



EMPLOYMENT TRIBUNALS

Claimant: Ms N Wadley

Respondent: Oldham Metropolitan Borough Council

Heard at: Manchester

On: 11-13 September 2019

Before: Employment Judge Ainscough
(sitting alone)

REPRESENTATION:

Claimant: Mr P Johnson, Solicitor

Respondent: Miss R Wedderspoon, Counsel

JUDGMENT

The judgment of the Tribunal is that the claimant's claim for unfair dismissal is dismissed.

REASONS

Introduction

1. The claim was brought by way of a claim form dated 12 September 2018 in which the claimant complained of unfair dismissal and race discrimination in her role as an Interim Head of Sourcing Services with the respondent with effect from 26 April 2018.
2. The response form of 23 October 2018 defended the proceedings. It stated that the claimant was dismissed for gross misconduct and the dismissal was fair in all the circumstances.
3. During the telephone Preliminary Hearing on 5th December 2018 the claimant withdrew her complaint of race discrimination and that claim was dismissed by Employment Judge Warren.

Issues

4. Following the telephone Preliminary Hearing, Employment Judge Warren set out at paragraph 4, the issues to be determined as follows:

4.1 What was the reason for the dismissal? The respondent asserts that it was a reason related to conduct which is a potentially fair reason for section 98(2) Employment Rights Act 1996. It must prove that it had a genuine belief in the misconduct and that this was the reason for the dismissal.

4.2 Did the respondent hold that belief in the claimant's misconduct on reasonable grounds? The burden of proof is neutral here but it helps to know the claimant's challenges to the fairness of the dismissal in advance and they are identified as follows:

4.2.1 As an interim in post, the claimant was given no training on the roles required with the post.

4.2.2 At an interim review the claimant was not warned that the areas of concern could lead to disciplinary proceedings.

4.2.3 The claimant was blamed for the conduct of Mr Morgan to whom she answered.

4.2.4 She was disciplined for the actions and inactions of others for whom she was not responsible.

4.2.5 The actions for which she was found responsible were outside her remit, related to predecessors' conduct, and to the conduct of 2 individuals more senior than her.

4.3 Was the decision to dismiss a fair sanction, that is, was it within the reasonable range of responses for a reasonable employer?

4.4 If the dismissal was unfair, did the claimant contribute to the dismissal by culpable conduct? This requires the respondent to prove, on the balance of probabilities, that the claimant actually committed the misconduct alleged.

4.5 Does the respondent prove that if it had adopted a fair procedure the claimant would have fairly dismissed in any event? And/or to what extent and when?

Evidence

5. The parties agreed a joint bundle of written evidence running to 782 pages.

6. The claimant gave evidence and the respondent called three witnesses: Mark Stenson, the Head of Corporate Governance for the respondent and the investigating officer; Ray Ward, an Executive Director for the Corporate and Commercial Service and the dismissing officer; and Councillor Barbara Brownridge, a member of the respondent Council and the appeal Chair.

Relevant Legal Principles

7. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996.

8. The primary provision is section 98 which, so far as relevant, provides as follows:

“(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or, if more than one, the principal reason) for the dismissal and

(b) that it is either a reason falling within sub-section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this sub-section if it ... relates to the conduct of the employee ...

(3) ...

(4) Where the employer has fulfilled the requirements of sub-section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonable or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case”.

9. If the employer fails to show a potentially fair reason for dismissal (in this case, conduct), dismissal is unfair. If a potentially fair reason is shown, the general test of fairness in section 98(4) must be applied.

10. In a misconduct case the correct approach under section 98(4) was helpfully summarised by Elias LJ in **Turner v East Midlands Trains Limited [2013] ICR 525** in paragraphs 16-22. The most important point is that the test to be applied is of the range or band of reasonable responses, a test which originated in **British Home Stores v Burchell [1980] ICR 303**, but which was subsequently approved in a number of decisions of the Court of Appeal. The “**Burchell test**” involves a consideration of three aspects of the employer’s conduct. Firstly, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case? Secondly, did the employer believe that the employee was guilty of the misconduct complained of? Thirdly, did the employer have reasonable grounds for that belief? If the answer to each of those questions is “yes”, the Employment Tribunal must then go on to decide whether the decision to dismiss the employee was within the band of reasonable responses, or whether that band falls short of encompassing termination of employment.

