



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr K Howe

**Respondent:** Broseley Town Council

**Heard at:** Birmingham (by Skype)      **On:** 11 June 2020

**Before:** Employment Judge Miller

## Representation

Claimant: Mr Powell (Counsel)

Respondent: Mr Heard (Counsel)

**JUDGMENT** having been sent to the parties on **15 June 2020** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Background and introduction

1. This is the decision on the claimant's application for interim relief in the case of Dr K Howe v Broseley Town Council and others. The other named parties in the claim are individuals and are not therefore party to this interim application.
2. By a claim form presented on 20 May 2020 and following a period of Early Conciliation from 6 May 2020 to 15 May 2020 against the respondent in this application, the claimant brought claims of unfair dismissal, sex discrimination and further payments. Her claim for unfair dismissal included, amongst other things, a claim for automatically unfair dismissal pursuant to section 103A of the Employment Rights Act 1996 and it included an application for interim relief in respect of that claim of unfair dismissal.

3. The respondent had not at the time of the interim relief hearing presented a response and was not obliged to do so until 24 June 2020.
4. The summary background to the case is that the claimant was appointed as Town Clerk to Broseley Town Council (the first respondent in the main claim and respondent in this application and hereafter “respondent”) on 1 April 2019 and she was dismissed with effect from 14 May 2020. During the course of her employment the claimant says that she made a number of protected disclosures relating, predominantly, to the conduct of the respondent’s elected members some of whom are the additional respondents to this claim.
5. It is common ground that the claimant was dismissed by resolution of the full council of the respondent on 11 May 2020. The respondent’s case is, broadly, that the claimant was dismissed for a reason relating to her conduct.

### **The hearing**

6. The hearing today was conducted by Skype with the agreement of the parties. I was provided with an agreed bundle of 258 pages and a witness statement from the claimant and Mr G Goodall. I was able to read the witness statements in advance of the hearing and I read most of the documents referred to in the claimant’s witness statement. I did not hear oral evidence from any witnesses. I was taken to a number of other documents by the party’s representatives and I was provided with written submissions by each party.

### **The issues and the law**

#### **Interim relief**

7. The issues that I have to decide today are those set out in sections 128 and 129 of the Employment Rights Act 1996.
8. Section 128 provides

#### **128 Interim relief pending determination of complaint**

(1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—

(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—

(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or

(ii) paragraph 161(2) of [Schedule A1](#) to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met,

may apply to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.

(4) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.

(5) The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

9. In this case, the claimant asserts that the reason or the principal reason for her dismissal was reasons specified in section 103A of the Employment Rights Act 1996 so that she may apply to the tribunal for interim relief.

10. Section 129 provides that

### **129 Procedure on hearing of application and making of order**

(1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find—

(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—

(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or

(ii) paragraph 161(2) of [Schedule A1](#) to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met.

(2) The tribunal shall announce its findings and explain to both parties (if present)—

- (a) what powers the tribunal may exercise on the application, and
  - (b) in what circumstances it will exercise them.
- (3) The tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
- (a) to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed), or
  - (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
- (4) For the purposes of subsection (3)(b) “terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed” means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.
- (5) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
- (6) If the employer—
- (a) states that he is willing to re-engage the employee in another job, and
  - (b) specifies the terms and conditions on which he is willing to do so,
- the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.
- (7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.
- (8) If the employee is not willing to accept the job on those terms and conditions—
- (a) where the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and
  - (b) otherwise, the tribunal shall make no order.
- (9) If on the hearing of an application for interim relief the employer—
- (a) fails to attend before the tribunal, or
  - (b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in subsection (3),
- the tribunal shall make an order for the continuation of the employee's contract of employment.

