



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

Case No: S/4100182/2017

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Held in Glasgow on 10, 11, 12, 13 and 14 July 2017  
and 7, 8, 9 March and 6 April 2018

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Employment Judge: Frances Eccles  
Members: Rhona McColl  
James Burnett

**Mrs Moira Byers**

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**Claimant**  
**Represented by:-**  
**Mr S John –**  
**Counsel**

**Comlongon Ltd**

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**First Respondent**  
**Represented by:-**  
**Mr M Howson –**  
**Senior Litigation**  
**Consultant**

**Philip Ptolomey**

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**Second Respondent**  
**Represented by:-**  
**Mr M Howson –**  
**Senior Litigation**  
**Consultant**

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## **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The **unanimous** Judgment of the Employment Tribunal is that (i) the claimant was  
35 unfairly dismissed by the first respondent; (ii) the first respondent shall pay to the  
claimant a basic award of **£9,340.50** (1.5 x 13 x £479); (iii) the first respondent shall  
pay to the claimant a compensatory award of **£29,952**; (iv) the claim of discrimination  
**E.T. Z4 (WR)**

because of marriage is not well-founded and shall be dismissed; (v) the first respondent failed to provide the claimant with a written statement of her employment particulars for which the first respondent shall pay to the claimant compensation of **£1,916** & (vi) the claim of unauthorised deduction from wages shall be dismissed.

5 The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to the award. The prescribed period is 2 November 2016 to 21 June 2018. The total award for the purposes of recoupment is **£39,292.50**. The prescribed element is **£17,461.99**. The total award exceeds the prescribed element by **£21,830.51**.

## **REASONS**

### 10 **BACKGROUND**

1. The claim was presented on 30 January 2017. The claimant complained of (i) unfair dismissal; (ii) discrimination on grounds of marriage; (iii) unauthorised deduction from wages & (iv) failure to provide a written statement of employment particulars. The claim was resisted. The reason  
15 advanced by the respondents for the claimant's dismissal was gross misconduct. The respondents denied having discriminated against the claimant because of marital status. They disputed that the Tribunal had jurisdiction to consider the claim of discrimination on the grounds that the claimant's complaint was of less favourable treatment because of a dispute  
20 between the second respondent and her husband as opposed to her marital status. The respondents did not accept that any payments were outstanding to the claimant. They reserved their position regarding failure to provide the claimant with a written statement of her employment particulars.

2. The second respondent was party to the proceedings because of uncertainty  
25 at the start of proceedings as regards the identity of the claimant's employer and because the claimant complained of discrimination by the second respondent. By the time of the Hearing, the Tribunal understood that it was not in dispute that the claimant was employed by the first respondent. The second respondent remained in the proceedings as the claim of  
30 discrimination was brought against both respondents.

3. The case was listed for a full Hearing at which the Tribunal heard evidence from the second respondent; Katie Pascoe, General Manager & Sara Walasz, Bookkeeper. The claimant gave evidence and called her son, Steven Byers; Alexander Roberts, former Duty Manager; Stuart Dalglish, former Chef; Ashley Paterson, former Head Receptionist & Emma Graham, her daughter and former Head Housekeeper. The Tribunal was provided with a Joint Bundle. During the Hearing additional documents consisting of staff rotas (P75) and notes of “banked hours” (P76) were produced by Emma Graham. They were lodged by the claimant. The Tribunal was also shown a video from You Tube on which Katie Pascoe introduced herself as the General Manager of the first respondent. The claimant was represented by Mr Simon John, Counsel. The respondents were represented by Mr Michael Howson, Senior Litigation Consultant.

#### **FINDINGS IN FACT**

4. The Tribunal found the following material facts to be admitted or proved; the claimant was employed by the first respondent from 1 April 2003 to 1 November 2016 when she was dismissed. The first respondent is a hotel and wedding venue trading as Comlongon Castle (“the castle”). The castle is situated near Dumfries and employs around 22 people. Most of the employees are from a close-knit rural community. Many are related or friends. The second respondent is the sole Director and owner of the first respondent. The claimant began employment with the first respondent as a Housekeeper. She was promoted to the post of Receptionist/Wedding Coordinator in 2006 and to the post of Hotel Manager in 2007. When first promoted to the post of Hotel Manager, the claimant job-shared with the existing Hotel Manager until her predecessor’s retirement in 2008. The claimant was not trained for any of the above roles. She was not provided with a statement of written employment particulars. At the date of her dismissal the claimant was aged 55. Her average weekly wage was £576. Her average take home pay was £449 per week.

5. As Hotel Manager, the claimant was responsible for the day to day management of employees working at the castle. She enjoyed her job and regularly worked more than her contracted hours. The second respondent was also involved in the management of the castle. He authorised larger financial transactions, discounts and operational changes. The second respondent's mood was unpredictable. He would rarely attend work until the afternoon and worked into the night. He could be impulsive and had a tendency to issue instructions in emotional and intemperate terms.
6. The first respondent has a business relationship with Gretna Wedding Bureau ("GWB") involving wedding receptions held at the castle. It was agreed with the second respondent that GWB would be charged £500 for each wedding reception booked through them. The second respondent instructed Ashley Paterson, Head Receptionist to take responsibility for invoicing GWB. Around August 2015 errors with invoices issued to GWB came to the second respondent's attention resulting in a sum outstanding to the first respondent of around £18,000 (P6). An arrangement was reached between the second respondent and GWB for payment of money outstanding and future invoicing. Further errors occurred in relation to invoicing GWB which resulted in a further significant shortfall of around £10,000. The second respondent met with GWB to agree payment of the shortfall. No employees, including Ashley Paterson and the claimant, were reprimanded for the above errors.
7. The first respondent received bookings through on-line travel agencies. The claimant did not receive training on how to operate on- line bookings. This resulted in errors which included failure by those working at Reception including Ashley Paterson and Katie Pascoe to obtain payment from guests. The claimant was not responsible for the errors and was not reprimanded when they came to light. Around late 2015 the second respondent informed the claimant that Katie Pascoe would have sole responsibility for on-line bookings and would process payments for which she received training.
8. Management systems at the castle were informal and had not been updated for some time. In relation to wages, the respondents operated a system of

“banking hours”. The system was operational when the claimant was first appointed as Hotel Manager. It allowed employees to defer payment of wages earned during busy periods, normally the summer months, to less busy periods, normally the winter months. Hours to be “banked” were recorded by most employees in note books which they kept in various places around the castle. Each week employees would inform the claimant of the hours they had worked that week and the total hours for which they sought payment including any holidays and banked hours they wished to claim. The claimant would check the hours worked against the rota for the week in question and prepare a wage sheet (P31) detailing the hours claimed by each employee. The wage sheet was faxed to the respondents’ Bookkeeper, Sara Walasz who would calculate the payment due to each employee, prepare wage slips and arrange a bank transfer to pay the employees’ wages.

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9. A number of employees at the castle, including the claimant, Heads of Department for Reception, Housekeeping and the Kitchen were guaranteed a minimum number of hours each week. Any additional hours worked could be banked. The claimant’s daughter, Emma Graham, as Head Housekeeper was guaranteed 30 hours each week. Around 2014, attempts were made by the second respondent to issue employees with zero-hour contracts. Those employees guaranteed a minimum number of hours refused to vary their contracts. The second respondent did not insist that zero-hour contracts were issued. The existing contractual arrangements remained in place. Around the same time the claimant distributed Handbooks to employees. The claimant expressed concerns about the informality of the systems in place for recording hours. She suggested to the second respondent that they introduce a system for clocking in and out. The second respondent was not persuaded that such a system would be financially worthwhile. It was not introduced.

10. The claimant was authorised to open mail delivered to the castle. Mail for the second respondent was placed in his office. The second respondent’s office was untidy and disorganised. He worked irregular hours. He drank at work. Confidential paperwork including personnel files were stored in the drawer of

a desk situated in the castle's office. A key to the drawer was kept in the castle safe. A number of employees in addition to the claimant had access to the safe.

- 5 11. There were tensions and jealousies between employees at the castle. On occasions these were caused by the allocation of hours and duties in the various departments. As Head of Housekeeping, Emma Graham prepared the rota for housekeeping and allocated shifts. Disagreements occurred between Katie Pascoe and Ashley Paterson who were both employed in Reception. They argued over responsibility for a cancelled discotheque and  
10 missing paperwork. Around February 2016 one such disagreement came to the claimant's attention. The claimant sought to deal with the situation informally by meeting with Katie Pascoe and Ashley Paterson. The claimant understood that she had managed to resolve matters informally. Both Katie Pascoe and Ashley Paterson advised her that this was the case. Katie  
15 Pascoe remained unhappy about her working relationship with Ashley Paterson.
12. Emma Graham was on maternity leave from 1 January 2016. By the time her maternity leave was due to start, she had banked hours and accrued holidays for which she intended to obtain payment while on maternity leave. During  
20 her maternity leave, Emma Graham continued to work 5 hours each week undertaking management duties including rotas and ordering supplies. She worked at home when not in the castle. She also worked additional hours each week to cover holidays and sick leave of other employees in housekeeping. This arrangement was agreed with the second respondent.  
25 During her maternity leave, Emma Graham claimed the equivalent of her full-time wage of £270 per week using hours worked, banked hours and accrued annual leave (P15). She returned to work full-time from maternity leave in April 2016. Before her return to work, and on the advice of Sara Walasz, she also received payment for Keeping in Touch days for weeks commencing 28  
30 March and 4 April 2016 (P31/130-131).

13. The claimant and her family are neighbours of the second respondent. They were close friends. The claimant's daughter Emma Graham had worked for the first respondent for around 6 years and was Head of Housekeeping. The claimant's husband Bryan Byers undertook work for the second respondent including the purchase of wine. He is also a tenant of land owned by the second respondent. During 2016 the second respondent received notification that Bryan Byers had registered an agricultural interest in the land. The second respondent could find no record of receiving any notification of the registration to which he would have objected. He suspected wrongdoing by Bryan Byers.
14. The second respondent was angry and frustrated about the situation with the land. On 2 June 2016 the claimant was in the castle making arrangements for a wedding due to take place the following day. She had not planned to be in the castle but was keen to ensure that arrangements were made for the wedding. The second respondent told the claimant that he had to send her home due to the "land situation". He informed the claimant that if she could convince her husband to leave the land that she could return to work immediately. There was mention of the claimant having a period of 48 hours within which to "*sort matters*". The second respondent said that the claimant's husband was involved in fraudulent activities for which he would be arrested and end up in prison. Before leaving the castle the second respondent requested that the claimant visit the local bank to authorise a bank transfer for the first respondent. Later that day the second respondent spoke to the claimant's daughter, Emma Graham, by telephone. The second respondent told Emma Graham that he had sent the claimant home because of the land dispute. He suggested that she should try to get her father off the land to allow the claimant to return to work. He told Emma Graham that her father would be found guilty of fraud and asked her how her son would feel about visiting his grandfather in prison.

15. The claimant's husband did not leave the land. The second respondent was furious. He sought advice from Peninsula, HR Consultants. He sent a letter to the claimant dated 3 June 2016 (P9/70) in the following terms;

5 *"(Further to our meeting on 2<sup>nd</sup> June) I write to confirm that you have been suspended on contractual pay to allow an investigation to take place following the allegations of alleged misappropriation of company property, specifics it is alleged that you intercepted a letter sent to the proprietor via recorded delivery containing confidential company information. As your employer we have the duty to fully and properly investigate this matter.*

10 *Suspension from duty on contractual pay is not regarded as disciplinary action. It is merely a holding measure pending further investigations where it is undesirable for an individual to remain on duty.*

15 *The duration of the suspension will only be for as long as it takes to complete the investigation. During suspension you remain our employee and continue to be bound by your terms and conditions of employment. It may be necessary for me to contact you and/or require you to attend an investigation meeting and you are required to make yourself available during your normal working hours.*

20 *You are instructed not to contact or to attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any other employee or client of ours. I am duty bound to inform you that a failure to abide by this instruction would be treated as an act of misconduct. However, if there is anyone whom you feel could provide a witness statement which would help in investigating the allegations against you, then please contact me and I will arrange for them to be interviewed.*

25 *Should the investigation indicate that there is some substance to the allegation(s) you will be required to attend a disciplinary hearing. You will*

*be provided with all the relevant documentation prior to the hearing and you will be notified in writing of the time, date and venue.*

*Once our investigations have been completed, we will contact you again to inform you of what action, if any, we will be taking.*

5 *If you have any queries regarding the contents of this letter please contact me”*

10 The claimant’s husband remained on the land. The second respondent did not want the claimant to return to work. He arranged for a further copy of the above letter (P10/71) to be delivered to the claimant by Sherriff Officers on 28 June 2016.

15 16. Following the claimant’s suspension, the second respondent encouraged employees to come forward with statements about the claimant. He sought the assistance of Katie Pascoe to undertake the claimant’s duties as Hotel Manager. Katie Pascoe examined the first respondent’s pay records and noticed that while on maternity leave Emma Graham was paid the equivalent of her full-time wage and £409.58 for weeks commencing 28 March and 4 April 2016 (P31/130-131). Katie Pascoe brought the above payments to the second respondent’s attention.

20 17. Sara Walasz, the first respondent’s Bookkeeper attended the castle on 7 June 2016. The second respondent and Katie Pascoe suggested to her that she had been misled by the claimant and Emma Graham about payment of wages during Emma Graham’s maternity leave. Sara Walasz felt anxious about any suggestion that she had been involved in an overpayment to Emma Graham. The second respondent encouraged Sara Walasz to telephone Emma Graham for an explanation. Based upon information provided to her by the second respondent and Katie Pascoe, Sara Walasz accused Emma Graham of lying to her. Emma Graham sought to explain that she had claimed “banked hours” during the period in question and referred to her note book

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which she understood to be in the castle's laundry. The second respondent and Katie Pascoe informed Sara Walasz that they could not find the note book in the laundry. Emma Graham became upset and denied any wrongdoing. Sara Walasz was encouraged to provide a statement (P25/115) describing her telephone conversation with Emma Graham. In her statement (P25/116) Sara Walasz stated that she was "*so angry and shook by the discovery that I was lied to and mixed up in such a situation that I didn't even notice who or how many people heard*". Shortly after her telephone conversation with Sara Walasz, Emma Graham resigned from the first respondent's employment.

18. Statements were obtained from various employees of the first respondent including Katie Pascoe (P12); a friend of the second respondent, Caroline Love (P13/78-79), Virginia Bingham (P14/80-81); the mother of Katie Pascoe, Ann Fellows (P17/87-88) & Tracy Walker (P26). Sara Walasz also provided statements (P16 & P25). The statements were critical of the claimant and Emma Graham. Around the same time, several employees who were supportive of the claimant left the first respondent's employment. They were not asked to provide statements.

19. By the time of providing her statement (P12), Katie Pascoe was undertaking the claimant's role as Hotel Manager. She described having had "*several concerns about certain practices at the Hotel*" under the claimant's management. She referred to difficulties with GWB and on-line bookings and the claimant's attitude to the first respondent's business. She implied that the claimant was responsible for the difficulties. She described monitoring the business and took credit for arranging a booking with South African connections which she claimed had been turned away by the claimant. She referred to Emma Graham's hours pay while on maternity leave and her examination of the filing cabinet in which paperwork was stored by the claimant. In relation to paperwork said to be missing from the castle, Katie Pascoe stated; "*In hindsight it is now clear that (the claimant) had been preparing to leave the business as I witnessed her removing a number of files*

from the office on Tuesday 31<sup>st</sup> May 2016". She stated; "*Since (the claimant) has been placed on suspension obviously there has been a lot of rumour, gossip and speculation within the building. However almost everyone has come forward with their own story about how both Emma and (the claimant) have tried to undermine the business for several years. Spreading rumours about not getting paid look for another job etc. The atmosphere since their departure is now one of confidence and renewed energy and driving the business forward*".

