EMPLOYMENT TRIBUNALS

Claimant: Mrs A Mountney

Respondent: Wirral Metropolitan Borough Council

HELD AT: Liverpool **ON:** 30 and 31 January 2017
1, 2, 3, 6, 7, 8, 9 and 10 February 2017

BEFORE: Employment Judge Robinson
Mr A G Barker
Mrs J E Williams

REPRESENTATION:

Claimant: Mr S Mountney, Husband
Respondent: Mr A Moore, Solicitor

JUDGMENT

The judgment of the Tribunal is that:

1. The claims of disability discrimination, namely the failure to make reasonable adjustments, indirect discrimination and harassment, and the claims for whistle-blowing detriment, less favourable treatment as a part-time worker and failure to provide a written statement of particulars, fail and are all dismissed.

2. The claim for sex discrimination was not pursued by the claimant and is also dismissed.

REASONS

1. The issues to be dealt with by the Tribunal relate to public interest disclosure, disability discrimination and to the claimant's part time worker status.

2. Although the claimant's evidence over the course of the hearing and in her witness statement touched on other issues she had with the respondent, the only claims before the Tribunal, and we made this clear at the outset, were those claims

which are set out in the Scott Schedule. There are 33 of them and we have dealt with those claims individually.

3. The claimant still works for the respondent. She has worked in private companies previously. She was managed at the respondents in the time with which we are concerned by Mrs Robinson and Mr Tour.

4. It is worth saying something about credibility as there were times when the evidence of the claimant and the respondent witnesses was in direct contradiction .

5. We concluded overall that the respondent's witnesses were, in difficult circumstances, trying to remember all the issues with regard to the claims that the claimant brought which went back a number of years. We were content to accept their evidence as being more consistent and reasoned than the claimant's own evidence.

6. Mrs Mountney's evidence was often exaggerated and she was prone to hyperbole. She also had a high opinion of her own abilities and a low opinion of her managers, in particular, Mrs Robinson and Mr Tour which at times tainted the way she presented her evidence.

7. The witnesses that gave evidence on her behalf we considered were truthful witnesses but had their own individual agendas in wanting to give evidence to the Tribunal. Some of those witnesses were critical of the claimant. For example Mr Upton, who was her union representative, suggested that "her [the claimant's] views can be somewhat blinding at times". He also said that she took things "very personally".

8. The events of which Mrs Mountney complains seems to have caused the claimant's depression not because of the other respondent employee's actions but in the way the claimant has reacted to, sometimes, quite anodyne incidents. However we accepted that she was disabled within the meaning of section 6 of the Equality Act 2010 and the relevant disability is depression. We also accepted that the claimant was stressed and anxious at the time of this hearing and we took that into account when analysing her evidence.

9. The claimant is an intelligent woman who has not been afraid to raise grievances, to complain or put her point of view forward in the most forceful way.

10. Some of the claimant's evidence was contradictory. Her evidence initially was that she was very happy in Electoral Services but when questioned as to whether she had raised any grievances in that department she immediately went on the defensive and suggested that she was not as happy as first suggested and uncomfortable there because people in the office did not chat except for her friend, Rachell. Later on in her evidence she accepted that Mr Tour agreed to her going to the Electoral Services Department and that she was more than content to go there.

11. Before launching into the facts of this case we noted that the essence of this claim boils down to this - that the claimant was happy in the Electoral department until she found out that her grade was no longer to be an H grade. Any perceived grievances or detriments that the claimant suggests had no connection with her disability, her part time status nor that she was a whistle-blower.

12. There are some jurisdictional issues which need to be acknowledged and it is also important to set out what this claim is not about.

13. Mr Mountney, on behalf of his wife, and this was entirely understandable, often cross examined witnesses and mentioned in his submission that the treatment of his wife was unfair. There is no unfair dismissal claim before us. The claimant has not been dismissed.

14. We accepted that it has been stressful for the claimant whilst these issues have been going on. We also recognised that the same applies for some of the respondent witnesses, especially those who have been criticised by the claimant and been the subject of her ire. The claimant can be verbally vicious when criticising her peers and her managers. When she is thwarted she does not hold back. At the same time she seeks to portray herself as pleasant and understanding and it is others who are in the wrong.

15. We did not have to decide whether the treatment of the claimant by the respondent has caused her personal injury. We concluded, in any event, that the actions of the claimant's managers had been reasonable and should not have caused the difficulties the claimant now says they caused.

16. There is also some criticism by Mr and Mrs Mountney of her trade union. There was no claim against the trade union or its officers as they are not a party to these proceedings.

17. We were asked to deal with jurisdictional matters with regard to time. In the end we decided that all the claimant’s claims were a continuum. This is one piece, one story from Mrs Mountney and we found that it would not have been reasonably practicable to bring a claim until she suffered a detriment. The claimant alleges the detrimental actions of the respondent were connected to her whistle-blowing right up to the last events in her ET1 in January 2016, and that the termination of her H grade post was the culmination of that poor treatment.

18. Those claims from the autumn of 2015 up to 2016 are in time and we accept that some of those claims had their germination in treatment that took place in 2011. We therefore decided to deal with all the claims of the claimant and exercise our discretion with regard to the disability discrimination claims on a just and equitable basis to extend time to allow the claimant to proceed with her claims. With regard to the whistle-blowing, we found that it was not reasonably practicable to make any application to the Tribunal until the incidents which occurred in the autumn of 2015. That is when the claimant's claims in respect of whistle-blowing crystallised in her mind.