11. I was referred to the following cases:

12. In *Taplin v C Shippam Ltd* [1978] ICR 1068, the Employment Appeal Tribunal held, at paragraph 23 and 24

*“23. We think that the right approach is expressed in a colloquial phrase suggested by Mr White. The Tribunal should ask itself whether the applicant has established that he has a 'pretty good' chance of succeeding in the final application to the Tribunal.*

*24. Although the Chairman of the Tribunal expressed the burden of proof differently from the way which we have done we do not consider that there is any real difference of emphasis. He thought that 'likely' meant more than 'probable' and he regarded 'probable' as being '51% or more'.”*

13. That this is a higher test than on the balance of probabilities is clear from paragraph 24.

14. In *Ministry of Justice v Sarfraz* [2011] IRLR 662, Underhill J said at paragraph 14,

*“...in order to make an order under ss.128–129 the judge had to have decided that it was likely that the tribunal at the final hearing would find five things: (1) that the claimant had made a disclosure to his employer; (2) that he believed that that disclosure tended to show one or more of the things itemised at (a)–(f) under s.43B(1); (3) that that belief was reasonable; (4) that the disclosure was made in good faith; and (5) that the disclosure was the principal reason for his dismissal”.*

15. The “pretty good chance” test applies to each of the elements in a claim under s103A Employment rights Act 1996. It was also confirmed in that case that ‘likely’ is a significantly higher degree of likelihood than on the balance of probabilities, being 51% or more.

16. The claimant is required to show, therefore, in respect of each element of the claim that she wants to bring that she is likely to be able to prove each of those elements at a final hearing.

17. I was referred to a number of other cases including *His Highness Sheikh Khalid Bin Saqr Al Qasimi v Robinson* UKEAT/0283/17/JOJ and *Raja v Secretary of State for Justice* [2010] UKEAT 0364/09/1502

18. In *Al Qasimi v Robinson*, HHJ Eady approved the dicta of His Honour Judge Shanks in *Parsons v Airplus International Ltd* UKEAT/0023/16:

*“8. On hearing an application under section 128 the Employment Judge is required to make a summary assessment on the basis of the material then before her of whether the Claimant has a pretty good chance of succeeding on the relevant claim. The Judge is not required (and would be wrong to*

*attempt) to make a summary determination of the claim itself. In giving reasons for her decision, it is sufficient for the Judge to indicate the "essential gist of her reasoning": this is because the Judge is not making a final judgment and her decision will inevitably be based to an extent on impression and therefore not susceptible to detailed reasoning; and because, as far as possible, it is better not say anything which might pre-judge the final determination on the merits."*

19. In *Raja v Secretary of State for Justice* it was held:

*"What a Tribunal has to do in an application for interim relief is to examine the material put before it, listen to submissions and decide whether at the final hearing on the merits "that it is likely that" that Tribunal will find that the reason or reasons for the dismissal is one or more of those listed in section 129(1). What is clear is that the Tribunal must not attempt to decide the issue as if it were a final issue"*

20. Those cases say that I am not required to make any findings of fact, in fact I ought not to do so for fear of prejudicing any future tribunal, but that I should carry out a summary assessment on **all** the material before me.

### **Protected disclosures and unfair dismissal**

21. The claim that the claimant is bringing is that she was unfairly dismissed under section 103A of the Employment Rights Act 1996. This says

An employee who is dismissed shall be regarded for the purposes of this part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made protected disclosure.

22. A protected disclosure is defined by section 43B of the Employment Rights Act 1996. This provides:

#### **43B Disclosures qualifying for protection**

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

23. Section 43 C provides, as far as is relevant

**43C Disclosure to employer or other responsible person**

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure . . .—

(a) to his employer, or...

24. The elements of a protected disclosure are, therefore,

- a. that the claimant has disclosed information
- b. that she reasonably believed that that information tended to show one or more of the things listed in subsections a - f of section 43B (1)
- c. that she reasonably believed that she was making disclosure in the public interest; and
- d. that the disclosure was made to the claimant’s employer

25. For the purposes of this application the claimant must show that it is likely that she will be able to prove each of these matters to the final tribunal.

26. In respect of the disclosure of information I was referred to *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] IRLR and *Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436 CA. In *Cavendish* the employment appeal Tribunal made it clear that there must be the disclosure of information consisting of conveying facts rather than the making of allegations. In *Kilraine*, the Court of Appeal confirmed that a disclosure

which contains both allegations and information may still amount to a disclosure of information.