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20. Caroline Love, provided a statement (P13/78-79) shortly after her return to the first respondent's employment and being offered Emma Graham's role in Housekeeping. In her statement (P13), Caroline Love was critical of the "banked hours" system. She was critical of Emma Graham and questioned the number of hours she had worked. She accused Emma Graham of abusing the "banked hours" process. She was "*taken aback*" on overhearing a conversation in which Emma Graham said to another employee that she had 100 banked hours to claim. She was of the opinion that there was "*no way*" that Emma Graham could have accrued that number of banked hours. She questioned the length of Emma Graham's maternity leave. She questioned how long Emma Graham had worked during her maternity leave. She claimed to have concerns over the recording of hours worked. She claimed that having brought her concerns to the attention of the claimant and Emma Graham her hours were "*cut drastically*". She stated that she had brought her concerns to the attention of the second respondent at the time of resigning and had since returned to the first respondent's employment on being persuaded that her concerns were being acted upon.

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21. In her statement (P14/80-81) Virginia Bingham, who was also employed in Housekeeping, claimed that the most she had ever managed to bank was 40 hours. She assumed that as a member of management, Emma Graham did not have to record her hours. She stated that since the claimant's suspension she had been made aware of Emma Graham's banked hours. She did not understand how it was possible for Emma Graham to claim 200 hours. She

stated that the hours of those who complained were reduced and given to friends of either the claimant or Emma Graham. She referred to all employees having a chance *“to bring problems to new management, especially to (the second respondent) in person and speak about the situation of institutional bullying under both (the claimant) and Emma Byers”*.

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22. In her statement (P17/87-88), Ann Fellows, gave her understanding of how the system of banked hours operated. She stated that she had never seen any record of Emma Graham’s banked hours but that *“the most any of us ever had were around 30/40”*. She referred to those in Emma Graham’s *“personal circle”* receiving extra shifts. She stated that Emma Graham’s hours were not recorded as she was management. She described a *“constant culture of bullying within the castle ran by both (the claimant) and Emma”*. She described the claimant and Emma Graham threatening her with reduced hours if complaints were made to the second respondent. She described the stress and illness caused by *“the whole situation”* and the fear of how complaining might affect her hours and those of her daughter who was also employed at the castle.

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23. The second respondent obtained a statement from Sara Walasz (P16) in which she described the claimant turning away business from the castle and made the statement; *“It is now clear since (the claimant) has been suspended that she has formed a very clear part in a conspiracy to damage the business”*.

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24. The second respondent prepared statements for Peninsula (P18 & 19). In his statement (P18) the second respondent stated that *“All staff, once they were sure that (the claimant) was actually suspended, came forward with their own stories of abuse, mismanagement and general actions designed to bring the business to its knees”*. In his statement (P19) he referred to the claimant and her husband as having had a *“concerted campaign calculated to damage the business, drive away customers and increase overheads with a view to taking over the business”*. He referred to the claimant’s husband having *“falsified*

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paperwork and registered himself as a tenant on our land". He described suspending the claimant from work on 2 June 2016. He stated that he had told the claimant that "she had to be removed from the building for her own protection as we had uncovered some serious allegations against her husband and I did not want her involved in this". He referred to having agreed that "she could have until 5.00pm on the Friday to try and address the situation". In his statement (P19) the second respondent described action taken since the claimant's suspension. He stated; "Since (the claimant) has been on suspension I have interviewed most members of staff for statements in relation specifically to their knowledge over Emma's hours., working practices etc. What has been revealed is far more deep rooted than we first suspected. It is clear that (the claimant) ran a mini empire within the business and supervised a regime based upon bullying and victimisation". He stated; "For the purposes of severing (the claimant's) contract a lot of the above is a mine field and very difficult to prove. But for our immediate action it is clear that (the claimant) has acted illegally in authorising payments to her daughter; is this enough to fire her?"

25. Alexander Roberts, a Duty Manager at the castle, provided a statement to the second respondent. It was supportive of the claimant. He was subsequently contacted by a friend of the second respondent who requested that they meet. At their meeting, the second respondent's friend warned Alexander Roberts that the second respondent would be upset if the statement went further and that his employment would probably be made uncomfortable. Alexander Roberts felt concerned. He withdrew his statement.

26. Statements critical of the claimant and Emma Graham were passed to Peninsula. HRFace2Face, HR Consultants were appointed to conduct a disciplinary procedure. By letter dated 3 August 2016 (P21/99-100) the claimant was invited by the first respondent to an investigation meeting to be held on 9 August 2016. This was the first occasion that the claimant had heard from the respondents since receiving the letter (P9) confirming her suspension. The claimant was not provided with a time for the meeting. She

was advised that it would take place in the afternoon and that she would be notified of the exact time by telephone on 9 August 2016. The claimant was informed that the investigation meeting was to allow her the opportunity to provide an explanation for the following;

5            *“We have concerns regarding your conduct and behaviour as a Hotel Manager and supervisor”.*

The claimant was not provided with copies of any of the statements passed by the second respondent to Peninsula.

27.       The claimant met with Teresa Stirton from HRFace2Face on 9 August 2016. 10       Katie Pascoe attended as Note taker. The claimant expressed concern about this arrangement as she understood that Katie Pascoe had been in contact with other employees on behalf of the second respondent following her suspension. Teresa Stirton informed the claimant that the purpose of their meeting was for fact finding. She explained to the claimant that she had *“little 15       information and her role was to ask questions, listen and record the information”*. She referred to *“some irregularities and inconsistencies found in paperwork and staff complaints”* and that she was *“looking for information in regard to this”*.

28.       Teresa Stirton informed the claimant of the statement she had received from 20       Katie Pascoe (P12). She referred to the passage in which Katie Pascoe described observing the claimant on 31 May 2016 clearing out files and paperwork. She added that Katie Pascoe had seen her taking some of them to her car. Teresa Stirton informed the claimant of concerns over missing information and documents from her locked desk drawer. The claimant 25       denied having removed any paperwork or files from the office. Teresa Stirton questioned the claimant about Emma Graham being paid during maternity leave. The claimant explained that her daughter had *“worked the entire summer and had banked hours, as other staff did”*. She explained that the second respondent had agreed that her daughter could bank 5 hours each

week by coming in for a shift and doing the ordering from home. Teresa Stirton questioned how the claimant's daughter had been paid for 30 hours each week. The claimant referred to her daughter working all summer for which she had banked hours. Teresa Stirton informed the claimant that "there was no paperwork to be found anywhere". The claimant explained that there had been a book for her daughter that had disappeared. Teresa Stirton referred to statements obtained from Housekeeping staff that the claimant's daughter had not been in work for more than one hour at a time since April 2016 and that she had informed them that she would not be returning from maternity leave until July 2016. The claimant confirmed that her daughter had returned from maternity leave in April 2016 and that the increase in her salary for two weeks to over £400 included Keeping in Touch days which had been processed by the book keeper.

29. The claimant was asked about the cancellation of an internet booking. The claimant confirmed that she could "put her hands up to that". She explained that she had to cancel a room booked on the internet as she had been left with no staff. The claimant denied having instructed another employee to cancel the entire internet booking service. The claimant confirmed that she had distributed new staff handbooks to each department. She denied being instructed to distribute zero-hour contracts. The claimant denied responsibility for processing payments from GWB. She was unaware of outstanding invoices to the value of £22,000. She explained that Ashley Paterson was in charge of invoicing GWB. She denied any responsibility for managing online travel agents. She explained that this was the responsibility of Katie Pascoe. The claimant blamed the second respondent for any failure to explain the above systems to other employees. The claimant denied having turned down a booking for £12,000. Teresa Stirton questioned the claimant about her management style. The claimant explained that she got on well with all the staff but was not a trained manager. Teresa Stirton read extracts from Caroline Love's statement (P13) concerning her management style. The claimant denied having reduced the hours of anyone who had challenged her or raised issues.

30. Teresa Stirton questioned the claimant further about the number of hours banked by Emma Graham. She referred the claimant to a statement in which concerns were raised about Emma Graham having 200 banked hours. The claimant denied that there had ever been an issue and that the second respondent had told her daughter that she would get “30 hours paid summer and winter”. She explained that her daughter had banked some of the 30 hours to allow her to be paid in full from April to July 2016.
31. Teresa Stirton questioned the claimant about opening mail delivered to the castle. The claimant confirmed that as instructed by the second respondent she had opened all mail. She could not recall opening any mail for the Land Register. She confirmed that she was unaware of any e mails from the Land Register being received in relation to her husband’s tenancy application.
32. The claimant recalled her husband being paid for wine. She denied having paid her husband around £24,000 from 2009 to 2012. She explained that the second respondent used stock for his own use. The claimant denied having authorised six weeks’ holidays for Shona Donnelly. She denied having inadvertently passed on confidential or sensitive information to anyone outside the business including information about the price of the second respondent’s car.
33. Teresa Stirton described the procedure as “an ongoing investigation and that paperwork and information were being sourced and produced on a daily basis”. She informed the claimant that she may have to speak to her again and that she “remained suspended without prejudice”. The claimant expressed concerns about the circumstances of her suspension and what the second respondent had told her about her husband’s removal from the land and alleged criminal behaviour. She described feeling distressed and explained that the issues with her husband had nothing to do with her job. Teresa Stirton explained that from an initial investigation into missing letters from the Land Register other discrepancies had been highlighted. She expressed concern about the number of documents missing from the

claimant's desk and described the second respondent's shock that the documents were not there as she had been given full management control.

34. The claimant stated that she had managed to the best of her ability, got on well with staff and liked her job. Teresa Stirton referred to the second respondent having stated that there was a breach of trust and confidence between him and the claimant and a complete breakdown in the employer/employee relationship. The claimant was shocked and explained that it was not in her nature to take anything that did not belong to her. When asked by the claimant, Teresa Stirton confirmed that she would consider all the information available to her and produce a report with findings and recommendations.

35. Teresa Stirton prepared a report dated 10 August 2016 (P22/101-107) in which she made the following findings and recommendations;

*"Having considered all of the information provided I find that:*

1. *Mrs Byers faxed sheets to the Book Keeper on a weekly basis with staff hours. Housekeeping staff have verified that Emma Byers had not attended work for any more than a few hours once a week since 11<sup>th</sup> April 2016. Mrs Byers cannot produce any documentation in support of her paying 30 hours and, as stated in a call on 10<sup>th</sup> August 2016 at 12.52 with Teresa Stirton, Mrs Byers advised that Emma Byers had accumulated enough hours from working the summer of 2015 to be paid 30 hours salary from April to July 2016 without working. Mr Ptolomey stated that all the staff except for MB were on zero hours contracts including Emma Byers. It is not therefore unreasonable to believe that Mrs Byers has continued to authorise full pay for Emma Byers despite her not working her contractual 30 hours per week.*

2. *The weekly wages sheets, authorised by Mrs Byers, evidence that Shona Donnelly was paid for 50 hours holiday, that were not accrued, over weeks: 24, 25 ,27, 28, 29 and 30.*
  
- 5 3. *Mrs Byers was in full charge of running the company on a daily basis as agreed with Mr Ptolomey. Mrs Byers agreed that she paid invoices produced by Mr Byers for wine etc. Mr Ptolomey confirmed that Mrs Byers authorised all invoices for payment. It is not therefore unreasonable to believe that Mrs Byers authorised payment of all invoices, inflated or otherwise, produced between 2009 and 2012*  
10 *from Mr Byers.*
  
- 15 4. *Katie Pascoe stated that on 31<sup>st</sup> May 2016 she was in the office with Mrs Byers who was having a “massive clear-out”. KP stated that MB was tearing up all sorts of paperwork, removing pages from staff files and accrued hours books and finally took files out to her car. There is extensive amounts of paperwork missing from the desk drawer at Mrs Byers’ desk. It is not therefore unreasonable to believe that KP’s account of that day is more accurate and that MB destroyed or removed paperwork on 31<sup>st</sup> May 2016.*
  
- 20 5. *Mrs Byers could provide no information on what had been done with the letters sent by Land Registry in relation to Mr Byers’ application to register himself as a tenant on Mr Ptolomey’s land and claim agricultural subsidies. Mrs Byers agreed that she was the only person within the business that opened and dealt with incoming mail. Furthermore Mrs Byers could not provide any information on the*  
25 *company email detailing a mistake in the application made by Mr Byers for the above. Mrs Byers agreed that Mr Byers did not have access to Comlongon computers or email. It is not good therefore unreasonable to believe that Mrs Byers knew, was involved in and supported her husband in his application to register himself as a*

*tenant on Mr Ptolomey's land and claim subsidies against the wishes of Mr Ptolomey.*

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6. *Two members of staff have independently given statements to confirm that MB turned away bookings for Weddings at the Castle. There has also been a consistent reduction in business and revenue over the past years. This coupled with the facts that MB cancelled with booking.com and did not process invoices for both Gretna Wedding Bureau and Online Travel Agents. It is not therefore unreasonable to believe that MB has consistently and wilfully tried to damage the business.*
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7. *MB agreed that she and only she opened ALL incoming mail. MB could give no reason for the mail from Land Registry, in regard to Mr Byers' application to apply for tenancy to claim agricultural subsidies on Mr Ptolomey's land, not being passed on to Mr Ptolomey. Furthermore MB could give no reason for the email relating to this application being on the companies email system. MB stated that she knew nothing about any of this however agreed that Mr Byers did not have access to the company IT system. A statement from Mr Andy Freeman also stated that Mr Byers had discussed the payment of £820 a month for Mr Ptolomey's car. MB agreed that Mr Ptolomey and Mr Byers had not spoken for about a year. It is not therefore unreasonable to believe that Mrs Byers has passed on confidential information to Mr Byers and supported him in his application to Land Registry against the wishes of Mr Ptolomey.*
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8. *Paperwork was available from the company detailing discussions that MB had with some staff, when issuing them with zero hours contracts. The staff involved were: George Brysdon, Stewart Dalglish and Kenny Wilson. MB stated that these staff along with Emma Byers were paid set and regular hours winter and summer. It is not therefore unreasonable to believe that all staff were on zero hours contracts*
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*and that MB failed to follow a reasonable management instruction to distribute these and the new staff handbooks to all staff.*

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9. *Statements from staff indicate that they were fearful for their jobs and having their hours cut if they challenged or raised issues to either Emma Byers or MB. It is not therefore unreasonable to believe that there was a culture of bullying and unfair treatment encouraged by MB.*

### **RECOMMENDATION**

- 10
36. *Having fully considered all of the information provided and considering the findings above I recommend that:*

- *Mrs Byers is invited to a Disciplinary meeting to discuss the following:*
  - *Mrs Byers has authorised payment of salary to Emma Byers for hours that she has not worked since December 2015.*
  - *Mrs Byers has authorised holiday pay for Shona Donnelly that had not been accrued and that she was not therefore entitled to.*
  - *Mrs Byers has authorised payment to her husband, Mr Byers, for services that have been charged at an inflated rate from 2009 to 2012 the sum which is circa £24,000.*
  - *Mrs Byers has destroyed or removed paperwork of a highly confidential nature including letters and land registry, invoices, personal files, staff hours' books, shift and rota sheets.*
  - *Mrs Byers has acted in a way to directly damage the business by sabotaging prospective clients and failing to process invoices for both Gretna Wedding Bureau and Online Travel agencies, the sum of which was in the region of £80,000 in unclaimed revenue.*
- 15
- 20
- 25

- *Mrs Byers has passed on confidential information to Mr Byers and supported him in his application to Land Registry.*
- *Mrs Byers has failed to follow reasonable management instructions in regard to issuing new staff contracts and handbooks.*
- 5       • *Mrs Byers has treated some staff less favourably and in managing Comlongon Castle allowed a culture of bullying to prevail.*
- *There is a breach of trust and confidence due to all of the above and there is therefore a fundamental breakdown in the employee/employer relationship”.*

10   37.   The second respondent was provided with a copy of Teresa Stirton’s report (P22). He instructed Peninsula to arrange a disciplinary hearing. The claimant was invited to a disciplinary hearing by letter dated 16 August 2016 (P27/119 – 121). The claimant was unable to attend the disciplinary hearing scheduled for 19 August 2016 as she did not receive the above letter (P27/119-121). A  
15   copy was sent to her on 19 August 2016 (P28/122-124) inviting her to attend a disciplinary hearing on 25 August 2016. The claimant received the letter of 19 August 2016 (P28/122-124) on 23 August 2016. The claimant was informed that the following “*matters of concern*” would be discussed at the disciplinary hearing;