19. The claimant did not endear herself to her managers by involving herself in things which she had no right to be involved in. She was not a manager but she was highly critical of those who did manage. An example of her view that Mrs Robinson and Mr Tour were poor managers was when another staff member was given a holiday during an election period. Mrs Mountney did not think much of that and thought that that was wrong. Initially Mrs Robinson and Mr Tour refused the leave but the trade union representative for that particular member of staff became involved and eventually the leave was given. The claimant allowed her frustration

over those kind of decisions to boil over and cloud her own judgment. Those matters had nothing to do with her.

20. The claimant also had little time for the trade union representative of another employee called Mandy Gorman who made a complaint about Mrs Mountney and other employees. Ms Gorman taped the employees saying derogatory things about Ms Gorman who was thalidomide. The claimant was disparaging about the trade union officer's involvement in that investigation and disciplinary.

21. Neither Mrs Robinson nor Mr Tour had anything to do with the outcome of that disciplinary hearing taken against the claimant. The claimant accepted that she had used inappropriate language regarding the Gorman complaint but no sanction was issued to the claimant. It was right that the claimant, with others, were investigated over that matter as Ms Gorman's complaints were serious and the respondent would have been severely criticised, and rightly so, if they had not investigated the allegations.

Findings of Fact

22. The claimant is a part time worker for the respondent. From February 2011 she has worked in Electoral Services. She was downgraded on 2 November 2015 from Grade H to Grade F for reasons which we set out below.

23. The claimant says she did not know of a whistle-blowing policy at the respondent. She is experienced in the workplace. She has worked, for example, for KPMG in private practice. It is unlikely that she did not know the respondent had a whistle blowing policy.

24. The claimant suggests that people who raise grievances in their employment were mistreated. The evidence showed otherwise. For example the claimant accepted that Rachell Bramhall raised a grievance and nothing untoward happened to her.

25. The claimant did have a written statement of employment particulars given to her. For some considerable time her role was as a Scrutiny officer at H grade. When she was eventually moved to Electoral Services she remained on H grade for a while. She was never going to agree to go back to Scrutiny. At one point during her employment she refused to sign her amended contract of employment because she said the start date was incorrect. However, the contractual position was crystal clear. Firstly the claimant had had a statement of initial employment particulars which satisfied Section 1 of the Employment Rights Act 1996 and secondly her substantive role was as a Scrutiny Officer until she was taken on permanently in Electoral Services and, after evaluation, her grading was reduced to F.

26. The claimant accepted that there was a vacant Grade H post when she moved to the Electoral Services. She was not given that role. It was her colleague, Mr Davies, who moved into it when Mrs Robinson was temporarily away from the office ill. There was no change in the claimant's substantive role at that point.

27. Although the claimant wanted certainty and wanted to stay in the Electoral Services Department she still knew that her role was as a Scrutiny officer at grade H. It was for Mr Tour to sort that technicality out. She did Scrutiny work as and when

she was asked to do it despite being in a different department. The claimant became aware that the Scrutiny Department was going to be restructured. The claimant accepted that Mrs Robinson ultimately helped her get her substantive post in Electoral Services by lobbying Mr Tour.

28. What upset the claimant was that the role was eventually reduced from Grade H to Grade F.

29. The first protected disclosure the claimant made was in either November or December 2011 about a canvasser who had falsified signatures. The more signatures a canvasser gets the more that person gets paid. The canvasser we will refer to as MB. There was also another person, AP, who was also caught doing the same thing as MB. The claimant cannot remember the issue with regard to AP.

30. The claimant complained to Mrs Robinson about MB and it is likely that Kate Robinson informed Mr Tour of the issue, although Mr Tour could not remember being told. However, despite the complaint of Mrs Mountney MB was appointed again by Mrs Mountney to canvas at later elections. The claimant says that she had no option other than to re-appoint MB because she could not go “accusing people of committing fraud”. The claimant did not escalate the issue herself to Mr Tour.

31. In September 2012 Wirral Borough Council’s cabinet decided to change and restructure Scrutiny Services and in July 2013 Human Resources gave the claimant the opportunity to stay in Electoral Services or to go back to Scrutiny under a new manager, Fiona Johnston.

32. On 14 July 2013 at a meeting between Mr Tour, Mrs Robinson and the claimant a job description was given to the claimant showing that she was now graded F in Electoral Services. This was not a final decision as the role had to be evaluated formally. This was only the start of the consultation. Mr Tour had, on an ad hoc basis, considered the business need in Electoral Services with Kathy Robinson.

33. Nothing of note happened until September 2014 when it was decided that the restructure of Electoral Services should be dealt with at the same time as the Council wide restructure. The restructure was a money saving exercise started because of central government’s reduction in funding. Formal packs of information were given to all staff including the claimant.

34. In October 2014 the claimant was able to challenge being placed in the Band F role. She stated unequivocally that her role was not F but H. The consultation for the whole restructure ended on 24 November 2014. It was decided after a job evaluation process that the role for Mrs Mountney was at Grade F. The claimant never went into Electoral Services as a Band H role. During the two years she was there, before the restructure, she was paid as Band H only because of her nominal Scrutiny officer role.

35. On 13 July 2015 the claimant went off sick long-term. In September 2015 while she was off sick she was offered the new Grade F post and she was given until 2 October to reply. She did not reply as requested so was dismissed for redundancy at that time. She changed her mind and accepted the role on 13 November 2015.

36. The claimant could have appealed the decision to grade her at Grade F but once she accepted the new role that was the end of the whole process. The claimant does not have a breach of contract claim nor a constructive unfair dismissal claim in these proceedings. The question is was she treated in the way she was treated because she was a disabled person or because she was a whistle blower or because she was a part time worker?

37. Whistle blowing at Wirral Borough Council can be raised by telephone, face to face meetings or verbally, or indeed in writing.