27. The test of reasonable belief in respect of the tendency to show one of the matters in section 43B(1)(a) – (f) is a mixture of a subjective and objective element: was it objectively reasonable for the claimant to believe that the disclosures tended to show a relevant breach?
28. The test of reasonable belief in respect of the public interest is subjective. In *Chesterton global Ltd v Nurmohammed* [2017] EWCA Civ 979, the Court of Appeal confirmed that private complaints may also include or amount to complaints in the public interest. There is not necessarily a clear distinction between the two - there may be some overlap.
29. The relevant breaches on which the claimant relies are subsections (a), (b) and (d) of section 43B(1). Namely that a criminal offence has been committed or is likely to be committed, that a person has failed, is failing or is likely to fail to comply with any legal obligation, or that the health or safety of any individual has been or is likely to be endangered.
30. This means that the claimant will at the final tribunal have to show that the disclosures on which she relied in her reasonable belief tended to show that one of these things was happening.
31. In respect of those breaches, there must be something in the disclosures which identifies the breach of legal obligation, criminal offence or health or safety risk which the claimant believes that the information tends to show.
32. In respect of the causal link between any disclosures that claimant makes and the reason for her dismissal, the burden of proving that the reason she was dismissed was the making of protected disclosures will, in the final hearing, fall to her. (*Boulding v Land Securities Trillium (Media Services) Ltd* (2006) UKEAT/0023/06).
33. In *Abernethy v Mott, Hay and Anderson* [1974] ICR 323,330, Cairns LJ set out the well-known explanation of what the employer's reasons for dismissal means:

*“A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee”*



34. I was also, however, referred to *Royal Mail Group Ltd v Jhuti* [2019] UKSC 55 and specifically paragraphs 60 to 62. At paragraph 60, Lord Wilson said

*“If a person in the hierarchy of responsibility above the employee (here Mr Widmer as Ms Jhuti’s line manager) determines that, for reason A (here the making of protected disclosures), the employee should be dismissed but that reason A should be hidden behind an invented reason B which the decision-maker adopts (here inadequate performance), it is the court’s duty to penetrate through the invention rather than to allow it also to infect its own determination. If limited to a person placed by the employer in the hierarchy of responsibility above the employee, there is no conceptual difficulty about attributing to the employer that person’s state of mind rather than that of the deceived decision-maker”.*

35. This means that although the starting point for determining the employer’s reasons for dismissing an employee is the reasons held by the dismissing officer (or, in this case, the dismissing committee of elected members) where there is a “hidden” reason of another person who has influenced the decision of the ultimate decision maker, the task for the tribunal will be to identify that hidden reason.

36. In *El-Megrisi v Azad University (IR) In Oxford* UKEAT/0448/08/MAA, Underhill J (P) held:

*“But in a case where a Claimant has made multiple disclosures s 103A does not require the contributions of each of them to the reason for the dismissal to be considered separately and in isolation. Where the tribunal finds that they operated cumulatively, the question must be whether that cumulative impact was the principal reason for the dismissal”.*

37. The claimant is not, therefore, required to identify a direct causal link between particular disclosures and her dismissal - it will be sufficient if she can show that cumulatively, any disclosures (individually or cumulatively) she made were the sole or principal reason for her dismissal.

38. I was also referred, by the respondent, to *Blackbay Ventures Ltd t/a Chemistree v Gahir* [2014] ICR 747. This provides that the claimant must identify with specificity the protected disclosures on which she relies and which disclosures were responsible for which detriments. I do not consider that this case adds anything to the principles set out in *El-Megrisi*. The claimant will need to identify the disclosures that, individually or cumulatively, she says led to her dismissal.

39. However, I remind myself of the nature of an interim relief application. It must appear to me that the claimant has a “pretty good chance” or proving that, firstly, each of the disclosures on which she relies meet the tests set out above and that, secondly some or all of the protected disclosures (if they so be) were the reason or principal reason for the claimant's dismissal.

### **Decision**

40. I consider each of the elements of protected disclosures first.

### **Protected disclosures**

41. The claimant relies on a number of alleged disclosures set out in her claim form and witness statement. They are, in summary, as follows:
- a. 13 May 2019 – at a meeting with the deputy chair of the staffing committee and an HR officer from Shropshire CC the claimant sought advice about a Councillor's bullying behaviour.
  - b. 6 June 2019 – at a meeting with the Mayor and another person, the claimant and others present raised concerns at Councillors' conduct
  - c. 13 June 2019 – the claimant made a report to the Staffing Committee about the conduct of Simon Harris
  - d. 3 July 2019 – the claimant made a report to the Staffing Committee about the excessive workload on the claimant and her team
  - e. 31 July 2019 – the claimant made reports to the Staffing Committee about allegedly defamatory and bullying conduct of Mark Garbett
  - f. 27 August 2019 – the claimant made disclosures to the Staffing Committee that Mark Garbett had publicly questioned her professional integrity and honesty and reported issues about Staff Workloads
  - g. 19 September 2019 – the claimant sent an email to Gavin Goodall and Ian West complaining about allegedly bullying behaviour of Mark Garbett and referring to the Equality Act
  - h. 24 September 2019 – in an email exchange with Tarlochen Singh-Mohr the claimant asserted that his request for assistance with an

