



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Carroll-Cliffe

Respondent: Pembrey and Burry Port Town Council

Heard at: Cardiff (by video) On: 15, 18, 20, 21, 22, 25, 26
January 2021 and in chambers
on 27 January and 8 February
2021

Before: Employment Judge R Harfield
Members Mr C Stephenson
Ms S Hurds

Representation:
Claimant: Mr J Davies (Counsel)
Respondent: Mr D Bunting (Counsel)

RESERVED JUDGMENT

It is the unanimous decision of the Tribunal that:

- (1) The claimant's complaints of "ordinary" constructive unfair dismissal and constructive wrongful dismissal succeed. The claimant is also be entitled to an award under section 38 of the Employment Act 2002;
- (2) The claimant's complaints of whistleblowing detriment, whistleblowing dismissal, and breach of contract relating to wages do not succeed and are dismissed.

REASONS

Introduction

1. The claimant was employed by the respondent as Town Clerk from January 2013 until her resignation on 12 February 2019. By way of a claim form presented on 3 May 2019, the claimant indicated she was bringing claims for constructive unfair dismissal, sex discrimination, notice pay, arrears of pay and "other payments." The ET1 rider [17 – 30] identified claims for whistleblowing detriment, whistleblowing

dismissal, Equal Pay, Wrongful Dismissal, Failure to Provide a section 1 Statement of Terms, and “Breach of Contract and/or Constructive Unfair Dismissal.” By way of an ET3 response form the respondent denies the claims.

2. A case management hearing took place before Employment Judge Ryan on 20 April 2019 [59-63]. Employment Judge Ryan made some directions, particularly in relation to the Equal Pay claim. A public preliminary hearing took place before Employment Judge Frazer on 10 December 2019 in which she found that Carmarthenshire County Council were not an “associated employer” of the Respondent and there was no single source for the purposes of Article 157 of the TFEU such that the claimant’s Equal Pay claim could not proceed.
3. The parties were then able to agree a list of issues pertaining to liability [108-109]. A case management hearing took place before Employment Judge Moore on 15 October 2020 [116-122]. Case management orders were made to get the case ready for this hearing. In view of the ongoing restrictions relating to the Covid 19 pandemic the case was listed to be heard by video (CVP).
4. The Tribunal received a written witness statement from, and heard evidence from, the claimant. For the respondent the Tribunal received written witness statements from, and heard evidence from Town Councillors; Mr D Owens, and Mr M Theodoulou. We also had a written witness statement from, and heard oral evidence from, Mr Paul Egan. Mr Egan is Deputy Chief Executive of One Voice Wales, an organisation which provides HR consultancy services for Community and Town Councils. We were in receipt of a bundle of documents extending to 1753 pages and a supplemental bundle from the claimant of 146 pages. We also had a cast list, agreed list of facts, agreed chronology, agreed essential reading list, an updated agreed list of issues and a note from the claimant’s counsel clarifying certain issues. References in brackets [] are references to page numbers in the main joint bundle. References in brackets prefixed with an A [A] refer to the claimant’s supplementary bundle.
5. On completion of the evidence we received written and closing submissions from the parties’ counsel. We do not set out in this Judgment a full summary of the parties’ submissions, but we did take them fully into account. 27 January 2021 was earmarked for the Tribunal’s deliberations and delivery of an oral judgment. We were unable to complete our deliberations within the timescale and therefore held another day in chambers on 8 February 2021. It should be noted that the claimant’s witness statement extended to 98 pages and 227 paragraphs of relatively close type text. We raise this to bring to the attention and future reference of the claimant’s representatives in particular, that the Tribunal found the length of the claimant’s witness statement unhelpful. It made it more difficult for the Tribunal to readily understand and follow the narrative and lengthened both the Tribunal’s deliberations and the preparation of this Reserved Judgment.