38. The claimant alleges that her whistle-blowing claims are also about claims for payments made during the Police and Crime Commissioner (PCC) election. Initially this was a complaint about another employee, Mr Burgess, and not about Mr Tour or Mrs Robinson. It was a different allegation from the complaints she had made about the canvasser fraudulently claiming money. We accepted she was a whistle blower with regard to that matter as well.

39. On occasions the claimant would say, in an enigmatic way to managers, that she knew things about the Council and its employees that needed to be dealt with, and that certain people had lied about matters. She never expanded on these vague allegations.

40. However it was explained to the claimant that she could either raise these issues as a whistle-blower or by way of grievance but she never did so. Her next allegation was made on 9 February 2015.

41. On that day she had a meeting with David Armstrong, the Acting Chief Executive and Joe Blott, the Strategic Director of Transformation and Resources.

42. The claimant had therefore by that time made two whistle-blowing allegations – firstly about the canvasser MB and secondly about the Mr Burgess and the PCC, allegations. Mr Blott set up an investigation of the claimant's allegations. On 2 November 2015 the investigation found that the allegations of the claimant of improper payments to officials involved in elections was not proven.

43. In July 2013 Mrs Johnston, the new Head of Scrutiny, and Mr Williams from Human Resources told the claimant her employment was now in Electoral Services and she was no longer attached as a substantive role to Scrutiny. Unfortunately at that point it was not made clear to her what her role within Electoral Services was and what band she would be paid at.

44. It was shortly after the meeting with Mrs Johnston and Mr Williams that Mr Tour and Mrs Robinson informed the claimant that if she was to stay in Electoral Services she would be paid at Band F. The claimant suggested that whilst Mrs Robinson was absent from December 2012 she acted up into Mrs Robinson's role. That is wrong. It was David Davies who acted up during that period.

45. During those first 2 1/2 years when the claimant worked in Electoral Services she had to endure a disciplinary process because of Mandy Gorman's complaint mentioned above. However, that complaint was a complaint by Mandy Gorman and had nothing to do with Mrs Robinson or Mr Tour.

46. Mrs Mountney suggested that Mr Tour threatened her on a number of occasions that he would send her back to Scrutiny. Mr Tour did not harass the claimant in that way.

47. In February 2013 the claimant wanted an Occupational Health report. Mr Tour did not refuse, as the claimant suggests, her request he simply passed her on to her line manager, Mrs Johnston. That was the correct procedure.

48. The claimant also complains that her pay in March 2015 was wrong. It was immediately rectified. Although Mrs Mountney suggests that Mr Tour had something to do with that. He did not. It was a genuine mistake by Payroll.

49. We do not find that Mrs Robinson bullied the claimant. She did raise, however, with the claimant flexi leave in a rather crass way when the claimant was late for work. There was nothing wrong in raising the issue of the claimant's timekeeping but Mrs Robinson could have done it in a more appropriate way. We do not find that the respondent's conduct, however, has made the claimant ill. It is the claimant who has become unnecessarily worked up over perceived wrongdoings and her irritation with the way in which her department is managed.

50. There was no whistle-blowing in July 2013 when the claimant informed Lesley Hales of breaches in the PCC guidance. We are not sure that Lesley Hales was actually told of that in July 2013 (because she denied it), but even if she was told it was not a qualifying protected disclosure because Mrs Hales was not an employee of the respondent at that time.

51. Neither Mr Tour nor Mrs Robinson knew about any allegations the claimant had made in relation to the PCC until, at the earliest, February 2015 and as far as Mrs Robinson is concerned, probably not until March 2015. Mrs Robinson gave evidence, and we agreed with this, that she thought the allegation was against Mr Burgess regarding payments made to him and that, at that stage, it was not an allegation against her or Mr Tour.

52. We also find that allegations about MB in 2011 had long since been dealt with and forgotten by all the parties. The allegation now has only been introduced by the claimant to bolster her claim against the respondent in this litigation. If the claimant had wanted to make more of an issue of MB's wrongdoing she would have followed up her complaint, either to Mrs Robinson or Mr Tour, and she would not have employed MB as a canvasser in elections after the allegation.

53. With regard to her disability the claimant did go to Occupational Health in April 2013 but she refused to release the Occupational Health report to the respondent. The claimant suggested that she did not want to release her Occupational Health report to Mr Tour and it was only Mr Tour that she had issues with. However, we find that she refused to release the Occupational Health to the respondent generally.

54. Once Mrs Robinson received the letter of 16 January 2014 from Mrs Mountney (page 445 of the bundle) Mrs Robinson was put on notice that the claimant could well be disabled. We accept that up to that point the claimant's absence had been mainly to do with surgery she had undergone, but the claimant makes it clear in that letter that she is stressed because of work issues and also because of the serious potential consequences which were hanging over her head

with regard to the Mandy Gorman grievance and investigation. No stress risk assessment was put in place nor was a return to work interview arranged by Mrs Robinson, and that was remiss of her. She should have done those things in order to find out whether the claimant was disabled or not. However, we put the knowledge of the respondent as to the claimant's disability at that point, and despite Mrs Robinson's poor management the appropriate reasonable adjustment was put in place which was a phased return to work. There was no complaint at that time by the claimant and she returned to work.

55. At no point thereafter, however, did the claimant require a further reasonable adjustment. It is difficult to establish what the provision, criterion or practice ("PCP") is, and it is difficult to know therefore what disadvantage the claimant was suffering from. She had had a period of absence, she had come back to work of her own volition, she had had a phased return to work. Once back in work she carried on in the normal way. The claimant has never identified any PCPs.

56. Those are our general findings of fact. We now deal with the Scott Schedule allegations one by one and in doing so set out further facts. Those facts together with the findings of fact set out above have enabled us to come to our decision.