- 20       1.   *Allegedly you authorised payment of £270.00 salary to Emma Byers for hours that she had not worked since December 2015.*
2.   *Allegedly you authorised holiday pay for Shona Donnelly that were not accrued, she was therefore not entitled to pay over weeks: 24, 25, 27, 28, 19, and 30 totalling 50hours.*

3. *Allegedly you authorised payment to your husband, Mr Byers, for services that have been charged at an inflated rate from 2009 to 2012.*
- 5 4. *Allegedly on 31<sup>st</sup> May 2016 you have destroyed or removed paperwork of a high confidential nature including letters from Land Registry, invoices, personnel files, staff hours' books, shifts and rota sheets.*
- 10 5. *Allegedly you have acted in a way to directly damage the business by sabotaging prospective clients and failing to process invoices for both Gretna Wedding Bureau and Online Travel agencies. The sum of which was in the region of £80000 in unclaimed revenue over the past years.*
- 15 6. *Allegedly you have passed on confidential information about the cost of Phil Ptolomey' new car to Mr Byers and also allegedly you supported him in his application to Land Registry in June and July 2015.*
- 20 7. *Allegedly you have failed to follow reasonable management instructions from Phil Ptolomey in regard to issuing new staff contracts and handbooks. Allegedly you have not issued zero hour's contract as instructed.*
- 25 8. *Allegedly you have treated some staff less favourably in managing Comlongon Castle by allowing a culture of bullying to prevail. Further particulars being Caroline Love allegedly raised a concern about her hours being unfairly distributed and allegedly her hours have been reduced. Allegedly Katie Pascoe raised concerns to yourself about Ashley Patterson which allegedly you ignored leaving her feeling bullied and harassed.*

38. The claimant was provided with copies of documents which she was informed would be used at the hearing. This included statements provided by other employees, the investigation report (P23) and minutes; wage spreadsheets, invoices and a disciplinary procedure (P29). The claimant was informed that if the allegations against her were substantiated that they would be considered to be gross misconduct and her employment might be summarily terminated. The claimant felt anxious about the lack of time available to prepare for the disciplinary hearing. She wrote to the second respondent on 23 August 2016 (P33) requesting at least 5 working days' notice. Her request was refused.
39. The disciplinary hearing was chaired by Linda Satterley of HRFace2Face. The claimant was accompanied by her son, Steven Byers. At the start of the hearing the claimant explained that she did not receive the respondents' letter of 19 August 2016 (P28/122-124) until the afternoon of 23 August 2016 and that she did not feel that this gave her sufficient opportunity to prepare for the hearing. The claimant requested that the hearing was postponed. Linda Satterley informed the claimant that she could not postpone the hearing again. She suggested that they "*see how we go*".
40. When asked to explain her role, the claimant explained that she was "*left in charge*" of the first respondent but "*ultimately had to run things through (the second respondent)*". She described the processing of staff wages as "*outdated*". She referred to the "*little notebooks*" used by employees to record the hours worked. She described comparing notebooks with the relevant weekly rotas. She agreed with Linda Satterley that the number of hours worked was "*purely based on trust*". She referred to completing a spreadsheet of hours worked which she faxed to the book keeper for payment. She explained that the email system at the castle was not very reliable. The claimant confirmed that there was no system for staff to check in and out, something that had been suggested but rejected by the second respondent. In relation to Emma Graham's hours, the claimant confirmed that, along with around 6 other employees, she was guaranteed 30 hours "*in summer and*

5            *winter*” and had banked any additional hours worked with the second respondent’s agreement. The claimant explained that the notebook in which her daughter recorded her banked hours was missing from the laundry. She confirmed that her daughter had been on maternity leave from 30 December 10            2015 to 1 April 2016 and had holidays and banked hours to take. The claimant explained that her daughter had received a large payment in March 2016 which the bookkeeper had confirmed to her daughter was for Keeping in Touch Days, holidays and banked hours. The claimant denied that she was responsible for organising payments to her daughter to which she was not 10            entitled.

41.        The claimant explained that Shona Donnelly was an acquaintance employed by a previous Head Housekeeper and had worked at the castle on and off for around three and a half years, in particular during school holidays given her job as a classroom assistant. The claimant confirmed that she had been in 15            touch with Shona Donnelly who had explained that she did not receive holiday pay and that there had been a mistake in the calculation of her holiday entitlement. She explained that the word “*holiday*” against Shona Donnelly on the wage sheets (P32/155-161) was a “*typo*” and that the hours claimed had been worked and were almost certainly reference to Shona Donnelly covering 20            holidays for other employees and not her own. The claimant requested that Linda Satterley check the position with Shona Donnelly. Linda Satterley agreed to do this.

42.        When questioned by Linda Satterley the claimant explained that her husband did a number of different jobs for the second respondent including the supply 25            of wine. She confirmed that she was not involved in the above work or payment of her husband which was organised direct by the second respondent. The claimant denied the allegation that she had authorised payments to her husband of around £24,000.

43.        The claimant confirmed that Katie Pascoe had been a Receptionist but was 30            now doing her job as Hotel Manager; she had worked at the castle for a year

and had reported to the claimant. The claimant identified the employees who, in addition to her and the second respondent, had access to the safe where the key to the desk drawer was kept. The claimant confirmed that she would have no reason to take any business records home. The claimant asked  
5 Linda Satterley to explain the basis on which it was alleged that she would remove paperwork from the castle. Linda Satterley referred to Katie Pascoe having witnessed her removing a number of files from the office on 31 May 2016. The claimant asked why she would move files on 31 May 2016 and stated that it did not make sense. The claimant confirmed that she opened  
10 the post. She denied any knowledge of destroying or removing documents from the Land Registry.

44. The claimant explained the online travel system. The claimant confirmed that responsibility for this had been passed to Katie Pascoe by the second respondent. The claimant explained the procedure for invoicing GWB. The  
15 claimant was aware of the shortfall of around £22,000 that was subsequently paid. The claimant denied any responsibility. She explained that Ashley Paterson worked on invoicing GWB. The claimant was informed of the allegation that she acted in a way that directly damaged the respondents' business by sabotaging prospective clients and failing to process invoices.  
20 The sum of unclaimed revenue was said to be in the region of £80,000. The claimant denied any knowledge of the amount identified by Linda Satterley and any responsibility for money owed to the respondents.

45. The claimant denied having turned away business. She informed Linda Satterley that the majority of staff had not been approached for statements,  
25 only the *"little crew that's now still at the castle"*. Linda Satterley referred to Sara Walasz's statement that she overheard a telephone conversation between the claimant and potential clients during which the claimant turned away business and promoted alternative venues. The claimant denied having a conversation with Sara Walasz about the importance of keeping  
30 business.

46. The claimant was unable to explain her husband's application to the Land Registry. She explained that it was not something about which she knew anything and that it was a dispute between her husband and the second respondent. She confirmed that she had told the second respondent that the land issue had nothing to do with her and that she was not going home to discuss it with her husband. The claimant was questioned about the second respondent's new car. The claimant denied having told her husband the price of the car.
47. The claimant was questioned about employment contracts and the staff handbook. The claimant confirmed that she had distributed the handbook as instructed and had not been provided with contracts for distribution. She recalled an occasion when on the instruction of the second respondent she informed the castle's chefs that they were to be placed on zero-hour contracts which had resulted in them taking legal advice. The claimant denied having failed to follow management instructions and issue employees with zero-hour contracts.
48. The claimant was questioned further about staff rotas and the allocation of work. The claimant confirmed that she did not allocate work to employees in Housekeeping. The claimant denied any knowledge of Caroline Love's concerns about her hours being cut before reading about it in her statement. The claimant confirmed that she was aware of issues between Katie Pascoe and Ashley Paterson. The issue concerned missing documents for which Ashley Paterson blamed Katie Pascoe. The claimant explained that the issue had been resolved and that both employees had confirmed to her that they did not wish to proceed with a grievance. The claimant explained that she had recorded the incident in a notebook which was also now missing. The claimant denied that she had ignored concerns raised by Katie Pascoe about Ashley Paterson.
49. The claimant informed Linda Satterley of her concerns that the disciplinary procedure had been engineered because of her husband's dispute with the

second respondent. She informed Linda Satterley that she was told at the time of her suspension that she could return to work if she was able to persuade her husband to come off the land. She informed Linda Satterley that the second respondent referred to her husband as having committed fraud and that he would be arrested and sent to prison for 4 years. The claimant identified the dispute between her husband and the second respondent as the reason that she was sent home and suspended. The claimant informed Linda Satterley about the second respondent's telephone call to her daughter following her suspension. The claimant described feeling discriminated against because she was married to Brian Byers. She referred to never having received a verbal or written warning throughout her 13 years of employment at the castle. She expressed concern about the length of her suspension from work and of the stress and anxiety caused to her by unfounded allegations. She referred to the delivery of mail by Sheriff Officers as a tactic to intimidate and apply pressure to her.

50. At the close of the hearing, Linda Satterley confirmed that she intended to obtain further information and statements before completing her report. She expressed doubt about whether the allegations against the claimant were sufficient to justify dismissal and suggested that she would be recommending settlement. She asked the claimant whether she had a figure in mind. The claimant declined to discuss settlement. Minutes were prepared of the meeting (P37/178-229).

51. The claimant obtained statements from a number of employees who had left the first respondent's employment since her suspension and from whom statements had not been provided to HR Face2Face. They included Sheona Houliston (P38); Ashley Paterson (P42); Emma Byers (P43); Lauren Handley (P44); Shona Donnelly (P45) Nickolas Graham (P47) & Stuart Dalgliesh (P48). They were all supportive of the claimant. In her statement (P42) Ashley Paterson described a previous incident in November 2015 when documents went missing in the castle; the claimant's attempts to resolve difficulties between her and Katie Pascoe and how matters were resolved with GWB.

Alexander Roberts who remained in the first respondent's employment provided the claimant with a statement (P49).

52. The claimant was concerned about the length of time taken to hear about the outcome of the disciplinary hearing. She sent a written grievance to the second respondent on 5 October 2016 (P50/257-258). She complained about her suspension; Sherriff Officers delivering mail to her home; not being given sufficient time to prepare for the investigation and disciplinary meeting and of not being notified about the outcome of the disciplinary hearing. The claimant alleged that she was being subjected to discrimination because of her marital status. The second respondent did not respond to the claimant's grievance.

53. Linda Satterley issued her report on 17 October 2016 (P55/286A – 286N). She made the following findings and recommendation;

**"FINDINGS**

*Having considered all of the information provided I find that:*

15 **67. Allegation 1 – Allegedly you authorised payment of £270.00 salary to Emma Byers for hours that she had not worked since December 2015.**

20 68. *At the outset of the meeting Mrs Byers specified that all staff had little note books to record their hours: having spoken to the Bookkeeper and some of the housekeepers I have established that the housekeeping staff never had books.*

25 69. *The wage spreadsheet shows that Emma Byers had sporadic wages until August 2015 when Sara Walasz started to do the bookkeeping for the business. From speaking to Sara Walasz, Mrs Byers informed Sara Walasz that Emma Byers, Head House keeper, had to be paid £270 each week. Sara Walasz was under the impression, from Mrs Byers that*

*Mr Ptolomay had authorised this. There are no documents to support that any such agreement was in place.*

5 70. *On Speaking with Mr Ptolomay he established that all staff were in fact on zero-hour contracts with effect from 2015, this included Emma Byers. This meant that staff would only be paid for each hour they worked.*

71. *The weekly wage spreadsheet shows that Emma Byers received a variable salary from week commencing 20<sup>th</sup> April 2015 until week commencing 27<sup>th</sup> September 2015.*

10 72. *Emma Byers did go on maternity leave from January 2016 through to the end of March 2016. The records show that Emma received £270 per week for six weeks until week commencing 22<sup>nd</sup> February 2016, this was followed by six payments of £139.58 maternity pay. Week commencing 28<sup>th</sup> March and 4<sup>th</sup> April Emma Byers was paid £409.58 for two weeks. These increased payments were apparently to cover for*  
15 *Keeping In Touch Days. Mr Ptolomay was not aware of these payments. Emma Byers then received a further eight payments of £270 until her resignation at the end of May.*

20 73. *From speaking with the housekeeping staff, Emma Byers did not attend work regularly during these eight weeks. Three housekeepers advised that Emma Byers popped in each week for up to thirty minutes to provide the rotas for the following week, often her baby was left asleep in the car. Two of the employees were under the impression that Emma Byers was not due to return to work from her maternity leave in July.*

25 74. *Mrs Byers states that Sara Walasz asked for the wage slips by fax however the bookkeeper states that she was told this was how the wages were submitted. By faxing handwritten sheets to the bookkeeper there was no electronic record/audit history, it is my belief that this was Mrs Byers' intention.*

75. Mrs Byers specified that she was solely responsible for the authorisation of the fraudulent payments made to Emma Byers, on that basis I uphold the allegation.

5 **76. Allegation 2 – Allegedly you authorised holiday pay for Shona Donnelly that were not accrued, she was therefore not entitled to pay over weeks: 24, 25, 27, 28, 19 and 30 totalling 50 hours.**

10 76. The weekly wage sheets faxed across from Mrs Byers to Sara Walasz show that the hours submitted for these weeks were listed as holiday. In order to check that this was not an oversight by Mrs Byers the wage sheets for weeks 20 ,21, 22, 23, 26 and 29 were reviewed to check for over typing on the same template.

15 77. Weeks 20, 21, 22, 23, 26 show no holiday pay week 29 does show holiday pay, this would indicate that Mrs Byers had not made a mistake by over typing on the template. This would also be evidenced by the submission for other staff on the same template.

78. Mrs Byers specified that she was solely responsible for submitting the wage sheets to Sara Walasz every Sunday. Mrs Byers must therefore be responsible for the authorisation of the fraudulent payments made to Shona Donnelly.

20 79. I therefore uphold this allegation.

**81. Allegation 3 – Allegedly you authorised payment to your husband, Mr Byers for services that been charged at an inflated rate from 2009 to 2012 the sum of which is circa £24000.**

25 82. I am unable to make any findings on this allegation and would consider the allegation as out of time. The payments were authorised over four years ago and had these payments been seen as inappropriate this

*should have been reviewed and challenged at the time, on that basis I do not uphold this allegation.*

5 **83. Allegation 4 – Allegedly on 31<sup>st</sup> May 2016 you have destroyed or removed paperwork of a high confidential nature including letters from Land registry, invoices, personal files, staff hours' books, shifts and rota sheets.**

83. *Mrs Byers denied that she had removed paperwork from the business. The key is hung up and Mrs Byers alleges that anyone could have accessed the safe to remove things.*

10 84. *Katie Pascoe witnessed Mrs Byers removing a number of papers from the office and placing them in her car, she did not challenge her as she was not aware that there were any problems at the time.*

15 85. *Mrs Byers has sole responsibility for opening the mail for the business. Mr Ptolomay has been informed by the Land Registry that two documents were sent for his attention, he has not seen these. Mrs Byers states that she has not seen these documents.*

20 86. *Mrs Byers states that she has no idea what her husband does. The only person or persons who would benefit from the removal of these documents would be Mr Byers and Mrs Byers to the detriment of Mr Ptolomay.*

25 87. *The documents have been removed from the business premises it is reasonable to believe especially in light of the witness statement and the nature of the documents that have disappeared that Mrs Byers did remove or destroy letters from Land Registry, invoices, personnel files, staff hours' books, shifts and rota sheets.*

88. *I therefore uphold this allegation*

- 5
90. **Allegation 5 – Allegedly you have acted in a way to directly damage the business by sabotaging prospective clients and failing to process invoices for both Gretna Wedding Bureau and Online Travel agencies, the sum of which was in the region of £80000 in unclaimed revenue over the past years.**
- 10
91. *The business has no formal procedures for managing the invoices for Gretna Wedding Bureau and Online Travel agencies. Mr Ptolomay has confirmed that some of the monies have been reimbursed by Gretna Wedding Bureau as it was accepted that there had been an administration error.*
- 15
92. *Following the resolution of the initial mistake, no formal processes were put in place and the business find that there have been further accountancy errors with the invoices.*
- 20
93. *Mrs Byers may have made a number of mistakes with the accounts, however some responsibility must also be taken by the business owner and the accountants. Although Mrs Byers denies any knowledge of the Online Travel agencies, she did state at the beginning of the meeting that she was responsible for the day to day running of the castle and its staff and therefore should have been fully aware of the booking service.*
- 25
94. *Katie Pascoe may have been delegated some of the responsibility for the service however as the hotel manager Mrs Byers was responsible to oversee the full booking system and staffing within the castle. Both Katie Pascoe and Sara Walasz both state that that have heard Mrs Byers turning away business. Sara Walasz in her statement even challenged Mrs Byers about a booking and was told that the business received commission for recommending alternative venues.*
95. *I thereby uphold this allegation.*

96. **Allegation 6 – Allegedly you have passed on confidential information about the cost of Phil Ptolomay’s new car to Mr Byers and also allegedly you supported him in his application to Land Registry in June and July 2016.**

5 97. Mrs Byers provided a handwritten statement from a Mr Alistair Clark Garage Proprietor regarding a conversation between himself and Mr Byers regarding repayments on the purchase of a Range Rover. These figures were apparently discussed by Mr Ptolomay and the sons of Mr Clark. I thereby do not uphold this part of the allegation.