11. It is important that in carrying out this exercise the Tribunal must not substitute its own decision for that of the employer. The focus must be on the fairness of the

investigation, dismissal and appeal, and not on whether the employee has suffered an injustice.

12. The band of reasonable responses test applies to all aspects of the dismissal process including the procedure adopted and whether the investigation was fair and appropriate. The appeal is to be treated as part and parcel of the dismissal process: **Taylor v OCS Group Ltd [2006] IRLR 613.**

Relevant Findings of Fact

Background

13. The claimant had worked in Local Government since 29 April 1996 and began working with the respondent on 1 June 2005 as a Contracts Officer.

14. In 2013, the claimant took up the role of a Procurement Manager and was seconded to work in this role for Trafford Council from 7 July 2014 until December 2014 when she returned to work for the respondent in a promoted role as Senior Sourcing Manager. From 1 July 2015 the claimant acted up as Interim Head of Sourcing Services.

15. The claimant was informed that the interim role would initially be for a period of three months to cover the ill health of Karen Lowes, who was expected to return to the role after a period of medical treatment.

16. In fact, Karen Lowes never returned to work and until Karen Lowes' eventual retirement in July 2016, the claimant's interim role was extended on a tri-monthly basis.

17. The claimant remained in this interim role in anticipation of a restructure which was signed off by the respondent in May/June 2017.

18. Following the restructure, a number of employees were made redundant.

19. In the interim role, the claimant answered to her line manager, Helen Gerling, the Assistant Director of Commercial and Transformation Services. Consultant, Alun Morgan, was the Interim Head of Strategic Relationship Management. Alun Morgan and the claimant were peers until June 2017 when Alun Morgan was promoted to Assistant Commercial Director.

20. Following the claimant's promotion to Interim Head of Sourcing Services, her role of Senior Sourcing Manager was not filled but she was assisted by seven Procurement Managers including Gaynor Gamble.

21. The claimant also worked with Jane Harrington, the PMO Gateway Manager/eCommerce and Compliance Manager, and Suzanne McCormack, the Supplier Quality Assurance and Performance Manager.

Whistle-blowing Complaint

22. On 22 June 2017, the respondent received a complaint from an anonymous whistle-blower about the alleged financial mismanagement of a school at which Alun Morgan was the Chair of Board of Directors.

23. Following this complaint, the respondent undertook an investigation into the financial arrangements it had with Alun Morgan which subsequently led to separate investigations into Helen Gerling, Alun Morgan, Karen Lowes and the claimant.

24. In July 2017 the claimant received a call from Audit stating that they wanted a general chat in regard to procurement review. The chat was rearranged to August but then the subsequent rearrangement was cancelled and did not take place.

25. On 3 August 2017, Alun Morgan was suspended. On 4 August 2017 Alun Morgan resigned his position from the Council.

26. On 27 September 2017, the claimant took part in a conference call to which she had been invited, the subject matter of which was a procurement review.

27. During that call the claimant dealt with six issues of concern that had previously been emailed to her and queried whether this call was connected to the call she had received from Audit in July.

28. On the same date, a letter was sent to the claimant inviting her to a formal investigatory interview.

Investigatory Meetings

29. On 5 October 2017 the claimant attended the investigatory meeting with a colleague and was asked a series of questions by Mark Stenson, the investigating officer, about the appointment of Alun Morgan as a Consultant and the respondent's use of his company, Morgan Bristol Limited.

