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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4102991/2019**

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**Held in Dundee on 4, 5 & 6 November 2019**

**Employment Judge I McFtridge  
Tribunal Member J McCullagh  
Tribunal Member J Burnett**

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**Mr H Rae**

**Claimant  
Represented by  
Mr Lawson  
Trainee Solicitor**

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**Charles Ramsay and Mrs Arabella Ramsay  
trading as South Chesthill Partnership**

**Respondent  
Represented by  
Mr Edward  
Advocate**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The unanimous judgment of the Tribunal is that

(One) The claimant was unfairly dismissed by the respondent. The respondent shall pay to the claimant a monetary award of Eight Thousand and Thirty Four Pounds and Ninety Seven Pence (£8034.97). The prescribed element is One  
40 Thousand Seven Hundred and Seventy Five Pounds and Fifty Two Pence (£1775.52) and relates to the period between 25 February and 5 April 2019. The

E.T. Z4 (WR)

monetary award exceeds the prescribed element by Six Thousand Two Hundred and Fifty Nine Pounds and Forty Five Pence (£6259.45).

(Two) The claim of unlawful sex discrimination does not succeed and is dismissed.

5 (Three) The claim of damages for breach of contract does not succeed and is dismissed.

(Four) The respondent shall pay to the claimant the sum of Two Hundred and Seven Pounds and Fourteen Pence (£207.14) in respect of annual leave accrued but untaken as at the date of termination of employment in terms of section 14 of  
10 the Working Time Regulations 1998.

## REASONS

15 1. The claimant submitted a claim to the Tribunal in which he claimed that he had been unfairly dismissed by the respondent. He also claimed that he had been unlawfully discriminated against on grounds of sex and that the respondent was due him various sums following the termination of his employment. He also submitted a claim that his dismissal was direct  
20 marriage discrimination under section 13 of the Equality Act 2010 however this claim was subsequently withdrawn. The respondent submitted a response in which they denied all claims. They accepted that the claimant had been dismissed but stated that it was for some other substantial reason and was fair. The hearing took place over three days during which  
25 evidence was led on behalf of the respondent from Mr Charles Ramsay and Mrs Arabella Ramsay the partners of the said firm of South Chesthill Partnership and Mr Scott Nisbet an employee of a company called Managed Estates Limited who provided factoring services to the respondent. The claimant gave evidence on his own behalf. A joint  
30 bundle of productions was lodged. The Tribunal found the following essential facts relevant to the claims to be proved or agreed.

## Findings in fact

2. The respondent are a partnership which owns Chesthill Estate in Glenlyon. The current partners are Mr Charles Ramsay and Mrs Arabella Ramsay who are husband and wife. Arabella Ramsay has an approximately 1% share in the partnership capital the balance being owned either by Charles Ramsay or held on his behalf by the executors of his late father's will. Mr Ramsay's father purchased the estate in or about 1978. The current partnership was set up some years ago and in or about 2012 Mr Charles Ramsay's brother, William Ramsay, took over day to day management of the estate. Shortly thereafter William indicated to Charles Ramsay that he did not find this congenial and since around 2014 Charles Ramsay and his wife have been solely responsible for running the estate.
3. The estate is run as a business and there are various business enterprises carried on by the respondent therefrom. They let out Chesthill House which is a substantial house sleeping up to 16 together with Gardener's Cottage which is a smaller property which sleeps 4-6. Properties are let out to sporting tenants and there is both deer shooting and fishing on the estate. In recent years the properties have also been let out to individuals for other than sporting uses such as people who enjoy hill walking and more recently for art classes tours. The total estate extends to 6000 acres and is a mix of open hill and forestry. There are riparian rights along the River Lyon which borders the estate at one part and then runs through the estate. There is a herd of sheep and there is a forestry operation as well as the holiday letting business.
4. The estate employs contractors to deal with the forestry and the agricultural elements however in or about 2018 they also had three employees. One of these was employed as a handyman and a cottage was provided on the estate for the handyman and any family of his to reside in. The respondent also employed a gamekeeper and housekeeper who were traditionally employed on a linked contract. The claimant and his then partner KM had successfully applied for these roles in 2008. They lived together in Keeper's Cottage. There is another property on the estate known as Inverinain Cottage. This was rented out to another

couple SA and her husband from around 2016 onwards. The relationship between SA and her husband appears to have come to an end around March 2018 although SA continued to reside in the property.

5. The claimant's principal duties as keeper were broad. They included traditional gamekeeping, and tasks such as vermin control. He also did some general caretaking duties. The claimant also acted as ghillie when the estate had guests or visitors. During the stalking season he would be a stalker. The role of the stalker was to get guests in to position to take a shot at the deer. As ghillie his task was to assist guests with catching fish. He would provide advice, coaching and training to guests.
6. During the stalking season he would sometimes be assisted by a second stalker and also there were sometimes ghillies employed to assist with driving deer. The gamekeeper was also responsible for maintenance around the estate including property and outbuildings and generally keeping things tidy. The role of the housekeeper involved looking after Chesthill House and Gardener's Cottage.
7. Both of these properties were rented out to guests who were either shooting guests or others as noted above. Gardener's Cottage is usually let for about 30 weeks per annum. Chesthill House may be let for between 18 and 20 weeks. In addition to this Mr and Mrs Ramsay and members of their extended family also use the property outside these times. The general expectation was that the housekeeping role would be a part-time one for two to three hours per day but longer on a Sunday which was a changeover day.
8. When KM was carrying out the role of housekeeper she always had Thursday as a fixed day off during the week. She would attend the house for between one and two hours on Monday, Tuesday, Wednesday, Friday and Saturday. Whilst there she would generally make up the beds and the fires. There were 16 beds and three fires. She would do very limited cleaning given that most of her time was taken up doing the beds. The respondent employed a firm of contract cleaners who provided a squad of cleaners who would attend South Chesthill House on Thursdays and Sundays. On Thursday they would carry out the task usually carried out

by KM on the other days. On Sundays they would be responsible for the changeover from one set of guests to the next. The respondent always schedules this for a Sunday. Usually they would expect the outgoing guests to be away around 10 or 11 in the morning and the new guests would be arriving in the afternoon. The contract cleaning company would deal with South Chesthill House changeovers. KM would deal with the changeover at Gardener's Cottage. This would involve cleaning the property. The respondent had tried various firms of contract cleaners. In 2018 and currently they are using a firm called Heartland Cleaning. They are based in Pitlochry. It takes around 50 minutes to one hour to drive from Pitlochry to the estate. Previously, housekeepers have been free to take on other jobs and the current housekeeper has another job which takes her away from the area of the estate on a regular basis. The respondent also had the expectation that the housekeeper would be involved in welcoming guests although in practice the claimant was the one who generally welcomed guests and handed over keys etc.

9. The claimant's initial contract from 2008 was lodged (p114-116). This was superseded in 2012 with a second contract (page 117-131). The 2008 contract contains the following clause

20 "Your continuing employment is conditional on Mrs (KM's) employment as Housekeeper; in the event of her employment being terminated by either party, then your employment will also terminate, unless otherwise agreed." (p116)

The 2012 contract was signed by the claimant on 12 April 2012 and contained the following clause

25 "Your continuing employment is conditional on (KM's) employment as Housekeeper; in the event of her employment being terminated by either party, then your employment will also terminate, unless otherwise agreed."

- 30 10. KM's contract was not lodged however the Tribunal accepted Mr Ramsay's evidence that this contained a similar clause.

11. The respondent's position was that the reason for this clause was that they were concerned about problems trying to recruit a housekeeper without being able to provide that housekeeper with accommodation on site. Glenlyon is isolated. Many of the properties in Glenlyon are second homes or holiday cottages which are not occupied all year round. The nearest village is Fortingall which is around 10 minutes from the estate. There are only around 30 houses in Fortingall. The nearest towns of any size are Aberfeldy which is around half an hour away and Killin which is also half an hour away in the other direction. The respondent had been in the habit of putting such clauses in their employment contracts for the gamekeeper and housekeeper for many years. Mr Ramsay's understanding from discussions with his mother was that there had previously been an occasion during the time Mr Ramsay's parents had run the estate where the housekeeper had become ill and required time off. Mr Ramsay's mother told him that they had tried to recruit a housekeeper without accommodation. They had managed to get someone but it had been very difficult and she said that matters did not 'work out' with that person. The matter was resolved when the original housekeeper recovered.
12. The respondent has a contract with a company called Managed Estates Limited who act as Factors on the estate. They provide advice and assistance to the respondent as well as someone on the spot who is able to deal with matters as they arise. In 2018 this company was Managed Estates Limited. Up until around 2015 the respondent was contracted with a different company and the Factor was a Mr Taylor. He had then left and a Mr Inglis had been a Factor for a short time. When Managed Estates took over Mr Scott Nisbet became the Factor of the estate. Mr Nisbet reported to a Mr Anderson who was the owner of Managed Estates. In matters relating to the estate he took instructions from Mr Ramsay. He was also able to consult with John Sinclair who is another employee of Managed Estates Limited who is Factor of another estate in Glenlyon and is extremely familiar with the locality. Mr Nisbet would visit the estate around once a week and would deal with day to day matters which arose. Mr Ramsay lives primarily in Suffolk where he runs an online travel company employing around 20 people. Mrs Ramsay is a full time mother

and lives with her husband in Suffolk. Mr Ramsay would generally only visit the estate a few times a year. In addition there would usually be one family visit to the estate where he would be accompanied by Mrs Ramsay and their children. Mrs Ramsay gave birth to another child in early 2018. Her baby was hospitalised for a time after the birth and as a result of this Mrs Ramsay had little involvement in the business of the estate. Prior to giving up work to become a full time mother Mrs Ramsay was a solicitor specialising in employment law.