10 98. No evidence has been provided to substantiate whether Mrs Byers supported Mr Byers in his application to the Land Registry in June and July 2015.

99. I thereby do not uphold this part of the allegation.

15 100. **Allegation 7 – Allegedly you have failed to follow reasonable management instructions from Phil Ptolomay in regard to issuing new staff contracts and handbooks. Allegedly you have not issued zero hour’s contract as instructed.**

20 101. Mrs Byers has stated that she did issue the employee handbooks to the staff in line with Mr Ptolomay’s instructions. There is no evidence that Mrs Byers claims she was ever given the new contracts to issue to all the staff, she did have a discussion about zero hour’s contracts with the chefs as instructed by Mr Ptolomey.

102. These staff have now left the business premises.

103. I thereby do not uphold this part of the allegation.

5 **104. Allegation 8 – Allegedly you have treated some staff less favourably in managing Comlongon Castle by allowing a culture of bullying to prevail. Further particulars being Caroline Love allegedly raised a concern about her hours being unfairly distributed and allegedly her hours have been reduced. Allegedly Katie Pascoe raised concerns to yourself about Ashely Paterson which allegedly you ignored leaving her feeling bullied and harassed.**

10 105. *Having spoken to Caroline Love and Katie Pascoe both individuals have made spate claims of feeling bullied and harassed. Both employees raised concerns directly with Mrs Byers and neither employee felt that Mrs Byers took their claims seriously.*

106. *There is no legal definition of workplace bullying. However, experts believe that bullying involves negative behaviour being targeted at an individual, or individuals, repeatedly and persistently over time.*

15 107. *There is no supporting evidence/file note to illustrate what actions Mrs Byers took following these allegations. Neither employee has had any records place on their personnel files. Caroline Love's pay does illustrate that the number of hours she received was reduced, the salary spreadsheet shows that this was not consistent across all the*  
20 *housekeeping staff.*

108. *Caroline Love did in fact leave her role to seek alternative employment but was persuaded to return following the intervention of Mr Ptolomay.*

25 109. *As the senior manager for the business it was Mrs Byer's responsibility to ensure that all employees' allegations were taken seriously and dealt with in an appropriate manner, neither Katie Pascoe nor Caroline Love felt that Mrs Byers dealt with their concerns.*

110. *In light of the fact there were two separate allegations made from different employees and that there is no documented evidence that these matters were dealt with.*

111. *I do uphold this allegation.*

5

**RECOMMENDATION**

10

112. *The Company handbook states, at page 27, that any behaviour or negligence resulting in a fundamental breach of contractual terms that irrevocably destroys the trust and confidence necessary to continue the employment relationship will constitute gross misconduct, the sanction for which is summary dismissal.*

15

113. *In relation to allegation 1, I believe Mrs Byers' actions in submitting false wage sheets for Emma Byers satisfies the description for gross misconduct. On that basis I would recommend that in line with the employee handbook the employer looks to terminate the contract of employment for Mrs Byers without notice and without payment in lieu of working her notice period.*

20

114. *In relation to allegation 2, I believe Mrs Byers' actions in submitting false wage sheets by authorising 50 hours holiday pay for Shona Donnelly would satisfy the above description of gross misconduct and she should be treated as above.*

115. *In relation to allegation 3, this allegation is not upheld.*

25

116 *In relation to allegation 4, I have considered that Mrs Byers colleagues would also have had access to the key and could also have removed paperwork from the business. Mrs Byers at the very least has failed in her duties to store paperwork of a highly confidential nature including letters from Land Registry, invoices, personnel files, staff hours' books,*

*shifts and rota sheets, correctly. I believe Mrs Byers' actions would satisfy the description for serious misconduct. On that basis Mrs Byers in line with the employee handbook should be issued with a final written warning for serious misconduct.*

5           117. *In relation to allegation 5, I believe Mrs Byers should be issued with a written warning for failing to process invoices and implement appropriate procedures for dealing with the invoices for both Gretna Wedding Bureau and Online Travel agencies.*

118. *In relation to allegation 7, this allegation is not upheld.*

10           119. *In relation to allegation 8, two employees have both complained that Mrs Byers failed to deal with their allegations of bullying and harassment. Failure to address these issues could lead to significant compensation payments at a tribunal, by her lack of action to deal with these matters in an appropriate way Mrs Byers has placed the business at*  
15           *considerable risk. I believe that Mrs Byers' actions satisfy the definition for serious misconduct. On that basis Mrs Byers should be issued with a final written warning for serious misconduct."*

54.       In her report (P55/286A-286N) Linda Satterley concluded that it was for the first respondent to decide if they wished to adopt all or any of her  
20           recommendations and confirmed that the claimant had the right to appeal the decision reached by the first respondent.

55.       The claimant wrote to the second respondent on 20 October 2016 (P51) requesting that he acknowledge receipt of her grievance and confirm when it would be addressed. The claimant reminded the second respondent that it  
25           was eight weeks since she had attended the disciplinary hearing and almost five months since her suspension. She informed the second respondent that the length of time taken with the process was unreasonable and causing her stress and anxiety.

56. The second respondent replied to the claimant about her grievance by letter dated 21 October 2016 (P52). He confirmed that HRFace2Face would hear her grievance on 28 October 2016. The claimant attended a grievance hearing on 28 October 2016. The claimant was questioned about her grievance by Naomi Sayers of HRFace2Face. The claimant stated how shocked she had been to be accused of bullying. She described the impact on her health of being suspended from work and of hearing that staff were being told by the second respondent that she had been stealing from the first respondent. She observed that very few people had provided statements against her, two of whom were now undertaking her role and that of her daughter. She observed that twelve people had left the first respondent's employment since her suspension. She expressed the view that those who had been asked to provide statements were not long serving employees and had been "handpicked". The claimant confirmed that she had still to hear about the outcome of the disciplinary hearing. Notes were prepared of the meeting (P54/269-278).

57. The second respondent wrote to the claimant on 31 October 2016. (P55) in the following terms;

*"As you know, we engaged an impartial consultant to conduct the disciplinary hearing on 21 August 2016. Please find attached their report, which represents my decision.*

*This will take effect immediately and as you have been summarily dismissed you will not be entitled to notice pay.*

*You have the right to appeal against my decision and should you wish to do so you should write to Katie Pascoe, General Manager within five days of receiving this letter giving full reasons why you believe the disciplinary action taken against you is too severe or inappropriate".*

58. The claimant informed the second respondent of her intention to appeal against her dismissal by e mail dated 2 November 2016 (P56/287). At the

same time, she requested a copy of the minutes from the disciplinary hearing and a response to her grievance. The claimant provided the second respondent with her grounds of appeal in writing on 4 November 2016 as follows;

5 **“Appeal**

*I refer to my letter to you dated 3<sup>rd</sup> November 2016 intimation my appeal against the decision to dismiss me. I was advised at the time of my suspension that I was being suspended as a direct consequence of your land dispute with my husband. It has been reported by a number of witnesses that this was the reason given to them for my suspension by you. The disciplinary procedure that followed was contrived in order to put more pressure on my husband. I deny the allegations made against me.*

*There has not been a full and fair investigation:-*

15 *1. The witnesses appear to have been asked selective questions.*

*2. All the witness statements that I submitted appear to have been disregarded.*

*I would also note that Alex Roberts statement was retracted under duress i.e. under threat of losing his job.*

20 *In relation to the disciplinary hearing, I would note that you had delegated the authority to conduct the disciplinary investigation and hearing to a third party. You did not delegate the authority to decide the outcome of the disciplinary hearing. You did not attend the disciplinary hearing. Linda Satterley of HRFace2Face chaired the meeting and thereafter, produced a report. In her report Ms Satterley makes findings and recommendations. You did not comment on the findings. You arbitrarily adopted the recommendations of the report without comment or explanation. Accordingly, my dismissal is unfair.*

25

5 *In relation to the specific allegations against me, I deny all of the allegations. To date I have not received a copy of the minutes of the disciplinary hearing or the additional investigation meetings with Sara Walasz, Katie Pascoe, yourself and Virginian Bingham. Upon receipt of these I will provide the detailed basis upon which I deny the allegations.”*

59. The claimant provided further information about her grounds of appeal in a letter to the second respondent dated 7 November 2016 (P58/290-292) as follows;

**“APPEAL AGAINST DISMISSAL**

10 *According to the ACAS guide, if possible, appeals should be made to someone senior to the person who made the disciplinary decision. If, as in this case, that is not possible, the appeal should be made to the person who made the decision. I feel it is deliberately demeaning to tell me to appeal to someone who was my subordinate and who now has my job. I*  
15 *therefore address my appeal to you, copied to Katie.*

*I wish to appeal my summary dismissal on the grounds that the investigation was not fair or impartial, with not enough attempt to find proof of my innocence. I feel that you did not follow the Acas Code of Practice.*

20 ***Allegation 1 – Allegedly you authorised payment of £270 salary to Emma Byers for hours that she had not worked since December 2015.***

25 *Like Anita Ritchie the previous housekeeper, Emma Byers was promised 30 hours wages per week, summer and winter. £270 per week at the time she left. Other staff also received a minimum number of hours pay per week. These were agreed between the individuals and yourself in the past.*

Only the weekly wages sheets (42-52) I showed Emma as on maternity, I gave no indication of further payments. The handwritten values and notes are Sara's.

5 On the wages sheet for week 1, I stopped showing Emma on maternity and noted 30 hours – her standard weekly hours. Sara has written 5 days KIT + Maternity. £270 +£139.58.

10 While she was on maternity leave, Emma agreed to continue to create rotas, order laundry products and phone staff if shifts needed to be changed. The rotas were done at the castle once a week and took about an hour while the other things were done from home. I discussed this with you in January and you agreed that she would be given 5 hours pay per week for this because of the time it would take to do the work as well as the fact she would be using her own telephone. This time was to be banked since she couldn't be paid while on maternity leave.

15 There are no documents to support the arrangement to pay Emma £270 per week, but I don't have a contract either. Sara had the wage sheets I faxed for some weeks. Had they been e-mailed they could have been deleted. Fax is not better or worse than e-mail in terms of an audit trail.

20 ***Allegation 2 – Allegedly you authorised holiday pay for Shona Donnelly that were not accrued, she was therefore not entitled to pay overs weeks 24,25,27,28,19 totalling 50 hours.***

25 The faxes which I sent to Sara have not been supplied for those weeks, so it has not shown that I authorised them. What has been supplied is a spreadsheet that someone else has created and therefore does not prove that I authorised paying Shona Donnelly 50 hours holiday pay.

***Allegation 4 – Allegedly on 31<sup>st</sup> May 2016 you destroyed or removed paperwork of a highly confidential nature including letters from Land Registry, invoices, personnel files, staff hours' books, shift and rota sheets.***

I do not recall seeing Land Registry documents, but do not deny that they may have passed through my hands. My custom was to open mail and put any on your desk that genuinely was specifically for you.

5 I enjoyed my job and anticipated working there for years to come. I did not appreciate that I would be suspended on 02 June 2016 and therefore had no reason to remove or destroy paperwork. You say it benefits me to have it removed. I say it would prove my innocence.

10 **Allegation 5 – Allegedly you have acted in a way to directly damage the business by sabotaging prospective clients and failing to process invoices for both Gretna Wedding Bureau and Online Travel agencies, the sum of which was in the region of £80,000 in unclaimed revenue over the past years.**

15 I had the degree of autonomy which you, as the owner, allowed. You told me from the start of Online Travel Agents that it was under Katie Pascoe's specific remit and I was to have nothing to do with it.

20 I have never turned away business that we could accept and which made business sense. My friend Sheona Houlliston, has made a statement, enclosed, detailing the functions that she has arranged at Comlongon, both for the business she works in and for personal events. If I was turning away business, logic says I would have told my friend not to use Comlongon. If I had said that to Sheona she would have gone elsewhere.

25 **Allegation 8 - Allegedly you have treated some staff less favourably in managing Comlongon Castle by allowing a culture of bullying to prevail. Further particulars being Caroline Love allegedly raised a concern about her hours being unfairly distributed and allegedly her hours have been reduced. Allegedly Katie Pasco raised concerns to yourself about Ashley Patterson which allegedly you ignored leaving her feeling bullied and harassed.**

30 People, including Virginia Bingham and Caroline Love, have accused me of giving fewer hours to those who were not favourites.

5 I have a statement from Joanne Doherty, copy enclosed. She is the owner of a local caravan park and confirms that last year when there was not enough work at Comlongon, I twice asked her if she had any work for Virginia Bingham and Caroline Love, eventually securing some work for them over a couple of weeks. I went out of my way to help them get work when we had none for them and while it doesn't prove that I didn't cut their hours, it makes it seem unlikely.

10 There was an incident between Ashley, head receptionist at the time, and Katie regarding some missing paperwork. I spoke to them both together. I then spoke to Ashley privately about it having been inappropriate to shout at Katie and spoke to Kate privately to see if she wanted to take the matter further and raise a grievance. She told me that she did not. I also checked with her a couple of times after that day to see if she had changed her mind having thought about it, but she said she had not.

15 Regarding the allegation of bullying, when Emma's son was born Caroline Love visited them in hospital, bringing baby clothes and staying for 2 hours. This does not seem like the behaviour of someone being bullied. Even if she had felt she needed to visit and bring gifts, there was no need to stay for 2 hours. During the time she was there, and at all other times she appeared to be comfortable in both my company and Emma's.

**Other Points to Note**

25 There are statements from 6 staff but I feel these are not representative. I feel that there was no effort to find witnesses who might speak for me. When considering witness statements it is important to consider who the person is and what they stand to gain from the statement made or lose if they don't give "the right one". Of the six statements I would like to draw your attention to four of them:

- a. Katie Pascoe has made a statement against me, but she stood to gain as she now has my job.

5                   b. *Ann Fellows is Katie Pascoe's mum. In her statement she has made it very clear that Katie's welfare and job is of prime concern. That is natural for a mother, but does make it reasonable question her statement. If I returned to work, Katie would revert to her previous role.*

                  c. *Caroline Love appears to be a friend of yours. That does not mean that her statement is not true, but equally a reasonable person would have to wonder if she was saying what her friend wants her to say.*

10                  d. *Traci Walker has now left. She has previously complained to me about Caroline Love bullying her although she did not want to take it further. I have been told that she refused to sign the statement because she said it was not true".*

15                  The claimant enclosed copies of the statements that she had obtained from former colleagues.

60.               The claimant was invited to an appeal hearing by letter dated 8 November 2016 (P59/293-294). The claimant was informed that the appeal would be conducted by way of a review of the original decision. The grounds of appeal were identified as follows;

20                   1. *You state that the disciplinary procedure was contrived in order to put more pressure on your husband*

                  2. *You deny the allegations made against you*

25                   3. *You state that there has not been a full and fair investigation, as you state that the witnesses appear to have been asked selective questions and that all the witness statements that you have submitted appear to have been disregarded.*

4. *You further state that Alex Roberts' statement has been retracted under duress, e.g. under threat of losing his job.*

5. *You finally state that your dismissal is unfair.*

5 61. By e mail dated 10 November 2016 (P60/295) the claimant reminded the second respondent that she had still to receive copies of the additional statements obtained by Linda Satterley and requested that the appeal hearing was rescheduled to allow her an opportunity to consider the above statements. The claimant also reminded the second respondent that she had still to hear from the respondents about the outcome of her grievance. The  
10 claimant did not receive copies of any notes of a further investigation or the outcome of her grievance.

