EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100459/2018

Held in Glasgow on 28th and 29th August and 13 November 2018

Employment Judge: Ms Claire McManus

Members: Mr McAllister & Mr Alexander

Mr J McLaughlin	**Claimant** **In person**
South Lanarkshire Council	**Respondent** **Represented by:-** **Mr Mays -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous decision of the Tribunal is that: -

- The claimant's claim of victimisation under section of the Equality Act 2010 is unsuccessful and is dismissed. The respondent did not subject the claimant to a detriment in respect of allocation of opportunities to earn overtime payments because of him having done the protected act of making a complaint under the respondent's Dignity at Work procedure, that complaint having included allegations of sex discrimination.

- The claimant's claim of unlawful deductions from wages is unsuccessful and is dismissed.

- The claimant's claim of sex discrimination has been withdrawn and is dismissed.

REASONS

E.T. Z4 (WR)

Background and Preliminary Discussions

1. The claim (ET1 form) was presented on 22 January 2018. The response (ET3 form) was received on 26 February 2018. The claim form stated Unison as a second respondent but the ACAS EC Certificate made mention only of South Lanarkshire Council as the respondent and the claim proceeded against South Lanarkshire council only. A Preliminary Hearing ('PH') on case management issues took place on 6 April 2018, before EJ Robison. The Note of that PH sets out the issues discussed then. The claims were registered as being in respect of sex discrimination and unlawful deductions from wages. Paragraph 6 of the Note of the PH begins 'I noted that the claimant has also stated that he is claiming victimisation'. That Note sets out that the claimant was directed to provide further particulars of his claims of sex discrimination and victimisation. It was set out in that Note that no claim is being made for unlawful deductions from wages.

2. Further to discussions at that PH, the Claimant wrote to the Tribunal in terms of the letter at B19 – B20 in the Inventory before the Tribunal for this hearing. That letter was taken as further particulars of his claim, although there was no request for the ET1 to be amended in these terms. Those further particulars begin:-

> 'My claim against South Lanarkshire Council is one of victimisation after lodging a dignity at work claim.'

Some further detail in respect of that dignity at work claim and the claimant's position in respect of the respondent's distribution of overtime is then provided.

The respondent's response to those further particulars (at B33 - B34 in the Inventory before the Tribunal at this hearing) makes no reference to any objection to a claim for victimisation being brought. It confirms the respondent's position that the claimant has not been treated less favourably than his colleagues. The only reference to the claim of victimisation in that response is:-

> 'In relation to the claims of less favourable treatment as a result of sex discrimination and disadvantage due to victimisation, the claimant has not produced any evidence which would support these claims.'

In these circumstances, and where the claimant is not represented, no issue was taken in respect of there being no formal amendment to the ET1 in respect of the victimisation claim.

3. At the outset of the hearing on 28 August 2018, there was discussion on the claims which the claimant sought to pursue before the Employment Tribunal. This included an explanation being given to the claimant by EJ McManus on the meaning of victimisation within the Equality Act 2010, as opposed to the common usage of the word. This explanation was given in recognition of the Tribunal's overriding objective as set out in the Employment Tribunals Rules of Procedure 2013. The respondent's representative confirmed he had no objection to this explanation being given or its terms. In respect of the direct discrimination claim, the claimant confirmed that the comparators he sought to rely on as earning more overtime than him were all males. EJ McManus sought to explain that that would present a major hurdle in his direct discrimination claim, as the basis of that claim is that he was treated less favourably than females. The claimant's position was then that he did not wish to pursue his direct sex discrimination claim. The claimant was given the opportunity to consider his position in respect of this matter. After lunch on the first day of the hearing, the claimant confirmed that he did not want to pursue his direct sex discrimination claim and this was withdrawn.

4. In respect of the victimisation claim, the claimant confirmed that the protected act relied upon by him is the bringing of a complaint under the respondent's Dignity at Work policy. The terms of section 27 of the Equality Act 2010 were noted. In particular, EJ McManus noted to parties the terms of section 27(2)(c). It was the respondent's representative's position that the respondent accepted that the claimant had done a protected act by bringing that Dignity at Work complaint. The claimant also mentioned in these initial discussions that he believed he was not given the opportunity for overtime

because he had been a trade union representative. It was noted that there was no reference in his ET1 claim form or subsequent correspondence in this claim of any allegation of unfair treatment on the grounds of his trade union involvement, and that there was currently no claim by him against the respondent on that basis, which the claimant accepted.

5. EJ McManus noted to parties the Employment Tribunal's overriding objective, including seeking to place parties on an equal footing before the Tribunal. Relevant to that, it was agreed that in circumstances where the claimant was not legally represented, and the respondent was, the evidence should be heard first from the respondent's witnesses. The claimant was reminded that he should ensure that any factors which he wished to rely on in respect of his claim should be put to the relevant respondent's witness in cross examination, so as to ensure that the respondent had the opportunity to state their position in respect of the claimant's case.

6. The Tribunal heard evidence for the respondent from Deborah Mackle (Locality Manager); Michelle McLellan (Home Care Operations Manager), Yvonne Douglas (Audit Compliance Manager) and Andrew Crookston (Community Support Coordinator). The respondent had not initially intended to call Andrew Crookston as a witness, but after hearing evidence from the other witnesses for the respondent, and in recognition of the focus of the claimant's claim on a victimisation claim and the line of evidence in respect of the claimant's own actions in making himself available for overtime, the Tribunal offered the respondent the opportunity to call a witness who may speak to their understanding of the claimant's position in respect of his availability for overtime. It was on this basis that the respondent then called Andrew Crookston, as the former line manager of the claimant. The Tribunal then heard evidence from the claimant and from Richard McLaughlin (a Home Carer with the respondent and the claimant's son), Donald Mathieson (Home Carer with the respondent and the claimant's former shift partner) and Nicholas Rossi (Home Carer with the respondent). Evidence from all witnesses was heard on oath or affirmation.

7. Reference was made during the course of the evidence to papers within a joint inventory of documents which had been prepared by the respondent

and incorporated documents which the claimant wished to rely on. This inventory was set out in sections A - E, with page numbers being consecutive within each section. References in this Judgment to a letter followed by a number relate to the document's page in that Inventory. During the course of Andrew Crookston's evidence, reference was made to email correspondence between him and the claimant in respect of the claimant's availability for overtime. Both parties were given time to identify any particular emails which they wished to rely on in respect of this, to go before the Tribunal for a view to be taken on their relevancy and admissibility. Parties were reminded that it is normally the responsibility of the parties to ensure the documents which they wish to rely on are before the Tribunal, in sufficient numbers. During a break allowed in proceedings for this purpose, parties identified further documents and those considered to be relevant and admitted by the Tribunal were then included in the Inventory at E6-E12.