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13. In or about June 2018 Mr Nisbet was asked by the wife of the handyman on the estate to have a word with KM the housekeeper. He was told that the relationship between the claimant and KM was in difficulty. Mr Nisbet spoke to KM who told him that her relationship with the claimant was in the course of breaking down and she anticipated that she might have to leave her employment and leave the estate. Mr Nisbet and Mr Ramsay had a discussion on the telephone around the implications if that were to happen. Mr Ramsay was concerned that they would have problems replacing KM. He checked the terms of the contract with the claimant.

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14. On or about the beginning of July a conversation took place between Mr Ramsay and the claimant. Both Mr Ramsay and the claimant gave different recollections as to what had occurred during that meeting. The claimant's position was that he had a rough awareness that the contract said something about his employment being linked to that of KM. He told Mr Ramsay that he and KM would be splitting up. He asked Mr Ramsay how this would affect him. Mr Ramsay stated that his job was safe. The claimant was happy about this and came away from the meeting relieved. Mr Ramsay's position was that the claimant did raise the matter with him and asked if his job would be affected and that Mr Ramsay responded, "It might Hamish". Although the Tribunal's view was that the matter was not in any way determinative of the issues before it the Tribunal's view on balance was that the claimant was honestly describing what he took from the meeting.

15. Following his conversation with Mr Ramsay the claimant did not hear anything further from either Mr Ramsay or from Mr Nisbet. During this period KM confirmed that she was leaving as soon as she could find

another job and somewhere to go to. At one point she indicated that she might remain living locally and continue with her role as housekeeper but she did not go ahead with this. The claimant was aware that this was happening.

5 16. In the period July-August both Mr Nisbet and Mr Ramsay became aware that the claimant had started a new relationship with SA who, as noted above, lived in a rented cottage on the estate.

10 17. Following discussions with Mr Ramsay Mr Nisbet decided that he would take soundings to see if there was anyone in the locality who could take over the housekeeping role from KM in the event that she left. Mr Nisbet and Mr Ramsay were aware that KM could leave on giving one week's notice and was concerned so as to ensure that the housekeeping duties continued to be carried out particularly if KM left during the late summer which was one of the busiest times of the year. Mr Nisbet contacted three  
15 individuals over this period. He did not take any steps to advertise the role. He could have advertised in the local shop but he did not. He spoke to three people who he knew. The first of these was the wife of the handyman who lived on the estate. She indicated that she was not interested in the role. The second person he spoke to was an individual  
20 who lived close to the estate and who had previously worked for the estate as a housekeeper. She indicated that she would not be prepared to take over the role on a permanent basis but might be prepared to help out on an ad hoc basis should they be stuck. The other person he spoke to was SA. She indicated that she would be happy to take on the role. On  
25 13 August (which was the day after the stag stalking season began on 12 August) KM gave the respondent one week's notice that she would be leaving. Her last day would be 19 August.

30 18. On 16 August Mr Ramsay was present at the estate and had a brief informal meeting with the claimant where they discussed future plans for the estate including various initiatives to try to widen the appeal of the estate to visitors. The claimant was invited to what was described to him as a "moving forward" meeting which was to take place the following day, 17 August at which Mr Nisbet and Mr Ramsay would both be present.



19. In advance of this meeting Mr Ramsay met with Mr Nisbet and instructed Mr Nisbet to produce a letter dismissing the claimant. The claimant duly attended the meeting on 17 August. During the meeting he was handed a letter which was lodged (p136). The letter stated

5 "South Chesthill Estate: Your Employment

We very much regret what has happened between you and K and you have our sympathies. As you know, because of the circumstances K has handed in her notice on 13<sup>th</sup> August 2018 and by agreement her last day of employment with South Chesthill Partnership will be 19<sup>th</sup> August 2018.

10 As you are also aware, your two contracts of employment are linked: if the employment of either one of you is terminated, then the other's employment also terminates.

We therefore serve notice from the date of this letter (17<sup>th</sup> August 2018) that your contract of employment with South Chesthill Partnership, and therefore your license to occupy Keeper's Cottage, shall terminate on 24<sup>th</sup> February 2019 inclusive. Your period of notice allows six months for you to seek alternative employment, and includes one week beyond the end of the 2018/2019 hind season for you to finalise other matters on the Estate and to move out of Keeper's Cottage.

20 The terms of your contract and other normal procedures continue to apply during your period of notice – if there are any specific matters that you wish to discuss, please contact me or Debbie as appropriate."

- 25 20. In terms of the claimant's contract of employment the respondent only required to give him 11 weeks' notice. Extending the contract to February meant that the claimant would still be in post for the shooting season involving the culling of hinds which began in October and ended around February. Generally speaking, February/March are the best months of the year for a new gamekeeper to start work.

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21. Around 17 August the respondent also contacted SA and indicated that they would be happy to appoint her to the post of Housekeeper but that this would be on a temporary basis. At the meeting on 17 August the claimant was told that the respondent would be advertising for a

Gamekeeper and Housekeeper on their usual basis which would be that this was a job which would ideally suit a couple and SA would be encouraged to apply for this the claimant was told that there was a very good chance that he and SA would be successful.

5 22. During the course of this meeting the claimant asked if he could have a written assurance that his job was safe. He referred back to what he considered to be the assurances which had been given to him when he spoke to Mr Ramsay at the beginning of July. The claimant was advised by Mr Ramsay and Mr Nisbet that they were not in a position to give him  
10 any written assurance but repeated that he and SA were in a very strong position to get the jobs.

23. At no time prior to the dismissal did the respondent discuss with the claimant whether there were any other possibilities which would allow the housekeeper's duties to be completed or if the claimant had any other  
15 suggestions to make which might involve him keeping his job.

24. Following the meeting on 17 August the claimant continued to work his notice. SA, his partner, began to work as housekeeper. SA did not require a fixed day off each week as KM had. The respondent agreed with her that she would work one to two hours each day apart from Sunday when  
20 it would be four to six hours. SA also agreed to work for four hours on a Thursday in order to do a deeper clean on that day. As before, contract cleaners would come in on the Sunday. They would deal with the changeover for Chesthill House whilst SA would deal with the changeover for Gardener's Cottage. The respondent had operated various different  
25 hours for various housekeepers in the past and were flexible as to what was required.

25. The respondent proceeded to advertise the post of gamekeeper and housekeeper. They decided that they would broaden the description of gamekeeper to keeper/caretaker. The duties of this post were identical to those the claimant was already carrying out. They advertised on the  
30 Scottish Gamekeeper's Association website. They also advertised on a website called "Rural Recruits". The Rural Recruits website also covers housekeeper positions. There was a job description for each post and it

stated that the company wished to fill both of them. The advert stated that the roles were ideally suited to a couple. The respondent received 20 applications from couples. They received eight individual applications for the post of gamekeeper. They did not receive any applications from individuals wishing to apply for the job as housekeeper on their own.

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26. At various points in the period from August to November Mr Nisbet had a number of conversations with SA. SA discussed various ideas and other ambitions for things she could do in the estate. She suggested things like outward bound, art courses and yoga. She also indicated that she had found someone who would be able to help her with the cleaning. Mr Nisbet felt that the estate may not be able to cater for SA's ambitions. He and Mr Ramsay saw cleaning as a key part of the role of housekeeper and were unimpressed when SA indicated that she might wish to subcontract out some of this. They were concerned by a statement SA made that she did not see herself as just a cleaner. Mr Nisbet had the impression that SA was more interested in the "hostess" aspects of the job rather than cleaning. Mr Nisbet spoke to an individual who SA had indicated might be willing to assist SA with the cleaning. That individual indicated that she might be but was not willing to do so as "second fiddle" to SA. That individual had some experience of Chesthill House since she worked cleaning various other holiday accommodations in Glenlyon and also from time to time worked as a cook for house parties who rented the house and wished to have someone do the cooking for them.

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27. Out of the 20 applications, the respondent carried out some telephone sifting. Eventually, it was decided to invite six couples for interview. None of the single applicants for the post of gamekeeper were interviewed. The claimant and SA both submitted applications together. They applied as a couple.

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28. At least one of the couple applicants was known personally to Mr Nisbet. Mr Nisbet had contacted them and suggested they apply for the jobs which they did. They were unavailable for the first day set aside for interview and it was then arranged that the interviews would take place over two days in November. The claimant and three other couples were interviewed on the first of these days which was 9 November.

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Arrangements were made for the other two couples, including the couple known to Mr Nisbet, to be interviewed a fortnight later.

29. Mr Ramsay visited the estate arriving at the house on or about 7 November. This was his first visit since August. He went to stay at Chesthill House and was unimpressed by the standard of cleaning. He took a number of photographs which were lodged (p165-181). These showed items in the wrong place, a broken piece of furniture which had not been reported, marks on the wall near the dishwasher, glasses and other things jumbled up together when they should not have been, a jug which had been put away dirty, mud on the wall of the boot room and a cleaning cupboard which was messy and had rubbish on the floor. He discussed this with Mr Nisbet. The position was that the contract cleaners Heartland Cleaning had cleaned Chesthill House a few days previously. Mr Ramsay took the view that although SA had not herself carried out the cleaning that she ought to have supervised the contract cleaners better.
30. This was not the first time that Mr Ramsay had raised issues of cleanliness and tidiness with Mr Nisbet. He had raised such issues at various times in the past with previous housekeeper including KM. The issues raised were similar to those which had been raised in relation to KM. Although the issues related to the quality of cleaning work carried out by the contract cleaners Mr Ramsay did not raise the matter with the contract cleaners at any point.
31. The claimant and SA attended their interview on 9 November. They were asked different questions from the other attendees since Mr Ramsay felt he had no need to question the claimant about his abilities as a gamekeeper. Mr Ramsay considered that the claimant was extremely skilled as a gamekeeper.
32. Mr Ramsay and Mr Nisbet carried out interviews in respect of another two couples approximately 14 days later.
33. Following the interviews on 9 November one of the applicant couples was told that the estate was very interested in their application and that they should expect to hear something soon. The other two couples were told that the estate would not be progressing further with their application.

