statistics Bulletin. Gender cases from "Police Complaints: statistics for England and Wales 2011/12", Paper 25, ipcc.	4083.843	0
10	OJC	Membership and gender cases extract from Judicial Conduct investigations Office ' www.judicialconduct.judiciary.gov.uk/disciplinary-statements-2012htm.	0.563	0.4532263
11	RCVS	Membership and gender cases extract from "RCVS Facts. The Annual Report of the Royal College of Veterinary Surgeons: Part 2, 2010/11/12/13"	9.095	0.0025624
12	ACCA	Membership extract from 2011/12 Annual report. Gender cases supplied by ACCA for 2011/12	243.256	0
13	GDC	Membership extract from 2010/11/12 Annual Reports. Gender cases extract from GDC Web Site "Hearings" section2010/11/12/13.	19.024	0.0000129
14	GDCP		0.056	0.8136637
15	CPLA	Membership and cases extract from Alam, A, Klemensberg, J., Griesman, J., & Bell, C. M. (2011) "The characteristics of physicians disciplined by professional colleges in Canada" Open Medicine, 5, 4, pp.166-172. Ten Year sample.	15.883	0.0000674
NB. 1. Male disciplinary dominance features in all professional bodies and is statistically significant with the exception of the two professional bodies highlighted (OJC, & GDCP).				
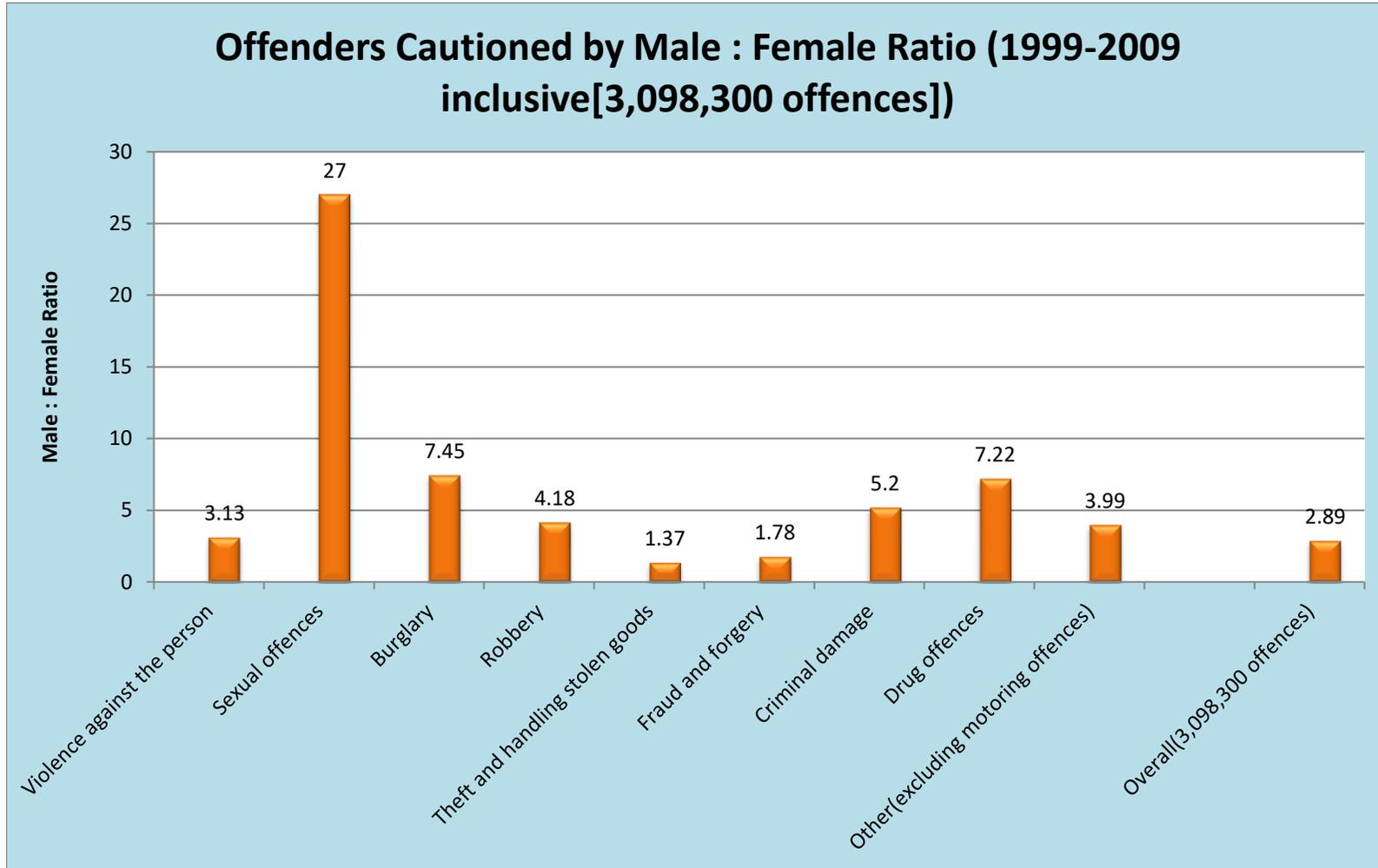
Offenders Cautioned by Male : Female Ratio (1999-2009 inclusive[3,098,300 offences])