30. On 2 November 2017, Gaynor Gamble provided a witness statement to the investigating officer.

31. On 7 November 2017 the claimant was invited to a second investigatory interview to take place on 14 November 2017 and was informed that it had been arranged so that the investigating officer could establish "whether your actions and/or inactions relating to Morgan Bristol Limited, Toxotis Limited and the payment of staff members constituted a breach of one or more of the Council procedures". The claimant was also advised that the investigating officer would require clarity around HR processes and the appointment of staff to the Procurement Team.

32. On 13 November 2017 Jane Harrington provided a witness statement to the investigating officer.

33. At the investigatory meeting the claimant was asked questions about the issues highlighted in the invite letter.

34. On 22 November 2017 the claimant received a letter advising her of her suspension on the grounds that she had breached Council procedures. The claimant was informed that the allegations amounted to gross negligence and could result in her dismissal. The claimant was also informed that she would be subject to a further investigatory interview.

35. ON 4 January 2018 the claimant provided written responses to the interview letter dated 27 September 2017 and the subsequent interview on 5 October 2017, and the formal investigatory interview on 14 November 2017. On 23 January 2018 the claimant was invited to a further investigatory interview to be held on 31 January 2018.

36. At the investigatory meeting on 31 January 2018 the claimant was asked specific questions about particular documents and emails.

37. On 7 February 2018 the claimant provided a bundle of documentation to supplement her answers given at the investigatory meeting of 31 January 2018. At the same time, the claimant submitted a grievance in regard to the disciplinary procedure itself and a breach of data.

38. On 14 February 2018 the investigating officer wrote to the claimant to advise he was compiling all information but that it was his view that there was a case to answer and the matter would be referred to a disciplinary hearing.

39. On 28 March 2018 the claimant received a letter inviting her to a disciplinary hearing on 18 April 2018 to be chaired by Ray Ward, Executive Director (Corporate and Commercial Services). That letter set out 12 separate allegations which can be summarised as follows:

- (1) That the claimant did not ensure that there was a sufficient contract in place for the provision of consultancy services by Morgan Bristol Limited.
- (2) That the claimant failed to ensure that the provision of services by Morgan Bristol Limited did not breach the financial thresholds of the European Procurement Rules.
- (3) That the claimant had enabled a duplicate payment to be made for the services provided by Morgan Bristol Limited.
- (4) That the claimant had paid Morgan Bristol Limited in advance of services rendered in breach of the Council rules of procedure.
- (5) That the claimant had inappropriately approved two purchase orders to enable payments to be made to Morgan Bristol Limited of approximately £25,000.
- (6) That the claimant failed to review the contractual arrangements with Morgan Bristol Limited for the provision of ICT staff.
- (7) That the claimant failed to act on the legitimate concerns of two members of her team in regard to the contractual relationship with Morgan Bristol Limited.

- (8) That the claimant inappropriately authorised a payment to Toxotis for a telephony exercise.
- (9) That the claimant instructed a junior member of staff to make a payment to Toxotis without making the necessary company checks as to whether the agreement with Toxotis was compliant.
- (10) The claimant's failure to comply with Council rules and procedure would impact on the 2017/18 Value for Money conclusion submitted by an external auditor.
- (11) That the claimant failed to follow a management instruction in regard to a consultant contract.
- (12) That the claimant had, during her suspension, contacted a member of staff.

40. The claimant was provided with a copy of the investigating officer's report in which the investigating officer concluded that the claimant had breached Council rules and procedure in regard to all 12 allegations.

41. The claimant provided a response to that report in preparation for the disciplinary hearing in which she asserted that the investigating officer had failed to evidence that her conduct fell outside the band of reasonableness and the fault lay with Helen Gerling and Alun Morgan.

Disciplinary Hearing – 18 April 2018

42. The claimant attended the disciplinary hearing on 18 April 2018 accompanied by a colleague. At that hearing the management case was presented by the investigating officer, Mark Stenson, and chaired by the Deputy Chief Executive of Corporate and Commercial Services, Ray Ward.