(1) The claimant was provided with employment particulars. She was given them on 15 October 2010. Her role was altered at the end of 2015 and she was given a clear indication in correspondence as to what the changes were, and that took place between 22 October 2015 and 16 November 2015. There has been no breach of section 1 of the Employment Rights Act 1996.

(2) We accepted that the complaint in or around December 2011 was a protected disclosure, but as set out above it was made long ago and nothing flowed from the issue. Indeed Mrs Mountney continued to employ MB as a canvasser. Mr Tour could not remember being told about the incident and we believed him and consequently any actions he did towards the claimant could not have been connected to that disclosure. As far as Mrs Robinson was concerned, nothing that she did when managing the claimant had anything to do with that complaint. Those issues went "into the ether". The incident with MB had no repercussions later on in the claimant's employment.

(3) We find that the claimant did not continue to raise concerns with Mrs Robinson about the canvasser. If she had Mrs Robinson would have done something about it. But as Mrs. Mountney continued to employ MB nothing needed to be done.

(4) We find that Mr Tour did not tell the claimant that she had to return to Scrutiny in the political corridor. There was no pressure put on her by anybody, let alone Mr Tour, to return to that political corridor. In any event we found that, if Mrs Mountney did have difficulties in the political corridor, she never made it clear to the respondent managers what those difficulties were. She kept her cards close to her chest and only started to mention these issues again once she was reduced from grade H to grade F. Before us the claimant did not make it clear what the issues in the political corridor were that made her so unhappy.

(5) The claimant suggests that the respondent's managers' actions exacerbated her stress. There is precious little evidence, however, that that is the case. The claimant was frustrated by what she considered was poor management of her but that had nothing to do with her disability or with the whistle-blowing. The claimant was kept in limbo for 2½ years in Electoral Services without knowing positively what her substantive post was or what her grade would be in that department. We believe that Mr Tour and Mrs Robinson had some vague idea that Mrs Mountney was complaining about Mr Burgess' issue as the Deputy Returning Officer during the PCC elections. Far from causing the claimant difficulty Mr Tour helped the claimant by allowing her to join her friend, Rachell Bramhall, in Electoral Services. There was concern by the trade union as to how Rachell Bramhall, Mr Davies and the claimant had been slotted into that department without going through a proper process. This may be why the claimant was upset with the union because the trade union was concerned about that issue. Ultimately we find that Mr Tour was doing Mrs Mountney a favour. He accepted that she was unhappy for various reasons in the political corridor. She was transferred to Committee Services for a short while, did not seem happy there and felt underused. Mr Tour helped her get into Electoral Services. The claimant was generally happy in Electoral Services until she was told what grade she would be on.

(6) Mr Tour did not refuse the request to send the claimant to Occupational Health. Mrs Johnson was technically her line manager because the claimant was still, ostensibly, part of Scrutiny. Her own witness, Mr Upton, agreed that it was 100% the right thing to do for Mrs Johnson to be dealing with the Occupational Health of the claimant and not Mr Tour. Mr Upton agreed that Mr Tour was correct in referring the matter to her line manager and not dealing with it himself.

(7) Mr Tour did not insist on the claimant going back to Scrutiny. She simply did her Scrutiny work whilst in Electoral Services on an ad hoc basis whilst helping out Mrs Robinson's team in Electoral Services. There was very little work to do in Scrutiny. Mr Tour did not ask her to be removed from Electoral Services.

(8) The claimant did not raise the serious issues with Lesley Hales as she suggests about the PCC election. This cannot be a protected disclosure because at the time Lesley Hales was not an employee of the respondent.

(9) The claimant did not raise the PCC issue with Mrs Robinson in July 2013. Mrs Robinson only knew of those allegations at the earliest in March 2015.

(10) The meeting on 4 July 2013 with Fiona Johnstone was a successful meeting as it was at that meeting that the claimant was told that she would now be formally moved from Scrutiny to Electoral Services. We accept Mrs Mountney was very happy about that. We also accept that on 9 July when she had her meeting with Mr Tour, Mrs Robinson and the HR assistant she became unhappy because she was told that not

only was her substantive post to change but that there was an intention to downgrade her to grade F. Fiona Johnson, head of Scrutiny, was at that point restructuring her political corridor. As set out above, the claimant had never been slotted into the vacant H grade post in Electoral Services as she suggests. We found that it was David Davies who managed that department when Mrs Robinson was absent through ill health.

There was therefore a need for the claimant's position within Electoral Services to be evaluated otherwise once more the trade union would have been unhappy. A job evaluation process had to take place. The claimant's position was different from Mr Davies' and Mrs Bramhall's position because they were in Electoral Services with substantive posts already. Neither Mr Tour nor Mrs Robinson dealt with the job evaluation process. That is done elsewhere within Wirral Borough Council. Mr Upton conceded that there was a remodelling and restructuring exercise going on and it was correct, he said, for the respondent to deal with the claimant's position in the autumn at the same time as the whole council was being re-evaluated. In other words, the delay in dealing with that matter from July 2013 through to the autumn was an appropriate way forward in view of the way that the council was looking at all their departments to consider how to restructure in order to save money and become more efficient. Mr Upton also accepted that the claimant's job had to go through a job evaluation process and he accepted also that when a job evaluation process is taking place any job can go up or down in grade. The decision to evaluate the role had nothing to do with whistle-blowing or the claimant's disability, and everything to do with due and proper process being followed by Wirral Borough Council. The claimant herself in her witness statement accepts that that has always been the way forward for Wirral.