Male : Female Ratio

Category	Ratio
Violence against the person	3.13
Sexual offences	27
Burglary	7.45
Robbery	4.18
Theft and handling stolen goods	1.37
Fraud and forgery	1.78
Criminal damage	5.2
Drug offences	7.22
Other(excluding motoring offences)	3.99
Overall(3,098,300 offences)	2.89

REGION	COUNTRY & GDP/ 1,000($)		POPULATION (millions)	"OFFENDING" RATE/ 100,000 ADULTS AGED 18 or over		M:F RATIO
				MALE	FEMALE	
EASTERN AFRICA	Kenya	1.8	42	702.3	74.8	9.4
	Mauritius	15.4	1.3	3680.7	348.0	10.6
	Mozambique	1.2	23.4	373.0	23.3	16
NORTHERN AFRICA	Algeria	7.3	37.8	1,268.0	81.2	15.6
	Egypt	6.5	79.4	185.0	13.6	13.6
	Morocco	5.2	31.3	2,870.3	331.9	8.6
SOUTHERN AFRICA	Botswana	15.7	2.0	25,504.2	5,331.1	4.8
NORTH AMERICA	Canada	42.3	34.5	3,302.8	789.5	4.2
	USA	51.7	311.6	7,032.7	2,289.9	3.1
CARIBBEAN	Grenada	13.5	0.15	13,397.5	1,452.3	9.2
	Trinidad & Tobago	19.8	1.3	784.3	49.9	15.7
	El Salvador	7.3	6.3	2,578.3	197.9	13.0
	Guatemala	5.2	14.0	1,084.4	77.2	14.0
	Honduras	4.7	7.8	298.0	25.6	11.6
	Mexico	15.4	116.4	598.2	62.4	9.6
	Nicaragua	4.4	5.8	2,766.3	131.2	21.1
SOUTH AMERICA	Chile	18.2	17.3	7,505.8	1,385.1	5.4
	Columbia	10.7	47.1	1,203.8	125.5	9.6
	Guyana	8.0	0.8	15,850.1	1,907.2	8.3
	Peru	10.6	28.9	662.3	36.4	18.2
ASIA	Tajikistan	2.2	7.8	462.3	62.1	7.4
	Hong Kong	50.9	7.1	764.6	281.9	2.7
	Japan	35.9	127.8	346.5	92.2	3.8
	Mongolia	10.6	2.8	1,594.5	240.9	6.6
	Singapore	60.8	5.2	650.0	185.6	3.5
	Armenia	5.9	3.0	955.9	117.8	8.1
	Azerbaijan	10.4	9.1	490.7	65.4	7.5
	Cyprus	26.8	1.1	1,216.7	156.6	7.8
	Bulgaria	14.1	7.3	1,349.9	173.3	7.8
	Czech Republic	27.0	10.5	2,243.1	328.2	6.8
	Poland	20.6	38.1	2,896.8	268.2	10.8
	Moldova	3.4	3.6	852.0	102.4	8.3
	Romania	12.7	21.4	2,130.5	252.5	8.4
	Russia federation	17.5	143.0	1,562.5	237.7	6.6
	Slovakia	24.1	5.4	1,967.9	344.7	5.7
	Ukraine	7.3	45.9	1,085.3	146.1	7.4
NORTHERN EUROPE	Finland	35.8	5.4	10,542.5	2,039.9	5.2
	Latvia	18.1	2.2	2,490.9	308.7	8.1
	Lithuania	21.4	3.0	1,390.9	149.5	9.3
	Norway	54.4	5.0	1,388.4	255.4	5.4
	Sweden	40.3	9.4	2,014.0	477.6	4.2
SOUTHERN EUROPE	Croatia	17.6	4.3	1,443.9	171.7	8.4
	Italy	29.8	60.7	2,904.9	611.2	4.8
	Malta	26.8	0.4	2,114.2	632.4	3.3
	Montenegro	11.6	0.6	2,014.8	131.7	15.3
	Serbia	10.7	7.3	1,170.1	97.5	12.0
	Slovenia	27.8	2.0	1,808.8	351.5	5.1
	Spain	30.1	46.2	1,703.4	205.1	8.3
WESTERN EUROPE	Austria	41.9	8.4	5,355.2	1,294.3	4.1
	Belgium	37.5	11.0	3,905.2	968.0	4.0
	France	35.3	65.4	3,428.6	603.1	5.7
	Germany	38.7	81.8	3,613.6	1,134.3	3.2
	Luxembourg	78.0	0.5	8,172.2	2,509.5	3.3
	Netherlands	41.5	16.7	4,130.1	729.4	5.7
	Switzerland	44.9	7.9	2,943.6	732.4	4.0
ANTIPODES	Australia	42.0	22.2	2,787.0	711.9	3.9
	New Zealand	29.5	4.4	8,069.5	1,967.5	4.1

1. NB.1. Population figures taken from worldbank.org/indicator/SP.POP.TOTL
2. Offending rate of adult brought into contact with police from United Nations Office on Drugs and Crime (UNODC).
3. Figures are for individual years either 2009/10/or 11. given that not all years are recorded by the UNODC
4. GDP figures/1,000 population taken from International monetary Fund 2012.
5. "Developed and buoyant economies

APPENDIX 20

Percentage of Cautions in England by age group (2002, N=3.5Million) Age/Crime Curve (McVie (2005)