43. During that hearing the management case was presented and the claimant responded to the same. In addition, the claimant and the panel Chair were given an opportunity to ask questions of two witnesses, Gaynor Gamble and Jane Harrington.

44. On 26 April 2018 the claimant received a letter informing her that the disciplinary Chair had found that nine of the allegations amounted to gross misconduct, two amounted to misconduct and one was not proven. The claimant was informed that as a result, she was subject to summary dismissal as of 27 April 2018.

45. On 10 May 2018 the claimant appealed against her dismissal on the basis of:
- (a) The findings;
 - (b) The severity of the disciplinary action imposed; and
 - (c) The procedure.

46. On 25 May 2018 the claimant was informed that the appeal hearing would take place on 21 June 2018.

Appeal Hearing – 21 June 2018

47. The appeal was chaired by Councillor Barbara Brownridge and she was assisted by Councillor Gloucester and Councillor Hussain. The claimant was in attendance with a work colleague as was the appeal Chair, Ray Ward, and advisory members from the Human Resources Department.

48. At the appeal hearing the claimant called two witnesses, Darren Judge and Helen Ramsden, and the Management Team called the investigating officer, Mark Stenson.

49. On 26 June 2018 the claimant was informed that whilst the panel overturned the finding that allegation (3) amounted to misconduct, that part of allegation (9) amounted to gross misconduct and that allegation (11) amounted to misconduct, the summary dismissal was upheld.

Submissions

Claimant's Submissions

50. The claimant accepts that the reason for the dismissal was conduct and gross negligence, though takes the view that the respondent could have chosen to dismiss on the grounds of capability but chose not to do so.

51. The claimant reminded the Tribunal that its role was to determine whether there was a fair or unfair reason proven by the employer in all the circumstances, and that the respondent acted reasonably or unreasonably in accepting conduct as a sufficient reason for dismissal. The Tribunal was reminded to consider equity and the substantial merits of the case, and that it could not substitute its own view for that of the employer.

52. The claimant submitted that the relevant test was that in the case of **Burchell** and that the reasonableness of the process included the disciplinary hearing as well as the investigation process. It is the view of the claimant that the respondent had not constructed a satisfactory investigation.

53. The claimant submits that there were essentially three investigations that became more specific as each was undertaken. The claimant is of the view that she co-operated with all and maintained the same position throughout.

54. It is the claimant's contention that she faced catch-all allegations that would not stand on their own. The claimant believes she maintained the nature of the interim role, her lack of training and that she was led to believe that her role was to focus on the bigger procurement functions.

55. The claimant submits that she was only in post after Alun Morgan and Morgan Bristol Limited had been appointed by Helen Gerling. The claimant maintains that whenever issues were raised with her she raised them with Helen Gerling. The claimant submits that this is as much as a reasonable employer could expect of

somebody in her position. To have an expectation that she would go beyond her line manager would be inferring an obligation to blow the whistle.

56. It is the claimant's position that there were no red flags at the time she was performing the role but with hindsight can see that it could be inferred that she must have known what was going on.

57. The claimant maintains that she was able to answer all allegations and any reasonable employer would have concluded that she had done nothing wrong and the allegations were not made out at all.

58. The claimant submits that there is no objective evidence to reach the conclusion that the employer did. If the evidence of the Gaynor Gamble and Jane Harrington are discounted, there is very little there.

59. The claimant states that even if the Tribunal accepts that the respondent was entitled to find wrongdoings the most that can be said is there was a failure to follow procedures rather than imposing an obligation on the claimant to check the Morgan Bristol Limited contract.

60. The claimant submits that at most, there was minor negligence, certainly not enough to justify gross misconduct and dismissal, and this was not in the band of reasonable responses.

61. The claimant submits that even if the respondent could justify the findings and allegations there should have been a lesser sanction imposed.

62. Finally, the claimant submitted that the right thing for the respondent to do was to give her a warning and explain how she should have dealt with the matter differently.