8. At the conclusion of the evidence on 29 August 2018, it was agreed that parties would make their submissions in the case to the Employment Tribunal on 13 November 2018. In the circumstances it was agreed that the respondent's representative would provide his outline written submissions and copies of case law which he intended to rely on to the claimant by 14 days prior to that, i.e. by 31 October 2018. It was agreed that the claimant would then provide any comment he may have on those submissions to the respondent's representative within seven days of that, i.e. by 6 November 2018. Parties were informed that there will be no requirement for them to copy the Employment Tribunal in on that exchange in respect of submissions.

9. Parties were requested to provide the Tribunal on 13 November with a written outline of the points they were seeking to make in their submissions, although neither party would be held to speak only to those written submissions. Both parties were happy with those arrangements. It was noted that during the course of proceedings the claimant has stated that he was dyslexic. At that time the claimant was asked if he required any adjustments to be made by the Tribunal to the proceedings in respect of this and he confirmed that he did not. The claimant had no issue with providing

an outline written submission of the points he wished to rely on before the Tribunal. It was indicated that the claimant's wife would assist him in preparation of his submissions.

Issues

10. The Issues for the Tribunal to determine were:-

(1) Did the respondent subject the claimant to a detriment in respect of allocation of opportunities to earn overtime payments because of him having done the protected act of making a complaint under the respondent's Dignity at Work procedure, that complaint having included allegations of sex discrimination?

(2) Are any sums due to the claimant in respect of unpaid wages / deductions from wages?

Findings in Fact

11. The following facts were admitted or found by the Tribunal to be proven:-

(a) The Respondent is a local authority with approximately 14,000 employees. The claimant has been employed by the Respondent as a Home Carer since 6 January 2003. His employment continues as at the dates of this Employment Tribunal hearing. The respondent employs around 1000 Home Carers, covering around 34,000 visits a week to between 200 and 300 service users. Home Carers provide for a range of care needs of service users, who are individuals living within their own homes. The respondent's home care service is managed across four localities, with some Home Carers located to a particular locality and 'run' of service users and peripatetic Home Carers, who have no permanent caseload and are not allocated to any particular locality.

(b) Michelle McClellan is the respondent's Operations Manager for Home Care services in East Kilbride. She manages three team leaders, who in turn manage 24 office-based staff, including

communication, support coordinators and home care support workers. Those office-based individuals in turn manage 267 home carers. The Homecare support workers are responsible for coordinating Home Carers, in the first instance to meet the needs of 577 service users who currently receive Homecare support directly from the respondent, and 388 service users who receive support from private homecare companies contracted with the respondent to provide support. The coordinators allocate Home Carers to particular service users. Home Carers provide a range of services to the service users, including intense personal care, meal preparation, support with feeding, transfers from bed / chair / toilet, toileting, continence management, changing catheters, help to shower, dental care, hair care and shaving. After an initial assessment, where the care required is identified, a care plan is created and home carers are then directed to provide that care to the service user. Because of the personal and intimate nature of the services provided, a service user can express a preference in respect of a particular home carer or in respect of the gender of the home carers allocated to provide the services to them. The respondent seeks to permanently allocate home carers to particular service users in order to provide continuity of care, but there are often changes to that, such as when a particular home carer is not available or absent e.g. due to holidays or ill health. Each coordinator manages 40 home carers, allocated to between 80 and a hundred service users. When dealing with planned absences, the coordinators normally seek to allow a maximum of four or five carers in their locality to be on holiday in the one week.

(c) The respondent's home care workers normally work a pattern of 7 working days in 14, being work days of Monday, Tuesday, Wednesday, Saturday and Sunday in Week 1 and Thursday and Friday in Week 2. Home Carers work with a shift partner, who works the opposite shift pattern in Week 1 and Week 2, so providing for continuity of care for service users. Generally, two home carers are

allocated to a particular service user, providing cover each day over a 14 day period. Some service users require two carers to attend them at the same time, e.g. to operate a mechanical hoist for transfers. Working days for full time home care staff are in two split shifts of 5 hours, being from 7am until 12 noon and then from 5pm until 10pm. Some home carers work 21 hours per week, only working evening shifts. Some home carers work 21 hours per week, working only morning shifts.

(d) The respondent allows its Home Carers opportunities for overtime work. There is no requirement for overtime work to be offered to or to be accepted by Home Carers. The respondent relies on its Home Carers working overtime hours to meet the service needs of the organisation. Some Home Carers choose not to work any hours beyond their contractual obligations. The respondent in general operates two systems in respect of offering overtime hours to its Home Carers, one being one in respect of cover for 'planned' absences, such as holidays and long term sickness absence, and one in respect of 'unplanned' absence such as a Home Carer phoning in to advise of a sickness absence shortly before the start of a shift. Home Carers normally work a 35 hour week. Payment is not made at the enhanced rate of overtime until the Home Carer has worked 37 hours in a particular week.

(e) Peripatetic home carers are used to cover absences of other home carers, whether due to holidays, training, ill- health or otherwise. The respondent does not employ sufficient peripatetic staff to cover all Home Carers' absences. It is expected that absences which cannot be covered by the supply of peripatetic staff will be met by Home carers working overtime.

(f) The respondent's procedure for dealing with long term absences is that approximately three weeks in advance of the absence, a group text message is sent to the respondent's employed home carers working in a particular locality to inform them of the availability of

certain overtime. The claimant received these group text messages sent to all Home carers in the respondent's East Kilbride locality, other than in periods when the mobile phone allocated to him by the respondent was out of use and he was not issued with a replacement. There is a poor take-up rate at the stage of this group text message being sent. A factor in this is because some home carers will not want to accept overtime unless they know the particular times required or the 'run' i.e. the schedule of particular service users required to be attended to on that shift. The claimant exercised an element of choice in deciding which overtime shifts he wished to work. There were some service users which were difficult for the claimant to get to because of the service user's geographic location. The claimant is a 'walker' and not a 'driver'. He travels between service users' premises on foot and using public transport. Some of the respondent's Home Carers are 'drivers' and use a car to travel between service users.