15 62. The claimant attended an appeal hearing on 11 November 2016. It was chaired by Melanie Hogg of HR Face2Face. At the start of the Hearing the claimant requested an adjournment to consider the additional statements obtained by Linda Satterley, copies of which she had still not received. Melanie Hogg informed the claimant that there were no statements available. The claimant referred to her grievance meeting on 28 October 2016. Melanie Hogg informed the claimant that this was a separate process and that she was unable to discuss the grievance. The claimant stated that she would have  
20 expected to know the outcome of her grievance before the appeal given the subject matter was the conduct of the disciplinary proceedings. Melanie Hogg refused to adjourn the appeal hearing. She offered to make enquiries about whether there was anything holding up the outcome of the grievance.

25 63. The claimant explained to Melanie Hogg her concerns about the timing and reasons for her suspension. The claimant expressed concern that the paperwork which she claimed would show how hours were banked was missing. Melanie Hogg identified the allegations against the claimant in relation to "*false wage sheets*" as gross misconduct. The claimant explained that Shona Donnelly had been in touch with the first respondent's bookkeeper

5 who had confirmed the issue of holidays had been dealt with. The claimant provided Melanie Hogg with a statement from Shona Donnelly (P45/248) in which she referred to a conversation in August 2016 with Sara Walasz about her holiday entitlement and of being informed that she still had 28 days holiday to take before April 2017 and that there had been an error. Melanie Hogg sought clarification that the claimant was responsible for the accuracy of pay and that an anomaly in the processing of pay was the claimant's responsibility. The claimant explained that Sara Walasz was employed to process payment of wages. The claimant explained that she had not been suspended for any pay anomalies.

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64. The claimant referred to the witnesses being asked "*selective questions*". Melanie Hogg informed the claimant that the questions were on specific issues relevant to the business as her case was an employment and not a criminal case. The claimant stated that all her statements had been disregarded. Melanie Hogg asked the claimant to clarify what questions she felt should have been asked. The claimant suggested that the questions related to "*bullying and things like that*". She did not feel "*it was done fairly*". Melanie Hogg informed the claimant that where there have been allegations of bullying and harassment there is a duty of care on an organisation to ask questions and investigate the wider issues of what could be going on in the organisation. She asked the claimant to identify the questions that she thought should have been asked. The claimant became upset. She confirmed that she could not continue and would leave her papers with Melanie Hogg. The claimant offered to provide written statements from employees who were not interviewed during the disciplinary process and who she felt could give a different perspective. The respondents prepared a minute of the appeal hearing (P61/297-304).

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65. The claimant provided the respondents with further information to support her appeal by letter dated 17 November 2016 (P63/306-313). The claimant emphasised points that she had made previously and which had not been addressed by HRFace2Face in correspondence to date.

66. Melanie Hogg prepared a report dated 22 November 2016 (P68/335-342) in which she dismissed the statements provided by the claimant as not adding “any further substantive evidence” other than “she was indeed a positive person and pleasant to work with”. In her report (P68), Melanie Hogg made findings and recorded under the heading “Facts and Evidence” (P68/340-341) the following;

“ From the above the finding is that the evidence supports the disciplinary penalty and outcomes. That although (the claimant) felt that the outcome of the disciplinary was unsubstantiated, the facts and case was reviewed in its entirety along her own evidence. The following are agreed facts;

- That (the claimant) was responsible for the payroll, pay documentation and processes such as timesheets and pay books, invoices and the effective management of staff.
- That there was evidence of missing timesheets.
- That (the claimant) by her own evidence, agreed that payroll was incorrect that payment had been authorised by her.
- It was established that invoices had not been effectively processed and as a consequence had impacted upon the business.
- That there were missing documents and that (the claimant) had access to and oversight of these and responsibility for the distribution of these documents.
- That (the claimant) had not put processes in place to avoid appearance in her conduct of wrong doing.
- That there was a culture within the team that was not united and there were grievances that could have been addressed earlier

- *That the serious nature of the breaches of conduct were fundamental to the role of Hotel Manager.*
- *That there were ongoing failures in relation to key processes.*
- *That the disciplinary outcomes and findings were supported by these facts.*
- *That although (the claimant's) interpretation of these facts varied there was not additional evidence provided that would dismiss them".*

67. In her report (P68/341) Melanie Hogg made the following recommendations;

24. *Having given full and thorough consideration to the total information presented I recommend that the disciplinary penalty of Dismissal for gross misconduct be upheld in its entirety specifically as it is related to serious matters. Specifically, that '(the claimant's) actions of submitting the false wage sheets was gross misconduct in line with the company policy, i.e. Page 27: 'any behaviour or negligence resulting in a fundamental breach of contractual terms that irrevocably destroys the trust and confidence necessary to continue the employment relationship will constitute gross misconduct.'* The sanction of which was summary dismissal. The facts and evidence support this outcome and the other disciplinary penalties. This outcome was also upheld the facts and (the claimant's) own evidence that she was responsible for the payroll process and the management of the team.

25. *In considering the level and fairness of the penalty the following factors were assessed. The impact of the breach of trust and confidence. The context of the size and business environment were also considered specifically that as a hotel, the impact of the errors*

*such as loss of business the impact on the staff team. The nature of the penalty as it related directly to (the claimant's) role and her position within the team.*

5           26. *The investigation and disciplinary process were thorough and (the claimant) has had full opportunity to present her case and provide detailed information. The facts and evidence continue to support the disciplinary penalties and outcome.*

10           27. *I partially uphold the point that the processes were delayed at key points this was due to both (the claimant's) requests and the client. On this point of the appeal I note that these delays would not have changed the outcome of the process based upon evidence presented. I do however, recommend that any future cases be handled with reasonable speed.*

15           28. *There was no substantive evidence provided that would overturn the Company's decision.*

29. *It is my recommendation that the organisation ensure that a timelier approach to resolving employee matters both formal and informal be taken.*

20           30. *That the clear provision of role profiles and accountabilities be provided for the staff and where any potential conflicts of interest arise that these are dealt with in a timely manner by the business.*

31. *That the provision of training for key roles would ensure procedures are followed and support the efficient operation of the hotel.*

25           32. *It is for the organisation to decide if it wishes to accept my recommendations.*

68. The second respondent wrote to the claimant (P69) as follows;

*“Please find enclosed a copy of the latest Disciplinary report from Peninsula.*

*The report represents our position and decision to terminate your employment with immediate effect”.*

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The claimant did not receive the second respondent’s letter (P69/343) or a copy of Melanie Hogg’s report (P68). She did not receive a copy of Naomi Sayers’ report (P66) about her grievance. The claimant wrote to the respondents by letter dated 5 December 2016 (P70) enquiring about the outcome of her appeal. She did not receive a reply from the respondents.

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69. The claimant has been unemployed since her dismissal. She has made some attempts to obtain alternative employment. There are limited employment opportunities in her local area. She has been unfit for work due to work related stress (P72/346-352). She became stressed and anxious during her suspension. Her condition continued after her dismissal. She has received Employment and Support Allowance (P71) since her dismissal.

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## **ISSUES**

70. The issues to be considered by the Tribunal were identified as follows;

(i) What was the reason, (or, if more than one, the principal reason) for the claimant’s dismissal?

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(ii) If the reason for dismissal related to the conduct of the claimant, did the respondents act reasonably or unreasonably in treating the claimant’s conduct as a sufficient reason for dismissing her?

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- (iii) Was the claimant suspended because she is married to Bryan Byers and if so, was she treated less favourably because of marriage?
- (iv) Did the respondents fail to pay the claimant a week's wage amounting to an unauthorised deduction from wages?
- (v) Did the respondents provide the claimant with a written statement of her employment particulars? &
- 10 (vi) If any of the claims are well-founded what, if any, compensation should be awarded to the claimant and by how much should any award of compensation be increased or reduced?

## SUBMISSIONS

### RESPONDENTS' SUBMISSIONS

- 15 71. The respondents provided the Tribunal with written submissions to which oral submissions were added at the Hearing on 6 April 2018. What follows is a summary of the above.
- 20 72. In relation to the first allegation of unauthorised payments to Emma Graham, Mr Howson submitted that it was reasonable for the respondents to prefer the statements of Caroline Love, Virginia Bingham and Ann Fellows, all of whom stated that it was impossible for Emma Graham to have accrued the number of banked hours claimed. The evidence, submitted Mr Howson, demonstrates that Emma Graham was paid a full-time wage during her maternity leave to which she was not entitled. It was reasonable, submitted Mr Howson, for the respondents to find that the claimant was responsible for the above payments on the basis that she had authorised them. It was also reasonable, submitted
- 25 Mr Howson, for the respondents to believe that the claimant must have known that the payments should not have been made but continued to authorise them to the benefit of her daughter. It is a critical part of the case, submitted

Mr Howson, showing culpable behaviour that the claimant is unable to explain where she got the hours from to justify her daughter's level of pay while on maternity leave.

5 73. Mr Howson referred the Tribunal to the housekeeping staff rotas for March to  
December 2015 and Emma Graham's calculation of hours for the above  
period (390-427) and which she disclosed during the course of the Hearing.  
The above documents, submitted Mr Howson, are crucial to the extent that  
they demonstrate not that Emma Graham had banked hours in the run up to  
her maternity leave but had in fact worked 112 fewer hours than the 30 hours  
10 which she claimed were guaranteed. Mr Howson described the alleged  
entitlement to 30 hours per week as a misnomer during the period of maternity  
leave when Emma Graham claimed to rely on banked hours to make up her  
pay. Even including accrued annual leave of 100 hours, submitted Mr  
Howson, leaves Emma Byers owing the first respondent 12 hours at the start  
15 of her maternity pay. The tribunal should reject Emma Graham's evidence  
that she had banked hours from 2014, submitted Mr Howson. It was contrary  
to the claimant's evidence at the disciplinary meeting which infers that the  
banked hours were accrued during 2015 and the statements from other  
employees in housekeeping that to bank that number of hours was  
20 impossible. Mr Howson referred to the claimant's concessions during cross  
examination that she could not explain where she got the banked hours from  
for Emma Graham or the grounds on which she authorised the payments.

25 74. Mr Howson invited the Tribunal to find that although the above evidence was  
not available to the respondents at the time of the claimant's dismissal and  
was not therefore part of the decision-making process, it did prove that Emma  
Graham had been paid for work she had not undertaken. The Tribunal should  
take this evidence into account when considering any reduction for culpable  
and blameworthy conduct on the part of the claimant. The claimant, submitted  
Mr Howson, had authorised the payments which the evidence clearly  
30 demonstrates was unjustified. Mr Howson submitted that the claimant was

guilty of fraud or, at the very least, gross negligence by failing to properly ascertain the correct payments due to Emma Graham.

5 75. In relation to the allegation concerning Shona Donnelly, Mr Howson submitted that if the Tribunal did not find that she was a close friend of the claimant, it was not in dispute that she had been recruited by the claimant. It was not in dispute, submitted Mr Howson that Shona Donnelly could not have accrued sufficient holiday pay to justify the amount she was paid over the period in question (P32/155-161). The claimant's explanation that Shona Donnelly was covering for other employees' holidays should be rejected  
10 submitted Mr Howson as the claimant had failed to show for which employees she was covering and why it was felt necessary to add the word "holiday" next to her hours. The respondents were entitled, submitted Mr Howson, to form the reasonable belief that the explanation from the claimant was inadequate. They were entitled to conclude that Shona Donnelly had not worked the hours  
15 for which the claimant had authorised payment, in particular given that they were during school term time. The claimant therefore, submitted Mr Howson, was culpable and her conduct amounted to fraudulent behaviour.

20 76. Mr Howson again referred the Tribunal to the housekeeping staff rotas for March to December 2015 (390-427) which were disclosed by the claimant during the course of the Hearing. He submitted that again, while not available to them at the time of the claimant's dismissal, they supported the respondents' decision to dismiss the claimant. The housekeeping roster, submitted Mr Howson does not record Shona Donnelly working or any of the other housekeepers taking annual leave during the weeks in question. The  
25 Tribunal should reject the claimant's explanation provided in response to questions in cross examination that Shona Donnelly would have been working in the banqueting department at the time as the wage sheets clearly show her working in the housekeeping department. The claimant's sudden change in her evidence in this respect, submitted Mr Howson, undermined her  
30 credibility.

77. Mr Howson again invited the Tribunal to find that although the above evidence was not part of the decision-making process at the time of the claimant's dismissal, it did prove that Shona Donnelly was paid for work that she had not undertaken. The claimant, submitted Mr Howson, had authorised the payments which the evidence clearly demonstrates was unjustified. Mr Howson submitted that the claimant's conduct in authorising payments to her friend amounted to fraudulent behaviour or, at the very least, gross negligence by failing to properly ascertain the correct payments due to Shona Donnelly. The respondents, submitted Mr Howson, contend that the claimant's conduct was culpable and blameworthy justifying a reduction in any award in compensation.

78. In relation to the alleged removal of paperwork from the office, Mr Howson submitted that the second respondent gave cogent evidence as to the removal of sensitive paperwork from the office in or around 1 June 2016 which included employee files. It is not in dispute, submitted Mr Howson that the paperwork said to have been removed by the claimant was stored in a locked drawer with the key kept in the office safe to which only the second respondent, the claimant, Katie Pascoe, Ashley Paterson, Alex Roberts and Sara Walasz had access. Ashley Paterson was no longer employed by the first respondent at the time of the alleged incident and the others denied any wrongdoing. The claimant, submitted Mr Howson, blamed Katie Pascoe. The claimant's evidence should be rejected, submitted Mr Howson, as it was based on a similar situation when missing paperwork was later found by Katie Pascoe. The only motive that could be advanced by the claimant and Ashley Patterson for Katie Pascoe deliberately removing paperwork to subsequently find it was an attempt on her part to try and "stir up trouble". In her statement (P42/238-241) however, submitted Mr Howson, Ashley Patterson's recollection of events contradicts the evidence she gave to the Tribunal and should be rejected as unreliable.

79. As regards motive, Mr Howson submitted that the missing documents could be linked to the fraudulent payments made to the Emma Graham and Shona

Donnelly. It is the respondents' position that the documents could and would have shown conclusively that fraudulent payments were made. The respondents therefore contend, submitted Mr Howson, that it was reasonable for them to believe that the claimant had removed paperwork in the manner described by the second respondent and Katie Pascoe.

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80. In relation to the allegation of failing to properly invoice GWB, Mr Howson submitted, that the Tribunal should prefer the second respondent's evidence to that of the claimant and Ashley Patterson that it was the claimant who had overall responsibility for invoicing GWB. Either way, submitted Mr Howson, the claimant's position that the second respondent was entirely motivated by money was contradicted by her evidence that the second respondent failed to provide Ashley Patterson with the correct instructions for invoicing GWB. Mr Howson submitted that it must follow from the second respondent's disinterest in the day to day management of the business that responsibility for establishing the correct invoicing procedures for GWB fell to the claimant and that it was therefore the claimant who had failed to establish the correct procedure.