application for funding on behalf of a third party organisation was outside her remit

- i. 1 October 2019 – the claimant discussed Councillor conduct with the Mayor and the Chair of the Staffing committee and how they could address bullying. This is in the claimant's witness statement, but not her claim form.
- j. 3 October 2019 – in her claim form, the claimant says that she reported the effect of overwork and Councillor conduct on the office staff to Mr Goodall in two emails. In her witness statement, the claimant says that these emails came from her colleagues.
- k. 14 October 2019 – the claimant discussed the behaviour of Simon Harris, Tarlochen Singh-Mohr and Mark Garbett with the Mayor
- l. 15 October 2019 – the claimant discussed the conduct of Simon Harris, Mark Garbett and Tarlochen Singh-Mohr with the respondent's HR advisor and the locum Town Clerk.
- m. 4, 6 and 11 November 2019 – the claimant repeated disclosures relating to excessive workload and alleged bullying by Simon Harris and Mark Garbett in the investigation meeting with Niamh Kelly. The alleged disclosure on 6 November is referred to in the claimant's witness statement but not in her claim form.
- n. 15 November 2019 – the claimant sent an email to Niamh Kelly repeating concerns she had about the investigation and alleged bullying behaviour of councillors
- o. 2 February 2020 - The Claimant submitted a grievance expressing facts relating to sex discrimination, bullying, harassment. excessive workload and unpaid overtime
- p. 6 April 2020 – the claimant's legal representative wrote to the respondent asserting that the respondent had breached its legal duty by its failure to make payments in respect of authorised contractual overtime and expenses

42. The respondent's first case is that they do not contain the disclosure of information.

**Information tending to show**

43. I was taken to a number of those alleged disclosures in the course of the hearing, although not all of them. A significant number of them are recorded in official Council minutes including on 13 June 2019, and 31 July 2019.
44. The minutes of the meeting of the staffing committee of 13 June 2019 are included in the bundle. These record the claimant referring to the content of emails sent by one councillor which included complaints that were not supported by evidence and were said to undermine the professionalism of staff. In the same minutes, reference appears to be made to the emails suggesting that the members of the staffing committee had seen the emails. There is a further reference to the staffing committee expressing the view that they have seen evidence of behaviour that potentially amounts to a breach of the Equality Act 2010.
45. This evidence has not been tested. However, the record of the minutes combined with the evidence set out in the claimant's witness statement lead me to conclude that it is likely that the tribunal will conclude that the claimant made disclosure of facts (being, potentially, the sending of the emails from councillors which the committee appears to have seen) which she reasonably believed tended to show the breach of a legal obligation – there is a clear reference to a breach of the Equality Act.
46. The minutes of the staffing committee meeting of 13 July 2019 are also *included in the bundle. These record that*
- “Councillor Garbett had since sent an email (30.07.19) to the Clerk, copied to all BT Councillors accusing her of writing to T&W Council without his approval. The email includes wording which could be inferred as bullying: ‘Again I am appalled by more actions taken by yourself without following actions specifically asked by the town councillors requests.’ From handwritten notes and draft typed record of Full Council meeting. Staffing Committee agreed the Clerk had carried out actions approved by July Full Council. Furthermore, the Clerk had followed written advice from Chairs of relevant Committees to inform wording of the letter sent to T&W Council as had been requested by Councillor Mark Garbett for a vote at Full Council Meeting in July. Staffing Committee RESOLVED that the Clerk should make a formal*

*grievance against Councillor Mark Garbett to the Monitoring Officer citing the Bullying & Harassment protocols, and how his behaviour impacts her wellbeing and health. Chair to write to Councillor Mark Garbett asking him to clarify his accusations of the number of instances that the Clerk has acted against instructions or requests issued by Councillors as he is not aware of any such circumstances”.*