APPENDIX 21

GMC Average Annual Complaints/1,000 Members
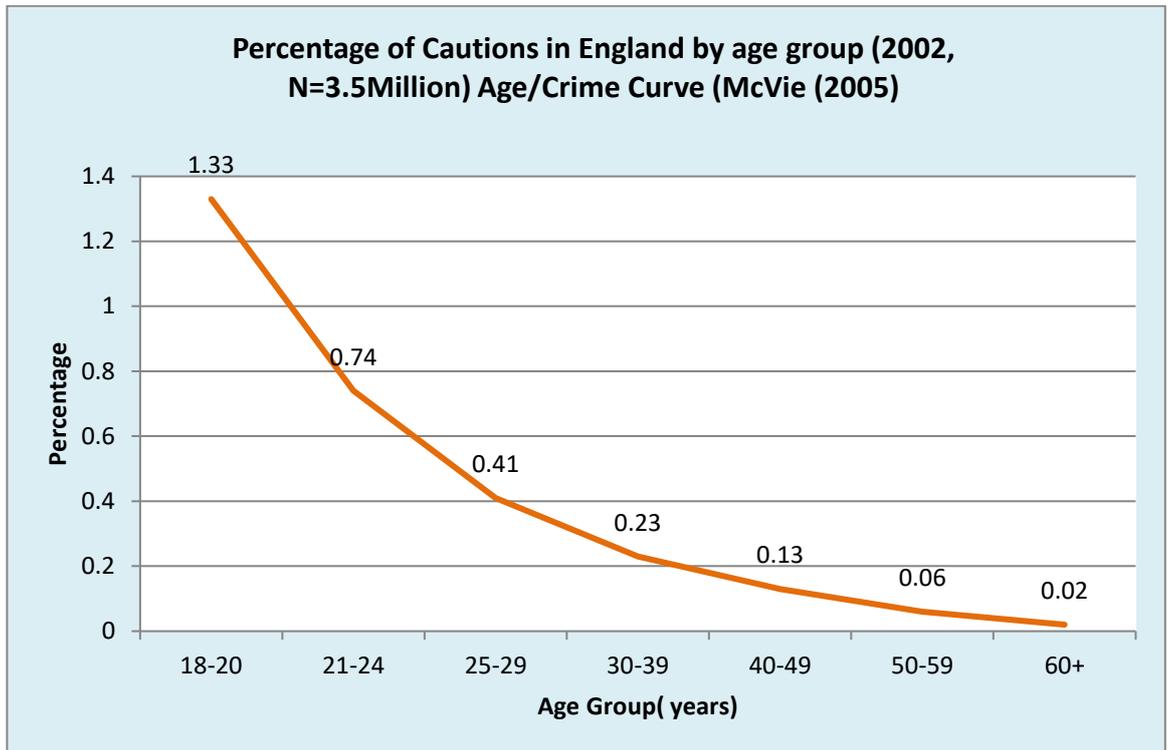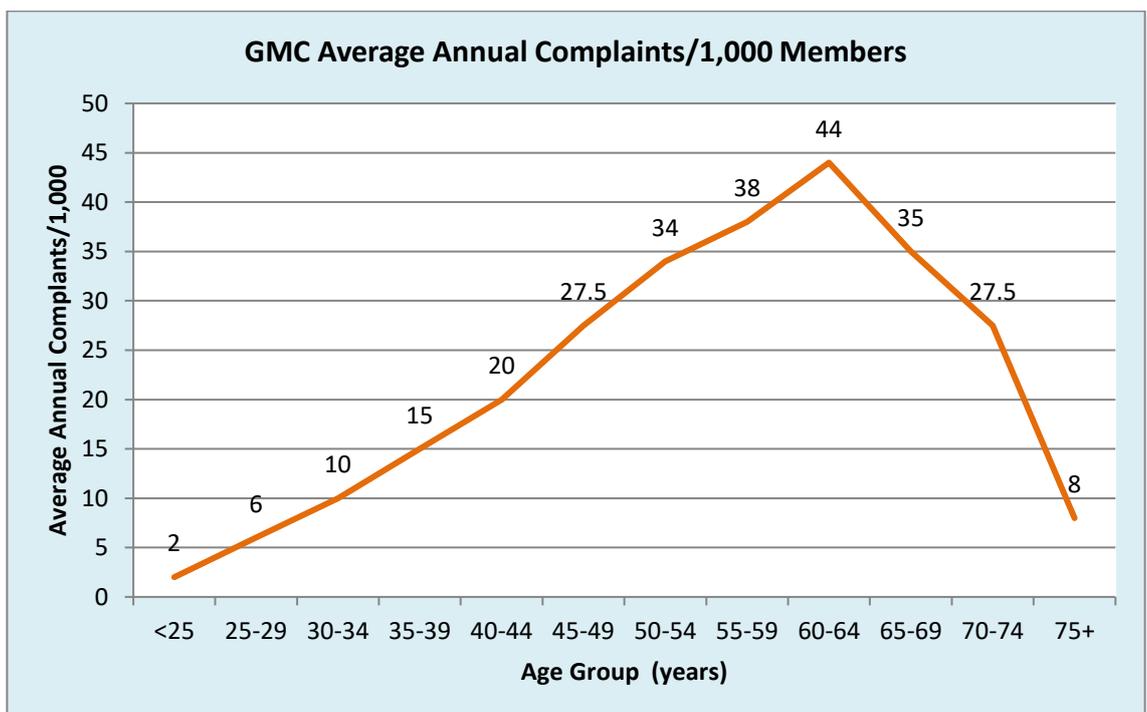
APPENDIX 22