(g) Approximately 2 weeks after that initial text message, a second group text is issued to all home carers working for the respondent, giving some more detail of the particular overtime, which is required to be filled. It the shift remains unfulfilled, the next stage is for phone calls to be made to home carers asking if they are available to work particular overtime shifts. When making these phone calls to home carers, the respondent takes into account the likelihood of availability of the particular home carer and whether they have indicated that they are willing to work overtime. Some home carers have indicated that they do not wish to work overtime, for whatever reason, including their personal circumstances, and there is no requirement for them to work overtime hours. Such employees would then generally not then be contacted by phone with requests to work overtime shifts.

(h) The respondent's procedure for dealing with short notice unplanned absences is to phone Home Carers to try to find someone who will cover the shift at short notice. The respondent has a duty to ensure that the service needs are met. There is often a short time factor

within which to obtain cover, e.g. where someone calls in sick shortly before the start of their shift. This leads to a practice of phone calls being first made to those employees who have indicated to the respondent their willingness to work overtime, who have taken overtime shifts in the past and who are able to get to the service users in time. Because of the timing of notification of an absence, calls to home carers asking them to cover a shift of this nature are necessarily made before the start of the normal shifts. The purpose of this practice is to ensure that service users needs are met and the shifts are covered.

(i) An effect of the respondent's practices in respect of overtime is that some Home Carers work a lot of overtime shifts, both because of allocation being on a 'first come, first served basis' in respect of speed of response to the group texts and in respect of individual home carers being called with requests for particular overtime shifts to be worked. This is a source of aggrievement to the claimant.

(j) The respondent provides its Home Carer employees with a mobile smart phone device to which the group texts re overtime availability are sent (known as 'Rant and Rave'). These mobile devices are also used for other purposes such as notifications of schedules and for Home Carers to provide information to the respondent of the time when they enter and exit a particular service user's home and in recognition of Home Carers normally being lone workers. The respondent has an allocation of 'gold standard' mobile phones which are a pool resource to provide replacement cover in the event of a home carer's allocated mobile device being out of use. There have been periods when the mobile device provided to the claimant by the respondent has been out of use. During part of those periods, when the claimant was not provided with a replacement device, the claimant did not receive the text messages providing information in relation to available overtime. There was a period of 6 months when the mobile phone allocated to the claimant from the respondent was out of use and the claimant was not allocated a replacement device.

During this period the claimant did not have access to group or individual text messages or calls in respect of overtime availability.

(k) The claimant made it known to the respondent that he did not wish to be contacted outwith his working time. This was because the claimant used to be a Trade Union Representative and found that he required to receive a lot of phone calls in respect of this position outwith his working hours. When the claimant stopped being a Trade Union Representative, he decided that he no longer wished to receive phone calls in connection with work outwith his working hours. This limitation on communications had an effect of limiting the periods when the claimant allowed himself to be contacted in respect of his availability to work overtime. This had a particular effect in respect of the claimant's availability to cover short notice overtime e.g. when another Home carer had called in sick before the start of a shift. This limit on communications also had an effect on the respondent's ability to contact the claimant in respect of cover for planned overtime.

(l) The respondent's Home Carers are line managed by Community Support Coordinators. Each Community Support Coordinator has responsibility for ensuring shifts are covered and for meeting the service needs for Home Carers in their particular area. Particular managers have their own way of managing overtime allocation. In the period from early 2014 until early 2018,the claimant's line manager was Andrew Crookston. During that period Andrew Crookston had overall responsibility for allocating and approving overtime hours worked by the claimant. Andrew Crookston's focus in respect of overtime is to ensure that service needs are met in the most efficient way possible. As part of the means of achieving such efficiency, Andrew Crookston seeks to cover absences of the Home Carers' in his locality first by absorbing some of the absent home carers' runs into the runs of other Home Carers. Such absorption can particularly take place where a gap arises in a Home Carers' run because of a change, such as a particular service user going into

hospital. There are occasions when absences are not able to be covered by such absorption and on those occasions, Andrew Crookston contacts those Home Carers in his team who he understands are willing and available to work overtime.

(m) In April 2016 the claimant raised a complaint under the Respondent's Dignity at Work policy in respect of the allocation of overtime. The cover sheet of this complaint is at D13. The claimant alleged in that Dignity at Work complaint that females were being given more overtime hours that him and alleged discrimination on the grounds of sex. This complaint was a protected act in terms of the Equality Act 2010 and it is this complaint raised by the claimant under the respondent's Dignity at Work policy which the claimant relies on in respect of his victimisation claim.

(n) The claimant's position in this Dignity at Work complaint was that he had been offered only one overtime shift from his previous organiser. While his Dignity at Work complaint was being progressed, the claimant did not accept any overtime shifts. This position is reflected in the email trail between the claimant and his then line manager, Andrew Crookston on 25 April 2016, which is at E8. Andrew Crookston sent an email to the claimant's personal email address at 14:21 on 25 April 2016 which states:-

> "Hi John,
> Can you advise if you are interested in working overtime on Friday 06/05/16 - 8 AM to 1:30 PM. Walker's male run in the Murray area. Thanks"

The claimant replied at 16:29 on 25 April 2016 stating:-

> "Hi Andrew. Unfortunately I just put in a discrimination form over this issue so unable to assist. Thanks. John

Andrew Crookston replied at 16:33 on 25 April 2016 as follows:-

> "Hi John. That's completely fine. Just thought as you had mentioned before then as this was available then you may have wished the option. Thanks again."

(o) The claimant adopted the position of not accepting overtime in April 2016 because he believed that the status quo should remain, while his Dignity at Work complaint was being progressed.

(p) Deborah Mackle is Locality Manager for the Hamilton locality of the respondent's social work resources. In 2016 Deborah Mackle was the Care Service Manager for all four of the respondent's social work resource teams. She was based in the respondent's headquarters and was the direct line manager for each of the Operations Managers in the four localities. Ms Mackle had overall responsibility for the delivery and strategic development of care services and had a role in external, being the element of homecare services, which was externally commissioned from private sector providers. Deborah Mackle dealt with the respondent's complaint raised under the Dignity at Work policy. Her letter advising the claimant of the outcome of this complaint is at E2. One element of the claimant's complaint was upheld by Ms Mackle. She acknowledged that the procedure for offering, authorising and monitoring overtime was not a written procedure. She did not find any evidence that the claimant had been treated unfairly.