The issues to be decided

6. The updated joint list of issues is as follows:

“Whistleblowing – Disclosures

1. *In respect of each of the disclosure made to the Respondent on 12 March 2017 [A5-13, annexing A23-36]:*

- a. *It is accepted that the Claimant disclosed information.*
- b. *It is accepted that the Claimant's disclosure was to her employer, under s43C.*
- c. *Did the Claimant believe that such information tended to show one or more of:*
 - i. *that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (s43B(1)(b)),*
 - ii. *that the health or safety of any individual has been, is being or is likely to be endangered (s43B(1)(d)),*
- d. *Was any such believe objectively reasonable taking into account the personal circumstances of the discloser?*
- e. *Did she subjectively believe that the disclosure was made in the public interest?*
- f. *Was any such believe objectively reasonable?*

2. *In respect of the disclosure to the Public Service Ombudsman for Wales on/around 29 June 2018 [693-703]:*

- a. *It is accepted that the Claimant disclosed information.*
- b. *It is accepted that the Claimant's disclosure was to a prescribed person, under s43F.*
- c. *Did the Claimant believe that such information tended to show one or more of:*
 - i. *that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (s43B(1)(b)),*
 - ii. *that the health or safety of any individual has been, is being or is likely to be endangered (s43B(1)(d)),*
 - iii. *that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed (s43B(1)(e)).*
- d. *Was any such believe objectively reasonable taking into account the personal circumstances of the discloser?*
- e. *Did she subjectively believe that the disclosure was made in the public interest?*
- f. *Was any such believe objectively reasonable?*

Whistleblowing – Detriment

3. *Did the following alleged conduct take place?:*

- a. *On the 18 April 2017 the Respondent concluded an unfair job evaluation process and only increased the Claimant's salary to SCP 38.*
 - b. *From February 2017 to March 2018 the Claimant was undermined by Labour Councillors.*
 - c. *In August 2017 Cllrs Bob Walpole and Moira Thomas called an Extraordinary Council meeting in order to intimidate the Claimant.*
 - d. *From August 2017 to November 2017 Cllrs John James, Moira Thomas, Bob Walpole, Linda Edwards were the main Labour councillors who exerted pressure to reinstate Mr Fox.*
 - e. *On 21 September 2017 Mr Fox and Labour Councillors allowed to heckle and jeer at the Claimant, intimidation.*
 - f. *In or around 26 February 2018 Councillor John James and others alleged that the Claimant had sanitised minutes and removed them from website.*
 - g. *Up to February 2019 the Respondent failed to inform the Claimant that a fair evaluation process had been completed or act on the recommendation made by Mr Egan.*
 - h. *The Respondent did not release the investigation into her grievance until February 2019 and when it did so, the Respondent did nothing to engage the Claimant in any formal grievance procedure. Despite outwardly suggesting that they intended to try and resolve the grievance issues, the Respondent did nothing to assist the Claimant in resolving the matters raised.*
 - i. *Up until February 2019 failed to provide a copy of Mr Egan's report in a timely manner.*
 - j. *Up till February 2019 there was a complete lack of support from the Respondent for the Claimant.*
 - k. *Up till February 2019 there was a complete failure to resolve grievance in a timely manner.*
 - l. *Finally, when the Respondent wrote to the Claimant's solicitors at the end of January 2019 and then again at the start of February, it made it clear to the Claimant that it did not intend to assist her in resolving her grievance and addressing her stress and anxiety at work.*
4. *If such conduct did take place, did any or all of it amount to a detriment?*
 5. *If so, was the Claimant was subjected to that detriment / those detriments?*
 6. *If so, was the Claimant subjected to such detriment on the ground that she had made a protected disclosure or disclosures on 12 March 2017 and/or 29 June 2018?*

7. *Was the complaint submitted within 3 months less one day from the date of the act or failure or, where that act or failure was part of a series of similar acts of failures, the last of them, in accordance with s48(3)? (C commenced Early Conciliation on 21 February 2019, therefore matters on/before 21 November 2018 may be out of time).*

8. *Was it reasonably practicable for the complaint to be presented in time?*

9. *Was the complaint submitted within such further period as was reasonable?*

Constructive Unfair Dismissal

10. *Did the Respondent act in such a way as to fundamentally breach the Claimant's contract of employment, by reason of the matters referred to below entitling the Claimant to resign and treat herself as dismissed?*

11. *The Claimant relies upon the following alleged breaches of contract:*

- a. *The failure to comply with the grievance procedure.*
- b. *Duty of health and safety towards the Claimant;*
- c. *Duty to provide a suitable working environment - unacceptable behaviour;*
- d. *Redress of grievances;*
- e. *Duty to not act capriciously in relation to pay;*
- f. *Their duty of trust and confidence towards her.*