Following the interviews later in November one of the couples was told that the estate was very interested in them and that they would be hearing shortly. Both of these other couples were subsequently contacted again by Mr Nisbet and told that the process was taking longer than expected but the estate was still interested and they would be hearing in due course.

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34. In the meantime, the claimant and SA continued to do their work. On 11 December they both asked to participate in a conference call with Mr Ramsay. A note of this call was lodged. It was prepared by Mr Ramsay. The claimant's position was that the note did not cover everything discussed over the telephone. The Tribunal was not in the position to make any detailed findings as to precisely what was said other than that during the course of this meeting the claimant and SA were told that they had not been successful at interview. The claimant was told that his job would be ending once his notice ran out on 24 February. The claimant was told that if he wished he could appeal the decision and put his reasons for this in writing. The claimant appealed.

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35. The appeal hearing was held by telephone conference call on 21 December. Mr Ramsay conducted the appeal hearing and notes were taken by Debbie Beer, an admin assistant who works for Mr Ramsay in his business in Suffolk. The claimant was accompanied on the call by Cate Ritchie a HR specialist who the claimant had contacted in order to provide him with advice and assistance. Ms Beer prepared a note of the meeting which was lodged (p143-148). At the commencement of the hearing Mrs Ritchie read over an email the claimant had sent her dated 21 December which she said set out the claimant's grounds of appeal. This was lodged (p141-142). It is as well to set this out in full. It states

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"I wish to appeal the decision for the estate terminating my contract. I was very surprised and shocked to be called into a going forward meeting only to be told out of the blue that after 10.5 years of faultless, loyal service that my contract was being terminated for something that wasn't even my fault.

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I have been honest and upfront with the estate, telling them that myself and K were going to split up, as things hadn't been great between us

for quite a few years, and that I was finding having her stay with me unbearable.

To have to be with someone just for the job seems to be unfair and against my human rights, to be forced to live with someone, when I didn't want to.

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I seem to recall in our July meeting being told that my job was safe (although there seems to be some doubt over this statement now by the estate).

When I was called into the August going forward meeting I was unaware of the nature of the meeting, especially as Charlie was talking about his visions for the future the previous evening.

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I was shocked, disappointed and numb at the meeting when I was told that my contract was being terminated at the end of the season, as I was told that my contract stated the two positions were linked. As K was going to resign my contract would have to be terminated. I would have to dispute the context of the contract as I have one dating 9-3-12 that has no mention of that. I was sent two copies, one from Debbie, one from Scott, both where slightly different. One stated at unless prior agreed I thought the estate had prior agreed that my job was safe.

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I was told that it was a legal requirement for the estate to terminate my contract and advertise the position, but that I should reapply and that I would be in the driving seat, the strongest position to get the job back. Looking back, how could that be true, especially as I was single at the time, and as Charlie said in his email of 12<sup>th</sup> Dec that as far as he can remember the two positions were always linked.

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However myself and Susan are now together, she took over the housekeeper position and has had excellent feedback from guests. So surely why get rid of a winning team! In my almost eleven years at South Chesthill estate and dealing with many thousands of sporting and non sporting guests I have had nothing but good feedback, it's even used on the estates website.

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To quote a few comments sent as references 'the pride of the estate is personified by keeper Hamish Rae. Hamish is a temperate and quiet man who, when asked the right questions reveals a wealth of

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knowledge and also how much he cares for the estate. He shares his knowledge only when asked and stands proud as you fish. Negative comments never pass his lips and a more natural ghillie you will struggle to find.' (Trout and Salmon magazine, this article is used on the estates website)

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'If Hamish were to move on he would be a great loss to South Chesthill estate and to all the tenants.' – Andrew McKinnon.

'For me and for my many guests Hamish is the face of the estate. Always welcoming, always gentle and understanding he is one of the main reasons I have returned so many times. As the face of South Chesthill that the public see I cannot recommend Hamish Rae highly enough.' – R. Greenly.

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'His skill as a stalker is unrivalled and his calmness and steady approach to the job is a huge help. Over the years we have had a larger number of guests, probably close to one hundred, not one of those guests has ever had a bad word to say about Hamish. Hamish and Susan are a great team and ideally suited for the job. They are clearly very enthusiastic. I hope they will both be at South Chesthill for many years to come' – Peter Curling

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'In my view as a head stalker on a highland estate Hamish ticks all the boxes. From the perspective of a guest, the organisation of both stalking and the lodge appeared seamless, all of which reflects well on Hamish. Over the last fifty years I have stalked on a great many deer forests, Hamish Rae is one of the best stalkers that I have had the pleasure to accompany on the hill' – Pat Lockett

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'Hamish has always gone the extra mile to ensure we are well catered for and enjoy and understand our day. He is one of the most intelligent and engaging stalkers. It would be a great loss to both guest and South Chesthill should Hamish no longer be there' – James Enderby.

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I am looking for consistency in how employees are treated by the estate. We have a part time employee who stole and sold firewood, this was labelled as a misunderstanding, with no further action taken, the same employee, as well as verbally abusing staff, threatened to shoot a guests hawk, this was reported in a phone call, as well as a message to Scott Nisbet on 6<sup>th</sup> December 2017, again no action was

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taken, despite a firearms offence being threatened, this was just put down to him being what he is?

Yet despite me doing nothing wrong, and being a great asset to the estate my contract is being terminated with no warning letters first, I  
5 feel a bit victimised here.

I really hope this appeal can be 100% impartial and not the foregone conclusion paper exercise I fear it is.

Hamish Rae.”

10 36. Towards the end of the hearing Mr Ramsay summarised the claimant's grounds of appeal as being

1. He was not given the right to be accompanied and not given any warning that there was a risk that his employment might be terminated before the original meeting in August.
- 15 2. That it was against his human rights to effectively be told that in order to keep his job he must remain with KM.
3. Discrepancy in contract versions mentioned by the claimant.
4. That he and SA were a good team and had had good feedback from tenants.
- 20 5. The lack of consistency in relation to other employees. This related to the various allegations the claimant had made about other employees and the wording of the contract.

25 At the end of the hearing the claimant confirmed that the outcome he wanted was to be allowed to keep his job. During the course of the meeting Mr Ramsay confirmed that the jobs had not been offered to anyone as yet. At that stage the respondent was still in touch with the two other couples and had indicated to them that the process was taking slightly longer than expected.

30 37. In a letter dated 27 December 2018 Mr Ramsay wrote to the claimant confirming that his appeal had not been upheld and the dismissal stood. The letter was lodged (p149-152). Mr Ramsay went through each of the grounds of appeal in turn. He rejected them all. He once again indicated that the estate did not accept that either Mr Nisbet or Mr Ramsay had told



the claimant that his job was safe. Mr Ramsay addressed the reasons for the decisions (p150).

5 “• We explained on 17<sup>th</sup> August the reasons why the contracts are linked and confirmed that in the interests of the estate that your contract would be terminated, and that we hoped that you and S would apply/reapply. We did not at any time state that the joint nature of the keeper and housekeeper contracts was no longer a requirement, as it has been since my father bought the Estate in 10 1978, and we would not have terminated your contract were it no longer a requirement. What we said, which S pointed out on our previous call, was that you were both in a strong position in your application, and this was the case. As I said, although your application has not been successful, it has been a difficult decision for us.

15 You also wrote ‘Looking back, how could that be true, especially as I was single at the time, and as Charlie said in his email of 12<sup>th</sup> Dec that as far as he can remember the two positions were always linked.’

- On several occasions after KM’s expected departure was known about, SA had expressed an interest in the Housekeeper position, 20 including to me on 2<sup>nd</sup> July when I saw her at Inverinain.
  - On 12<sup>th</sup> August you informed me that you and S were in a relationship and again that S was interested in applying for the Housekeeper position.
  - Given S’s interest in the Housekeeping position, it was on the 25 basis of a joint application that we suggested that you would be in a strong position.
2. Your grounds for appeal: to have to live with K was against your human rights.

Response:

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- you were not required to live with K. She did not want to leave but you asked her to go due to the breakdown in your relationship and she decided to resign her position and leave the area.
  - If you or K had decided to move out of Keeper’s Cottage but relocate nearby and continue with your employment, your

employment would not have been affected. Therefore we were not forcing you to live with K.

- The contracts are linked, for good reason, but this is not the same as requiring you to live together.”

5 Mr Ramsay then went on to confirm that the terms of the contract were as previously indicated and that it was the April 2012 contract which was relevant. On the issues of the claimant and SA being a good team Mr Ramsay’s response was

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- “• We are not terminating your contract due to your performance Hamish.
  - Our reasons for not believing S to be suited to the role of Housekeeper were explained on our call on 11<sup>th</sup> December 2018.”

38. With regard to the linked nature of the keeper and housekeeper contracts Mr Ramsay stated

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- “• The contract is clear that if either of you terminated your contracts, that the other contract would be terminated unless otherwise agreed.
  - I am satisfied that there are valid business and operational reasons why the contracts are linked, which were explained to you
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- in our meeting on 17<sup>th</sup> August 2018 and on our call on 11<sup>th</sup> December 2018. In short, these are that due to the very low population in Glenlyon (estimated at about 100 people according to glenlyon.org) and the surrounding area, it is extremely difficult to replace either a Keeper or a Housekeeper with someone
- 25
- i. with suitable experience and/or expertise,
  - ii. located in close enough proximity to respond quickly to tenants’ requirements, and
  - iii. who can get to and from the estate at an acceptable cost to the estate (in the case of the housekeeper, for only 2
- 30
- hours work on five days of the week).
  - This is evidenced by the absence of any applications from individual Housekeepers for the role. We therefore need to be able to offer accommodation to attract the right candidates, and

as we only have one property available for these positions (Keeper's Cottage) this is why the positions are suited to a couple (living together), but that a couple is not necessarily a requirement (in the unlikely scenario where one of the roles is fulfilled by someone residing near but not on the Estate, as explained in my comments above regarding your appeal ground no. 2).