<table>
<tr><td colspan="5">Hypothesis 5. Seriousness of Offence will decrease as Age increases.
(Data Set = 257, Workforce = 3591)
(Chi Square value = 13.87, @ 7 df., and p = 0.054)
These Results are NOT Significant. (This part of H_5 not supported).</td></tr>
<tr><td rowspan="3">**Disciplinary Outcome**</td><td colspan="4">**Age Range (Years)**</td></tr>
<tr><td colspan="2">**17 to 42**</td><td colspan="2">**43 to 67**</td></tr>
<tr><td>**Data Set**</td><td>**Expected**</td><td>**Data Set**</td><td>**Expected**</td></tr>
<tr><td>**No case to answer**</td><td>13</td><td>10.952</td><td>19</td><td>21.048</td></tr>
<tr><td>**C/C, & V. W.**</td><td>38</td><td>33.198</td><td>59</td><td>63.802</td></tr>
<tr><td>**W. W. & F. W. W.**</td><td>19</td><td>18.138</td><td>34</td><td>34.861</td></tr>
<tr><td>**D., S. D., & R./ R.**</td><td>40</td><td>25.669</td><td>35</td><td>49.331</td></tr>
<tr><td>**Total**</td><td>110</td><td>87.958</td><td>147</td><td>169.042</td></tr>
<tr><td colspan="5">NB. 1. Excluded from the above are 5 Settlement Agreements, 1 Case ongoing.
    2. C/C= Capability/Counselling, V.W. = Verbal Warning, W.W.=Written Warning, F.W.W.=Final Written Warning, D.=Dismissal, S.D.=Summary Dismissal, R./R.=Retired/Resigned.</td></tr>
</table>

APPENDIX 23		ETHNIC MINORITY CASE DATA (N=7, total data set = 263)						
		Case No. 52	Case No. 53	Case No. 83	Case No. 85	Case No. 95	Case No. 104	Case No. 195
AGE	(Years)	50	50	45	30	50	26	24
GENDER	(M/F)	M	M	M	F	M	F	M
DISABILITY	(Y/N)	N	N	N	N	N	N	N
TENURE	(Months)	92	97	73	25	106	57	24
TRADE UNION MEMBER	(Y/N)	Y	Y	Y	-	Y	N	N
FULL/TIME or PART/TIME		P/T	P/T	F/T	F/T	P/T	F/T	P/T
ANNUAL PAY		£13k	£13k	£14k	£19k	£13K	£14k	£12k
ALLEGED OFFENCE		Dereliction	Interpersonal	Dereliction	Criminal	Dereliction	IT Misuse	Dereliction
DISCIPLINARY OUTCOME		WW	C/C	WW	C/C	FWW	R/R	NCA
CASE APPEALED	(Y/N)	N	N	N	N	N	N	N
CASE DURATION	(Days)	184	75	71	40	44	16	1
SUSPENSION	(Days)	0	15	0	0	0	0	0
DAYS SICKNESS		126	119	0	37	8	0	0
OCCASIONS OF SICKNESS		4	2	0	5	3	0	0

WORKFORCE COMPARISONS			
		ETHNIC MINORITIES (7 Cases, 5 Male, 2 Female)	WORKFORCE (3591)
NUMBERS		2.66%	2.23%
AGE	MALE	44	47
	FEMALE	28	46
	OVERALL	39	46
GENDER	MALE	71%	28%
	FEMALE	29%	72%
TENURE	MALE	78	168
	FEMALE	41	142
	OVERALL	68	150

APPENDIX 24		DISABILITY CASE DATA (N =12, 10 Male, 2 FEMALE)										
		CASE NUMBER										
		4	130	138	151	160	167	169	173	187	238	239
AGE	(Years)	43	47	37	49	49	41	52	34	56	51	49
GENDER	(M/F)	M	F	M	M	M	M	M	F	M	M	M
ETHNICITY	(B/I,O)	B/I	B/I	B/I	B/I	B/I	B/I	B/I	B/I	B/I	B/I	B/I
TENURE	(Months)	72	188	49	223	223	267	400	129	148	170	136
TRADE UNION EMBERSHIP	(Y/N)	N	Y	N	Y	Y	Y	Y	N	Y	Y	Y
FULL /TIME or PART/TIME		F/T	P/T	F/T	F/T	F/T	F/T	F/T	P/T	F/T	F/T	P/T
ANNUAL PAY	(£k)	£18	£10	£14	£20	£20	£14	£22	£9	£15	£17	£15
ALLEGED OFFENCE		6	4	1	5	5	8	4	3	4	8	7
DISCIPLINARY OUTCOME		C/C	WW	VW	C/C	C/C	C/C	WW	VW	C/C	WW	FWW
CASE APPEALED	(Y/N)	N	N	0	0	0	0	0	0	0	0	0
CASE DURATION	(Days)	67	199	40	21	29	14	39	53	20	126	100
SUSPENSION	(Weeks)	0	0	0	0	0	0	0	0	0	0	0
DAYS SICKNESS		0	108	111	11	12	0	164	3	0	84	38
OCCASSIONS OF SICKNESS		0	5	4	3	4	0	5	1	0	3	4

Alleged Offence :- 1=Attendance, 2=Criminal Offence, 3=IT Misuse, 4=Interpersonal, 5=Sexual, 6=Theft/Defrauding, 7=Health & Safety, 8=Dereliction of Duty
Disciplinary Outcome:-C/C=Counselling/Capability, VW=Verbal Warning, WW=Written Warning, FWW=Final Written Warning, D=Dismissal.
ETHNICITY : - B/I = British/Irish, O = Other.