12. *The Claimant relies upon the following conduct:*

- a. *January 2013 - The Respondent failed to ensure that the Claimant's salary was commensurate to her position (regarding either other Town Clerks in similar Councils or with reference to the standardised NALC/SLCC salary benchmarking guidance);*
- b. *February 2015-July 2017 - The Respondent persistently delayed in engaging with the Claimant in respect of updating her job description, knowing that this would (or should) have fed into her salary benchmarking;*
- c. *12 March 2017 - The Respondent failed to engage with the Claimant in any meaningful manner in respect of the grievance she raised on 12 March 2017. They failed to act reasonably towards her in promptly investigating the grievance and in progressing this to a conclusion, contrary to best practice and the ACAS Statutory Code of Conduct;*
- d. *February 2018 - The Respondent, having committed to seeking an independent assessment of the Claimant's salary first obtained a report in February 2018 but failed to increase her salary in line with the recommendation prior to her resignation; the Claimant was entitled to assume that she would be receiving a pay rise (including a back dated pay rise) based upon the Respondent's actions;*

e. February 2018 - October 2018 - The Respondent failed to share with the Claimant the outcome of an independent report specifically commissioned to consider the salary and evaluation of the role of Town Clerk at Pembrey & Burry Port Town Council and thereafter failed to engage with the Claimant in finalising the review of her position;

f. 12 March 2018 – 12 February 2019 - The Respondent failed to properly engage with the Claimant during a period of lengthy sick leave in any attempt to resolve the issues which the Claimant and later the OH Physician, identified as the root cause of her stresses;

g. On 25 October 2018, the Respondent, during a telephone conference with the Claimant's solicitor requested that the Claimant provide a list of steps to facilitate her return to work, which was duly provided on 14 November 2018. The Claimant was hopeful that it would 'bring all matters out into the open' and that these matters would be satisfactorily addressed by the Respondent to enable her to return to work. Despite responding in a letter of 13 December 2018, the Respondent ignored almost all of what was raised.

h. The Respondent did not release to the Claimant the full investigation report into her grievance until February 2019 despite having commissioned it in July 2017 and receiving it themselves in or around September/October 2017. Despite outwardly suggesting that they intended to try and resolve the grievance issues, the Respondent did nothing to assist the Claimant in resolving the matters raised.

i. When the Claimant eventually received both of Mr Egan's reports, she concluded beyond reasonable doubt that the Respondent had contrived to deliberately keep both out of her possession because they knew that neither report was favourable to them. In doing this, the Respondent cannot have intended to resolve either matter or else they would not reasonably have adopted this stance.

j. The Claimant avers that a reasonable employer who was abiding by its implied duty of trust and confidence would have ensured that these reports were provided to the Claimant in good time and would have arranged to discuss them with her. The explanations of delay and the ongoing failure of the Respondent to address the issues showed no desire to resolve matters. Furthermore, the Respondent's repeated failure to address these issues was contrary not only to the expressed desires of the Claimant to resolve matters but also the advice from the Occupational Health physician.

k. Finally, when the Respondent wrote to the Claimant's solicitors on 29 January 2019 in an attempt at a more substantive response to the Claimant's list of steps to facilitate a return to work (as set out on 14 November 2018), these further responses to each step were either evasive, misleading, untrue or completely outrageous. It became clear to the Claimant that the Respondent did not intend to assist her in resolving her grievance and provide a safe working environment.

13. If the Respondent's actions had the effect of breaching the contract of employment, did the Respondent have reasonable and proper cause for its actions?

14. Did the alleged "final straw" of the Respondent writing to the Claimant and/or the Claimant's Solicitors on/or around 29 January 2019 contribute to the breach in a manner that was more than trivial [793-795]?

15. Did the Claimant resign in response to the any of the alleged breaches?

16. Did the Claimant delay in resigning? Did the Claimant affirm the alleged breach?

Wrongful dismissal

17. Did the Respondent wrongfully dismiss the Claimant entitling the Claimant to resign, by reason of the matters contained in paragraph 46-49 of the Grounds of Claim (i.e. the matters relied upon in relation to constructive unfair dismissal, above)?

Whistleblowing – Dismissal

18. If the Claimant was dismissed, was the reason, or principal reason for the alleged constructive dismissal the fact that she had made a protected disclosure or disclosures on 12 March 2017 and/or 29 June 2018?

Breach of Contract - Wages

19. Did the Respondent breach an express or implied term of the Claimant's contract of employment in relation to the Claimant's wages?

(i) Failing to pay her at scale 38 as a result of the evaluation carried out by the County Council?