- This explains why the roles are linked: if one party resigns, it is vital for the estate to be able to look beyond the immediate area for a replacement Keeper or Housekeeper, and that requires offering accommodation in the form of Keeper's Cottage.

We were clear with you that we would take on SA in a temporary role, see how it goes from your perspective and ours, and encourage you both to apply/reapply for the (permanent) roles. Unfortunately we do not believe that SA is suited to the role of housekeeper, and therefore the termination of your role still stands.”

39. The letter went on to state

“Whilst we do not accept your first grounds for appeal above, labelled ‘The process we followed’ we acknowledge that we could have given you formal written notification of your risk of dismissal in advance of our meeting on 17<sup>th</sup> August. Therefore we would like to give you a further opportunity to appeal this decision.”

The letter goes on to confirm that the appeal would be dealt with by Arabella Ramsay, Mr Ramsay's wife and the other partner in the partnership.

40. The claimant decided to appeal again. He sent an e-mail to Arabella Ramsay on 3 January 2019. This was lodged (p153). The claimant made the point that he had not been aware of the reason for his dismissal and he believed the dismissal was directly discriminatory. He stated

“My contract has been linked to a person, not a post and in the findings, Charlie has stated that it is not a requirement for the housekeeper to live with me.

If that is the case, then there is absolutely no reason for my contract to have been terminated – as the post of housekeeper could have been recruited separately. Therefore my dismissal is unfair.

5 If that is not the case, then my employment is wholly reliant on the employment of another person (named in my contract) and this suggests that we must be in a relationship. This is directly discriminatory.”

The claimant asked if Cate Ritchie could accompany him to this hearing also.

10 41. The appeal hearing took place by telephone conference call on 8 January 2019. It was conducted by Arabella Ramsay and minutes were taken by Debbie Beer an employee of the respondent who works in Mr Ramsay’s other business in Suffolk. Mr Rae and Cate Ritchie called in. Ms Beer’s note of this meeting was lodged (p154-158). Following the hearing  
15 Mrs Ramsay considered the matter, she spoke to her husband regarding Mr Rae’s position that he had received no warning of his dismissal but had instead received assurances. Mr Ramsay had confirmed to Mrs Ramsay that he had told Mr Rae when asked in July that his employment might be affected. Mrs Ramsay noted that in the minute of the meeting of 17 August  
20 produced by her husband he indicated that Mr Rae had asked for a written assurance about his job. Mrs Ramsay thought that Mr Rae would not have asked for this if he was absolutely certain that he had been told his job was safe. Her view was that there was no requirement for the claimant to be in a relationship but that it was going to be very difficult to recruit a  
25 gamekeeper and housekeeper separately. She also spoke to her mother-in-law Mr Ramsay’s mother who confirmed that this was also her view. She spoke to her husband about the interview questions and formed the view that these were appropriate for Mr Rae. She decided to uphold the original decision and wrote to the claimant at length in a letter dated  
30 11 January 2019 setting out her decision and the reasons for this. The letter was lodged (p159-163).

42. The claimant began applying for other jobs following the refusal of his appeal. He felt aggrieved that he had missed out on a number of jobs which would have been suitable for him that he could have applied for had

he not believed that he would ultimately be successful in remaining at South Chesthill. He raised the issue of a reference with Mr Ramsay. Mr Ramsay initially indicated that potential employers should contact Mr Ramsay for a reference but subsequently produced a "To Whom It May Concern" reference for the claimant. A copy of this was lodged (p164).  
5 This states

"Hamish has been Keeper on South Chesthill Estate since March 2008, when my father owned and managed the estate. I have known Hamish since this time, and I took over management of the estate in  
10 2014. His duties include stalker, ghillie and bank maintenance on the river, moorland management and vermin control on the hill, and caretaker for the properties.

Hamish is an outstandingly patient and knowledgeable Ghillie. He will happily and gently coach for hours, and is equally adept with complete  
15 beginners and seasoned experts. He took pride in maintaining the river bank to a high standard.

He is a skilful stalker, and good at making each day interesting for his guest through explaining what is happening, and/or discussing the broader environment on which he has a great deal of knowledge.

20 Another example of this is the nature tours that he has run for non-sporting tenants, and these have been well received.

With regards to other duties, he has worked on heather burning and vermin control, to try to help the grouse population, and has been helpful with basic maintenance in the properties, including calling out  
25 and overseeing tradesmen, particularly during some significant recent refurbishment projects.

He is leaving in February 2019 due to the departure of the housekeeper to whom he had a linked contract.

I would be very happy to speak to any potential employer to provide  
30 more information."

43. In terms of the claimant's contract he was due 20 days' holiday per year exclusive of statutory, local and bank holidays. In terms of the working time regulation he was of course entitled to 28 days' paid annual leave per annum. Paragraph 12 of his contract stated (p121)

“12. HOLIDAYS

- 5
- (a) Holiday entitlement is as specified on Page 1 and applies per holiday year.
- (b) The holiday entitlement will be taken at dates agreed with the Employer. You must give at least two week’s notice of holiday requests and whilst every endeavour will be made to co-operate with you in fixing the dates of your holiday, such dates will remain in the ultimate discretion of the Employer. The Employer will give you at least two weeks’ notice if you are required to take holiday other than during notice.
- 10
- (c) Holidays must be taken in the holiday year of entitlement and may not be carried forward to the following year without prior approval from the Employer.
- (d) The holiday year runs from 1<sup>st</sup> January to 31<sup>st</sup> December.
- 15
- (e) No more than two weeks’ holiday may be taken consecutively.
- (f) The Employer reserves the right to require you to take any unused holiday during your notice period, even if booked to be taken after the end of the notice period.
- (g) In the first year of employment holiday entitlement shall be pro rata.
- 20
- (h) In the year in which you leave holiday entitlement will be pro rata up to the termination date and any holidays taken in excess of entitlement will be reflected by deduction from your final salary.

13. HOLIDAY PAYMENT

- 25
- (a) Holiday pay will be paid at the basic rate.
- (b) Upon termination of your employment you will be entitled to pay in lieu of any unused holiday entitlement for the final leave year only or be required to pay to the Employer pay received for holiday taken in excess of your holiday entitlement. Any sums so due may be deducted from any money owing to you and you hereby irrevocably authorise the Employer to make such deductions.”
- 30

44. In previous years when the estate was managed by Mr Nisbet’s predecessors the claimant had tended to not use his annual holiday entitlement during the appropriate year but to carry it forward or at least

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ask to carry it forward. When Mr Nisbet took over the factoring of the estate the previous factor told him that he should watch out for this and try to make sure that the claimant took his holidays during the year but that there was often an issue with this.

5 45. The claimant did not take all of his holiday entitlement during the year 2017 and around ten days were transferred into 2018. Mr Nisbet and Mr Ramsay both advised the claimant that this should be regarded as a one off and they wished him to take his holiday entitlement during the appropriate year from now on.

10 46. The usual arrangement for the taking of holidays was that the claimant would sit down with the factor at the beginning of the year around February and then work out holiday weeks for the whole year. In previous years the difficulty usually arose when something unexpected arose which required the claimant's presence during a week when he had booked holidays. The  
15 claimant would then cancel his holiday which is what had led to holidays being carried forward from 2017 until 2018.

47. The claimant had been due to take two weeks' holiday in November 2018. The interview which took place on 9 November was within the period the claimant had booked for holidays. At this time the claimant felt that it was  
20 inappropriate for him to take his holidays and indeed that it would cause problems for the estate if he was not present to carry out his duties. The claimant therefore did not take his holidays in November. At the end of 2018 he still had these 10 days' holidays left. The claimant made no arrangement with either Mr Nisbet or Mr Ramsay to be allowed to carry  
25 these holidays forward into 2019 and at no point did Mr Nisbet or Mr Ramsay ever agree to this.

48. With regard to the 2019 holiday year the claimant was due four and a half days' annual leave for the period between 1 January and 24 February which was his last day of employment. The claimant took 1 January off  
30 as annual leave. The claimant did not take any days off after this as annual leave. He felt that there was no time for him to do this given the various tasks which he required to complete on the estate before he left. This included additional tasks given to him by Mr Nisbet. Mr Nisbet and

the claimant had a discussion regarding this on 13 February. Mr Nisbet's view was that he wanted the claimant to take his holidays before he left. The claimant's view was that he did not have time to do this given the amount of work he had to do. On 15 February Mr Nisbet sent the claimant an e-mail.

"Hamish

Thanks for meeting me on Wednesday to discuss some of the final arrangements for you finishing your employment at South Chesthill. You asked me to look into two matters.

**1. Carrying forward holiday entitlement for public/statutory holidays**

I have not been able to find any reference to the statutory change that you thought had happened or is going to happen regarding carrying forward holiday entitlement for public/statutory holidays – if you can send or link me to this reference that would be helpful. The Estate's position is as laid out in your contract of employment: 'Holidays must be taken in the holiday year of entitlement and may not be carried forward to the following year without prior approval from the Employer'. We expressly did not permit carrying forward of any annual leave from 2018 to 2019.