47. Again, in my judgment it is likely that the tribunal would find that this amounts to a the disclosure of facts. There appears to be a reference to a disclosure of facts (the sending of an email which is set out in the minutes). The claimant asserts that she believed that this tended to show a risk to the health and safety of an individual. It is recorded that the committee suggested that the claimant submit a grievance about Mark Garbett with particular reference to the impact of his alleged behaviour on her health and wellbeing. It is likely, therefore, that the claimant was effective in communicating her concerns about the perceived risk to her health and safety arising from the alleged behaviour of Mark Garbett. It follows that it is likely that the claimant reasonably believed that information she disclosed to the committee tended to show that the health and safety of an individual was at risk.
48. I refer also to the alleged disclosures set out in the claimant’s grievance of 2 February 2020 and in a document prepared by the claimant on 15 November 2019 in response to the investigation undertaken by Ms Kelly. It is asserted by the claimant that these documents record specific factual matters put to the first respondent in various different formats namely to its staffing committee comprising of councillors, to the investigating officer and to an individual counsellor.
49. In my view it is likely that the claimant will be able to show that on at least some of these occasions she made a disclosure of facts. It certainly appears that, without making findings about any specific content, the documents included assertions that went beyond mere allegations. In the document dated 15 November, for example, the claimant sets out a number of assertions relating to the actions of a councillor asking the claimant to undertake work that she says is outside of her role. It is likely, in my view, that a tribunal will find that these amount to disclosures of fact, potentially being that the claimant was requested to undertake work outside her role. The

claimant asserts in her witness statement that she believed the matters set out in this document were indicative of the councillor's unlawful conduct in office and, again, it is likely that the Tribunal will find that, in light of the claimant's role as Town Clerk, the claimant had a reasonable belief that this information tended to show the breach of a legal obligation and/or that the claimant's health and safety was being put at risk. The health and safety risk relates to the impact of a high workload on the claimant's and her colleagues' wellbeing.

50. In respect of the claimant's grievance, the claimant restates her allegations including – again by way of example – saying that on 6 October “Mark Garbett sent a letter of complaint about me to the Mayor. The contents amount to bullying...” and on 8 October 2019 “BTC Full Council Meeting I was forced to leave the meeting early...due to the aggressive conduct of Councillors. At the meeting I was publicly bullied and harassed by Councillor Michael Garbett who behaved in an unprofessional combative manner all evening”.
51. It is likely that the Tribunal will find that this document includes disclosures of fact tending to show that the claimant reasonably believed that the health and safety of people (specifically, the claimant) was at risk and/or that councillors were breaching their legal duties as councillors and/or employers.
52. The claimant also relied on emails that were provided in the bundle. Again, by way of example, I refer to an email dated 19 September 2019. In this the claimant says “Ok so now this really is serious bullying. I am concerned about my personal well-being. This Councillor is repeatedly making untruthful allegations about me. I have not done or said these things, I may once have referred to the family as “the Garbetts” but that is their name”. The claimant again refers in that email to the Equality Act and, again, these appear to include matters that the claimant is likely to be able to demonstrate are facts.
53. The documents to which the claimant referred, including those set out above, related predominantly to the allegations of bullying against the claimant and her staff which the claimant relies on as showing both the breach of a legal obligation and that the health or safety of any person was being put at risk. The claimant pointed to comments of councillors in the Staffing Committee minutes as the claimant's employer in which the committee appeared to

potentially recognise that the respondent was being put at risk of breaching various obligations by the alleged actions of some of its other members.

54. Specifically, there appeared to be a recognition of the claimant's concerns by councillors in a number of the staff committee meetings including on 13 June 2019. Given that the respondent published responses to some of the complaints that the claimant has raised in its minutes recognising potential breaches of legal obligations (specifically, the Equality Act) in my view it is likely that the claimant will be able to establish that she had a reasonable belief that the disclosures she relies on tended to show the breach of legal obligations. The published minutes record that these issues were considered by the staffing committee and, again, it seems that the claimant has a pretty good chance of showing that her belief that her disclosures tended to show a breach of a legal obligation or that the health or safety of an individual was being put at risk was reasonable.