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81. Mr Howson submitted that a similar situation occurred in relation to the Online Travel Agency. The claimant, submitted Mr Howson, provided the Tribunal with a contradictory description of the second respondent. She maintained that the second respondent provided insufficient support while at the same time describing his personal intervention in the online bookings which, submitted Mr Howson, under any reasonable analysis would fall within the claimant's remit. Mr Howson submitted that the Tribunal should prefer the second respondent's evidence that he would not have become involved in either invoicing GWB or online bookings; these were matters within the claimant's remit. The Tribunal should find, submitted Mr Howson, that the respondents held a genuine and reasonable belief that the claimant by failing to establish proper invoicing procedures for GWB and on-line bookings had failed to properly undertake her role.

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82. The allegations of bullying and harassment, submitted Mr Howson, were supported by statements obtained from Caroline Love, Ann Fellows and Katie Pascoe. The respondents, submitted Mr Howson, were entitled to reasonably conclude that bullying had occurred as alleged in the above statements.

5 **DISCRIMINATION**

83. It is the respondents' position, submitted Mr Howson, that the reason for the claimant's dismissal was her conduct in relation to the above matters amounting to gross misconduct. If the Tribunal does not accept the above and finds that the reason was related to the dispute between the claimant's  
10 husband and the second respondent, which is denied, it is the respondents' position submitted Mr Howson, that a claim of discrimination has not been established. Referring to the case of **Hawkins v Atex Group 2012 IRLR 807**, Mr Howson submitted that protection from discrimination is based on marital status and not because of the identity of the person to whom the person is  
15 married. In this case therefore, the claim of discrimination based on the protected characteristic of marriage is misconceived as the claimant's case is that she was treated less favourably because of the person to whom she is married as opposed to her marital status.

**REMEDY**

20 84. In relation to remedy, Mr Howson submitted that the Tribunal should consider carefully the claimant's attempts to mitigate her loss. As regards her inability to work due to ill health, the Tribunal must be satisfied that this is attributable to the actions of the respondents and benefits received which are not subject to the recoupment provisions must be set off against any loss of wages  
25 awarded by the Tribunal. In terms of applying the case of **Polkey v AE Dayton Services Ltd 1987 UKHL 8**, Mr Howson submitted that there were three distinct stages in the process involving an investigation, disciplinary and appeal. If the above procedure was flawed, which is denied, it is the respondents' position that a fair procedure would have inevitably resulted in

the claimant's dismissal and that accordingly a 100% reduction is applicable. There was no breach of the ACAS Code of Practice submitted Mr Howson and accordingly no uplift should be awarded and if there is found to be a breach of the ACAS Code it should be limited given there is no evidence of a clear and systematic breach. There is however evidence, submitted Mr Howson, of culpable and blameworthy conduct on the part of the claimant for which a reduction in any award of up to 100% is appropriate. Similarly, submitted Mr Howson, the claimant's' conduct was repudiatory entitling the respondents to dismiss her without notice. In the event of any injury to feelings being awarded to the claimant, Mr Howson submitted that it should fall within the lower to mid-range of the lower band in the case of **Vento**.

### CLAIMANT'S SUBMISSIONS

85. The claimant provided the Tribunal with written submissions to which oral submissions were added at the Hearing on 6 April 2018. What follows is a summary of the above.
86. Mr John submitted that the claimant's dismissal was both procedurally and substantively unfair. It is the claimant's position, submitted Mr John, that the second respondent and/or HRFace2Face (whose findings the second respondent simply adopted) did not have a genuine belief in the alleged misconduct. Instead, submitted Mr John, the second respondent had an ulterior motive for suspending and disciplining the claimant which was to remove her husband from the land. Further, or alternatively, submitted Mr John, the second respondent's approach to the disciplinary proceedings developed into a paranoid "witch hunt" (most likely assisted by Katie Pascoe) against the claimant, her husband and daughter.
87. Mr John submitted that the investigatory process was procedurally and substantively unfair. Key evidence and explanations from the claimant were not properly considered or followed up. There were significant and unexplained delays in the process. The appeal hearing was oppressive and the report substantively flawed. It represented a shifting from the original

allegations to a finding of any misconduct being sufficient to justify dismissal with no consideration given to any mitigating circumstances.

5 88. Mr John invited the Tribunal to find that the second respondent was an unimpressive witness. He described him as the controlling mind of the first respondent. Employment of HRFace2Face did not absolve the respondents, submitted Mr John. The second respondent was evasive, forgetful and sought to “pass the buck” on to his advisers whenever it suited him and from whom the Tribunal did not hear any evidence. He had predetermined the case at an early stage. Linda Satterley’s report was flawed as she had formed the view, submitted Mr John that there were insufficient grounds to dismiss the claimant which is why she questioned the claimant about settlement. There was also evidence, submitted Mr John, of the second respondent having behaved in a similar manner with a previous employee. The evidence of Katie Pascoe was equally evasive, submitted Mr John. It was impossible to reconcile her flippant oral evidence with the allegations made against the claimant in her statements. There was abundant evidence, submitted Mr John that Katie Pascoe was a manipulative troublemaker who benefited directly from the claimant’s dismissal.

15 89. Mr John invited the Tribunal to find that the claimant was asked by the second respondent to leave work on 2 June 2016 as a means of removing her husband from the second respondent’s land. This, submitted Mr John, was the driving force behind suspending the claimant. The second respondent’s position that the claimant could have until Friday to “*try and address the situation*” was, submitted Mr John, entirely inconsistent with the suggestion that he believed the claimant to have intercepted mail from the Land Register at the time of her suspension. There was in any event, submitted Mr John, no evidence of the email in question having been delivered to the castle.

20 90. If, submitted Mr John, the purported reason for the claimant’s suspension was not genuine, a sham or tainted by an ulterior motive, it must go to the core of the second respondent’s credibility and reliability as a witness. It must also

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cast very real doubt on the genuineness of the subsequent disciplinary process, evidence gathering and belief in the claimant's guilt.

5 91. Referring to the second respondent's evidence and in particular his statement (P19/94-97), Mr John submitted that once it became apparent that the claimant was unable or unwilling to influence the "land issue" there was an agenda to ensure her dismissal. The above statement (P19/94-97) submitted Mr John was provided before any of the allegations other than the interception of mail were put to the claimant. Given the decision to dismiss the claimant was predetermined, submitted Mr John, it will be difficult for the respondents to show that there was a balanced or fair approach to the evidence and sanction to be applied. Similarly, submitted Mr John, the comments made by Linda Satterley at the close of the disciplinary hearing supported the claimant's position that the respondents had decided to dismiss her however weak the evidence.

15 92. As regards the allegations against the claimant, submitted Mr John, many were historical in nature and not raised with the claimant at the time. He also questioned that authenticity and accuracy of the statements relied upon by the respondents. Mr John referred in particular to the statement of Sara Walasz (P16/84-86) and her evidence in cross examination when she conceded that parts of her statement were inaccurate.

25 93. The first allegation, submitted Mr John, was vague. The claimant, submitted Mr John, was accused of abusing a system which she had inherited and had herself sought to update. The second respondent, submitted Mr John, had rejected the claimant's suggestion about how the system might be improved by the introduction of a clocking in system. This evidence, submitted Mr John, contradicted the suggestion that the claimant was intent on abusing the system. The respondents had failed to take into account the claimant's explanation that in addition to banked hours, Emma Graham still had accrued holidays to take when starting her maternity leave. The claimant's evidence that her daughter was employed for 30 guaranteed hours should be accepted

by the Tribunal submitted Mr John. Likewise, submitted Mr John, the second respondent accepted that he had agreed to the arrangement that the claimant's daughter work 5 hours a week. The respondents, submitted Mr John, had a credible explanation for Emma Graham's rate of pay during her maternity leave. The second respondent knew about the sources as he had agreed to them, for example the guaranteed 30 hours and the 5 hours worked during maternity leave. Mr John warned the Tribunal against placing too much weight on the evidence about rotas produced during the course of the Hearing. It was unfair, submitted Mr John, to expect the claimant to recall exactly how hours paid more than two years ago were calculated and from incomplete records. Moreover, the records in question were not before the respondents at the time of the claimant's dismissal and it would be unfair to speculate about what the claimant was thinking at the time. There had been no attempt at a "cover up" by the claimant, submitted Mr John.

15 94. Mr John invited the Tribunal to draw an inference that Katie Pascoe was responsible or at least involved in Emma Graham's "hour book" going missing. He referred the Tribunal to the evidence which he submitted supported the above conclusion. The finding by the respondents that the claimant must be responsible for authorising fraudulent payments to her daughter is simply unsustainable submitted Mr John. The second respondent knew or should have known that this was not the case and that accordingly the allegation was fundamentally flawed. It is insufficient, submitted Mr John, for the second respondent to claim that he delegated the decision making to Peninsula. The respondents remain responsible for the claimant's dismissal.

25 95. Mr John also referred the Tribunal to how the first allegation against the claimant changed during the course of the disciplinary process. At the investigation level, submitted Mr John, it was an alleged payment of £270 to the claimant's daughter. By the time of the disciplinary report the claimant was responsible for authorising a fraudulent payment. On appeal the allegation had been watered down to failure on the part of the claimant to involve the second respondent "to avoid the suggestion of impropriety". The finding

5 against the claimant on appeal, submitted Mr John, does not qualify as a breach of the first respondent's disciplinary procedure, let alone gross misconduct. There was no finding of impropriety, only a "a desperate attempt to hunt around for some criticism" against the claimant in circumstances where the original allegation could not be supported. The appeal recommendations, submitted Mr John, failed to take account of the lack of support provided to the claimant to allow her to undertake her management role. Mr John also referred the Tribunal to the evidence of Sarah Walasz that she had not concluded that Emma Graham's hours were claimed fraudulently on being told that the "hour book" was missing.

10 96. Mr John submitted that in all the circumstances the Tribunal should find that the respondents did not have a genuine belief that the claimant had authorised fraudulent payments to her daughter; that the investigation into the allegation was unreasonable and that the decision that the allegation amounted or contributed to gross misconduct or any breach of trust and confidence was out with the range of reasonable responses.

15 97. The respondents' treatment of the second allegation concerning authorisation of holiday pay to Shona Donnelly was similarly flawed submitted Mr John. Notwithstanding that Sarah Walasz had confirmed there was an error, this was not followed up by Linda Satterley, submitted Mr John. Her finding that the claimant must be responsible for "the authorisation of fraudulent payments to Shona Donnelly" is plainly unsustainable submitted Mr John. No reasonable employer, submitted Mr John, could have concluded from the information available that there had been fraud. The explanation was clearly one of error resulting in no loss to the respondents and no gain to Shona Donnelly. By the time of the appeal hearing, submitted Mr John, there was a clear acknowledgement that the evidence could no longer establish any monetary gain and the misconduct became failure by the claimant to correctly process pay. The findings at appeal fail all three stages of the **Burchill** test, submitted Mr John amounting to a "contorted and unconvincing attempt to vindicate a very questionable gross misconduct dismissal". Melanie Hogg

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failed to take proper account of the statement provided by the claimant from Shona Donnelly (P45/248) submitted Mr John. There was an overall failure to investigate evidence that might support the claimant.

5 98. Mr John submitted that the allegation of destroying or removing paperwork was generated purely on the evidence of Julie Pascoe. The Tribunal should reject her evidence as untrue, submitted Mr John. In addition, he submitted, there were no grounds on which the respondents could reasonably have believed that the allegation was true. Julie Pascoe's account of the claimant removing and destroying paperwork for over an hour is inherently improbable; 10 as the claimant's successor as General Manager, she had a motive for fabricating evidence to support the claimant's dismissal in relation to missing documents, turning away business and errors with on line bookings; she had a reputation as a troublemaker and someone who was associated with the disappearance of documents and was capable of manipulating evidence to support her own ends. The second respondent, submitted Mr John, displayed 15 paranoia in his attitude to the claimant and the suggestion that she would destroy files. Mr John referred to the second respondent's evidence that "*over the years I am constantly amazed at the folk who have ripped me off*".

20 99. Mr John referred the Tribunal to the recommendation in the Disciplinary Report (para 116 286m) that the claimant be issued with a final warning for failing to store confidential paperwork correctly. This was not the allegations against the claimant, submitted Mr John, and it is entirely unclear how the claimant is said to have incorrectly stored paperwork. Mr John described the recommendation as a further desperate attempt to "*make something stick against the claimant, where the evidence does not justify it*". Similarly, 25 submitted Mr John, the findings from the Appeal relating to responsibility for missing documents bear little resemblance to the original allegation of deliberately removing or destroying paperwork.

30 100. The allegation that the claimant acted in a way to damage the business is plainly flawed, submitted Mr John. The deficits in relation to the GWB and

online travel agencies occurred in August 2015. The claimant was not admonished, let alone disciplined at that time. On the contrary, submitted Mr John, in February 2016 the second respondent was expressing his gratitude to the claimant for her support. For the claimant to be disciplined for the deficits one year on as “deliberate sabotage” of the business was, submitted Mr John, wholly flawed and what he described as a clear attempt to falsely undermine the claimant.

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101. The evidence, submitted Mr John, did not show that the claimant was responsible for any errors with invoicing. This was the responsibility of other employees with the support of the second respondent. The claimant could not be criticised, submitted Mr John, for turning away business in circumstances where it would not be commercially viable to open the hotel for a small number of guests or where it was the second respondent who had refused to agree a discount. The evidence of Katie Pascoe that there was something “fundamentally wrong” with the way in which the claimant was running the business was flawed submitted Mr John and not something to which the Tribunal could attach any meaningful weight. It was the second respondent, submitted Mr John, who had failed to allow the claimant to introduce innovative ideas to grow the business and who through his own behaviour had undermined the business.

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102. In relation to allegations of bullying, Mr John reminded the Tribunal that none of the respondents’ statements were signed. The claimant had explained to the respondents how she had managed a conflict between Katie Pascoe and Ashley Paterson. Despite this, submitted Mr John, the incident materialised as an issue for Katie Pascoe 9 months later. Katie Pascoe, submitted Mr John, had deliberately exaggerated and distorted events to make out a case against the claimant. Allegations of bullying made by Caroline Love had not been raised before and there was no evidence of her letter to the second respondent detailing her alleged concerns. Similarly, submitted Mr John, the respondents’ statements could not be relied upon while those of the claimant were disregarded by the respondents. The evidence relied upon in relation to

the reduction in Caroline Love's hours was not put to the claimant. This was unfair, submitted Mr John, in particular given the weight attached to it in the Disciplinary Report (para 107 286m). The bullying allegations, submitted Mr John, could not reasonably have been accepted by the respondents given the contrary evidence about the claimant's management style, the informal resolution of disputes and the complete lack of contemporaneous evidence of the serious matters being alleged. By the time of the Appeal the allegations had again been "watered down". Bullying became a "a culture within the team that was not united and there were grievances that could have been addressed earlier". This is a huge step down from the allegation levelled against the claimant of a culture of bullying and discrimination. It does not address the original allegation, is unsupported by evidence and at worst, submitted Mr John, is unlikely to register as a disciplinary breach.

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103. In summary, submitted Mr John, none of the allegations as framed were reasonably supported on the evidence and none were upheld in anything like their original form at the Appeal. Neither a finding of gross misconduct or a sanction of summary dismissal, submitted Mr John, were in these circumstances within the band of reasonable responses and certainly not on Appeal. Regard should also be had, submitted Mr John, to the respondents' failure to take account of the claimant's 13 years' service with an unblemished record, no training and no job description.

104. Mr John submitted that the procedure followed by the respondents also lacked fair notice and was unfair due to inordinate and unexplained delays. There was a period of two months from the claimant's suspension until she heard anything further from the respondents. She did not receive the first letter about the disciplinary hearing. The second letter gave her less than only 48 hours' notice to prepare for the disciplinary hearing. Her requests for a postponement were refused. This was unfair submitted Mr John and left the claimant in a position where she was only able to respond in any detail at the appeal stage and after the decision to dismiss her had been made. The claimant's grievance, submitted Mr John, highlighted her concerns about the

respondents' delays and the stress that they caused. The claimant's five-month suspension, submitted Mr John, was in contravention of ACAS guidance. The claimant, submitted Mr John, did not receive the appeal or grievance outcome until just before the Tribunal hearing - 7 months after the Appeal. Again, submitted Mr John, this was procedurally unfair.