Related to this, your pro rata holiday entitlement for 2019 is just under 4½ days. You have confirmed that you have so far taken one day as holiday, on 1<sup>st</sup> January 2019. As discussed, and as mentioned in Mr Ramsay's letter to you of 2<sup>nd</sup> February 2019, the Estate require you to take the balance of your unused holiday entitlement (ie 3½ days), during the remainder of your notice period (ie by 24<sup>th</sup> February 2019). I would be grateful if you would please confirm the 3½ days that you will take as holiday, so I know when you are available for me to contact you.

**2. Rights as a 'tenant' or as a 'squatter'**

Your occupancy of Keeper's Cottage is solely as a consequence of your employment, as laid out in your contract of employment. The terms of your occupancy are such that you are not a tenant. Your employment and therefore your license to occupy Keeper's Cottage comes to an end on 24<sup>th</sup> February 2019, as laid out in my



letter to you of 17<sup>th</sup> August 2018. On or before 24<sup>th</sup> February 2019, we therefore expect you to remove yourself and all of your goods and gear from Keeper's Cottage, as laid out in your contract of employment. In advance of 24<sup>th</sup> February 2019, I will contract you to agree an arrangement to hand-over the keys to Keeper's Cottage and any lockable out-buildings. We encourage you to please vacate Keeper's Cottage on or before 24<sup>th</sup> February 2019 as required. If you remain in Keeper's Cottage from 25<sup>th</sup> February 2019, you will be doing so without the Estate's consent which means that you may be subject to criminal prosecution or civil proceedings – there are no 'squatters' rights' in Scotland. If on or after 25<sup>th</sup> February 2019 we have to ask you to leave and you refuse, we will have no option but to immediately take the necessary action to have you evicted. I very much hope this is a scenario we can avoid. If you have any further questions or are prepared to discuss your intentions on this matter, please give me a call. ....”

49. On 19 February Mr Nisbet sent an e-mail to the claimant which was lodged (p195).

20 “Hamish

Further to our earlier conversation, I confirm as below that your pro rata holiday entitlement for 2019 is just under 4½ days. As you confirmed that you had taken one day as holiday (1<sup>st</sup> January 2019), the balance of your unused holiday entitlement when we talked last week (Wednesday 13<sup>th</sup> February) was 3½ days. As Mr Ramsay informed you on 2<sup>nd</sup> February and I reiterated on 13<sup>th</sup> February and again below on 15<sup>th</sup> February, the Estate require you to take the balance of your unused holiday entitlement during the remainder of your notice period (ie by 24<sup>th</sup> February 2019). Having been asked by Mr Ramsay, you have had the opportunity since Monday 4<sup>th</sup> February (fifteen working days) to plan and take the balance of your unused holiday entitlement around outstanding work. If at this stage you need to discuss how to take the balance of your unused holiday entitlement

and complete your outstanding work please contact me as soon as possible.

Otherwise I will call you on Thursday or Friday this week as agreed.

Thanks”

5 50. On 21 January the claimant sent a text to Mr Nisbet stating

“How many days are you wanting me to work this week as Charlie states a different amount to yourself. I was working most of yesterday and have been busy this morning.”

Mr Nisbet responded

10 “Ur pro-rata for 2019 is virtually 4.5 days, u have taken 1<sup>st</sup> Jan, so 3.5 days remaining. If u take all those this week, u wd work 1.5 days this week

Charlie said in his email that I had to take my holidays this week and that was 4.5 days

15 The 4.5 days is ur pro-rata for 2019, but u have used one day (1<sup>st</sup> Jan) so have 3.5 days remaining”.

The claimant continued to work and did not take any days off prior to the termination of his employment on 24 February.

20 51. The claimant’s gross pay was £404.57 per week. His net weekly pay was £295.92. In addition to this the claimant received the use of Keeper’s Cottage rent free. His Council Tax (and that of KM) were paid by the estate. In 2018/19 the Council Tax was £1597.69 per annum for the claimant and KM. The respondent paid the buildings insurance amounting to £143.16. The claimant received a clothing allowance of £700 per  
25 annum. He also received a dog allowance of £5.60 per week per dog. He had two dogs and this amounted to £582.48 per annum. The claimant was also entitled to uplift firewood from the estate.

52. From time to time the claimant would require to purchase items for the estate and he would be reimbursed for this. There were certain items  
30 which the claimant had paid for where the estate was still to reimburse him

as at the termination of his employment. These sums were paid by the estate prior to the commencement of the hearing.

53. At some point in or around 2015 the claimant discussed the purchase of a rifle with the then Factor of the estate Mr Taylor. The claimant's view was that at that time the rifles available for his use which belonged to the estate were not capable of killing a fox. He asked Mr Taylor whether the estate would make a contribution if he purchased a rifle for his personal use. The claimant's understanding of the position was that Mr Taylor agreed that if Mr Rae purchase a particular rifle which cost £4200 then the estate would make a contribution equivalent to the VAT on this of £700. The arrangement was at no time reduced in writing. When Mr Nisbet took over factoring of the estate he was not told of this arrangement. The claimant did not seek payment from Mr Nisbet prior to being told of his dismissal. The claimant raised the matter with Mr Nisbet at some point in 2018 after he was given notice of dismissal. Mr Nisbet telephoned Mr Taylor the previous Factor who advised him that he had no recollection of entering into any such arrangement. The estate did not pay the claimant the £700 at any stage. The claimant retained the rifle for his own personal use.

54. During his employment the claimant was auto-enrolled into a pension under the government's NEST pension scheme. The respondent paid 3% of salary into this.

55. The claimant's employment terminated on 24 February. The claimant did not immediately move out of Keeper's Cottage. On 6 March 2019 solicitors acting for the respondent wrote to the claimant indicating that if he did not move out they would raise an action for recovery of possession. On or about 15 March the claimant was served with a summons seeking to evict him from the property. The claimant moved out into Inverinain Cottage on the estate which was still rented by SA.

56. The claimant was successful in obtaining another job as a gamekeeper. The start date in the new job was 8 April 2019. The claimant's net weekly wage in his new job was higher than his wage with the respondent. The claimant also has a tied cottage in his new job with similar arrangements regarding dog allowance, sticks, Council Tax etc. The claimant did not

incur any housing costs between 24 February and 8 April when he started in his new job.

### **Matters arising from the evidence**

57. At the end of the day there was very little difference between the evidence of the parties in relation to those matters which were relevant to the Tribunal's decision. There was a difference between the evidence of the claimant and that of Mr Nisbet and Mr Ramsay in relation to what the claimant had been told on 3 July. The claimant's position was that he had been told his job was safe. Mr Ramsay's position was that when asked about this he had told the claimant

"It might Hamish."

Mr Ramsay became quite emotional when he was recounting the matter. The position of the claimant's representative was that this was because he knew that he was not telling the truth about this. At the end of the day the Tribunal considered that the matter was not particularly relevant to our decision. Even taking at its highest we did not feel that any assurance which was given to the claimant would amount to an agreement that the claimant's employment was decoupled from that of KM so as to invoke the "unless otherwise agreed" element in his contract. At the end of the day the Tribunal's view was that what had most probably happened was that each party took from the meeting what they wanted to hear. It is clear that there was a very limited discussion. Mr Ramsay's account was that basically there were only three words which might have put the claimant on notice that his employment was in jeopardy. The tribunal's view was that the claimant simply did not take on board what was being said and that Mr Ramsay did not repeat this or clarify it because he didn't want to jeopardise things going forward until he had worked out what he wanted to do.

58. In general terms the Tribunal found the evidence of the respondent's witnesses to be rather stilted. It was quite clear that they had decided in advance what they wanted to say and were particularly careful around issues raised by the claimant where any statement could be regarded as discriminatory. The Tribunal felt they had agreed their line in advance and

were sticking to it. There were some minor discrepancies between the evidence of Mr Nisbet and Mr Ramsay in relation to a number of matters such as precisely who had carried out the telephone sifting of applicants. The tribunal did not set any great store by these discrepancies which appeared to be of the type where honest witnesses simply have differing recollections as to precisely how various matters transpired.

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59. With regard to the various minutes of the meetings which were produced by Mr Ramsay the Tribunal did not feel sufficiently confident in them to accept them as accurate records of what took place at the meeting. The claimant's position was to some extent at odds with what was recorded as having been said. We noted that no minutes of meetings were sent to the claimant for approval at the time. The claimant was eventually sent some notes along with the outcome letter following his second appeal to Mrs Ramsay. In any event the Tribunal did not feel that this was a case where precisely what was said at these meetings was key to the fairness or unfairness of the decision. The respondent's witnesses were absolutely clear in their evidence at the Tribunal as to what their reasons had been for behaving as they did. Mr Nisbet accepted in evidence that the enquiries he made about finding a replacement housekeeper were "limited" when this was asked by the panel. Mr Nisbet also accepted that he had known the successful applicants eventually appointed as gamekeeper and housekeeper after the claimant left.