(ii) Failing to pay her at the scale recommended by Mr Egan as part of the appeal process against the initial evaluation?

(iii) Failing to give her notice pay?

Terms and Conditions

20. The Respondent failed to provide the Claimant with a statement of particulars of employment. What compensation, if any, ought to be awarded under s38 of the Employment Act 2002?"

7. The claimant's counsel said that issues 3(b) to (f) were also relied upon for the constructive unfair dismissal claim despite not being listed as specific allegations. This approach was not objected to by the respondent. It was also clarified that 3(b) encompassed 3(c) to (f) as opposed to containing additional allegations. The claimant's counsel's additional note also said in respect of the constructive unfair dismissal claim that the claimant relied upon the following terms and duties:

(a) The implied term that the employer will not without reasonable and proper cause conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust which should exist between employer and employee.

(b) The implied term that the employer will take reasonable steps to ensure the employee's health and safety (including providing a safe system & place of work and providing and monitoring so far as is reasonably practicable a working environment which is reasonably suitable for the performance of them of their contractual duties) and or the

common law duty to take such steps as are reasonably necessary to ensure the safety of employees.

- (c) The implied term that the employer will reasonably and promptly afford a reasonable opportunity to their employees to obtain redress of any grievance they may have.
- (d) The implied term that the employer will exercise any discretion as to payments in good faith, for a proper purpose and rationally.

8. The claimant further asserts in Counsel's note:

- (a) Where there is no written contract providing any right to any grievance of disciplinary procedure then the implied terms set out at paras. [[7] (a) & (c)] above should include following the ACAS Code of practice dealing with such procedures and or the Code should be taken into account when considering breaches of the said terms.
- (b) Where there is no written contract providing for any evaluation process and method of salary increase or assessment of job duties then the implied terms set out at paras. [(7) (a) & (d)] above should include a duty not to make capricious and unmerited decisions in respect of pay and to follow a fair and proper evaluation process before deciding on the wages that should be paid to an employee.

Findings of fact

- 9. We make the following findings of fact in this case, by applying the balance of probabilities. It is not necessary for us to resolve every factual dispute in this case; only those necessary for us to decide the issues before us.
- 10. The claimant practised as a solicitor (progressing to be a partner), specialising in family law, from 1991 until she started employment for the respondent as Town Clerk on 2 January 2013. The claimant applied in response to an advert. She attended an interview on 13 November 2012. She did not receive a written contract or a statement of terms and conditions other than a short letter of appointment dated 14 November 2012 [126]. The letter said that the current salary was spinal column point 33 ("SCP") and the hours of work were 27 hours a week. The claimant accepted what she was told about pay in the letter prior to her appointment; it was not something that she engaged in negotiations about. The SCP referred (although not expressly) to the grading structure contained within the Greater London Provisional Council ("GLPC") job evaluation scheme. The respondent used that to assess the pay of their staff because it was the method used by Carmarthenshire County Council, who would assist the respondent on an informal basis with matters such as pay evaluations and HR advice. It is a scheme used widely in local government and adopting the same system as Carmarthenshire County Council made it easier for the respondent to get that informal assistance.