WORKFORCE COMPARISONS			
		DATA SET REGISTERED DISABLED	WORKFORCE(3672)
NUMBERS		4.60%	4.62%
AGE	MALE	48	47
	FEMALE	41	46
	OVERALL	47	46
GENDER	MALE	83%	28%
	FEMALE	17%	72%
TENURE	MALE	179	168
	FEMALE	158	142
	OVERALL	175	150

Age (Years)	Data set cases (Observed n=263)	Overall Workforce data (N=3982 occasions)		Male data set		Female data set	
		Male (A)	Female (B)	Data set cases Observed	Workforce cases Expected (E)	Data set cases Observed	Workforce cases Expected (F)
<25	34	161	115	68	53.31	33	8.02
25-34	39	149	453	77	49.34	46	31.59
35-44	51	181	567	49	59.94	29	39.55
45-54	84	296	1053	119	98.01	69	73.44
55 & over	55	270	737	37	89.40	27	51.40
Total	263	1057 (C)	2925 (D)	350	350	204	204
		3982 Occasions		354 Occasions			

OCCASIONS of ABSENCE by AGE GROUP and Gender (Data set= 263)
Employee headcount in Data set=86 female, 177 male,
(Occasions of absence for 2013/14 = 3982)

NB. 1. Variability in the OVERALL data compared to the workforce numbers (3672) is NOT significant with Chi square = 3.006, @1df, p = 0.083

2 Variability in the GENDER data by AGE GROUP is very significant with Chi Square = 155.804, @ 9df, p = 0.

3 The 55-64, and 65 and over age groups have been conflated due to low cell counts in the latter.

4 Data Set had 554 occasions of absence (males=350, females =204). 5. Workforce Expected by gender E = (A/C)350: Females F = (B/D)204.

HYPOTHESES KEY FINDINGS

Hypothesis	Chart	Table	Related Appendix	Finding	Chi Square value	Degrees of freedom	'p' value
T-test		4.1		Variables monitored prove insignificant in accounting for disciplinary outcome variance.			
H₁	4.7,4.8			Age and tenure positively correlated.			
H₂	4.9			Tenure displays considerable variability from workforce.	39.36	7	<<0.0005
		4.2		Low tenure more prone to breach than mid tenure, long tenure employees under represented.	25.56	4	<<0.0005
	4.10			Mean tenure of breach cases shows decrease as seriousness of offence increases.			
		4.3		Male excesses in each category of disciplinary outcome.			
	4.11			'Minor' offence numbers increase with tenure, 'Major 'offences decline with tenure.	32.03	7	<<0.0005
		4.4		Proportion of 'Major' to 'Minor' cases reduced for above workforce mean tenure.			
			15	Excess of low tenure cases compared to expected workforce numbers.	25.60	5	<<0.0005
H₃			16	M/C breach attendance rules at least twice as often as Admin/Professional.	Lack of sufficient number of cases and comparative workforce data means this hypothesis cannot be substantiated. Purely within Data Set comparisons used.		
			Data-set	M/C absence 60% higher than Admin/Professional.			
			16	M/C twice as likely to face prosecution for criminal offence compared to Admin/ Professional.			
			16	M/C at least twice as likely to breach health and safety guidance as Admin/Professional.			
			16	Females twice as likely as males to breach 'Theft/Defrauding'.			
H₄		4.5		Male employee's demonstrably more prevalent offenders than females.	205.09	1	= 0
	4.12			Male offending exceeds females in each year, despite comprising only 28% of workforce.	219.98	9	= 0
			17	Professional bodies males investigated disproportionately more than females.	26,714	1	= 0
			18	Male to female ratio of offenders cautioned in England & Wales showing male excess.			
			19	Males more likely internationally to come into contact with the police and/or judicial system.			
		4.6		Excess of male to female ratio of offending in Host, professional bodies, Cautions, Internationally.			
H₅	4.13			Employees aged under 25 substantially more likely, and those over 64 less likely to breach.	45.95	5	<<0.0005
		4.7		Employees aged 17-24, 5.7% chance of facing disciplinary, others only maximum of 1.5%.			
	4.14		20	Age-Crime curve for cautions late-teen/early adult offending rapidly declining as age increases.			
			21	GMC profile of age and annual complaints/10^3 with weighting toward older physicians.			
			22	Increased age does not reduce seriousness of offending, *therefore linkage not significant.*	**13.87**	**7**	**0.054**
H₆		4.8		IT breach <35years more evident than older employees, *possibly significant but low cell count.*	4.34	1	0.037
		4.9		Male majority despite being a minority in the workforce, *possibly significant but low cell count.*	7.03	1	0.008

H₇				11	**BME & Disabled workforce numbers.**			
				12	BME & Disabled data set numbers.			
				23	BME case sample data showing range of outcomes, and half cases poor attendance record.			
				24	Disabled sample data showing range of outcomes, similar poor attendance record.			
H₈			4.10		Males compared to females dominate these offences compared to the workforce composition.	40.84	1	= 0
			4.10		Mean tenure by gender of both sexes lower than expected from workforce.			
			4.10		Disciplinary case findings.			
H₉			4.11		Sickness absence of data set by gender massively in excess compared to workforce.			
		4.15			Absence period 0-7days very low, others low, 61+ employees huge excess over workforce mean.	76.08	3	= 0
			4.12		Short and long term absences markedly at variance to UK national data.			
		4.16			UK national male and female absence rates decreasing since 1993.			
		4.17			Female to male ratio of absence increasing over the period from 1993.			
		4.18			Gender absence varies with age and mirrors the national profile of later-life divergence.			
			4.13		Occasions of absence weighted to <35 years and above age groups.			
				25	Occasions of absence excess for both sexes up to 34yers, under-represented in 55+ and above.			
Contextual			4.14		Host grievance below and Disciplined numbers above expected compared to national figures.			
		4.19			Rise in disciplinary investigations 2009/10 to 2013/14, with economy comparison indicators..			