(11) Mr Blott's "chat" with the claimant was informal and it was positive. The claimant agreed that it was a positive discussion. He thought she was coherent and could put her argument across. The claimant did not show, in her demeanour during that meeting, that she was afraid of raising a grievance. Mrs Mountney is not backward in coming forward and she was more than able to engage with Mr Blott in order to lodge a grievance if she had wished. The claimant, however, did not at that meeting tell Mr Blott that she was being bullied. Mr Blott would have done something about it if he had been told that. What Mr Blott did want was that the Mandy Gorman issue, implicating Mrs Mountney amongst others, was dealt with as quickly as possible to the satisfaction of all parties involved. Mr Tour at the same time told the claimant that the Gorman investigation had to be dealt with despite an election going on at that time. He was right to say that. This was such a sensitive matter that it could not be put off because of work commitments. There can be no criticism of the respondent wanting Mrs Mountney to do her job with regard to any elections that were going on even though an investigation or disciplinary process was being dealt with as well.

The claimant complains about the delay with regard to the Mandy Gorman investigation. The claimant's illness delayed a decision and that delay for the claimant was exactly the same as the delay for Mr Davies and Mrs Bramhall who were also implicated in the Mandy Gorman complaint. Neither Mr Davies nor Mrs Bramhall are disabled within the meaning of section 6 of the Equality Act 2010. The claimant has been treated no differently from them. The requirement to have the Gorman investigation pushed through had nothing to do with the claimant's whistle-blowing, nor had it to do with her disability. Once Mandy Gorman had put in a grievance about her colleagues it was important, and in the interests of everybody, to have that completed as quickly as possible, and Mrs Mountney can have no complaint about that.

(12) On 15 February 2014 Mrs Robinson did say that the people involved with Mandy Gorman would probably get a warning. Mrs Robinson accepted that. However, we find that that was Mrs Robinson's opinion. It was given to allay the fears of three members of her team and we believe she made it with the best of intentions. The treatment of Mrs Mountney was exactly the same as Mr Davies and Mrs Bramhall. It was not connected to the claimant's status as a whistle-blower nor connected to the claimant's disability. Mrs Mountney's colleagues were dealt with in exactly the same way and heard the same comment from Mrs Robinson.

(13) There was an investigation meeting in July 2014 with Mrs Mountney and there was a six month delay. Again, however, that delay was not limited to a delay for the claimant. All the people involved suffered that delay. The delay had nothing to do with the whistle-blowing or the claimant's disability. Mr Blott's evidence was that it was better to get it right even if there was a delay rather than rush to a conclusion and get it wrong. We accepted that sentiment from Mr Blott.

(14) Ultimately the claimant was told that her position in Scrutiny at H grade was to be deleted and that she would continue in Electoral Services at F grade. Whether that was fair or unfair for the claimant is not for us to deal with as there is no such claim before us. What we did decide was that it was not connected to either the whistle-blowing or the claimant's disability. Mr Tour decided that he would tell the claimant that she was downgraded to F. It was a preliminary decision, and he made that decision with Mrs Robinson's advice. Mrs Robinson was the person on the ground who could say what the role of Mrs Mountney was. In any event that was not the final decision. Mrs Mountney knew that it had to go through a job evaluator in order to place the appropriate grade upon the job that Mrs Mountney was doing in Electoral Services. Any employee in these circumstances would have gone through exactly the same process and therefore it can have nothing to do with the claimant's status as a whistle-blower or the fact that she was disabled. Importantly the final decision was not made by Mr Tour or Mrs Robinson who were the employees to whom the claimant said she had whistle blown.

(15) Mr Upton had given up on Mr Tour and the claimant having a meaningful working relationship. He accepted that both Mr Tour and Mrs Robinson were entitled, as the claimant's managers, to establish the claimant in a permanent substantive role after she had been in limbo in Electoral Services for two and a half years. Mr Tour's role in the process of re-grading the claimant was only the starting point. The claimant had plenty of opportunity with the assistance of Mr Upton to put her case forward to show that she deserved to be on H grade as opposed to F grade. Mr Tour and Mrs Robinson could not decide where the role of Mrs Mountney fell in the job evaluation process. The claimant suggests that the process was a sham orchestrated by Mr Tour. We disagree. It was a managerial decision to downgrade the claimant which had nothing to do with the whistle-blowing or the claimant's disability. The job evaluator had no idea that the claimant had either whistle-blown or indeed was disabled. The job evaluation process was done in the same way as for other employees.

(16) The claimant on the one hand says she cannot bear to talk with Mr Tour or consult with him, yet on the other hand her complaint is that he never corresponds with or contacts her. The claimant cannot have it both ways. For the claimant to say that she had no opportunity to consult on the down grading is wrong. In October 2014 the rationale for the downgrade was explained to her. The claimant was told that it was a preliminary assessment. All the staff of the council were at risk during that restructuring and the trade unions were involved generally to discuss and consult with in relation to the council wide restructure. The claimant was given a job description by Mr Tour to consider. These actions were entirely appropriate and were not connected to the claimant's whistle-blowing and/or her disability. Anybody else in the same circumstances would have been dealt with in the same way. There was no reasonable adjustment that needed to be put in place at that point because the claimant was capable of dealing with the issue and putting her point of view forward. The claimant did not request any reasonable adjustment during that autumn consultation. She was in no different position from any other of the employees going through a restructure or remodelling of their post.

(17) The claimant suggested by 20 January 2015 the relationship between her and her manager had deteriorated. That is not a true description of what happened. We find that the claimant and Mrs Robinson were friends, or certainly friends in work. They would go out and have a smoke together. We accepted that Mrs Robinson said both to Mrs Bramhall and the claimant that the vision she had for the department meant that there were would be increased work for both Mrs Bramhall and the claimant. However, once the claimant aired her objection about what Mrs Robinson was suggesting Mrs Robinson capitulated and agreed that her vision would not be put in place. There are two points here. Firstly, Mrs Robinson dealt with both the claimant and Mrs Bramhall in exactly the same way. Secondly once the claimant had aired her objection Mrs Robinson changed her mind. There is actually

no detriment to the claimant and even if there was it nothing to do with the whistle-blowing or the claimant's disability.