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60. One of the matters where there was a conflict of evidence was in relation to whether the housekeeper was expected to welcome guests when they arrived or not. Mr Ramsay's position was that he understood this was part of the housekeeper's duties. The changeover date was Sunday. The housekeeper would work 4-6 hours that day. His position was that on occasions guests would arrive late and this would cause difficulty if she was not working in close proximity to the estate. The claimant's evidence was that generally speaking he was the person who welcomed guests during the period when KM was the housekeeper and that when SA was the housekeeper he and SA would jointly welcome the guests. The Tribunal did not consider the point be particularly important but on balance

we preferred the claimant's evidence since he was physically present and actually knew what was going on

61. With regard to the £700 which the claimant claimed in respect of the gun, we accepted the evidence of the claimant that there had been some sort of discussion with Mr Taylor however we also accepted Mr Nisbet's evidence that when he spoke to Mr Taylor, Mr Taylor said he knew nothing about this. The Tribunal's view was that what the claimant said was agreed was a somewhat unusual arrangement particularly as both sides were very keen to refute any suggestion that what had been planned was to put the purchase of the gun through the estate's books so that the estate could reclaim the VAT and then pay this to the claimant. Such a scheme would of course have been illegal. In the circumstances, given that the arrangement had not been reduced to writing and that the claimant had continued to work for the estate for some three or four years after he had apparently entered into the agreement without getting payment the Tribunal's view was that we could not rely on there having been a contract in the way that which the claimant suggested in his evidence. With regard to the holiday pay, it was really the evidence of all parties that there had been no express agreement between the respondent and the claimant whereby the claimant would be allowed to carry forward his unused holiday entitlement to 2018 to 2019. With regard to the 3½ days' holiday for the holiday year 2019 there was no evidence before the Tribunal that either Mr Nisbet or Mr Ramsay had told the claimant that he had to take specific days off. The closest to this was in the e-mails from Mr Nisbet which have been provided which suggest that the claimant was asked to take his holidays before he left and in fact asked to take them in the final week but the actual choice of days appears to have been left to the claimant.

## **Discussion and decision**

### *30 Issues*

62. The claimant claimed that he had been unfairly dismissed by the respondent. The respondent's position was that the dismissal was for some other substantial reason and was fair. The claimant sought the

remedy of compensation for his unfair dismissal. Initially he had sought reinstatement but this was not the case by the date of the hearing. The respondent's position was that if the Tribunal was not with them and found in favour of the claimant then any compensatory award ought to have been reduced on the **Polkey** principle since in their view had a fair procedure been carried out the claimant would still have been dismissed.

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63. The claimant claimed direct sex discrimination and indirect sex discrimination. The respondent denied both claims. Their view was that the appropriate comparator was a female keeper whose relationship with a co-habitee colleague (of any kind) ended. Their position was they did not treat the claimant less favourably than they would have treated a female employee in those circumstances. With regard to the claim of indirect sex discrimination the respondent denied that they had applied the PCP alleged, furthermore it was their position that even if they did, the PCP alleged did not put men at a disadvantage compared to women. Failing this, it was their position that the PCP was a proportionate means of achieving a legitimate aim.

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64. The claimant claimed that he was due money in respect of holiday pay. His position was that he was due 10 days in respect of annual leave accrued but untaken in 2018 together with 3½ days in respect of holiday pay accrued but untaken in 2019. The respondent's position was that there had been no express agreement that the claimant be allowed to carry forward his annual leave entitlement from 2018 to 2019 and that he had therefore lost this. With regard to the 2019 holidays their position was that the contract allowed the respondent to insist that holidays be taken prior to termination of contract and that they directed the claimant to do this but that he failed to do so and was therefore not entitled to payment in respect of the balance.

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65. The claimant sought payment in respect of expenses incurred by him on behalf of the respondent prior to his dismissal which remained unpaid as at the date of termination of employment. A certain amount of this was paid by the respondent prior to the date of the hearing. The remaining matter in dispute between the parties related to the claimant's claim that the respondent had undertaken voluntarily to pay him £700 towards the

cost of the claimant acquiring a rifle in or about 2015 but that they had never paid this. The respondent denied that such an arrangement had been entered into by or on their behalf.

### Discussion and decision

5 66. Both parties made helpful submissions to the Tribunal setting out their view of the legal background and how the legal provisions ought to be applied in this case. Both were in writing and supplemented orally. Rather than seek to repeat these submissions, they will be referred to where appropriate in the discussion below.

10 67. I will deal with the claims in turn.

(i) *Unfair dismissal*

15 68. The respondent's position was that the reason for the claimant's dismissal was because his employment was linked to that of KM who resigned from her employment. The respondent required to replace her and it was not possible to find a housekeeper alone. It was their position that it was only possible to find a housekeeper along with a keeper. It was their position that this amounted to some other substantial reason in terms of section 98(1)(b) of the Employment Rights Act 1996. It was their position that the case was analogous to that of ***Kelman v Oram [1983] IRLR 432*** in that it was impractical to continue to employ the claimant.

20 69. Section 98(1) of the Employment Rights Act 1996 states

“(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 –

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

(b) that it is either a reason falling within subsection (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.”

30 70. SOSR is essentially a catch-all category. In the case of ***RS Components Ltd v Irwin [1973] ICR 535*** the then NIRC stated that



“Parliament may well have intended to set out in [section 98(2)] the common reasons for a dismissal, but can hardly have hoped to produce an exhaustive catalogue of all the circumstances in which an employer would be justified in terminating the services of an employee. Section 98(1)(b) provides a residual potentially fair reason for dismissal that employers may be able to use if the reason for dismissal does not fall within the four specific categories in section 98(2).”

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71. As with all questions as to whether a dismissal is fair or unfair in terms of section 98 the Tribunal must first of all establish whether the reason for dismissal is a potentially fair one before going on to consider whether the dismissal meets the test of fairness set out in section 98(4).

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72. In this case the Tribunal considered that it was important to bear in mind that the question was whether the respondent’s reason was capable of justifying the dismissal of an employee holding the job in question. ie. we required to decide whether the reason given by the respondent could potentially amount to a fair reason for dismissing someone from the post of gamekeeper on South Chesthill Estate. The Tribunal was not required to decide whether or not in general terms it could potentially be fair to dismiss an individual from their post because it had been offered to them as one of a couple and the other member of the couple had resigned. The Tribunal’s view was that there could well be circumstances where in general terms such a dismissal would be for some other substantial reason. I noted for example that in the *Kelman* case quoted by the respondent’s, the employee in that case had accepted that the continued employment of the wife was impracticable in circumstances where the husband had been dismissed in respect of conduct amounting to dishonesty. Paragraph 4 on page 433 states

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“the finding that it was impracticable for the appellant’s employment to continue and that this was some other substantial reason in terms of section 57(1)(b) of the Employment Protection Consolidation Act 1978 was not attacked.”

In this case the claimant very much did not accept that the reason could amount to some other substantial reason.

5 73. The Tribunal agreed with the claimant that in this case the reason given by the employer did not amount to a substantial reason justifying dismissal.

10 74. The evidence of the respondent was that they had been advised around early July that KM was likely to be leaving. They had put in place a contingency plan to cover keeping duties by offering SA a temporary contract as housekeeper. Mr Nisbet's evidence was that this arrangement was in place by 17 August and SA signed her temporary contract shortly after this. KM then finally handed in her notice on 13 August and on 17 August the claimant was called to a meeting and handed a pre-prepared letter terminating his employment. Mr Nisbet's evidence as to why the claimant was dismissed in such apparent haste was that they had  
15 obtained advice that they should do so as soon as possible in order to be able to use the contractual provisions.

20 75. The Tribunal's view with regard to the contractual provision was that whilst this was one of the factors which we required to take into account the issue before the Tribunal was whether or not the dismissal was fair in terms of the statutory provisions contained in Part X of the Employment Rights Act 1996. The issue of whether a dismissal is justified in terms of contract is an entirely different one. Typically, an employment contract will contain provisions that allow it to be terminated on notice. A dismissal may be perfectly legal in terms of the contractual provision but still fall foul of the  
25 statutory provisions relating to unfair dismissal.

30 76. In any event, in this case, it is clear that at the point of dismissal the respondent had taken virtually no steps to ascertain whether or not it would be possible to find someone to act as housekeeper in place of KM without dismissing the claimant. What Mr Nisbet had done was speak to the wife of the handyman on the estate, one person who had worked for them before and SA. In actual fact SA was quite happy to do the job and Mr Nisbet's search stopped there. As the claimant said, it would have

been possible for him to put up a notice in the local shop or advertise the post in some way but he did not.

5 77. We should say that in the Tribunal's view this was not a case where the respondent was saying that they had made a business decision that in future they would be managing things in one way rather than another. In that case the Tribunal would not have been able to intervene with the way the respondent chooses to run their business. In this case the respondent's position was that they had decided to dismiss the claimant because he was employed on a contract linked with that of KM and there was no practical way of them obtaining a housekeeper without them dismissing the claimant and offering another two linked posts of gamekeeper and housekeeper. It was the Tribunal's view that there was absolutely no evidence to support the respondent's conclusion in relation to this.

10 78. The respondent's view that it would be extremely difficult to find a housekeeper without dismissing the claimant was essentially based on three matters. The first of these was in relation to what Mr Ramsay (and later Mrs Ramsay) had been told by Mr Ramsay's mother about the difficulty of finding a housekeeper. It was unclear which period this anecdote related to but on Mr Ramsay's own account the estate had in fact been able to find a housekeeper. His evidence was that "It didn't work out". Similarly when Mr Nisbet tried to find someone in July/August 2018 by phoning around he was able to find someone. As noted in the claimant's submissions the role of keeper and housekeeper were completely separate and the overlap was minimal. Mr Ramsay agreed this in his evidence. There was also no real evidence that the housekeeper had to be on call and available on the estate. It was noted that the current housekeeper has other work that takes her away from the estate on a regular basis. We would agree with the claimant's representative that the respondent's suggestion that they required the housekeeper to be able to respond to urgent situations did not square with the fact that they have previously, and do currently, allow the person holding the housekeeper role to take on other work away from the estate.

There was no requirement for the housekeeper to be available on call on the estate.