NB. M/C= manual /Craft employees,

These figures not statistically significant   These figures only tentative (low cell count)

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APPENDIX 27				Age and Ethical Decision Making Research Findings 2004 to 2011 (Craft, 2013).
Author/s	Year	Rests (1986) Decision Making Factor Model	Age Significant Variable	Finding
Chan & Leung	2006	Awareness	Yes	Age was positively correlated with ethical sensitivity.
Eweje & Brunton	2010		No	Cannot conclude older students are more ethically oriented than younger students.
Krambia-Kapardis & Zopiatis	2008		Yes	Older students over 30 were more ethical than those under 30 regarding perception.
Su	2006		Yes	Older students perceived the ethical problem more easily than did the younger students when comparing China, Egypt, Finland, Korea, Russia, and US respondents.
Forte	2004	Judgement	No	No statistically significant relationship found between locus of control, age, tenure, management level, education, and ethical climate, of managers.
Marques & Azevedo-Pereira	2009		No	The influence of age on Idealism was not significant.
			Yes	Older respondents were significantly more Relativistic than younger ones.
			Yes	Younger chartered accountants relied more on universal moral principles to make ethical judgements than older.
			No	No significant difference in ethical judgements between older and younger respondents.
Valentine & Rittenberg	2007		Yes	Ethical judgement was associated with increased age and experience.
Elango et al.	2010	Intent	Yes	Younger managers were more likely to be influenced by organizational ethics than older managers. Older managers more likely to make ethical choices.
Valentine & Rittenburg	2007		Yes	Ethical intention was positively related to age and business experience, and negatively to gender, greater ethical intentions were associated with increased age, experience and being female.
Cagle & Bacus	2006	Behaviour	No	Age and education were not significant in the acceptance of ethical behaviour.

NB. The above is an extract from Craft (2013) and highlights the very mixed findings regarding AGE, these ambiguous results are also mirrored in earlier papers before 2004.

APPENDIX 28

	Payments to Individuals during Suspension		
Rank	Council	Individual Payment (£)	Length of Suspension (Days)
1	Leicester	176,733	872
2	Lincolnshire	92,505,	523
3	Leicester	90,191	569
4	Leicestershire	89,475	597
5	Lincolnshire	77,208	523
6	Leicester	67,226	852
7	Stoke-on-Trent	64,787	504
8	Leicester	63,475	424
9	Leicestershire	61,051	357
10	Derby	58,907	420
11	Coventry	52,817	447
12	Leicestershire	52,501	307
13	Stoke-on Trent	60,600	504
14	Lincolnshire	48,295	302
15	Leicester	45,493	211
16	Leicestershire	44,944	564
17	Host Employer	42,750	270
18	Warwick	40,625	300
19	Leicestershire	40,459	307
20	Stoke0on Trent	40,162	504
21	Telford and Wrekin	38,899	294

1. **Figures from Taxpayers' Alliance (TA) "Midlands Councils' Spending Uncovered 2" (14 December 2011), p. 5.**
2. **Host employer payment ranges from £333 to £42,750, with a mean = £6,152 and Standard Deviation of £7,843.**
3. **TA assumes 240 working days /year. (p. 3).**
4. **TA survey average duration of suspension = 76 days. (p. 12).**
5. **TA survey average cost/employee = £6,008. (p.12).**