(q) The claimant was previously a trade union representative. While he held that position, the claimant did not work morning shifts as a Home Carer, instead carrying out trade union duties during that time, and working the evening (5 PM to 10 PM) Home Carers shifts only. The claimant claimed overtime for his attendance at union meetings in the afternoon during his non-scheduled hours as a Home Carer. That overtime was at 'plain rate' because the claimant would not have worked the necessary hours to earn enhanced rate overtime.

The claimant did not work enhanced rate overtime hours as a Home Carer while he was a trade union representative. As a result of having been contacted by telephone at home outwith his normal working hours when in his capacity as a trade union representative, when the claimant stopped being a trade union representative, he notified the respondent that he was available for overtime but that he did not want to be contacted outwith his working hours. This led to the claimant not being telephoned outwith his shift hours to be offered particular overtime shifts. Because of the nature of the work, generally Home Carers are telephoned outwith their working hours to enquire whether they will work additional overtime hours e.g. phoned prior to the start of a shift to ensure that there is cover for that shift. An effect of the claimant informing the respondent that he did not wish to be contacted by them outwith his contractual working hours, and the respondent acceding to this request, was to reduce the opportunities for available overtime offered to the claimant. The claimant did receive the group texts sent to Home Carers by the Respondent, but often by the time the claimant had replied to the respondent in relation to a particular overtime shift, which he wished to work, that shift had already been allocated to another Home Carer who had replied earlier.

(r) On receipt of the group texts sent by the respondent in respect of available overtime, the claimant would self-select which overtime shifts he wished to work. There are overtime shifts offered to the claimant along with the other Home Carers by group texts which the claimant is not interested in applying for and which he does not apply for. These include shifts to cover a run including a service user who had requested a preference for a female home care. The claimant recognises that because of the personal nature of the services which can be provided to a service user, a preference for a particular gender may be indicated and is appropriate. This practice means that sometimes the group text messages sent by the respondent to

its Home Carers specify the overtime being for a 'female' or 'male' run.

(s) When considering the claimant's complaint made under the Dignity at Work policy, Ms Mackle took into account that the claimant had requested not to be contacted out with his working hours. Ms Mackle considered it to be reasonable that the claimant had sought to protect his personal time by asking not to be contacted by the respondent when he was not working. She noted that that that was a factor in the allocation of overtime and that because of the nature of the needs of the service, phone calls requesting Home Carers to work overtime were often made outwith the Home Carers' normal working hours, to those who were happy to receive such calls. When considering the claimant's complaint made under the Dignity at Work policy, Ms Mackle did not analyze the amount of overtime work done by the claimant in comparison with other Home Carers. Ms Mackle did look at how overtime was allocated. Ms Mackle was aware of the respondent's Social Work Resources policy on Approval and Monitoring of Overtime dated July 2013 (at C15 – C17). An outcome of the claimant's complaint under the Dignity at Work policy was that Ms Mackle considered that the procedure in place in relation to allocation and approval of overtime at a 'local level' should be written and arrangements monitored to ensure transparency of the process. That was not yet done as at the dates of evidence being heard before this Employment Tribunal. Overtime hours worked are recorded by the respondent and a monthly report on overtime activity across all localities is presented at a high level in the organisation. There is an ongoing issue with the recruitment of peripatetic staff. There is ongoing recruitment, and 15 Home Carers have been appointed on a peripatetic basis in 2018 (to August).

(t) The claimant did not receive less opportunities for overtime as a result of having raised his complaint under the respondent's dignity at work procedure. Prior to raising this complaint, the claimant did not work any additional overtime hours as a Home Carer. He did receive

the text messages, informing him about overtime opportunities but the claimant either self-selected not to seek to work the overtime shifts available, or in respect of particular shifts which he was interested in working, by the time he contacted the respondent in respect of those shifts, those shifts had already been allocated to another Home Carer who had been quicker to respond.

(u) In the period when he was the claimant's line manger, Andrew Crookston had discussions with the claimant about the claimant's availability for overtime. After the claimant raised his dignity at work complaint, the claimant did not made himself available to Andrew Crookston for overtime, saying 'Big man, I'm not available for overtime. I'm in dispute.'

(v) The claimant did earn overtime in 2017 and 2018. This overtime was in respect of shifts which the claimant was notified of in group texts, and which the claimant chose to accept and which remained available at the time when the claimant chose to accept them . This overtime work was in respect of covering shifts in areas other than those managed by Andrew Crookston. Andrew Crookston signed off on those shifts, authorising the claimant to work them. Andrew Crookston continued to work on the basis that the claimant did not want to work overtime hours in his area.

(w) The claimant was not regularly contacted by phone to ask if he would work particular overtime shifts because the respondent acceded to his request not to be contacted outwith his working hours and it was not generally understood that the claimant would not agree to cover overtime shifts. This was a factor because the respondent's employees prioritise phoning Home Carers who are most likely to work the overtime required. This is because of the pressures of the needs of the service.

(x) During the time when his dignity at work complaint was being dealt with by the respondent, the claimant elected not to work any overtime hours, although opportunities for him to work overtime still can

continue to be offered to him via the group text messages. The claimant received these group text messages in respect of overtime apart from periods when his allocated mobile device was out of use and he did not have access to a replacement. The claimant regularly switched off and did not reply to text messages received from the respondent outwith his working hours. This limits the claimant's opportunity to work overtime, particularly at short notice. It also limits the opportunity for overtime because of the 'first come first served' policy operated by the respondent in respect of overtime.

(y) The claimant was advised of the outcome of his dignity at work complaint in November 2016 and did not appeal that outcome. Since that time, the claimant has worked overtime shifts for the respondent as a home carer. The claimant has worked overtime shifts which were notified to him as part of the group texts which he self selected as being interested in and which remained available at the times when he responded to the texts. As at the dates of evidence heard before this Tribunal in respect of this claim, those shifts have been work carried out for the respondent's alert service, responding to service users who have pressed the panic alarm provided panic alarm. The claimant has self selected not to respond to group texts informing of other available overtime because he does not know what would be required to be done when attending to the particular service users on the run.