Respondent's Submissions

63. The respondent submits that it has answered the case outlined in the case management summary at paragraphs 4.21-4.25. The respondent notes that the allegation at 4.2.2 was not put to the respondent's witnesses.

64. It is the respondent's case that the claimant had significant experience and expertise and was remunerated as a professional with 13 years' experience in procurement with a Public Body, and that the Tribunal must consider this standard.

65. The respondent contends that when the claimant returned in 2014, she accepted the promotion and that it was her position to challenge in that role. It is also submitted that the claimant had knowledge of both the EU Rules and corresponding legislation.

66. The respondent submits that this was not a rapid rise for the claimant. She was an expert in procurement and she was not actually held to account for her performance in the interim role, but rather to the bread and butter procurement aspect of that job.

67. The procurement roles, the respondent submits, are the eyes and ears of the Local Authority, and whilst there is a chain of command similar to most employment relationships, Procurement Officers have to be independent and challenge.

68. The respondent contends that the claimant has not proven that she had requested training or that she found the new role overwhelming. The reference to a caretaking role is a red herring: in fact, the claimant performed the role for 18 months with a significant salary. It is the respondent's case that caretaking does not absolve somebody from responsibility and accountability.

69. The respondent asked the Tribunal to note that the claimant had accepted that her role was subject to various rules and that she in fact had been responsible for revising those rules in 2017. The respondent submits the claimant's contention that she was not told that she was being subject to disciplinary process at the outset would not have affected the answers she gave, because it is the claimant's evidence that all answers given, whether before or after she was aware of a disciplinary matter, were honest and candid. The respondent contends this was a complex investigation and hence had to conduct a number of interviews to get to the bottom of what had gone on.

70. The respondent contends that the claimant has presented a consistent theme throughout both the disciplinary process and the evidence given before the Employment Tribunal that, it was not her fault and not her job. The respondent states that this is evidence of a complete lack of insight from the claimant and a way of distancing herself from the non-performance of her role.

71. The respondent contends that whilst the witness evidence obtained during the investigation may have been from a disgruntled colleague, the dismissing officer was entitled to take into account that evidence which corroborated the factual evidence uncovered in the investigation, when justifying his reason to dismiss.

72. The respondent contends it was a judgment call in regard to whether to believe the claimant or the individual witnesses, but given the corroborating evidence, it was the respondent's case that, on the balance of probabilities, the individual witnesses were to be believed. The respondent contends that the claimant had an opportunity to put her case to the witnesses in the disciplinary hearing but has only raised a number of issues at the Tribunal for the first time. It was therefore, proper and reasonable for the dismissing officer to accept that evidence when making his decision.

73. The respondent submits that the claimant had a number of red flags from conversations she had with the individual employees and that somebody with her competence and expertise should have investigated further.

74. It is the respondent's contention that the process it followed from the investigation to the appeal hearing was reasonable because the claimant was given an opportunity to be accompanied at all opportunities, and on putting her appeal the panel overturned three of the findings. However, the evidence from Councillor Brownridge was pertinent, in that it was the view of the panel that the lack of professional curiosity with the role the claimant occupied was a cause for concern and justified the dismissal. It is the respondent's case that given the claimant's

position, remuneration and her knowledge of a need to challenge, meant that it was fair to conclude she had been grossly negligent and the dismissal was fair.

75. The respondent is clear that it has never asserted that the claimant has been dishonest; it is rather that she just did not look out of the window when the signs were there.

76. The respondent reminded the Tribunal that the burden of proof was on the respondent to show the reason for the dismissal; there is no other reason other than conduct. The respondent contends it was not out to get someone after other key individuals had left the business. It contends that there were a number of individuals subject to an investigation and the elements of culpability were very different.

77. The Tribunal was reminded of the case of **Taylor** and of its need to look at the disciplinary process as a whole and establish whether it was within the range of reasonable responses. Whilst a dismissal can seem harsh, it can still be fair.

78. In regard to **Polkey**, the Tribunal is reminded that the allegation at 4.2.2 in regard to procedure was not put to the respondent witnesses.