APPENDIX 29

	Interviewee 'Working' Definitions of Justice and Fairness
TU	The law deals with justice and it is about control, it says this happens so this is the consequence, it operates logically. The consequences are not going to be fair because it can't be to all concerned.
	Justice is applying a utilitarian principle to a system that cannot be utilitarian.
	If you work in an organisation of this size, you have to have rules, and those rules will not always be fair, but they will be as close to fair as they can be.
	Sticking to the rules, making sure that everybody ---understands what they are, and adhering to them.
	Justice is to right a wrong put simply.
	Justice is to do the right thing.
	Justice may not be to do the right thing, because it may make something else wrong.
	Fairness is to be treated the same.
	Fairness is intervening if I see someone being bullied, I should stop it.
	In a court of law there is always going to be justice but it is not always going to be fair.
	Justice is about having a process that's open and transparent, which can be utilised to get a fair outcome, realising nothing is perfect.
	Justice means you achieve it [fairness] in a respectful way, and you get the opportunity to use process.
M	Justice was applied the correct way with everything taken into account.
	If everything is taken into account along the way then you will achieve justice.
	Is Justice more than just the outcome?
	If that justice outcome takes into account all that has gone before then you will achieve something that is just, and balanced and correct, at that time.
	Fairness is about how it's applied, developed, understood, with the opportunity for all to participate, providing an objective perspective on it, <u>whilst applying experience</u>.
	You need a fair account from both sides.
	This duty of care and a sense of fairness, and you have to rely on your own sense of integrity and experience.
	If the process is fair a just outcome should come on the back of it.
	Justice is whether they have had a chance to say what they wanted to say.
	Fairness is about the process
	Justice is about the result.
HR	Justice is about the proportionality of the sanction, the outcome.
	Fairness is about the process from beginning to end, have the issues been investigated properly, openly, and meaningfully with NO leading questions.
	Justice is considering all the evidence and mitigation, being open to everything, having a fair hearing, having a chance to speak.
	Justice and fairness can't be separated, you can only go on what evidence you have at the time, because things being just and fair can prove not to be so in retrospect.
	Justice is—whatever someone has done, they have the chance to respond to any allegations, provide their side of the story, before any decisions are made.
	Justice and fairness in my own head are the same thing. It's the process.
P	Justice is ensuring that your personal circumstances are taken into account.
	Justice is on the balance of probabilities what did or did not happen, what caused it to happen
	Fairness and justice are sometimes interchangeable, is it fair that someone gets a FWW and someone else for the same offence just get a slap on the wrist? Well yes I believe it is given <u>all the facts of the case.</u>
	Justice =process, fairness =outcome.
E	Justice is if a wrong has been done to someone, that person[victim] is made whole again.
	Fairness is you treat everyone the same.
	Justice is if someone has made an honest mistake you don't drag them through a disciplinary.
	Justice is all one way to management.

NB.
1. TU=Trade Union, M=Manager, HR-Human Resources, P=Politician, E=Employee.
2. The above responses were the result of asking what "What the concept of justice and fairness means to you?"

APPENDIX 30

UK WORKING AGE POPULATION, HOST WORKFORCE, and DATA SET by AGE BANDING (Years).

AGE BANDING (YEARS)	17-24	25-34	35-44	45-54	55-69
UK POPULATION %	15.6	19.7	20.5	20.1	24.1
HOST WORKFORCE %	3.3	14.8	21.7	33.9	26.3
DATA SET %	13	15.2	19.4	31.9	20.5