(z) The respondent carried out an internal audit in respect of overtime allocation. This internal audit covered the period from 1 April to 10 August 2017. This internal audit shows in that period the claimant earned above average overtime earnings. The claimant disputes this. There were some Home Carers who earned significantly more overtime than the claimant in this period. The internal audit took into account the overtime earned by all Home carers, including those who earned nil overtime. On that basis the claimant earned more than average overtime in the analysed period.

(aa) The claimant's overtime earnings did not decrease after he did the protected act of raising a claim of discrimination under the respondent's Dignity at Work Policy. The claimant made a freedom of information request to the respondent. The respondent's response to this is of 26 June 1018 is at D24 – D25. The information in that response is that the number of non- contracted (additional i.e overtime) hours worked by the claimant in years 2015 – 2018 (as at 26 June 2018) is:-

Year	**Additional Hours Worked**
2015	70
2016	70
2017	163
2018	128

The information provided in that response in respect of the entire Home Care East Kilbride Department is:-

Year	**Contracted Hours Worked**	**Additional Hours Worked**	**Total Hours Worked**
2015	395, 169.06	31,374.75	426,583.81
2016	445,014.90	34,938.75	479,953.65
2017	460,839.39	41,724.25	502,563.64
2018	458,649.51	42,406.75	501,056.26

(bb) These overtime hours shown as worked by the claimant in 2015 and 2016 relate to hours worked within the claimant's normal shift pattern in respect of which he was entitled to be paid at an overtime rate. The claimant did not work any overtime hours additional to his normal shift pattern prior to raising his complaint under the respondent's Dignity at Work procedure. This response, which the claimant obtained from the respondent's Finance & Corporate Resources Department to his request for information made under the via a Freedom of Information request, sets out accurate information in respect of the contracted hours, additional (overtime) hours and

actual hours worked by the respondent's home carers in their East Kilbride area in the years 2015 to 2018 (as at 26 June 2018) and number of non-contracted overtime hours worked by the claimant in the same time period . In 2015 and 2016, the only hours worked by the claimant for the respondent which came under the respondent's classification of 'additional hours' were public holidays. In both 2015 and 2016, the claimant worked 70 hours in public holidays. The claimant did no other additional overtime hours in 2015 or 2016. The claimant has worked overtime (additional hours) in 2017 and 2018, as set out in the information provided to the claimant in June 2018, in response to his freedom of information request.

(cc) The claimant's main interest in working over time is in respect of covering his partner's absences. As at the dates when evidence was heard by this Tribunal (27 & 28 August 2018), the claimant had never covered his partner's absences. When a home carer covers their shift partner's 2 weeks holiday absence, the effect of that is that the home carer works every day in a 28 day period. Some of the respondent's Home Carers do cover their shift partner' holiday absences, and so work 'back to back', working every day for 28 days. The claimant's son, Richard McLauchlan works as a home carer for the respondent. Richard McLauchlan has told his line manager that he is available to cover his shift partner's absences and is normally allocated that cover as overtime. When he provides this back to back cover, Richard Mclaughlan works every day in a 28 day period. Richard McLauchlan regularly carries out other overtime work for the respondent. Richard McLauchlan is a driver home carer who uses his own transport to travel between service users. The claimant is a 'walker' home carer who does not drive a car between service users.

(dd) During the period when he was line managed by Andrew Crookston, the claimant shift partner was Donald Mathieson Donald Mathieson used to cover his shift partner's holiday absences, not has not done so since the claimant became his shift partner. Donald Mathieson has chosen to not normally work overtime hours because of his own

personal circumstances. Andrew Crookston seeks to achieve efficiency by first seeking to cover Home Carers absences by absorption into the runs of other home carers, then by use of peripatetic staff and then by offering overtime. As at the dates of hearing evidence in this case, during the course of his employment the claimant had not informed the respondent that he sought to cover his shift partner's absences. As at the dates of hearing evidence in this case, the claimant had not been offered to cover his shift partner's absences by working overtime.

Submissions

12. At the close of the evidence, when arrangements were being made for parties to exchange skeleton written submissions, both parties were advised that the following would be considered by the Tribunal in its determination of the victimisation claim (which the Tribunal then did so):-

i. The application of the principle of 'significant influence' to the facts of the present case, that principle being as indicated by Lord Nicholls in *Nagarajan –v- London Regional Transport* 1999 ICR 877, HL, and applied by the EAT in *Villalba –v- Merrill Lynch & Co. Inc. and ors* 2007 ICR 469, EAT and in *Garrett –v- Lidl Ltd* EAT 0541/08, as commented on at para. 19.49 – 19.51 of chapter 19 ('Victimisation') of IDS 'Discrimination at Work' publication, including in particular paragraph 19.51 which states:-

> 'These decisions are capable of applying equally to s27(1) - the requirement that the detriment be 'because of' the protected act would seem to allow for multiple causes. This view is supported by the EHRC Employment Code, which notes at paragraph 9.10 that the protected act need not be the only reason for detrimental treatment for victimisation to be established.'

ii. The application of the principle of 'subconscious motivation' in the determination of a complaint under section 27 or section 13 of the Equality Act 2010 as referred to in the comment at paragraph 19.53 - 19.54 of chapter 19 ('Victimisation') of IDS 'Discrimination at Work' publication.

iii. The application of the 'Barton / Igen guidelines' to the facts of this case i.e., the guidance on the application of the shifting burden of proof given by the EAT in *Barton V Investec Henderson Crosthwaite Securities Ltd* 2003 ICR, EAT and the Court of Appeal in *Igen Ltd. (formerly Leeds Careers Guidance) and ors. –v- Wong and others* 2005 ICR 931, CA.

13. Both parties made oral submissions, based on their skeleton written submissions which they had previously exchanged.

14. The respondent's representative relied on the claimant's position in initial discussions to the tribunal at the outset of the hearing, including his claimant's position, then that he had been victimised in the allocation of overtime because he was a trade union representative and that that is not the claim which is before the this Tribunal. Reliance was placed on *Chief Constable of the West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830, [2001] ICR 1065*, particularly at paragraph 16, that 'The primary object of the victimisation provisions… Is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory rights or are intending to do so.'. It was submitted that when deciding on a victimisation claim there must be consideration of (1) the protected act being relied upon (2) the detriment suffered (3) the reason for the detriment (4) any defence.