(18) Mrs Robinson, as the claimant's manager, did have issues with the claimant's lateness. The claimant's lateness was because of childcare responsibilities because she took her children to school. The lateness had nothing to do with the claimant's disability. However, Mrs Robinson did think the claimant was taking advantage of the flexitime process and took her to task privately. Mrs Mountney was upset about that. Mrs Robinson on one or two occasions mentioned timekeeping to the claimant in front of other staff. That was poor management. Mrs Robinson should have kept any discussions with Mrs Mountney private. However, we accepted Mrs Robinson was frustrated with regard to what she perceived was the claimant taking advantage of the flexitime process. Mrs Mountney was regularly coming into work at the last minute. We heard no evidence to suggest that the claimant was in breach of the flexitime policy.

Mrs Robinson's decision to discuss the matter with the claimant had nothing to do, however, with the claimant's whistle-blowing or disability and everything to do with Mrs Robinson's frustration about the way the claimant was dealing with flexitime. Mrs Robinson was herself a stickler for being in work on time and she expected her staff to follow suit. We find that she did overstep the mark with regard to Mrs Mountney but not for the reasons that Mrs Mountney now suggests.

(19) Other than saying that the claimant made a protected disclosure when meeting David Armstrong, the Acting Chief Executive, and Mr Blott on 9 February 2015, there is nothing to say about this allegation. We have accepted the claimant's status as a whistle-blower in any event.

(20) With regard to the job share, the facts are simple. Mrs Bramhall and the claimant suggested a job share to Mrs Robinson. Both were doing 21.36 hours per week. The job that was seemingly on offer was one for 37 hours. Mrs Robinson asked them to agree between themselves on a reduction of hours. They never did this, nor did they go back to Mrs Robinson with a proposal once she had discussed it with them. We accept that the vacant post they were discussing was an H grade post and it was a full-time post. Mrs Robinson made it clear that she was open to job share if the claimant and Mrs Bramhall could come up with a proposal and they never did.

The way Mrs Robinson dealt with this matter was not less favourable treatment of the claimant as a part-time worker because there was no less favourable treatment of the claimant. There was a proposal, a discussion and then the matter faded into the background.

Mrs Robinson would have considered the issue if either Mrs Bramhall or the claimant or both had come back to her on the point.

(21) There was no cross examination of Mrs Robinson on this allegation. If it was said, it was a silly comment by Mrs Robinson but again had

nothing to do with the whistle-blowing or the disability of the claimant, and we are not sure how the comment of "now I know how to commit fraud" could be perceived as a detriment to the claimant.

(22) Having listened to the measured evidence of Mr Blott and heard him deny that he raised his voice, we do not accept that he turned nasty. He did tell the claimant off for the use of foul language to his personal assistant. The claimant accepted that she had used such language. Mr Blott listened to all that the claimant had to say patiently. The meeting on 1 July 2015 took one hour 35 minutes. Mr Blott said he had an open door policy and we accepted that that was the case. The claimant requested no reasonable adjustment of Mr Blott at that time. If she had requested reasonable adjustments we are sure, having heard Mr Blott's evidence, that he would have made arrangements to put them in place. Mr Blott did not act in the way that the claimant suggests. As a postscript to this allegation we noted that the claimant is more than capable of using language in a way, which if used towards her, would immediately spark protest and a complaint. Mr Blott was an exemplar of patience and understanding in the face of very poor behaviour by a junior employee.

(23) There was no request by the claimant to amend the absence management policy or process. She did not ask for that reasonable adjustment and in any event we find that Mrs Robinson would have been, and was, sympathetic to the claimant. Consequently there was no reason to require a change in the process. Mr Upton did not ask for such a change on the claimant's behalf.

(24) There was no assurance by Mr Blott or Mr Williams that the claimant would not be downgraded until the outcome of her grievance was dealt with. That would have been illogical. Mr Tour was not trying to get the claimant out of Electoral Services. Indeed he recognised she was needed in there. It was a busy office. All he wanted to do was have her cemented into a proper post because she had not been over the previous 2½ years. The process of evaluation had to be done and as we have said, it was done through a proper process. There was no connection in relation to this allegation to the claimant's whistle-blowing or disability. Any employee in the same circumstances would have been dealt with in the same way. We accept that any employee being downgraded so that their salary is reduced would, like the claimant, be upset and frustrated.

(25) The claimant was upset about the downgrading. She thought that she was better than grade F but by September/October 2015 the die had been cast and the process had run its course. She had had both her husband and her union representative to support her. To delay the implementation of the F grade would have been wrong, especially as other employees of the council were being taken through a restructuring process. The other employees in similar circumstances were dealt with in the same way as the claimant. It is not a reasonable adjustment to modify the time period because the process was being

rolled out Council wide. In any event the respondent was prepared to let the claimant appeal her dismissal.

However once she accepted her F grade role that was the end of the matter. No reasonable adjustment would have taken away any disadvantages in those circumstances save to keep the claimant in her role with an H grade.

To keep the claimant at H grade was not a reasonable adjustment in the circumstances because it would have undermined the job evaluation process. Furthermore it was a process dealt with by managers and the Union officials who were not connected to either Mr Tour, Mrs Robinson nor indeed Mr Blott. Putting that job evaluation into context the Council were under pressure to save costs and it would have been unfair to other staff who were affected in the restructure to delay implementation. However unfair the claimant and her husband believe the process to have been it was not tainted by the claimant's status as a part time worker, her status as a disabled person or her status as a whistle blower.