79. The second reason appeared to be based on a general view that the estate was remote and that it would be difficult to find someone willing to take on work for one or two hours a day if they did not live on or very close by the estate. Mr Ramsay's evidence was that there were around 100 people living in the glen. This did not include people living in Fortingall about ten minutes away from the estate. Mrs Ramsay's evidence was that around half of the properties were either holiday homes or holiday lets. Presumably all of these holiday lets would appear to have overcome the difficulty of obtaining a housekeeper. The claimant in evidence indicated that there were several local individuals who looked after a number of cottages. Mr Ramsay also accepted that the towns of Aberfeldy and Killin were both around a half hour drive away. Mr Ramsay indicated that he had costed a figure for using the professional cleaning firm they currently used (Heartland Cleaning) who were based in Pitlochry to do the work of the housekeeper and this would cost an additional £4500 per annum. The Tribunal considered this evidence to be flawed. Mr Ramsay ought to have considered that on a worst case scenario the respondent would be able to get someone from Aberfeldy and Killin who at most would require to be paid an extra one hour per day to cover their travel time during the up to 30 weeks per annum that one or more of the cottages is actually let.

80. Finally, the respondent relied upon the fact that when they advertised the job of housekeeper and gamekeeper together stating that the job "would be ideal for a couple" they had no stand-alone applicants for the post of housekeeper. The Tribunal preferred the evidence of the claimant that the way to find a housekeeper would have been to advertise locally in for example the local shop. As it was, the jobs were advertised primarily in publications which were aimed at people looking for gamekeeper type roles. The Tribunal's view was the fact that no-one made a stand-alone application for the post of housekeeper could not be regarded in any way as justifying the view which the respondent took. In submissions the respondent's agent indicated that the reason that the respondent did not try to advertise the housekeeper job on a stand-alone basis in August was

that at that stage they had SA doing the job. The Tribunal did not accept this as a valid reason. They had given SA the job on a short term contract. If the respondent was genuinely seeking to find a way to obtain a housekeeper which was satisfactory to them there were a myriad of ways in which they could do this without the necessity of dismissing the claimant. The Tribunal noted that the claimant was dismissed on the same day as SA.

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81. A further point which the Tribunal considered was that the respondent could have looked into the possibility of asking the claimant if he would be prepared to move out of Keeper's Cottage so as to allow that to be used to provide accommodation to a housekeeper who was brought in. The Tribunal observed that the respondent appeared to have two properties available on the estate. One of them, Inverinain Cottage was rented out to SA on a residential lease. The other was Keeper's Cottage and was provided to the claimant as an adjunct of his employment. The claimant and SA were a couple. It is entirely probable that had the matter been explored in this way a resolution could have been arrived at which would meet any genuine concerns which the estate had. As it was the matter was not explored at all since there was absolutely no consultation with the claimant.

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82. Furthermore the Tribunal were extremely troubled by the evidence given by Mr Nisbet to the effect that the successful applicants for the position of gamekeeper and housekeeper were known to him in advance of their application and that in fact he had encouraged him to apply. We also note that when they could not attend the initial date fixed for interview of 9 November a further date was fixed which would allow them to attend. Given the extremely poor quality of the respondent's evidence as to the need for the roles to be linked and the virtually non-existent evidence about the impossibility of finding a suitable housekeeper in Glenlyon the Tribunal's view was that had we required to do so we would have found that the reason for dismissal was the fact that the respondent had decided that they wished to get rid of the claimant and SA from the estate and employ someone else.

83. It is the view of the Tribunal that essentially the respondent decided at an early stage that they wanted a couple for the job. It also appeared to the Tribunal very likely that the respondent decided at a fairly early stage that, for whatever reason, they did not want the couple to be the claimant and SA. The Tribunal's view was that the reasons given by the respondent for coming to the conclusion the claimant should be dismissed were trivial and could not be justified. The Tribunal's view was that they had not made out some other substantial reason which could possibly justify dismissing someone holding the post the claimant held.
84. Given that the Tribunal's view was that the respondent had not established SOSR as a potentially fair reason for dismissal that is essentially the end of the matter in that the dismissal must be unfair. The Tribunal's view however that if we were wrong about this then it would be appropriate for us to go on to consider the issue in terms of section 98(4) and the issues of procedural fairness.
85. With regard to section 98(4) we would agree with the respondent's representative that we required to look at overall fairness taking into account not just the dismissal with notice on 17 August but also the steps which were taken thereafter with a view to either finding the claimant alternative employment or finding some way of allowing him to be reinstated in his job. We accept the respondent's argument that the situation was analogous to that of a capability type dismissal where the Tribunal will look at attempts made to redeploy the employee right up until the point of dismissal. In this case they made absolutely no attempt to consult with the claimant in advance of his dismissal. It would appear that the claimant sought to raise this matter with Mr Ramsay but with no success. As noted above we felt that there was no need to make any specific finding as to whether or not the claimant was given any assurance that his job would be safe but it is also absolutely clear that at these meetings there was absolutely no discussion of ways of potentially avoiding the claimant losing his job if KM left. The claimant's evidence was to the effect that the letter came as a complete shock to him particularly as the previous evening he had been discussing future plans for the estate with Mr Ramsay. The claimant was given notice. The

respondent sought to portray this as something done in fairness to the claimant but the Tribunal's view was that the notice period was given in order to suit the purposes of the respondent. Mr Ramsay's evidence was that the hind season went on until February and February/March are when he would be able to get a new gamekeeper. We note that the version of the claimant's contract which was lodged contains a crossed out clause 21(c) which states that the claimant might only leave in February or March each year which marks the start of the out of season period.

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86. There was then no further consultation with the claimant despite the claimant and KM working for the estate over the period from August until December. The claimant and SA were encouraged to apply for the roles (which involved the claimant applying for a job which was his own job). The respondent changed the title of the claimant's job from keeper to that of keeper/caretaker but Mr Ramsay's evidence was that this was so that more accurately portray the duties which the claimant had actually been carrying out. The claimant and SA then attend the interview. They are not awarded the job. The respondent's position is that this was due to issues with SA.

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87. The Tribunal's view was that the respondent was entirely free to make whatever decision they wished in terms of whether or not to employ SA. The Tribunal were not entitled to interfere in that decision in any way. We are aware that the claimant disputed that there was anything wrong with SA's cleaning and indeed we note that Mr Nisbet indicated that Mr Ramsay had made similar criticisms in the past of KM. Despite that, the respondent was perfectly entitled to decide that they did not wish to employ SA. What the Tribunal is entitled to look at is whether the employer acted reasonably in treating their decision not to employ SA as sufficient reason for them to decide not to revoke the claimant's dismissal and force him to leave.

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88. With regard to redeployment the respondent did not mention any attempts whatsoever to redeploy the claimant. The claimant's evidence was that on the contrary the respondent by "stringing him along" made it more difficult for him to obtain a new job in the February/March period when most gamekeepers would be moving.

89. The Tribunal also considered it relevant to take into account the various matters which we have outlined above which led us to the view that the reason given by the respondent was not 'some other substantial reason'. The Tribunal's view was that the respondent made absolutely no attempt to explore the possibility that they could fill the role of housekeeper without dismissing the claimant. They appeared to have made the decision at a very early stage that the claimant would be dismissed and it would appear that essentially he would only be allowed to keep his job if he managed to apply as a couple with someone else who was acceptable to the respondent as a housekeeper. The Tribunal's view is that there were numerous other options which could have been explored by the respondent and ought to have been explored by them when they made the decision to proceed to dismiss the claimant. In considering issues of reasonableness the Tribunal requires to apply the "range of reasonable responses" test. In order for the Tribunal to find the dismissal unfair we required to make a finding that no reasonable employer would treat the reason given by the respondent as justifying dismissal. The Tribunal's view was that that was indeed the case here.

90. Although the Tribunal are in absolutely no doubt that the dismissal is substantively unfair it is probably as well that we also set out our views with regard to procedural fairness. In this case we note that the claimant was simply dismissed by being handed a pre-prepared letter. He was not given any advance notice that this would happen. We accepted his evidence that he was told that he was to attend a "going forward meeting". The Tribunal accepted that the claimant did not have a right to be accompanied at this meeting since it was not a disciplinary meeting or a meeting linked to redundancy. That having been said, the Tribunal's view was that, as noted in the case of ***Polkey v A E Dayton Services Limited***, procedural fairness is a part of overall fairness in terms of section 98(4).

91. The Tribunal note that at even during the period when the claimant and SA were working on the estate there was still no attempt to consult the claimant about what might happen if the respondent decided that SA was not suitable. The respondent did not seek to discuss any "plan B" with the claimant. The Tribunal's view was that there was absolutely no point in



the process where the claimant was invited to give his views as to how his dismissal might be avoided. He was not given this opportunity either before being dismissed on 17 August or during his notice period. The claimant was also not given the right of appeal at the point of dismissal in August. The Tribunal would also agree with the claimant that the appeal which the claimant was eventually offered in December/January was totally flawed and a sham. The appeal was first of all to Mr Ramsay who had made the original decision and then secondly to Mr Ramsay's wife. The Tribunal's view was that despite her protestations there was absolutely no possibility of Mrs Ramsay choosing to believe the claimant over her husband in relation to the dispute over whether or not the claimant had been told his job was safe and no possibility of her overturning her husband's decision. It would have been perfectly possible for the respondent to have nominated an independent person to deal with the appeal and provide an independent overview of the fairness of what they decided. In the Tribunal's view the dismissal was procedurally unfair as well as substantively unfair.