15. It was accepted by the respondent that the claimant had made a protected act by bringing a complaint under the respondent's dignity at work policy alleging discrimination, although it was not accepted that there was any discrimination by the respondent in what was alleged by the claimant. It was noted by the respondent that the claimant had accepted previously to the respondent that occasional requests for female only shifts did not amount to

unlawful discrimination, being justified by the nature of the work including intimate personal care and respect for the wishes of the service user as to the sex of the carer. Reliance was placed on that being accepted by the claimant in his evidence before this Tribunal that female carers were sometimes required in order to respect the dignity of the service user. It was not submitted by the respondent that the claimant's original complaint of discrimination under the dignity of work policy had been made in bad faith. It was submitted that the context is important because the claimant's complaint principally relates to a perceived general unfairness in the allocation of overtime.

16. In respect of any detriment having been suffered by the claimant as a result of having made the protected act, reliance was placed on the evidence given by Deborah Alison about the outcome of the investigation into the dignity at work complaint, the evidence of Michelle McLellan in respect of how over time is allocated within the service and the evidence of Yvonne Douglas about the audit investigation into the allocation of overtime within the claimant's team. Reliance was placed on the result that the claimant did more than average overtime during the period covered by the internal audit, which was after the dignity at work complaint was made. Reliance was made on the claimant's dignity at work complaint being taken seriously and properly investigated. It was submitted that the fact that some other home carers earn more overtime than the claimant is not evidence of a detriment to the claimant. It was submitted that any difference in the amount of overtime completed by the claimant is due to a range of factors, including principally the claimant's own conduct. Reliance was placed on the position of the Court of Appeal in *MoD v Jeremiah [1979] IRLR 436, [1980] ICR 13, CA.* It was submitted that there is no reasonable basis for the claimant's view that the treatment was to his detriment. It was submitted that any alleged detriment must be capable of being objectively regarded as such, as emphasised by the House of Lords in *St Helens Metropolitan Borough Council V Derbyshire [2007] UKHL 16, [2007] IRLR 540, [2007] ICR 841*, applying *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003] IRLR 285, [2003] ICR 337,* particularly at para 35

that ‘an unjustified sense of grievance cannot amount to detriment’ which, it was submitted, is the position here.

17. Reliance was placed on the evidence of Michelle McLellan and Andrew Crookston and from the claimant himself in respect of the various ways in which the claimant had limited his own availability for working over time. Reliance was placed on the claimant:-

- Stating he was not available to work overtime due to an ongoing complaint
- Failing to respond to a request to add his name to a list of employees available to work overtime
- Declining specific offers of overtime
- Stating that he did not wish to be contacted at home
- Stating that he did not wish to be contacted when he was off shift
- Stating that he did not contact the office to ask for overtime although ‘I know its there if I want it’.
- Not responding to group texts offering overtime.

18. It was submitted that the evidence shows that the claimant has not been subjected to a detriment within the terms of the legislation.

19. It was submitted that in the event that the tribunal disagrees and finds that the claimant has been subjected to a detriment, then the respondent argues that the protected act is not the reason for the detriment. Reliance was placed on there being no evidence to indicate that the claimant’s overtime allocation worsened after the dignity at work complaint was made. Reliance was placed on the evidence of the claimant’s overtime income increasing after he had made his dignity at work complaint. It was submitted that any differences in the amount of overtime is explained by the claimant’s decisions regarding his availability and communication and by the needs of the service. It was submitted that if a policy or procedure is applied equally across the service, it cannot amount to victimisation. Reliance was placed on the respondent’s procedure being applied fairly across the service in respect of home carers who they know will be available to work overtime at

short notice, and that that is entirely reasonable, where there could be significant suffering by service users. If cover is not obtained at short notice.

20. It was noted that it was accepted by the claimant that there was no claim for unpaid wages in respect of this matter because he had not worked the overtime to earn any such wages.

21. It was submitted that the evidence does not support a finding in favour of the complaint and, therefore, the provisions of section 124 of the Equality Act 2010 in respect of a declaration of rights, compensation and / or recommendation are not relevant. It was the respondent's position that if the Tribunal finds for the claimant in respect of the victimisation claim, then specific steps would require to be taken in order to address compensation, which had yet been addressed in the respondent's submissions.

22. It was submitted that the burden of proof lies with the claimant and that once the claimant has established sufficient facts which, in the absence of any other explanation, point to a breach of the legislation having occurred, in the absence of any other explanation, the burden shifts onto the respondent to show that he or she did not breach the provisions of the Act. It was noted that it had been agreed in this case that it was more convenient for the respondent's evidence to be heard first, taking into consideration that the claimant is unrepresented. It was not accepted by the respondent that the claimant established sufficient facts which, in the absence of other evidence, points to a breach of the legislation having occurred. It was the respondent's position that the claimant's position in his submissions was not supported by the evidence before the Tribunal

23. The claimant's position in submissions was that he has been victimised due to the fact that in 2016 he put in a grievance around the unfair allocation of overtime within his office. His position was that this has been to his detriment not only financially but to his health, and the stress on his family life. His position was that section 27 of the Equality Act 2010 applies to these circumstances.

24. The claimant accepted that, with the exception of when his allocated phone was broken for six months, he received the group texts that were sent to every carer in the East Kilbride office. His position was that, despite receiving these texts, his chances of obtaining an overtime shift were 'slim'. The claimant's position in his submissions was that he informed the respondent that he was only not available to do overtime on his long week as he was already working 50 hours that week. In his submissions the claimant accepted that he did state to the respondent that he didn't wish to be telephoned at home or contacted out with working hours. The claimant's position was that he has been otherwise fully available for overtime and has been trying for three years to obtain shifts in the same way they are offered to his colleagues. His position was that despite Michelle McLellan's evidence that there were 'hundreds of overtime hours' available, he has had minimal overtime shifts. The claimant's position was that Michelle McLellan and Deborah Mackle's evidence that they had heard that the claimant didn't do overtime was contrary to the claimant having making complaints in respect of not being allocated overtime. The claimant submitted that the respondent's response to his complaint about allocation of overtime was to send him to CBT classes rather than to deal with his complaint seriously.