### **Legal obligations**

55. In her witness statement, the claimant refers to the obligation under the Localism Act 2011 which provides for the standards of conduct with which elected councillors must comply. The claimant also refers in the alleged disclosure on a number of occasions to obligations under the Equality Act 2010. Mr Powell referred in submissions to the contractual legal obligation of the implied term of trust and confidence. In my judgment, the claimant has a good chance of showing that her communications, correspondence and witness statement are imbued throughout with allegations that the councillors about whom she complains are acting improperly. It is likely, therefore that a tribunal would find that the claimant reasonably believed that any disclosures of fact she was making tended to show that the relevant councillors were in breach of their legal obligations to act properly under the Localism Act 2011, the implied term of mutual trust and confidence in the claimant's and her colleagues' employment contracts and/or the Equality Act 2010.
56. I was not referred to any evidence about potential criminal offences and the claimant did not make a representations about this.

**Public interest**

57. The question of whether the claimant had a reasonable belief that she was making such disclosures in the public interest is less clear.
58. In her witness statement, the claimant says meeting "*I believe the disclosures raised at the Staffing Committee Meeting were disclosures made in the public interest. I believed at the time – and still do believe – that these matters are of significant public importance. The behaviour about which I was complaining was being carried out by publicly elected councillors and it is a matter of public interest that those trusted to represent constituents act in an appropriate manner*".
59. Mr Powell submitted that it is obvious that the behaviour or alleged misbehaviour of elected councillors is in the public interest. That does not seem like a very controversial point. However, the question is whether the claimant reasonably believed at the time she was making the disclosures that she was making them in the public interest. I note that the public interest may include a group of people smaller than the whole of the public including in some circumstances a large group of employees. It is not asserted that this is the case here – it appears that the claimant is relying on the impact on only two other employees. However, in the claimant's witness statement she does say that she believed at the time that the concerns she was raising at the staffing committee were matters of legitimate public interest. Mr Powell referred also to the fact that some of the allegations of misconduct that the claimant levelled at councillors were carried out in public meetings and there is a complaint from a member of the public about the conduct of one of the councillors in the bundle of documents.
60. The issue was discussed about the failure of the claimant to report her concerns or allegations about elected councillors to the monitoring officer of Shropshire County Council. The respondent relied on this as evidence that the claimant would not be able to show that she made the disclosures in the public interest. The claimant conversely said that the delegations within the respondent and her role as Town Clerk meant that it was incumbent on her to raise these matters internally rather than externally.



61. Having regard to the claimant's role, her witness evidence and the comments of the staffing committee recorded in the staffing committee minutes about these allegations, again I think it is likely that the claimant will be able to show that she reasonably believed that the disclosures were made in the public interest. I remind myself that it is not necessary for there to be no private interest in the outcome of the disclosures at all - there can be an overlap and it seems to me that the claimant has a pretty good chance of showing that the disclosures were made in the public interest.

**Disclosure to employer**

62. The final question in respect of the alleged protected disclosures is whether the disclosures, if they were qualifying disclosures, were made to the claimant's employer. Although I recognise that the respondent has not yet submitted its response to the claimant's claim, this was not an issue that was taken up by the respondent at the hearing. It does not seem to be disputed at this stage that the claimant made disclosures to councillors in the forum of the Staffing Committee or that her role was one which reported into the councillors. Additionally, or alternatively, the claimant appears to have communicated with HR officers who it is likely were acting as agents or employees of the respondent. It may be that the respondent does raise this as an issue but on the basis of the information before me again it seems likely that the claimant will be able to show that she made disclosures to her employer. The alleged disclosures I've specifically referred to so far are those to the staffing committee and to Ms Kelly as investigating officer.
63. I have not considered each and every disclosure on which the claimant seeks to rely. The claimant is not required to identify which particular alleged disclosure resulted in her dismissal. The claimant said that she intends to rely on the disclosures cumulatively.
64. The disclosures I have seen and considered in more detail are all of a similar character. It is likely, in my view, that the other alleged disclosures on which the claimant relies and which I have seen but not analysed in similar detail will be of the same character such that it is likely that the claimant will be able to demonstrate that she has made a number of protected disclosures. My judgement, therefore, is that the claimant is likely to be able to show that she made at least some protected disclosures.