79. The respondent contends there is likely to be significant contributory fault and blameworthy conduct that the claimant did not check and challenge. The Tribunal was reminded that Councillor Brownridge's evidence was that there was no concession from the claimant that she had done anything wrong and the lack of insight meant her employment could not continue. Therefore if the Tribunal does find that the dismissal was unfair, the respondent contends any remedy should be reduced by 100%.

Discussion and Conclusions

80. Only point 4.2.2 relates to any allegation from the claimant as to a procedural defect. The remaining points go to the heart of the claimant's case that her dismissal was outside the range of reasonable responses of her employer.

81. The case of **Burchell** requires me to look at:

- (a) Was there an investigation into the matter that was reasonable in the circumstances in the case?
- (b) Did the respondent believe that the claimant was guilty of the misconduct complained of?
- (c) Did the respondent have reasonable grounds for that belief? And if so,
- (d) Whether the decision to dismiss the claimant was within the band of reasonable responses.

Investigation

82. It was clear from the evidence of the respondent witnesses that the investigation into the individual, Alun Morgan, began in June/July 2017. However, it is also clear that at the time complaints were made about Alun Morgan, there was no

individual complaint made about the claimant. When the claimant received the call in July from Audit seeking to review the procurement process, the claimant was not under suspicion but rather, having worked closely with Alun Morgan asked to account for her own observations of his actions.

83. The questions posed to the claimant in the meeting of 27 September 2017 were replicated at the first formal investigatory meeting on 5 October 2017. It is likely by this stage that the respondent's investigations were such that there was some suspicion that the claimant had herself committed acts which could amount to conduct for which she would be subject to disciplinary proceedings.

84. However, as the claimant stated in evidence, her answers in both meetings were consistent. The failure to warn the claimant before the telephone conference call in September 2017 that she may be under suspicion did not make the subsequent formal investigation unreasonable because the claimant was advised of the confirmed suspicion of the respondent before the October meeting.

85. The claimant has contended that the witness statements of Gaynor Gamble and Jane Harrington were obtained essentially with persuasion and assistance by the respondent's investigators. The wording of the statements are such that, by the time the respondent's investigators had reproduced what they had been told by the witnesses, they had been influenced by the drafting of the allegations formulated in regard to the claimant's conduct. However, that is not the same as fabricating or embellishing such evidence. The investigating officer was clear that the evidence given by the two witnesses was corroborated by factual documentary evidence that had been discovered during the investigation, and therefore the respondent was entitled to rely on the nub of that evidence in support of the allegations that were formulated.

86. Further, there was an independent contemporaneous email sent by Suzanne McCormack to the claimant alerting her to a breach of the EU thresholds that indicated in real time that the claimant had ignored a red flag.

87. The issues the claimant now takes with the credibility of those statements, were not put to either witness during the disciplinary hearing. The dismissing officer was therefore, able to properly rely on that evidence when making his decision.

88. The investigating officer, Mark Stenson, was of the view that the claimant had a close working relationship with Helen Gerling and Alun Morgan and had the necessary skillset to recognise the red flags that had been placed before her but chose not to deal with them. The investigating officer was of the opinion that the claimant had sufficient experience to challenge what she was being asked to do, regardless of whether she was being asked to do that by a senior manager, and therefore there was culpability. The investigation itself revealed procedural and regulatory deficiencies for which individual allegations could be formulated in regard to the claimant's own personal actions.

89. The investigation was thorough and the claimant was given the opportunity to answer each allegation. The questions over Alun Morgan and Morgan Bristol Limited had been raised independently and subsequently led to an investigation into the claimant's own actions. The respondent conducted a reasonable investigation.

Genuine Belief

90. Following that investigation, the respondent did have a genuine belief that the claimant was personally responsible for conduct which, although involved her line managers and superiors, led to her own personal culpability.