## **DISCRIMINATION**

105. In relation to the claim of discrimination, Mr John submitted that the claimant was treated less favourably on the ground of her marital status. The second respondent, submitted Mr John, accepted at the end of cross examination that if the claimant had not been married to Bryan Byers that she would not have been suspended. The fact that the claimant was married must have been instrumental in the act of suspension, submitted Mr John. Marital status gave her the close connection to Bryan Byers. The second respondent hoped to take advantage of their being married by suspending the claimant as leverage to get her husband off the land. It is unlikely, submitted Mr John, that suspension would have been so utilised if the claimant was not married to Bryan Byers.

## **FAILURE TO PROVIDE A WRITTEN STATEMENT OF EMPLOYMENT PARTICULARS**

106. The claimant, submitted Mr John, is entitled to compensation of up to four weeks' pay for failure on the part of the respondents to provide her with a written statement of her particulars of employment. She was required, submitted Mr John to operate on a verbal agreement. The respondents make no comment on this head of claim in their ET3 and have led no evidence of such a statement being issued submitted Mr John.

## **UNPAID WAGES**

107. The claimant, submitted Mr John, seeks one week's pay for which she worked in lieu.

**REMEDY**

108. The claimant did not contribute to her dismissal, submitted Mr John. She was working with an antiquated system which she had inherited from a previous Manager. Emma Byers had sufficient banked hours and holidays to justify the hours she was paid during maternity leave. The claimant's Schedule of Loss has not been challenged, submitted Mr John. Given the circumstances in terms of her health and the small rural community in which she lives, it is hardly surprising submitted Mr John that the claimant has been unable to find alternative employment. The dismissal was procedurally unfair and therefore an uplift is sought on any award of compensation in terms of the ACAS Guidance.

109. A **Polkey** deduction in this case, submitted Mr John, would be inappropriate. The unfairness is both substantively and procedurally unfair. Had the respondents fully engaged in the process, it is inconceivable that they would have fairly dismissed the claimant. Mr John described it as an unattractive proposition to make a hypothetical finding that the claimant would have been fairly dismissed in circumstances where there was clear predetermination on the part of the respondents and evidence of Alexander Roberts being persuaded to withdraw his statement.

**NOTES ON EVIDENCE**

110. The evidence in this case was complicated and was considered carefully by the Tribunal. The respondents sought to show that the claimant was guilty of numerous acts of misconduct. The alleged conduct was wide ranging and said to have taken place over a period of time. The recommendation to dismiss the claimant was contained in a report prepared by HR Face2Face (P55) and not the respondents. The Tribunal did not hear from Linda Satterley, author of the report. It did not hear from her about the evidence from which she concluded that the claimant was guilty of gross misconduct justifying dismissal. Likewise, the Tribunal did not hear from Melanie Hogg who heard the claimant's Appeal and concluded that the respondents were entitled to

uphold their decision to dismiss the claimant. The Tribunal heard from the second respondent, Phillip Ptolomey who, despite having accepted the recommendation to dismiss the claimant sought to distance himself from the decision-making process and struggled to explain the basis on which the claimant was found to be guilty of the numerous acts of misconduct for which she was dismissed.

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111. The Tribunal did not find the second respondent to be a reliable or in certain respects credible witness. He avoided answering questions that directly challenged his version of events and many of his answers were evasive and unhelpful. By his own admission there were a number of issues relevant to the decision to dismiss the claimant, for example discrepancies in the payment of wages, about which he knew very little if anything and about which he was unable to answer questions. The Tribunal did not accept the second respondent's evidence about events on 2 June 2016 when the claimant was suspended from work. The second respondent's evidence that the claimant was suspended on the advice of Peninsula because of a potential breach of security lacked credibility. It was inconsistent with the claimant being asked to undertake banking duties before she left the castle; inconsistent with the claimant being given 48 hours to *"try and address the situation"* of her husband being on the land and inconsistent with the subsequent discussion between the second respondent and Emma Graham about the reason why the claimant had been sent home. It was also not referred to as the reason for the claimant's suspension in the second respondent's statements (P18/91) provided for the disciplinary process. The evidence before the Tribunal supported the claimant's position that the second respondent could be unpredictable and easily take offence resulting in her being suspended from work in response to the frustration he clearly felt over the land dispute with the claimant's husband, a relationship which he described in evidence as being "at logger heads". The Tribunal was persuaded that once it became apparent that the claimant's suspension would not result in her husband moving off the disputed land that her dismissal was a foregone conclusion. The second respondent had said as much when he told the claimant that she

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could return to work once she had persuaded her husband to move off the land. When this did not happen, the focus turned to finding something for which the claimant could be blamed and that would justify her dismissal.

- 5 112. The second respondent described putting down everything he could think of about the business and background in his statement for the disciplinary process against the claimant; he stated, "*we started to check everything*". Practices that were known about and of limited concern before the claimant's suspension and, were said to have "*only came to light since the claimant's suspension*" became examples of "*sabotage*" on her part.
- 10 113. From the available evidence, the Tribunal also accepted the claimant's position that the second respondent was capable of being impulsive and inconsistent. An example of this was his evidence about Emma Graham's entitlement to be paid for 5 hours' work each week during her maternity leave. The second respondent began by accepting that he had agreed to the above  
15 arrangement. He then changed his position and denied any such agreement, taking "total issue" with the 5 hours' work, while acknowledging the conflict with his earlier evidence. Likewise, he accepted that Emma Graham had banked hours and that by the time of her maternity leave had outstanding hours for which she was entitled to claim payment. Without any direct  
20 knowledge of how many hours she had banked however and without any objective evidence available to him, he sought to discredit both Emma Graham and accuse the claimant of fraud based on payments made during her maternity leave. Another example was an e mail to the claimant (P8/69), in which the second respondent stressed how he would not have "*got through  
25 the last decade without you*" and referred to the business as improving. This was in marked contrast to the allegations made following the claimant's suspension of attempted conspiracy and sabotage without any credible explanation as to why the claimant would seek to destroy the business in which she had been happily employed for the past 13 years. The reason  
30 provided by the second respondent for believing that the claimant would remove and destroy files was to "*make life difficult*". The basis on which the

second respondent was able to reach such a conclusion from the evidence before him was unclear. He lacked objectivity, describing the claimant's suspension as "*highly charged and emotional*".

5 114. The Tribunal had reservations about the evidence of Katie Pascoe. Her statement (P12) was relied on by the respondents to establish the claimant's misconduct in particular that Katie Pascoe "*knew that there was something fundamentally wrong with the way (the claimant) was running the business and was sure there was a reason behind it*" (P12/74). Examples were given of the discrepancies with GWB invoicing and online travel agency bookings. 10 Katie Pascoe was said to have witnessed the claimant removing and destroying paperwork a few days before her suspension. Significant weight was attached to this alleged incident and Katie Pascoe's observation (P12/76) that in hindsight "*it is now clear that (the claimant) had been preparing to leave the business*". When questioned about the basis on which she reached the 15 above conclusion, Katie Pascoe sought to distance herself from the incident. There was no convincing reason advanced as to why the claimant would be planning to leave the first respondent's business. There was no convincing evidence as to what paperwork she was said to have removed from the castle and how this would assist her leaving the first respondent's employment. The 20 Tribunal did not accept the respondents' submission that the second respondent gave cogent evidence about the claimant's removal of sensitive paperwork from the office. It was Katie Pascoe and not the second respondent who was said to have witnessed the claimant removing paperwork. The exact paperwork that was said to have been removed from the castle and/or 25 destroyed by the claimant was unclear from the evidence before the Tribunal.

30 115. Likewise, Katie Pascoe was evasive and vague when questioned about the incident involving a booking with South African connections and which was relied upon to demonstrate that the claimant sought to sabotage the respondents' business. She sought to distance herself from the role of Hotel Manager. From the available evidence, including reference to Katie Pascoe as Hotel Manager in the respondents' letter (P55) to the claimant (confirming

her dismissal) and Katie Pascoe's self-description in the You Tube video as Hotel Manager, the Tribunal found that Katie Pascoe acquired the claimant's role shortly after, if not before, the claimant's dismissal. The Tribunal was persuaded that Katie Pascoe was motivated to exaggerate events and make unsubstantiated remarks about the claimant to support the second respondent and seek promotion. She lacked objectivity.

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116. Sara Walasz found herself in a similar position to that of Katie Pascoe following the claimant's suspension. The Tribunal was persuaded that she was placed under pressure from the second respondent to provide information that would support a decision to dismiss the claimant. When questioned about what she knew of the claimant's responsibilities as opposed to what she had been told by the second respondent, for example in relation to GWB and online bookings, she was less certain about attributing blame to the claimant. Likewise, when questioned in detail about the statements she had provided (P16 & P25), she became more circumspect and less inclined to agree with her previous remark that "*it was clear that there has been a deliberate and consistent attempt at fraudulent claiming of wages*". (P16/85). While she could not recall a conversation with Shona Donnelly about holiday pay, she stated in evidence to the Tribunal that the incorrect holiday pay was probably her fault. She stated in evidence that she did not witness any bullying and agreed that the claimant got on well with people. Sara Walasz also agreed with Mr John in cross examination that the second respondent was keen to get rid of the claimant and was sure that this was "the mood" of the second respondent.

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117. The Tribunal found the claimant to be credible. She had a clear recollection of events surrounding her suspension and the reason she was given by the second respondent for her suspension. Her evidence that the second respondent told her that he had to suspend her because of the land dispute with her husband and that she could return to work if she was able to convince him to vacate the land was highly persuasive. Her evidence on this matter was not challenged in cross examination. The Tribunal also found the

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claimant's evidence to be credible in relation to the issues about which she was cross examined in detail. This included the wages paid to her daughter, Emma Graham during maternity leave. As referred to above, during the Hearing Emma Graham produced documents (P75 & P76) detailing hours worked during 2015 & 2016. It was not in dispute that these were not before the respondents at the time of the claimant's dismissal. When questioned as to the basis on which the wages paid to Emma Graham had been calculated, the claimant was able to identify banked hours, accrued pay and additional hours worked during her maternity leave. While her evidence in this respect did not display a detailed knowledge of how the hours had been calculated, the Tribunal was not persuaded that this was sufficient to establish that she had deliberately authorised payments to her daughter to which she was not entitled. The Tribunal did not accept the respondents' submission that the claimant lacked credibility by suggesting that her daughter might have been entitled to accrued holiday from 2014. Similarly, the Tribunal was not persuaded that it should find that the claimant's evidence lacked credibility because she explained that Shona Donnelly had worked in banqueting in addition to housekeeping to help explain how her hours had been calculated. The Tribunal was satisfied that the claimant was seeking to assist rather than mislead the Tribunal when giving the above evidence about events dating back some time.

118. The Tribunal accepted the claimant's evidence in respect of her limited involvement in GWB and on-line bookings, The Tribunal did not accept the respondents' submission that the claimant's description of the second respondent's inconsistency in relation to management issues undermined her evidence that he had responsibility for supervising GWB invoices and on-line bookings. The claimant's description of the second respondent retaining responsibility for the above matters was consistent with his ownership of the business and understandable interest in the first respondent's financial position.

119. The Tribunal also found the claimant's witnesses to be credible including family members who, notwithstanding their relationship to the claimant, gave their evidence in a balanced and straight forward manner. The Tribunal accepted the evidence of Steven Byers and in particular his recollection of the disciplinary hearing at which he was asked to leave the room to allow Linda Satterley to discuss the possibility of a settlement with the claimant. As referred to above, Linda Satterley did not attend the Tribunal to dispute the claimant's evidence. Alexander Robert gave evidence of feeling intimidated by the second respondent for providing a statement which was supportive of the claimant and which he subsequently withdrew. This was a serious allegation. It was not challenged in cross examination. The Tribunal accepted his evidence. It was given in a straight forward manner and while there was evidence of the witness preferring the management style of the claimant to that of Katie Pascoe and of having subsequently left the first respondent's employment, the Tribunal was not persuaded that these were factors that would cause him to give false evidence. Similarly, the evidence of Stuart Dalglish was honest and straightforward. He gave evidence about the contractual arrangements for chefs and their refusal to accept zero-hour contracts. This evidence was not challenged. The evidence of Ashley Paterson was concerned for the most part with the second respondent's management style and her own working relationship with Katie Pascoe. The Tribunal accepted her evidence that the dispute with Katie Pascoe was resolved informally following the claimant's intervention. The Tribunal also accepted her evidence that she was involved with invoicing GWB and that there were no repercussions or suggestion of disciplinary action when the shortfall in payments came to the respondents' attention. Likewise, the Tribunal accepted her evidence that Katie Pascoe, as opposed to the claimant, was responsible for the on-line bookings and that again there was no suggestion of any disciplinary action when errors with invoicing came to the second respondent's attention.

120. Emma Graham's evidence was at times confused. She sought to explain the basis on which she had received payments while on maternity leave during

2016 and which had not been questioned before her mother's suspension. This was not made any easier given the lack of clarity in the available paperwork as to how hours were recorded, calculated and paid by the respondents. On balance, the Tribunal accepted her evidence that she had  
5 sought to maintain her level of pay during maternity leave by relying on a combination of "banked hours", accrued annual leave and additional hours to cover management duties such as preparing rotas and ordering supplies and covering annual leave of other employees during her maternity leave. The available evidence did not persuade the Tribunal that Emma Graham had  
10 deliberately claimed pay to which she knew she was not entitled or more specifically that the claimant had fraudulently claimed pay on her behalf. It was clear however that the arrangements with regards to paying Emma Graham had not been an issue at any point before the claimant was suspended from work. Emma Graham's evidence that she had not sought to  
15 defraud the respondents was credible. The Tribunal was not persuaded that any confusion on her part to explain exactly how and when she worked or accrued the hours for which she was paid during maternity leave was sufficient to find that she had fraudulently claimed payment from the respondents. Had she been guilty of fraud, it was unclear why she would of  
20 her own volition have produced documents to the Tribunal which according to the respondents established her wrongdoing.

## **DISCUSSION & DELIBERATIONS**

121. It was not in dispute that the claimant was dismissed. She had the right not to be unfairly dismissed in terms of Section 94 of the Employment Rights Act  
25 1996 ("ERA"). The respondents denied any unfairness. In determining whether the dismissal was fair or unfair, it was for the respondents to show that the reason (or, if more than one, the principal reason) for the claimant's dismissal was potentially fair in terms of Section 98(1) of ERA. The respondents claimed that the reason for the claimant's dismissal related to  
30 her conduct. This is a potentially fair reason for dismissal as it falls within Section 98(2)(b) of ERA. The respondents relied on the findings of HRFace2Face in relation to the claimant's conduct and submitted that they

were sufficient to justify the claimant's dismissal from the post of Hotel Manager. The claimant disputed that her conduct was a sufficient reason to justify her dismissal. She claimed that her dismissal was inevitable because of the land dispute between her husband and the second respondent.

5 122. From the evidence before it, the Tribunal was satisfied that the reason for the claimant's suspension was the land dispute between the claimants' husband and the second respondent. The Tribunal accepted the claimant's evidence that on the day of her suspension she was told by the second respondent that he had to send her home because of the dispute over the land and that she  
10 could return to work if her husband gave up his tenancy. This was the same reason the second respondent gave to the claimant's daughter later the same day for her mother's suspension from work. The second respondent also sought to apply pressure to the claimant's daughter by referring to her father being imprisoned if he did not leave the land.

15 123. The Tribunal did not find that the reason for the claimant's suspension related to "*alleged misappropriation of company property*" as stated in the letter to the claimant of 3 June 2016 (P9). The second respondent's request that the claimant undertake a financial transaction before she leave the premises was inconsistent with her suspension for the serious allegation of misappropriation  
20 of company property. In both versions of his statement (P18 & 19) the second respondent stated that the claimant was suspended from work "*whilst we conducted an investigation over various matters*" and that he "*told her she had to be removed from the building for her own protection as we had uncovered some serious allegations against her husband and I did not want*  
25 *her involved in this*". There was no reference in either statement to the claimant being suspended for the reasons given in the letter of 3 June 2016 (P9) of alleged misappropriation of company property or other conduct on her part.