## Dismissal

65. The final stage in the claimant proving her claim is that she is required to prove a causal link between any protected disclosures that she made and her dismissal.
66. The claimant's case is that her dismissal was orchestrated by the people against whom she had made complaints including the alleged protected disclosures. The claimant was suspended, on or about 22 October 2019, by being handed at work a letter from councillors that she alleges that it was in respect of whom she made protected disclosures in circumstances that the claimant describes as ultra vires. The letter provided in the bundle was not on the respondent's headed paper and in fact appeared to be from one of the suspending councillors home address. The claimant says that the letter was given to her by Mayor Burton, whose signature appears to be on the letter, and he was accompanied by Mark Garbett, the subject of many of the claimant's allegations of bullying and misconduct. Mark Garbett was also one of the councillors who the claimant accused of publicly attacking her in a full council meeting. This way of suspending the claimant certainly, on the face of it, seems unusual.
67. The suspension letter did not say what misconduct the claimant was accused of.
68. The claimant says that she was then reported to the police for alleged theft of council property on the same day in circumstances which the claimant says were contrived. Again, without making any findings about what actually happened, the circumstances in which an employer would report an employee to the police for taking their work equipment home rather than, for example, contacting them to discuss it first are unusual. The respondent did not say that the claimant was not reported to the police.
69. It appears that the respondent did initiate a formal process for investigating the claimant and it appointed Ms Kelly, an HR consultant, to do so. The claimant said she was notified of this in a letter dated 31 October 2019, which also set out what the claimant said were the broad allegations against her. I was shown correspondence from which it appears that the initial intention was to refer the matter to Shropshire County Council to consider any

appropriate disciplinary action against the claimant by an independent third party.

70. The allegations levelled against the claimant were initially misuse of council funds in respect particularly of claiming overtime that was not worked, professional misconduct relating to moments of council minutes and an allegation of bullying and harassment.
71. The claimant's case is that the allegations changed throughout the investigation. And without her knowledge were amended to include allegations of breach of the data protection act.
72. The claimant alleges substantial procedural unfairness in the way that her disciplinary case was handled. The investigation was conducted by Ms Kelly and some of the alleged disclosures are said to have been made during the course of that investigation. Those alleged disclosures are said to effectively repeat the allegations made previously about councillor conduct.
73. The claimant says that on 17 December 2019 she was informed that an external panel had been appointed to determine whether a disciplinary hearing should take place. On 13 March 2020, the claimant says she received correspondence from Shropshire County Council to the effect that a hearing would take place on 1 April 2020, although it appears that that hearing did not take place.
74. I was taken to minutes of a meeting of the Staff Committee dated 23 April 2020 comprising of Councillors: Singh-Mohr, Harris, Michael Garbett and Maltby. The minutes I was shown record that it was agreed that *"The Committee would make recommendations concerning the Town Clerk at the next Town Council meeting"* and reference was made to a confidential appendix. The claimant says that that confidential appendix is included in the bundle at pages 178 and 179. It comprises a recommendation from the staffing committee that the claimant be summarily dismissed at the next full Council meeting and setting out a summary of the staffing committee's concerns. The appendix starts:

*"The Town Council's Staffing Committee has met on several occasions with most of its time being focussed on events leading to the suspension of the Town Clerk and the repercussions following her suspension.*

*Since her suspension in October 2019 the Town Clerk has submitted a complaint about the Town Council which she has been advised to forward to the Monitoring Officer at Shropshire Council as the Town Council cannot deal with councillor complaints. The Town Clerk has also submitted 3 Subject Access Requests (SARs) which the Locum Town Clerk has spent some considerable time responding to (no less than 29.75 hours at £21 per hour = £624.75). The Locum Town Clerk has also spent some considerable time researching information to substantiate the Town Clerk's claims"*

75. The claimant also says, in her witness statement, that she was, on 6 May 2020, given an ultimatum by the Locum Town Clerk to produce evidence of her doctorate by 11 May 2020. There is email correspondence from the claimant's representative dated 11 May 2020 confirming the claimant's qualifications and asking who will carry out the claimant's disciplinary hearing. There is then an email from the Locum Town Clerk the same day which said:

*"Dear Ian*

*Shropshire HR is dealing with Kate's grievance and disciplinary hearings and I have asked them to get in touch with you so that a virtual meeting can be held due to the present circumstances. The Councillors will be independent from Broseley Town Council and I'm sure Kate will be informed of who they are when a meeting date has been set.*