92. Having established that the dismissal was both procedurally and substantively unfair it is probably as well to set out at this stage the Tribunal's view as to whether compensation should be reduced on the **Polkey** principle. The Tribunal's view was that it should not. As noted above the Tribunal considered that the dismissal was substantially unfair as well as procedurally unfair. Had the respondent carried out a fair procedure and consulted with the claimant at an early stage the Tribunal's view was that there is no question but that the dismissal of the claimant could have been avoided at that time. If matters had progressed then if for example the respondent had decided to give SA a trial and then tried to seek a housekeeper on a stand-alone basis then there is at least a possibility that if the respondent was unsuccessful in this the claimant might have been fairly dismissed some way along the line. The Tribunal's view was that if this process had been carried out then the overwhelming likelihood was that the respondent would have found a way of obtaining a housekeeper without dismissing the claimant but even if they did not then the claimant's employment would have continued for at least another six months. Given that he was able to find alternative work within six weeks

the Tribunal felt there was no point in allocating any **Polkey** percentage. Had a fair procedure been carried out the claimant would have remained in the employment of the respondent until at least 8 April 2019 when he found new work. We therefore make no **Polkey** deduction. Given that the respondent did not at any point aver that the claimant had in any way contributed to his dismissal no question of contribution arises.

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93. We accepted the claimant's figures as set out in the schedule of loss. The claimant had 10 years' service as at the date of dismissal during two years of which he was over the age of 41. He is entitled to a basic award of £5663.98. So far as the compensatory award is concerned he was out of work for six weeks. He made appropriate attempts to mitigate his loss. The Tribunal would award him six weeks' pay at the net weekly amount of £295.92 giving wage loss of £1775.52. The claimant sought £475 in respect of loss of statutory rights. The Tribunal considered that in most cases this figure would be somewhat on the high side. In this case however we note that the claimant works in an industry where typically he will be given the use of a house as part of his remuneration. His continued residence in the house is dependent on his employment continuing and in those circumstances the statutory right not to be unfairly dismissed is of particular importance. Given that the claimant will now have to work two years in his new job before he acquires this right, the Tribunal accepted the figure of £475 as appropriate.

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94. With regard to pension loss this was not dealt with by either party. It would appear that the respondent would have been paying pension contributions of 3% of pay. The claimant lost the benefit of these contributions for the six weeks he was unemployed. The pension loss figure is therefore £53.27. The Tribunal accepted that the claimant would have earned a weekly dog allowance of £67.20 during the period he was unemployed. The Tribunal accepted the respondent's argument that the claimant cannot claim losses in respect of his loss of housing, fuel and Council Tax benefit since the claimant did not have to pay these things during his period of unemployment. The total compensatory award is therefore (£1775.52 + £475 + £53.27 + £67.20) = £2370.99. The total monetary award for unfair dismissal is £8034.97. The claimant was in receipt of

jobseeker's allowance between 25 February 2019 and 4 April 2019. The prescribed element is therefore £1775.52 and relates to the period between 25 February 2019 and 4 April 2019.

*(ii) Sex discrimination*

5 95. The claimant's position was that as well as being unfair his dismissal was also discriminatory. The claimant based this assertion on two grounds. He first of all indicated that his dismissal amounted to direct discrimination in terms of section 13 of the Equality Act 2010. He also claimed indirect discrimination in terms of section 19. The claimant's position was that his  
10 dismissal was directly discriminatory since he was dismissed only on the basis that he was a man and he was not in a relationship with a woman. The claimant's position was that the claimant had been dismissed as soon as KM left. It was his position that the respondent had made a stereotypical assumption that a man would fill the keeper role and a  
15 woman would fill the housekeeper role. When the claimant was apparently no longer in a position to provide a housekeeper who could clean the house up to the respondent's standards he was dismissed. The Tribunal understood the claimant to be relying on a hypothetical comparator on the basis that had the gamekeeper been the one to resign  
20 then the housekeeper would not have been asked to leave.

96. The principal difficulty with the claim was that bearing in mind the reverse burden of proof the Tribunal could not find evidence from which we could draw an inference of discrimination.

25 97. We could quite see why the claimant's initial view was that his dismissal must be discriminatory. As can be seen from our finding in unfair dismissal we consider that the respondent behaved unfairly towards him. We can see why he would be seeking an explanation of this. The Tribunal agreed with the claimant that the respondent was guilty of a degree of stereotypical thinking in that from the moment KM resigned they believed  
30 that the only way to ensure that they obtained a housekeeper who could clean the property to their satisfaction was to dismiss the claimant and appoint another couple. We accepted their evidence that as long as it was a couple they were not bothered if the keeper was a man or a woman,

whether the housekeeper was a man or a woman and whether they were in a relationship with each other or not. We could see that the logic of the respondent's position was that if their factual contention that they could not find a stand-alone housekeeper but could find a stand-alone gamekeeper was indeed correct then the situation would be that if the gamekeeper left then the housekeeper would not have been dismissed since it was easier to get a stand-alone gamekeeper. We did not however feel this advanced the claimant's case. At the end of the day the Tribunal's view that whilst it was clear that the respondent had applied stereotypical assumptions (that they wanted a couple) these did not appear to be discriminatory on the basis of sex. We could not make a finding that the claimant had been treated less favourably than the respondent would have treated a woman keeper in the same situation. As noted above we felt that all three of the respondent's witnesses were very careful in their evidence to avoid any suggestion that they were thinking along stereotypical gender specific lines in respect of any of the roles. We did not find the claim of direct sex discrimination to be made out.

98. With regard to the indirect sex discrimination claim we understood the claimant's claim to be that the respondent operated a provision, criteria or practice that a man and a woman must be in a relationship in order to remain in employment. The claimant's representative noted that although the respondent had stand-alone applications for the post of gamekeeper they only in fact interviewed people who were members of couples. Having considered the matter carefully the Tribunal was of the view that the claimant had failed to demonstrate that if indeed this PCP existed it had a disparate impact on men. It certainly would have a disparate impact on people who were not in a relationship but once again the respondent was very clear in that they did not require couples to be married or indeed co-habiting in any formal sense. The Tribunal did not uphold the claim of indirect sex discrimination.

*(iii) Holiday pay*

99. With regard to holiday pay the Tribunal's view was that the issue required to be considered in light of both the contract and the Working Time Regulations 1998.

100. With regard to annual leave for the 2018 year the Tribunal found as a matter of fact that there had been no express consent from the respondent that these could be carried over. In terms of the contract the claimant therefore lost his entitlement to these holidays. The claimant also lost his  
5 entitlement to these holidays in terms of the 1998 Regulations. As is noted by regulation 17 the claimant is entitled to take advantage of whichever right is the more favourable. The Tribunal's view was that there was nothing in the Working Time Regulations which was more favourable to the claimant. It is clear from the Working Time Regulations that leave  
10 requires to be taken in the leave year to which it applies. The only provision which relates to payment of compensation where leave has not been taken during the appropriate leave year is section 14 which only applies where a worker's employment is terminated during the course of his leave year.

15 101. The Tribunal's view therefore was that the claimant had lost his entitlement to the 10 days of untaken annual leave in 2018 and was not entitled to compensation therefor.

102. With regard to the 2019 leave year the Tribunal accepted the joint factual position of the parties which was that the claimant had accrued 4½ days' leave of which he had taken one day. The respondent's position was that  
20 the claimant was not entitled to this leave because they had directed him to take it. The Tribunal notes that in terms of the Working Time Regulations an employer does have the right to direct which days an employee can take as annual leave. This right is contained in in section  
25 15. The employer may require the worker to take leave to which he is entitled. Regulation 15 states

“(2) A worker's employer may require the worker –

(a) to take leave to which the worker is entitled under regulation 13 or regulation 13A; or

30 (b) not to take such leave

on particular days, by giving notice to the worker in accordance with paragraph (3).”

Paragraph 3 gives the form of notice and notes that notice must be given twice as many days in advance of the earliest day specified in the notice as the number of days or parties to which they notice relates.

5 103. In terms of the contract the matter is covered by paragraph 12 which is set out above. The Tribunal's view is that the relevant paragraphs are paragraph (b) which states that holiday entitlement would be taken at dates agreed with the employer and paragraph (f) which states that the employer reserves the right to require you to take any unused holiday during your notice period. The Tribunal's view was that this contractual provision, like the provision in the working time regulations, requires the employer to state the actual dates on which the employee is required to take annual leave. Having considered carefully the evidence of Mr Nisbet and the terms of the e-mails which he sent it appears to me that whilst Mr Nisbet was saying that the estate very much wanted the claimant to take his remaining days' holiday prior to leaving and indeed within a certain week, they stopped short of directing him as to which days he take off. It appears clear from the e-mails that in fact the final discretion was to be left with the claimant. The Tribunal's view was that this was not a case where the employers had directed the claimant to take these days off. The days were not as a matter of fact taken off and the claimant is therefore still entitled to payment for the outstanding 3½ days in terms of section 14 of the Working Time Regulations 1998. This amounts to £207.14 (295.92 x 3.5 ÷ 5). The claimant is entitled to payment of this sum in terms of regulation 14 of the Working Time Regulations.

25 *(iv) Other payments*

104. By the time of the hearing the only matter outstanding was that of the claimed £700 as part payment towards a rifle. The Tribunal's view was that this could not be regarded as a payment for expenses incurred on the estate's behalf. It was clear that the claimant had purchased a rifle for his own use and indeed he took it with him when he left. The arrangement alleged was a somewhat unusual one. The Tribunal's view was that there was insufficient evidence before us to find that a contractual obligation had been entered into between the estate and the claimant whereby the estate would give the claimant £700 towards purchase of a gun. Our reason for

this was essentially that this was an unusual type of arrangement which we would expect to see expressed in writing. The claimant was somewhat vague as to exactly what the arrangement was. He claimed that he had made the arrangement with Mr Taylor but he did not call Mr Taylor to give evidence about it. We accepted Mr Nisbet's evidence that when he had spoken to Mr Taylor, Mr Taylor had said he knew nothing about it. For this reason the Tribunal found in favour of the respondent in respect of this aspect of the claim.

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**Employment Judge:**  
**Date of Judgment:**  
**Date sent to parties:**

**Ian McFatridge**  
**28 November 2019**  
**28 November 2019**

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