25. The claimant's position in submissions was that the respondent's policy of allocating overtime on a 'first come first served' basis was not fair and was detrimental to him. The claimant disputed Andrew Crookston's evidence that he had told Andrew Crookston that he didn't want to work overtime. He relied on the evidence that Andrew Crookston had signed off shifts for the claimant doing overtime in other areas. The claimant's position in his submissions was that he had made it clear to the respondent that he was fully available for overtime, especially in his short 20 hour week, but that he had never received personal calls or been offered, his back-to-back shift covering his shift partner's absences, which the claimant submitted is common practice throughout the council and not just the East Kilbride office. In his submissions, the claimant disputed the accuracy of Andrew Crookston's position that his shift partner's absences are covered by peripatetic workers or downtime. The claimant relied on Donald Matheson's

evidence that before the claimant had been his shift partner, he had covered his shift partner's absences back to back.

26. The claimant's position in his submissions was that he was 'at his wits end' and trying to get anyone in management to see his lack of overtime compared to others. The claimant noted that he had requested the health and safety audit and disputed the accuracy of the picture shown in that audit being that not one single carer in East Kilbride office had both worked well in excess of 15 days. The claimant submitted that that was perhaps due to the small time frame of that picture. His position was that the outcome of the audit was not a true reflection of the respondent's practice. Reliance was placed on the position of the claimant's witnesses that they had both worked well in excess of 15 days in a row.

27. The claimant disagreed that the fact that some carers earn more than him is not evidence of him suffering a detriment. The claimant's position in submissions was that he had has not been receiving the same chances of overtime that 'every other' of his colleagues are, because he doesn't get personal calls from his manager and doesn't get 'heads up' two weeks before, or offered his shift partner's holiday cover 'back to back'. It was the claimant's position that that has been detrimental to him financially. The claimant's position in his submissions was that he didn't want to phone up and beg, but that it was totally unfair how he was being treated in not being offered over time when others were getting an abundance of overtime.

28. The claimant did inform the tribunal at the time of submissions that he had been receiving more overtime since the dates of evidence being heard in this claim. His position was that it was 'night and day to before'. His position was that he since the hearing of evidence in this claim, he was being offered overtime, including to cover his partner's absences 'back to back' shifts.

29. In these circumstances, had the tribunal found in favour of the claimant with regard to his victimisation claim, then a separate remedy hearing would have been arranged in order to hear evidence on the extent of any financial loss suffered by the claimant in respect of that matter, taking into account

the extent of overtime offered to and accepted by the claimant since the dates of evidence being heard.

Relevant Law

30. Equality Act 2010:-

S27:- '(1) a person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act, or

(b) A believes the B has done, or may do, a protected act.'

Comments on Evidence

31. It was clear that there was an issue with communication between the claimant and the respondent is respect of overtime. The claimant's position in respect of overtime was inconsistent both during his evidence and between his evidence and his submissions. During the course of his evidence, the claimant said that his employer knew that he was available for overtime, although he 'didn't want to beg' for it. There were a number of occasions during his evidence, however, when the claimant admitted that he told the respondent not available for overtime, and when he admitted that he had done certain things, such as inform his employer that he did not want to be contacted by them outwith his contractual working hours, the effect of which was to necessarily limit the extent of overtime offered to the claimant.

32. The claimant's witnesses were all credible. The appellant's son, Richard McLaughlin was mainly straight forward in his evidence, with the exception of his position that he had 'never asked for overtime', which position did not take into account his evidence that he had informed his supervisor that he would be happy to work his (shift) partner's shifts. Those who appeared as witnesses for the claimant had then all been clear to the respondent in respect of the extent of overtime they wishes to work. This clarity in communication explained the difference in overtime worked by them and the claimant. The position in submissions that the claimant's overtime opportunities have increased since the dates of hearing evidence in this case is consistent with the explanation that the issue was with

communication and the respondent's understanding of what overtime the claimant wished to work.

33. All of the respondent's witnesses presented their evidence in a straightforward, non-emotive way and were found to be entirely credible. It was clear that Andrew Crookston's his focus in carrying out his duties for the respondent is on seeking efficiencies in the services provided by the respondent. The Tribunal accepted his evidence. There was no direct evidence before the Tribunal that the claimant had made it clear to Andrew Crookston what overtime he wished to work or in particular that he wished to cover his shift partner's back to back absences. Andrew Crookston's position in evidence was that the claimant had not made himself available for overtime after he raised the dignity at work complaint, saying 'big man, I'm not available for overtime. I'm in dispute.' This was consistent with the position in the email trail in the document at E8, which is set out in the findings in fact. The terms of that email trail of 25 April 2016 were considered to be significant, and it was on this basis that the tribunal made its finding in fact that in the period after the claimant raised his complaint under the respondent's dignity at work policy, Andrew Crookston operated on the understanding that the claimant did not wish to work overtime in his area, notwithstanding that he authorised the claimant working overtime in other areas.

34. There was no evidence of the exact date when the claimant made his complaint under the dignity at work policy, which is relied upon as being the protected act, but there was evidence of this being in April 2016 and it was accepted by both parties that complaint was raised in April 2016. On 25 April 2016 the claimant informed his line manager, Andrew Crookston that he was not available for overtime. That limited the extent of overtime which could be earned by the claimant.

35. The claimant's position in evidence was 'When I was a union rep I only did plain rate over time. Since then it's been no better.'. It was clear that the claimant preferred to work at times when he would have received double time rather than 'plain rate'. In order to earn enhanced rate, the claimant

would have required to work at least 35 hours in the week. The figures at D24 in respect of overtime earned by the claimant therefore give an accurate picture of all overtime earned by the claimant in the stated years, because additional hours are only shown once 35 hours in the week were worked.

36. In initial discussions on the case, the claimant's position was that he had received 'hardly any' overtime before he lodged his dignity at work complaint and that he had received even less after he had made that complaint. That contradicted the claimant's position in his evidence, and the information which the claimant had obtained from the respondent via his freedom of information request. That information produced in response to the freedom of information request was relied upon and referenced to by the claimant. That response is at D24 – D25 in the Inventory and is extremely significant in the determination of this case. The uncontested information in that response is that the number of non- contracted (additional overtime) hours worked by the claimant in years 2015 – 2018 (as at the reply, which is dated 26 June 2018) is:-

2015	70
2016	70
2017	163
2018	128

37. The claimant's victimisation claim is that after he made the protected act of raising a discrimination complaint under the respondent's Dignity at Work policy, he was victimised in terms of the Equality Act by non-allocation of overtime. The claimant's complaint made under the respondent's Dignity at Work Policy was made in April 2016. The uncontested evidence shows that the claimant was allocated more overtime after he made his complaint under the Dignity at Work Policy. This is why the claimant's claim of victimisation is unsuccessful. There was no doubt that the claimant has earned less overtime than some other care workers with the respondent. On the evidence, the reason for that was not because the claimant had done the

protected act of making a discrimination complaint under the respondent's Dignity at Work Policy.