*We have a Staffing Committee meeting later today so I will let you know the outcome concerning Kate's suspension once a decision has been made.*

*Kind regards*

*Sharon"*

76. Later that same day, minutes record that a meeting of the Full Council resolved to summarily dismiss the claimant. Those minutes record the councillors in attendance as Chairman Cllr. Michael Burton, Cllr. Caroline Bagnall, Cllr. Roy Childs, Cllr. Mark Garbett, Cllr. Michael Garbett, Cllr. Simon Harris, Cllr. A McCabe, Cllr. Philip Revell, Cllr. Tarlochen Singh Mohr.
77. The claimant submits that seven of the eleven councillors comprising that committee were aware of some or all of the alleged protected disclosures as follows:

- a. Michael Burton
- b. Simon Harris
- c. Tarlochen Singh-Mohr
- d. Mark Garbett
- e. Michael Garbett; (Mark Garbett's father)
- f. Lynda Garbett; mother of Mark Garbett and wife of Michael Garbett.
- g. Ann Maltby:

78. I note that Councillors Singh-Mohr, Harris, Michael Garbett and Maltby are all recorded as members of the Staffing Committee at which the minutes record the recommendation to dismiss the claimant was made.

79. However, I remind myself that this is not an ordinary unfair dismissal case, the question will be whether the dismissal was because of any protected disclosures that the claimant had made, rather than any potential procedural impropriety of itself. The claimant says that the decision of the Council on 11<sup>th</sup> of May 2020 to dismiss her without notice and without notice of the hearing is strong evidence that the council wanted to get rid of her at any cost. Particularly she relies on the fact that the council which comprises of only 11 members included five members against whom she had levelled complaints and included family members of one of the people against whom she had levelled complaints.

80. The claimant says that the respondent has been unable to satisfactorily answer this. Particularly, the claimant says that she was informed as late as the morning of 11 May 2020 that the formal independent process involving Shropshire County Council would be continuing. The claimant says this was an outright lie because by 4 May 2020 the respondent was well aware that it intended to put a resolution to the full council on 11<sup>th</sup> May that the claimant be dismissed and this wholly undermines the respondent's case.

81. The respondent refers to this as taking the matter back in-house.

82. I remind myself, again, that the burden of proof will be on the claimant to show that the sole or principal reason for her dismissal was that she made protected disclosures. Having regard to the chronology set out by the

claimant and, in large part reflected in official Council documents, it is my judgment that the claimant is likely to show that the sole or principal reason for her dismissal was that the claimant made protected disclosures about the conduct of a number of the elected councillors who formed part of the committee who made the decision to dismiss her.

83. I have considered particularly the reference in the first paragraph of the recommendation made by the Staffing Committee of 23 April 2019 to complaints made by the claimant, the composition of the Full Council meeting and the apparently misleading information contained in the emails provided in the bundle of the morning of that meeting. In my judgment, it is likely that a Tribunal would conclude from this that the reason for the claimant's dismissal was that she made protected disclosures.
84. Further, it is likely, in my judgment, that the claimant will be able to show that the "hidden" reason (having regard to *Jhuti* above) for her dismissal was the making of protected disclosures, rather than the reasons set out in the recommendation of the Staffing Committee.

### **Conclusion**

85. This is by necessity a summary exploration of the matters that I heard. I have reviewed the papers and heard submissions and on the basis of the evidence that was before me at the hearing, in my judgment the claimant has a pretty good chance of showing that the reason she was dismissed was because she made protected disclosures.
86. The chronology and timing of the events that the claimant relies on, some of which certainly appear to be corroborated by contemporaneous documentary evidence, do seem to support the claimant's case that the decision to summarily dismiss her at full council, rather than waiting for the outcome of the Shropshire County council process, was instigated by the Councillors about whom the claimant had complained. Even recognising that the respondent has not had the opportunity to put in a full response, the respondent has not put forward any convincing explanation for its decisions in respect of the claimant's dismissal and in my view it is likely that a tribunal would conclude that the reason for the claimant's dismissal was because she made protected disclosures.

87. For those reasons the claimant's application for interim relief is granted

Employment Judge **Miller**  
21 July 2020