(26) Mr Blott has dealt with all the issues raised, either by Mr Upton or the claimant, in his email of 12 October 2015. We have revisited that email. It is a very clear. He tells the claimant, reasonably, that all the issues that she now raises can be dealt with when she is back in work and feeling better. The claimant is still absent from work. That is an entirely appropriate way of dealing with the issue by Mr Blott. The treatment of the claimant in this regard had nothing to do with the whistle-blowing or indeed her disability. There is no detriment to the claimant in relation to this allegation either.

(27) We do not accept, for the reasons already given, that Mr Blott was rude or angry with the claimant. We find that he has treated the claimant with the utmost respect despite the claimant herself accepting that her behaviour "dipped below the standard expected of an employee".

(28) The letter terminating the claimant's employment was only sent because she did not respond to letters to her. We do accept that the claimant was ill during that period but she had not only union support but the support of Mr Mountney. Mr Mountney has been extremely supportive of his wife throughout the process and was more than capable of putting his wife's point of view to her employers. A letter could have been sent by the claimant or her husband to the respondent. We find that she hid certain things from her husband, and once she accepted the grade F role matters moved on and the appeal process was stopped, as there had been no dismissal at that point. There is no connection in the treatment of the claimant to the whistle-blowing or to her disability. The respondent could, of course, have enforced the termination and said that it was too late for the decision to dismiss to be reversed. However, the respondent acted reasonably by allowing the claimant to come back into the fold and accept her F grade post after the time for acceptance had long since passed. Those are

not the actions of an employer, as Mrs Mountney suggests, "out to get" the claimant.

(29) The claimant's appeal would have proceeded if she had not accepted the F grade job. There is no evidence to suggest that the respondent would have curtailed that process. The way the respondent dealt with the process was in no way connected to the whistle-blowing or her disability. There was no reasonable adjustment that could have been put in place to take away the disadvantage. The matter had to be concluded and it was.

(30) The question of a letter being sent by Mrs Robinson on 3 December 2015 requesting a welfare visit was hardly touched on during the eight days of the hearing. We are not exactly sure what the allegation is. Doing the best we can we felt that the letter written to the claimant on 15 December 2015 was a standard letter but it was an appropriate letter to send. It is the sort of letter that is sent out by many employers in those circumstances. The contents of the letter caused no detriment to the claimant. In any event Mrs Robinson had no idea at that stage that the claimant was saying that she did not want contact with her line manager. The letter does not harass the claimant. That is the allegation. It is a straightforward letter asking the claimant whether her manager can assist her in order to get her back to work.

(31) We do not accept that Mr Blott said that the claimant was not a whistle-blower. The notes of the meeting do not suggest that. The notes of the meeting are handwritten but they are Mr Blott's notes. Mr Blott denies that he said such a thing. When Mr Mountney gave his evidence he rode back from the allegation by saying, and we quote:

"He [Mr Blott] wanted me to say that she wasn't a whistle-blower."

On balance, therefore, we decided that Mr Blott made no such remark and therefore there is no detriment to the claimant with regard to that allegation.

(32) We do not believe the discussions between Mr Blott and Mr Mountney amounted to a detriment to the claimant. Far from it. We got the impression that their meetings and discussions were amicable. There was mutual respect between Mr Mountney and Mr Blott. We found that Mr Mountney was entirely reasonable during those encounters, as was Mr Blott. Indeed both Mr Blott and Mr Mountney came across when giving their evidence as being reasonable and thoughtful doing their best to help in difficult circumstances. We accept Mr Blott said, "Let's have one more go to sort out this matter internally". Mr Mountney agreed to that proposal. The working out of that issue, we have to say, may still have some mileage but as we speak there is no detriment to the claimant with regard to that allegation.

(33) The claimant did agree to allow Mr Mountney to be the filter for any information from the respondent. We suspect that he continues to be that filter. Ms Fisher's evidence rang true. The respondent had

concerns about data protection if they communicated with Mr Mountney. Once they had received the solicitor's advice the Council agreed that they would go through Mr Mountney. That seems to us to be a reasonable approach. Again there is no detriment to the claimant because she was allowed to have communication go through her husband rather than directly to herself. The respondent, we accept, was initially wary of doing that. They knew that there were strict rules with regard to data protection but ultimately they were happy to communicate with Mr Mountney. There is no detriment to the claimant and in any event the Council's actions have nothing to do with the claimant being a whistle-blower or disabled.

The Law

57. We felt that setting out both the facts and our decision on each of the Scott schedule allegations was the best way to give our decision and that is the way it was announced to the parties orally at the end of the hearing.

58. However, the law we have applied to the facts and issues is as follows.

59. Our task in relation to discrimination is to identify what the claims were, and with regard to the claim for breach of the duty to make reasonable adjustments identify the provision criteria or practice (PCP) in relation to each of the allegations. In some instances it was difficult to identify what the claimant was complaining about. Neither the claimant nor Mr Mountney identified the PCPs upon which they relied. We constructed the following PCPs:-

59.1 Taking the claimant's job role through a job evaluation study potentially placed the claimant at a disadvantage;

59.2 That leaving the claimant in Scrutiny as opposed to Electoral Services was a PCP which again potentially put the claimant at a disadvantage;

59.3 Taking the claimant through an investigation and disciplinary process with regard to the Mandy Gorman issue placed the claimant at a disadvantage;

59.4 That continuing to be line managed by Mr Tour and Mrs Robinson was placing the claimant at a disadvantage.

60 With regard to the indirect discrimination and harassment and failing to make reasonable adjustments claims, if we establish facts from which the Tribunal could decide in the absence of any other explanation that the respondent contravened the provision that has been identified then we accepted that the Tribunal must hold that the contravention occurred unless the respondent showed that they did not contravene that provision.