38. The claimant did not recognise the impact and effect of his own actions in respect of communications with the respondent. The Tribunal considered it to be significant that the claimant's position in response to a question from one of the Tribunal members (Mr McAllister) was 'I've never asked about working over-time. I don't need to ask. I know it's there and I apply for it if I get the texts and it suits me.'

39. It became clear, in particular during the course of hearing evidence from the claimant's witnesses, that the main source of the claimant's issue in respect of overtime was that he was not offered to cover his shift partner's shifts when his shift partner was on holiday. It was apparent to the tribunal that the claimant wished to cover his shift partner's shifts during his absences. It was also apparent to the Tribunal that the claimant was self-selective in responding to the texts offering overtime, on the basis of whether he was available to work the required shift, whose shift that was (in terms of the Home Carers who usually worked that run), the location of the run (particularly taking into consideration that the claimant is a 'walker' and not a 'driver' and normally would require to transport himself to the various service users locations. There was mention by the claimant of home carers choosing not to take a particular shift because of factors such as the type work which would be required for the service users on the run. It was the claimant's position that he didn't take a shift, when he 'didn't know what (he) was going to get'. He expressed a preference for 'alert' shifts, responding to service users who use their 'panic button'.

40. In respect of the claimant's issue with not being offered overtime to cover his shift partner's absences, the Tribunal accepted as the explanation that Andrew Crookston was working on the basis that the claimant did not wish to cover overtime. In respect of the claimant not being phoned up to ask whether he would work overtime, the Tribunal accepted the respondent's witnesses position that in circumstances where the respondent is working under pressure, seeking to ensure that service users requirements are met

at short notice, it is understandable and reasonable for phone calls to be first made to those care workers who had advised that they were willing to carry out overtime, and were regularly available to do so.

41. The claimant is aggrieved that an effect of the process in place in respect of the respondent seeking to ensure cover for service users is that some home carers worked a lot of overtime. In his cross examination of the respondent's witnesses, the claimant sought to made reference to a list of 25 named individual home carers who he claimed were working 'excessive hours'. Evidence on that point was held not to be relevant to the claims brought by the claimant and the issues which the Tribunal had to determine in respect of those claims. The Tribunal has not been asked here to determine a claim in respect of breach of the Working Time Regulations. The claimant has not brought a claim in these proceedings in respect of those Regulations. It was made clear to the claimant that determination of any such claim was outwith the scope of these Employment Tribunal proceedings which he brought before the respondent. Although the Tribunal did not seek to hear evidence from the respondent in respect of steps taken by them to ensure compliance with the Working Time Regulations, there was evidence that an audit had been carried out and by the Health and Safety Executive and that no issue in terms of compliance with the Working Time Regulations had been raised within that audit, taking into consideration the averaging out of hours worked over the requisite period.

42. The Tribunal did note with some concern that although the outcome of the claimant's complaint under the Dignity at Work policy raised in April 2016 was that Ms Mackle considered that the procedure in relation to allocation and approval of overtime should be written, and arrangements monitored to ensure transparency of the process, that no such written procedure was yet in place.

Discussion and decision

43. The Tribunal approached its considerations of the claimant's claims under the Equality Act in terms of the Burden of Proof provisions as set out in s136 of Equality Act 2010 and the Barton Guidelines as modified by the Court of

Appeal in *Igen Ltd. (formerly Leeds Careers Guidance) and ors. –v- Wong and others* 2005 ICR 931, CA (as approved by the Supreme Court in *Hewage –v- Grampian Health Board* [2012] IRLR 870).

44. The Tribunal accepted the respondent's submissions. On the balance of probabilities, the claimant has not proved facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent had subjected the claimant to detriment because the claimant had done the protected act. The primary facts in respect of the determination of the victimisation claim are :-

a. The claimant had done a protected act in April 2016.
b. After April 2016 the claimant worked more overtime hours for the respondent than he had worked prior to making the protected act.

45. On these primary facts, the Tribunal could not find that the respondent subjected the claimant to a detriment in respect of allocation of opportunities to earn overtime payments because of him having done the protected act of making a complaint under the respondent's Dignity at Work procedure, that complaint having included allegations of sex discrimination. Had there been facts from which it could have been concluded that the claimant had suffered a detriment in the allocation of overtime by doing the protected act, the Tribunal would have taken into account as significant the claimant's actions as set out in the finding sin fact which had the effect of limiting the extent of overtime worked by him i.e informing the respondent that he should not be contacted outwith contractual hours, informing Andrew Crookston that he did not wish to work overtime, don't making it clear to the respondent what overtime he wanted to work and choosing not respond to certain group texts.

46. The claimant has not proved facts from which an inference could be drawn that the respondent had subjected the claimant to a detriment because the claimant had done the protected act. The Barton guidelines do not apply because the burden of proof has not been shifted to the respondent. The claimant has not suffered a detriment because he brought his dignity at work complaint. His overtime has increased since making that complaint. The

claimant has done a protected act but the facts do not show that the claimant was treated less favourably than others who did not do the protected act or that he was subject to a detriment because he did the protected act. There are other Home carers who work more overtime than the claimant but because the claimant worked more overtime after he did the protected ac than he did before doing so, the primary facts are not that the claimant suffered a detriment because of doing that protected act.

47. There was no evidence relied upon for consideration of the claimant's treatment against a comparator who was an appropriate comparator in terms of there being no material differences. The Tribunal considered the victimisation claim both as a case where the alleged detriment has a connection to the protected act and where the detriment is directly 'because of the protected act', described in *Chief Constable of West Yorkshire Police –v- Khan* [2001] IRLR 830 and commented on by Lord Neuberger in *St Helens Borough Council –v- Derbyshire* [2007] IRLR 540 in respect of the establishment of detriment. The claimant has undoubtedly been upset at his allocation of overtime by the respondent but he has not suffered a detriment because of making his complaint under the Dignity at Work Policy.

47. It was accepted by both parties that there are no outstanding sums due to the claimant from the respondent in respect of unpaid wages / deductions from wages.

Employment Judge: C McManus
Date of Judgment: 07 December 2018
Entered in register : 07 December 2018
and copied to parties