APPENDIX 31

Mean days Absent (Annually) v Disciplinary Outcome (With UK Economy, Workforce and Data Set averages compared)
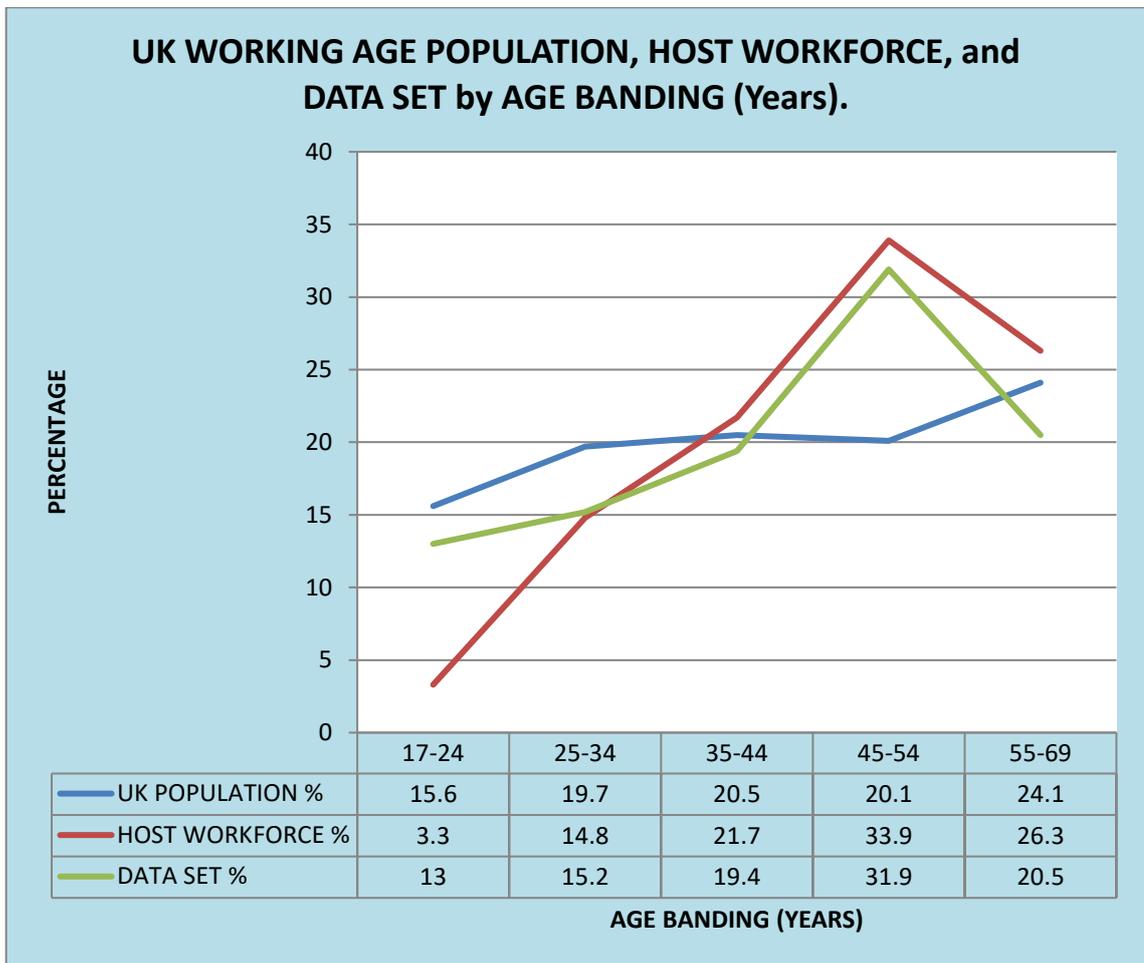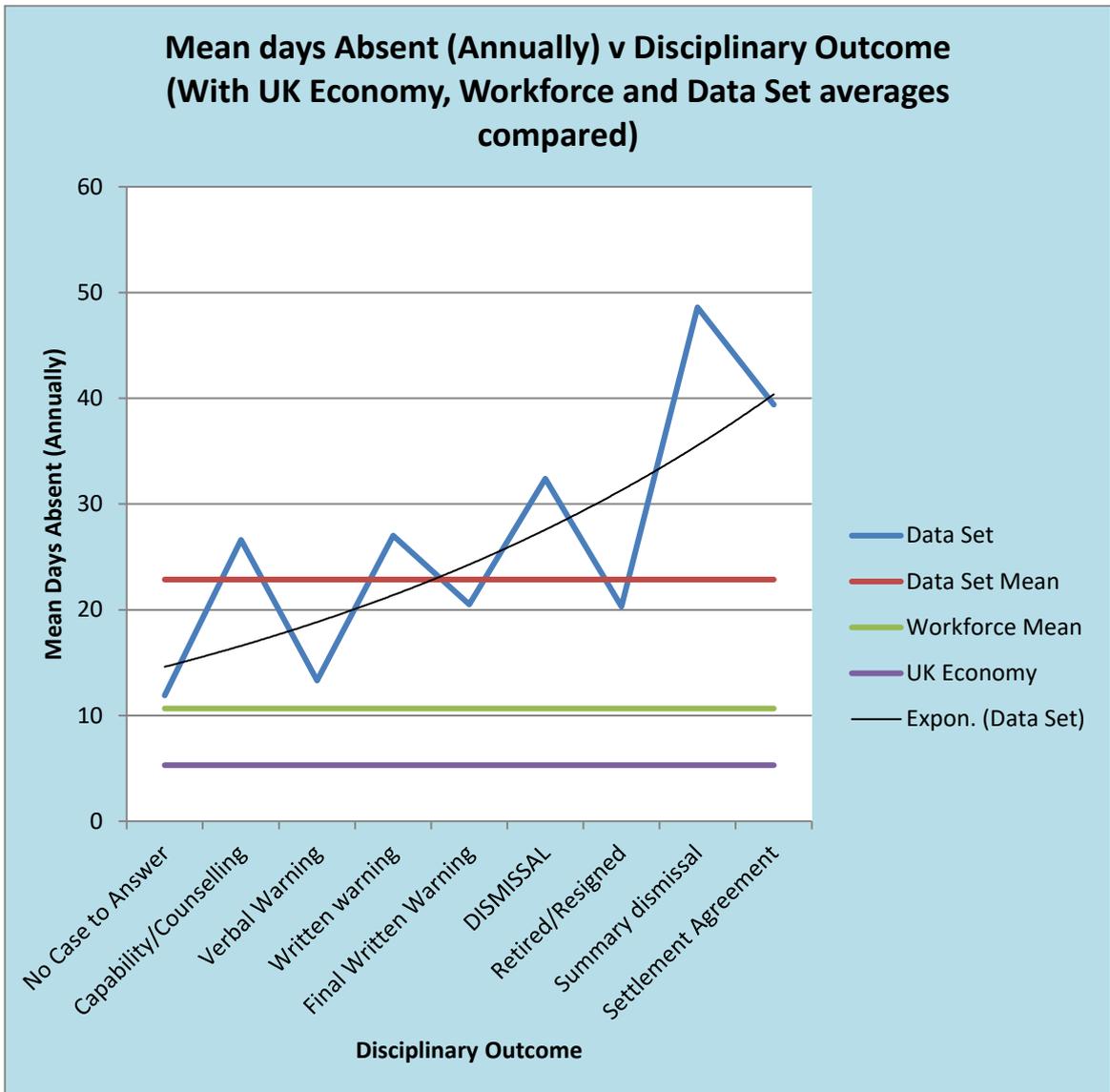
APPENDIX 32

Interview Transcript following an overnight 'Raid'@ on Work Premises.

"When I came into the office that morning the first thing [name] said to me is "we've been raided". What we discovered was that only one filing cabinet had been entered. The way the office was set up was main doors and reception to the building, to get through into the main building you had to have the staff key code. There was another key-coded lock further down [corridor]. Then there was an outer-office door which was locked, and inner-office door that was locked, and the keys to the filing cabinet were kept in a desk drawer which was also locked. So I don't need to tell you there weren't many people that had those keys. There were three people who had those keys [name], [name], and the admin worker. We also had an Apple mac computer---and the Admin worker saying "Everything has gone". All of my data had gone and it's worse than that because somebody had been on the computer, which you could see from the activity log, and on the log, we could see that things had been deleted. But whoever had done them and it could only have been [name], she was the only other person who had the password to the computer; and they had not emptied the trash can. But there were also two minutes of meetings which I had specifically <u>agreed </u>not to share information with [Government department] evaluators [bearing in mind this employee had already sent the report to them which this public body knew] without their [public body management] approval. And on both the dates in question I was on leave, one of them I was in Thailand"!