91. The claimant has maintained that it was not her responsibility and somebody else's job. However, she was an experienced procurement professional who was paid in accordance with that skillset. Whilst there is a chain of command in all employment relationships, the role of a Procurement Officer is to be independent and challenge when things are not right, regardless of who is to be challenged.

Reasonable Grounds

92. The evidence presented from the investigation outlined 12 allegations which were overlapping in nature. In essence, the complaint was that the claimant, with her experience, should have been aware that the appointment, continued appointment and expansion of the role of Alun Morgan and his company, put the position of the Local Authority at risk and she failed to challenge the same.

93. During the disciplinary hearing and the appeal hearing, the claimant maintained as she always had throughout the investigation, that she relied on the fact that the appointment of this individual had occurred prior to her taking the interim role, and that anything she was asked to do in accordance with that individual and his company was asked by those senior to her, including that individual, and it was not her position to question or challenge. Further, the claimant maintained at both the disciplinary hearing and the appeal hearing that any concerns raised by her junior staff were escalated to her line manager and that this was sufficient in the fulfilment of the claimant's role.

94. The dismissing officer, Ray Ward, had concerns in regard to the claimant's lack of acceptance and as a result she was therefore culpable.

95. In her evidence, Councillor Brownridge was clear that the lack of insight from the claimant in regard to what her role was and the refusal to accept that she should have done more, was of concern and of such concern, that the appeal panel was able to confirm the decision to dismiss.

96. Whilst, it appears that the claimant's line manager, Helen Gerling, and Alun Morgan himself, were more culpable in regard to his appointment and his role with the respondent, the respondent also had sufficient grounds to believe that the claimant herself had committed acts of misconduct.

Sanction

97. Ray Ward's evidence was compelling in regard to his rationale for dismissal. He was clear that he viewed the claimant as a person who had worked in procurement for many years, and despite her elevated position, was fundamentally a Procurement Officer. He could not reconcile this skill set with somebody who

maintained that she could not be curious following the red flags that were presented to her during her tenure in that interim role.

98. When Ray Ward was asked whether it was appropriate for the claimant to accept the position the claimant found Alun Morgan in on taking up the interim role, he accepted that it would have been had others not expressed concerns that should have pricked her professional curiosity to look into Alun Morgan's role within the Local Authority.

99. Ray Ward was clear that his dismissal letter did not hold the claimant responsible for contracting Alun Morgan but once in post, she had an obligation to check and challenge his role.

100. There was evidence that the claimant had breached Council rules and regulations such as in making advance payments to this individual because she had been told to do so by her line manager. Had the claimant been an administrative Assistant who perhaps did not have knowledge of the rules and regulations of the respondent, this might be behaviour that could have been explained. However, as an experienced professional in procurement, it is inexplicable that the claimant followed what she was told to do without challenge.

101. Ray Ward was of the view that a caretaker role would still require a person to fulfil all elements of the role. He was clear that the overall failure was the claimant not fulfilling the procurement basics that she had the adequate skillset to perform.

102. Councillor Brownridge was of the view that the claimant had the ability to do the job and was professionally competent to do it. Councillor Brownridge was extremely concerned that a number of issues had come to the fore but there was a failure by the claimant to ask questions and accept responsibility.

103. It is understandable why the claimant feels that she is a scapegoat. On learning of the allegations, Alun Morgan resigned and Helen Gerling was allowed to resign prior to her investigatory meeting/disciplinary hearing. The claimant is of the view that the respondent had to find somebody to blame and somebody they could hold responsible.

104. However, there is evidence to show that the claimant herself was personally culpable in not challenging the information before her as an experienced Procurement Officer. The claimant says with hindsight, it is easy to see such conduct but asks the Tribunal to consider how she was operating at the time, and that these things were not obvious.

105. It is concerning that even with hindsight, the claimant does not view the red flags as indicators that she was required to act upon. The dismissal of the claimant was within the range of reasonable responses and that the claimant's claim of unfair dismissal is dismissed.

Employment Judge Ainscough

Date: 28th October 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON
13 November 2019

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.