61 With regard to indirect discrimination we endeavoured to establish the detrimental action relied upon and we asked ourselves whether the PCPs identified by us put the claimant at a disadvantage, and whether ultimately the respondent could not show the PCP to be a proportionate means of achieving a legitimate aim.

62 With regard to reasonable adjustments, we have to identify a PCP and we needed to identify the detrimental action relied upon and if the respondent had failed to comply with the duty to make reasonable adjustments whether failing to make the reasonable adjustments put the claimant at a substantial disadvantage in comparison with a non disabled person. The respondent is required to take such steps as is reasonable to have to take to avoid the disadvantage.

63 With regard to harassment we considered whether the respondent engaged in unwanted conduct relevant to the protected characteristic, and whether the conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. We considered whether the conduct might have the effect of violating the claimant's dignity and also what was the claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect.

64 With regard to whistle-blowing we considered whether the disclosure was in the public interest? Did the disclosure qualify in that the claimant reasonably believed the disclosure tended to show that a criminal offence had taken place, a breach of a legal obligation, a miscarriage of justice, health and safety was endangered or environmental damage was being caused.

65 We then had to decide whether the disclosure was protected, in other words was it made to the employer, the appropriate regulator, or if made to a third party and did the claimant reasonably believe it was substantially true? Was it made for personal gain? Was it reasonable in all the circumstances to disclose?

66 With regard to causation in terms of the detriment can the respondent show that the detriment was not done on the grounds that the disclosure was made?

67 With regard to the regulation 5 claim relating to the Part Time Workers (Prevention of Less Favourable Treatment) Regulations, we had to decide was the claimant a worker? Was she a part-time worker? Has the claimant identified a comparator? If so, has the claimant been treated less favourably than the comparator? Was the less favourable treatment on the grounds that the claimant was a part-time worker? Was the less favourable treatment, if there was such less favourable treatment, justified on objective grounds?

68 With regard to a failure to provide a written statement of particulars, we had to decide whether the employer did give to the employee a written statement of particulars of employment, and that written statement of particulars included those matters which are contained in section 1(3) and (4) of the Employment Rights Act 1996.

69 In the judgment above we have dealt with most of the issues. However we felt that it would be helpful to the parties to summarise how we applied the law to the facts and summarise our conclusions.

70 We concluded that the claimant was disabled within the meaning of section 6 of the Equality Act 2010.

71 However, the treatment of the claimant was not as she describes. We accepted the respondent's witnesses' evidence rather than the claimant's witnesses' evidence for the reasons already set out.

72 These claims come down to one particular issue. That is the claimant's grading reduction from H to F and it is that which seriously upset the claimant. She felt, and still feels, she is worth more than that as an employee. Although unhappy at times when working in Scrutiny there was no connection between that unhappiness and her status as a whistle blower or as a disabled person. The claimant never described for us the details of why she was unhappy in Scrutiny. Indeed she kept that information from us. We find that when, ultimately, she was transferred to Electoral Services she was delighted. She got what she wanted and worked there for 2 ½ years without any serious difficulties and without escalating issues to her managers Mr Tour and Mrs Robinson. There was one cloud on the horizon and that was the complaint by Ms Gorman. There was no connection between that matter and the claimant's status as a whistle blower and/or her disability. The difficulties with Ms Gorman had nothing to do with her managers and everything to do with her, and her colleague's, fraught relationship with Ms Gorman. The PCPs which we have identified at paragraph 59 did not place the claimant at a disadvantage with regard to her indirect discrimination claim when compared to other persons with whom the claimant did not share the characteristic as a disabled person. Even if it did the respondents have proved that dealing with the claimant in the way they did on all issues was a proportionate means of achieving a legitimate aim. Furthermore the claimant did not suffer less favourable treatment on the ground she was a part time worker and the respondent have shown that any detriment in going through a job evaluation was not done on the grounds of the claimant making a protective disclosure. This litigation was born out of one matter and that is the grading issue. The preliminary decision by Mr Tour and Mrs Robinson to do that and to have her role evaluated is the major cause of these proceedings being isued. The claimant has become ill because of that and has trawled back over her employment and endeavoured to find a link between that re-grading and all the other allegations contained in her Scott Schedule. She has failed.

73 The claimant has set out a catalogue of wrongdoing that she sees the respondent and its managers have inflicted upon her. But looking at the situation as she perceived it, it was not reasonable for her to see these slights as detriments or less favourable treatment upon her for the reasons set out above.

74 Furthermore all reasonable adjustments that could have been made were made and none of the respondent's employees engaged in unwanted conduct relating to the claimant's protected characteristic. It follows that the conduct did not have either the purpose or effect of violating the claimant's dignity or created an intimidating, degrading, humiliating or offensive environment for her. In deciding that we took into account the claimant's perception and all the circumstances of the case. It was not reasonable for any conduct of the other employees, including her managers, to have that effect. Quite the contrary it was often the claimant's unpleasantness in work which caused difficulties for her managers.

75 None of the other employees actions that the claimant has criticised had anything to do with her whistle-blowing, her status as a part time employee or disability. When Mrs Mountney made a complaint they reacted to it, and in an appropriate way.

76 In short, none of the claims of the claimant succeed and consequently we dismiss all of them.

22-06-17
Employment Judge Robinson

JUDGMENT AND REASONS SENT TO THE PARTIES ON

26 June 2017

FOR THE TRIBUNAL OFFICE