124. The Tribunal found that following the claimant's suspension and her  
30 husband's refusal to leave the land, attempts were made by the second

respondent to find a potentially fair reason to dismiss her from the first respondent's employment. The Tribunal found that the second respondent was motivated to dismiss the claimant by his anger and frustration with Bryan Byers over the land dispute. He encouraged employees such as Katie Pascoe and Caroline Love, who would both benefit from the claimant's dismissal, to provide statements supporting his allegation that both the claimant and her husband "*had a concerted campaign calculated to damage the business drive away customers and increase overheads with a view to taking over the business*". (P18 & P19). In both statements (P18 & 19) the second respondent informed HRFace2Face that "*All staff, once they were sure that (the claimant) was actually suspended, came forward with their own stories of abuse, mismanagement and general actions designed to bring the business to its knees*". The second respondent knew that this was incorrect. The second respondent knew that statements had not been obtained from employees who were supportive of the claimant. The Tribunal heard from an employee who felt intimidated when approached by an associate of the second respondent about a statement supportive of the claimant and which he subsequently withdrew. There was no evidence of his statement having been provided by the respondents to HRFace2Face.

125. Katie Pascoe assisted the second respondent by questioning the pay of the claimant's daughter during maternity leave. This led to Sara Walasz being asked to justify the payments in response to which she became understandably defensive and sought to blame the claimant's daughter and indirectly the claimant. The Tribunal found that the second respondent took advantage of the difficulties faced by Emma Graham to explain how her pay was calculated and which were not helped by the respondents' "banking" system. In his statement (P19) the second respondent said of the allegations made against the claimant that; "*For the purposes of severing (the claimant's) contract a lot of the above is a mine field and very difficult to prove. But for our immediate action it is clear that (the claimant) has acted illegally in authorising payments to her daughter; is this enough to fire her?*" The Tribunal found that the second respondent had sought grounds upon which he could

justify the claimant's dismissal. It was the second respondent who made the decision to dismiss the claimant. He adopted, without further enquiry, the recommendations made by HRFace2Face to dismiss the claimant.

5 126. Dismissing the claimant for her conduct is a potentially fair reason in terms of Section 98(2)(b) of ERA. The Tribunal therefore went on to consider whether the claimant was dismissed fairly or unfairly having regard to the claimant's conduct. In terms of Section 98(4) of ERA this depends on whether in the circumstances (including the size and administrative resources of the respondent's undertaking) the respondents acted reasonably or unreasonably  
10 in treating the claimant's conduct as a sufficient reason for dismissing her. This is determined in accordance with equity and the substantial merits of the case.

127. The Tribunal had regard to the case of **British Home Stores Ltd v Burchell 1980 ICR 303** in which the EAT held that in a conduct related case the  
15 employer must show that (i) it believed the employee was guilty of the misconduct in question; (ii) it had in mind reasonable grounds upon which to sustain that belief and (iii) at the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

20 128. The Tribunal was not persuaded that the decision to dismiss the claimant for her conduct satisfied the three-fold test in **Burchell** (*supra*). As referred to above the second respondent provided HRFace2Face with the evidence on which to base their findings and recommendations. He knew that the employees from whom he obtained statements were unsupportive of the  
25 claimant and that in the case of Katie Pascoe and Caroline Love they would benefit from the departure of the claimant and Emma Graham from the castle. He did not provide statements from employees who might be supportive of the claimant. His friend put pressure on Alexander Roberts to withdraw a statement which was supportive of the claimant. The statements provided to

HRFace2Face from which to make findings and recommendations were one-sided and misleading.

129. HRFace2Face were also provided with inaccurate information about contractual arrangements between the first respondent, Emma Byers and other employees. They were informed that employees were on zero-hour contracts. This was incorrect. The second respondent knew it was incorrect. Emma Byers, in particular, was employed on a 30-hour contract. The second respondent knew this and failed to inform HRFace2Face. They were also not told that the second respondent had agreed to Emma Byers working additional hours during her maternity leave. They were told that no one in Housekeeping used notebooks to record their hours. Again, this was incorrect. HRFace2Face were provided with inaccurate information on which to make findings and recommendations.

130. As referred to above, no one from HRFace2Face gave oral evidence to the Tribunal. From the available evidence, the Tribunal was not persuaded that there had been a reasonable investigation into the points made by the claimant at each stage of the disciplinary process. For example, there was no evidence of Linda Satterley making further enquiries about the various sources identified by the claimant for Emma Graham's wages while on maternity leave including the Keeping in Touch days. The claimant explained that the payment to Shona Donnelly was probably an administrative error and that the payment was for wages and not holidays. There was no evidence of Linda Satterley speaking to either Sara Walasz or Shona Donnelly to check the claimant's version of events, notwithstanding the assurances that she gave to the claimant. There was no evidence of Linda Satterley making enquiries with Ashley Paterson about invoicing GWB or Katie Pascoe about on-line bookings or with any other employees. Linda Satterley was unable to explain to the claimant why she would have removed paperwork from the castle. There was no evidence of Linda Satterley having made any enquiries about any other employees having access to the safe where the key to the claimant's desk was stored. There was no evidence of HRFace2Face investigating issues raised in statements provided by the claimant other than

Melanie Hogg's finding (P68/339) that the claimant "*was indeed a positive person and pleasant to work with*". There was no evidence that HRFace2Face had considered the claimant's concerns about the land dispute and that this was the second respondent's motive for the disciplinary action against her.

5 There was no evidence of HRFace2Face considering the claimant's concerns about the motivation of Katie Pascoe to provide evidence that might put her in a bad light. The Tribunal did not, in all the circumstances, conclude that the respondents undertook a reasonable investigation into the claimant's conduct before recommending her dismissal.

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131. The Tribunal was not persuaded that the second respondent believed in the claimant's guilt. He knew that Emma Graham had worked additional hours during her maternity leave. He had agreed to this arrangement. He had worked with the claimant for a number of years without difficulty. Problems with GWB and on-line bookings had arisen sometime before the claimant's dismissal. There had been no suggestion that they were the fault of the claimant before her suspension and no disciplinary action had been considered necessary at that time. The Tribunal was not persuaded that the second respondent believed in the claimant's guilt or that when deciding to

15 dismiss the claimant there had been a reasonable investigation by HRFace2Face into the allegations against the claimant to reasonably conclude that the claimant was guilty of the misconduct for which she was dismissed.

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25 132. In all the circumstances, the Tribunal concluded that the claimant's dismissal was unfair. The respondents did not act reasonably in treating the claimant's conduct as a sufficient reason for dismissing her.

## **DISCRIMINATION**

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133. The claimant also complained of discrimination by the respondents because of marriage in terms of Sections 8 and 13 of the Equality Act 2010. The Tribunal agreed with the respondents that protection from discrimination in terms of Section 8 of the Equality Act 2010 is based on marital status as

opposed to the identity of a person's spouse. In the case of **Hawkins v Atex Group Ltd & Others 2012 IRLR 807** (at paragraph 13) Underhill J in the EAT favoured the approach to discrimination because of marriage as covering "only cases where the employer is motivated (at least in part) by the fact of marriage as such, rather than by closeness of a relationship which happened to take the form of marriage". The Tribunal was not persuaded that the claimant was suspended because she was married. She was suspended because of her close relationship to Bryan Byers to whom she was married. The second respondent suspended the claimant in the hope that it would lead to Bryan Byers moving off the land because of his close relationship with the claimant. Their close relationship took the form of marriage but this was not the reason for the second respondent the claimant. In all the circumstances the claim of discrimination was not well-founded and shall be dismissed.

#### **WRITTEN STATEMENT OF EMPLOYMENT PARTICULARS**

134. In terms of Section 1 of ERA the first respondent was obliged to issue the claimant with a written statement of her employment particulars. The Tribunal was not persuaded from the evidence before it that the first respondent had complied with the above obligation. There was no evidence before the Tribunal of a written statement having been provided to the claimant.

#### **UNAUTHORISED DEDUCTION FROM WAGES**

135. The Tribunal was unable to find from the available evidence that the respondent had failed to pay the claimant for her first week of work. The Tribunal was unable to find what was said to be properly payable to the claimant for the week in question and the amount that was said to have been deducted without authority from the claimant's wages. In all the circumstances the claim for unauthorised deduction from wages was dismissed.

REMEDY

136. The claimant sought compensation. The respondents submitted that any award of compensation should be reduced to reflect the claimant's conduct and in the case of the compensatory award, the extent to which any action of the claimant caused or contributed to her dismissal.

137. As referred to above, the respondents sought to attach significant weight to documents (P75 & P76) produced by Emma Graham during the Hearing to show that the claimant was guilty of authorising fraudulent payments to her daughter. They accepted that the documents (P75 & P76) were not before them at the time of dismissal and were therefore of limited, if any, relevance to the issue of whether the claimant's dismissal was fair or unfair. They sought to argue however that they were of relevance to the issues of whether the claimant could have been dismissed in any event applying the ruling in the case of **Polkey v AE Dayton Services Ltd 1988 ICR 142** and to contributory fault.

138. The Tribunal was not persuaded that the issues raised during the disciplinary process, either alone or cumulatively, could have justified the claimant's dismissal. Issues such as money outstanding by GWB and online bookings were historic and not issues for which the claimant had been blamed at the time. The respondents were unable to provide a convincing explanation as to why the claimant would have removed or destroyed paperwork from the castle. It was unclear in any event what she was said to have removed or destroyed. The Tribunal was not persuaded from the available evidence that the claimant was guilty of authorising payments to Emma Graham to which she knew she was not entitled. The amounts paid to Emma Graham during her maternity leave were known to the respondents at the time of payment. They were calculated by the respondents' bookkeeper, Sara Walasz. The additional payments for Keeping in Touch days were paid at the suggestion of Sara Walasz. The Tribunal did not accept the respondents' submission that the available evidence, which included documents (P75 & P76) that Emma Graham had voluntarily produced to the Tribunal, established that she was

not entitled to the payments and that the claimant had authorised them knowing this to be the case. It was not in dispute that the system used by employees to record their hours was outdated. The claimant had suggested a clocking in system. The respondents' own systems of "banking hours" and reliance upon notebooks and other informal methods for calculating hours led to confusion and lack of transparency. The Tribunal did not find that this was of the claimant's making. The Tribunal did not find that payments made to Emma Graham were the result of fraudulent intent or gross negligence on the part of the claimant. Similarly, the explanation provided for the payment to Shona Donnelly as an administrative error was credible and supported by Sara Walasz. The Tribunal was not persuaded and did not accept the respondents' submission that there was evidence to support a finding that the claimant had sought to defraud the respondents by paying Shona Donnelly holiday pay to which she was not entitled.

15 139. The Tribunal was not persuaded that the findings from the Appeal against dismissal (P68) supported a finding that the claimant could have been dismissed in any event. There were no specific findings of the claimant having destroyed records; of knowingly submitting false claims for payment or of allowing bullying amongst employees. In all the circumstances, the Tribunal was not persuaded that the claimant could have been dismissed fairly by the respondents for a reason relating to her conduct or some other potentially fair reason.

25 140. The Tribunal was also not persuaded that the claimant's dismissal was to any extent caused or contributed to by any action on her part that would make it just and equitable to reduce the basic award or to make a finding that the claimant's actions contributed to her dismissal making a reduction to any compensatory award just and equitable. The claimant was not to blame for her dismissal.

141. Based upon her age at the date of dismissal (55); length of employment (13 years) and a weeks' pay at the date of dismissal (£479) the claimant has been awarded a basic award by the Tribunal of **£9,340.50** (1.5 x 13 x £479).
142. The Tribunal was satisfied that in all the circumstances the claimant's loss of income since her dismissal is attributable to action taken by the respondents. The claimant has been unemployed since her dismissal. The Tribunal was not persuaded that she has failed to mitigate her loss during this period. She has made attempts to find work. She lives in a rural area. The claimant has been unwell due to stress and anxiety since her suspension. She has been certified as unfit to work due to work relate stress. The claimant had worked for the first respondent for thirteen years in hotel management and there was no evidence produced by the respondents of any similar employment opportunities for which she has failed to apply since her dismissal.
143. The claimant's loss of income to the date of the Judgment (1 November 2016 to 21 June 2016) totals £38,599.70. The Tribunal was satisfied that the claimant should be in a position to find alternative employment by the end of 2018 and accordingly has calculated her future loss in the sum of £12,437.30. The total compensatory award before any adjustments therefore totals £51,037.
144. The claimant sought an uplift to any award on the grounds that the respondents had failed to follow the ACAS Code of Practice. (Section 124A of ERA). It was not in dispute that the disciplinary process included an investigation, a disciplinary hearing at which the claimant had the right to be accompanied and the right to appeal against her dismissal. The Tribunal agreed with the respondents that to this extent they had followed the ACAS Code. In addition to providing a framework for a fair procedure, the ACAS Code also provides that issues should be raised and dealt with promptly. An investigation should be carried out without unreasonable delay. In the case of the claimant, there was a delay of almost three months between the claimant's suspension and the disciplinary hearing. There was no satisfactory

5 explanation provided by the respondents for this delay. There was a further  
delay of over two months, during which time the claimant raised a grievance  
complaining of delay, before the claimant was notified of her dismissal. Again,  
no satisfactory explanation was provided by the respondents for the above  
delay. The claimant was allowed the right to appeal against her dismissal. The  
claimant however did not receive the result of the appeal hearing before  
starting the Tribunal proceedings. The ACAS Code provides that an employee  
should be informed in writing of the results of the appeal hearing as soon as  
possible. No satisfactory explanation was provided by the respondents for  
10 their failure to respond to the claimant's letter of 5 December 2016 (P70)  
enquiring about the outcome of her appeal.

145. The Tribunal was satisfied that in the above circumstances there was a failure  
on the part of the first respondent to comply with the requirement to raise and  
deal with issues promptly and to notify the claimant of the outcome of her  
15 appeal hearing and that the failure on the part of the first respondent to comply  
with the ACAS Code was unreasonable. The Tribunal concluded that an uplift  
in accordance with Section 207A of the Trade Union & Labour Relations  
(Consolidation) Act 1992 to her award of 10% was just and equitable. Based  
on the total compensatory award of £51,037 (£38,599.70 + £12,437.30) the  
20 above adjustment totals £5,103.70.

146. The claimant has also been awarded compensation for loss of statutory rights  
of £300. The total compensatory award therefore totals £58,056.70 (loss of  
statutory rights of £300 + compensation of £56,140.70 (immediate loss  
£38,599.70 + future loss £12,437.30) + ACAS adjustment £5,103.70). The  
25 statutory cap of one year's gross pay must be applied to the above award in  
terms of Section 124 of ERA. In the case of the claimant this totals £29,952  
(52 weeks x £576). The compensatory award is therefore limited to £29,952.

147. The claimant has received Employment Support Allowance since her  
dismissal. The Employment Protection (Recoupment of Benefits) Regulations  
30 1996 therefore apply to the award. The prescribed period is 2 November 2016

to 21 June 2018. The total award for the purposes of recoupment is £39,292.50. The prescribed element is £17,461.99. The total award exceeds the prescribed element by £21,830.51.

5 148. In terms of Section 1 of ERA the first respondent was obliged to issue the claimant with a written statement of her employment particulars. The Tribunal was not persuaded from the evidence before it that the respondents had complied with the above obligation. In the above circumstances, the Tribunal has awarded the claimant 4 weeks' pay totalling £1,916.

### **CONCLUSION**

10 149. The Tribunal concluded for the above reasons that (i) the claimant was unfairly dismissed by the first respondent; (ii) the first respondent shall pay to the claimant a basic award of £9,340.50; (iii) the first respondent shall pay to the claimant a compensatory award of £29,952; (iv) the claim of discrimination because of marriage is not well-founded and shall be dismissed; (v) the first  
15 respondent failed to provide the claimant with a written statement of her employment particulars for which the first respondent shall pay to the claimant compensation of £1,916 & (vi) the claim of unauthorised deduction from wages shall be dismissed

20 Employment Judge: Frances Eccles  
Date of Judgment: 21 June 2018  
Entered in register: 25 June 2018  
and copied to parties