11. As part of her job the claimant had to line manage around 10 employees. She also had to work with around 17 Councillors. At the time of her appointment the Council was controlled by a Labour led group of Councillors.
12. After starting work the claimant was told that the respondent relied on and followed the policies and procedures of Carmarthenshire County Council in relation to salary, holidays, sick pay and pension. About a year into her employment the claimant became aware that the Technical Services Officer (TSO), Mr Ridgway, was paid on a higher spine point than she was. This came to light when Mr Ridgway sought a pay rise. The claimant raised this with the respondent, and she was increased to SCP 36 going forward.
13. The claimant looked at all the grades and salaries of the respondent's employees and discovered other anomalies. The matter came before the Civic Governance and Personnel Committee ("the Civic Committee") in February 2015 [368-371] who agreed they needed to consider whether each staff member was on the correct pay scale grade, given the evolving nature of the Town Council and the increased responsibilities taken on by members of staff. It was suggested that Carmarthenshire Council could be requested to undertake a job evaluation process.
14. The claimant was asked to contact Mr Paul Thomas, Head of HR at Carmarthenshire County Council, to ask if he could carry out the evaluations on an informal basis. She was also asked to contact Mr Galbraith, Clerk to Llanelli Rural Council, for guidance in conducting job evaluations. He told the claimant that when evaluating her own post the respondent should utilise the NALC/SLCC National Agreement of Salaries and Conditions of Service of Local Council Clerks in Employment and Wales 2004 ("NALC Agreement"). NALC is the National Association of Local Councils. SLCC is the Society of Local Council Clerks. He said the claimant's grade and role should be evaluated first before evaluating other staff roles. He gave the claimant the details of the grading for his role and that of Deputy Town Clerk. At a meeting of the Committee on 24 June 2015 the claimant reported back that Mr Galbraith had said that the NALC Agreement should be the correct basis for evaluating her role. The respondent is not a member of NALC.
15. The claimant was initially unable to get Mr Thomas to respond to her. By the Civic Committee meeting on 13 October 2015 [373-375] she reported she had made contact and Mr Thomas was willing to meet to discuss reviewing and evaluating job profiles. In November 2015 Councillor Stephen James, then Vice Chair of the Civic Committee, also approached Mr Paul Egan of One Voice Wales about the outstanding pay evaluations. On 23 November 2015 Mr Egan emailed the claimant to say [1601] that there were two potential methods: either job evaluation or benchmarking with other Councils. He said that the job evaluation process could be applied to the Town Clerk/Responsible Finance Officer using the NALC Agreement but for other staff the local government job evaluation scheme would be necessary. He said he would be happy to quote for the work on provision of a detailed specification but gave a rough estimate of 5 to 7 days' work at £375 a day plus travel costs.

16. On 25 November 2015 the Civic Committee set up a “Task and Finish Group” (which also became known as the “Job Evaluation Committee” - albeit strictly speaking it was a subcommittee) to look at staffing issues and staff policies. This was to include job profiles and job evaluation. The group was made up of Councillor John James, Councillor Kenneth Edwards (both Labour), Councillor Hedley-Jones and Councillor Owens (both Independents). The minutes of the meeting [376 – 379] acknowledged that the group would give consideration to the NALC Agreement in relation to the claimant’s SCP. At that time a decision had not been made as to how the staff evaluations would be undertaken and a budget of £3000 was recommended.
17. On 30 November 2015 the claimant wrote to Councillor John James, then Mayor and chair of the Civic Committee, requesting that her grade/SCP be reviewed as a priority [382 – 383]. She said she considered her role fell in between profiles 3 and 4 in the NALC Agreement.
18. On 10 December 2015 the respondent held a Special Governance meeting [384]. The note produced by the meeting said that, to the best of the knowledge of some members, the respondent had never adopted the NALC Agreement. It was said that when it was agreed in February 2015 to look at each staff member individually it was intended to be carried out as one exercise so that officers were not perceived to be receiving preferential treatment. There were some matters in the claimant’s letter which the note also disagreed with, and it was decided that there was not a case to delegate powers to the chair and vice chair of the Committee to look at the claimant’s circumstances separately. It was said that “the role and responsibilities of the Clerk would be looked at in detail at the agreed time and with an open mind.” That said the overall tone of the note is somewhat frosty.
19. In a Civic Committee meeting of 4 January 2016 [385 – 388] Councillor John James said there was little to report in terms of staff evaluation and a meeting was due to take place the next day. Councillor Stephen James referred to a meeting that had been held with all staff to explain what was happening and to reassure them. Councillor Stephen James referred to the email from Mr Egan and “expressed a view that the sub group currently tasked with looking into job evaluation may not be impartial enough or have the necessary expertise.” A decision was, however, ultimately made not to use Mr Egan at that time due to the cost and to instead go back and seek informal assistance from Mr Thomas. At a further meeting on 11 April 2016 [389 -391] Councillor John James reported that the sub group was meeting on a weekly basis and that once the new job specifications were prepared they would be looked over by the appropriate County Council officer prior to discussion with the staff.
20. In late April 2016 a temporary TSO, Mr Fox, was taken on as Mr Ridgway was on long term sickness absence.

21. In a Civic Committee meeting of 9 May 2016 [392– 394] Councillor Hedley-Jones reported that the job evaluation was near completion for the roles of Town Clerk, TSO, Responsible Finance Officer (RFO), and Administrative Assistant. The outdoor staff were to be considered next and then the caretaker roles. The caretaking roles were to be considered by the Facilities Management Committee. He said after the next job evaluation meeting on 17 May 2016 the job descriptions would be submitted to the appropriate County Council Officer. At a Civil Committee meeting of 13 June 2016 [395 – 397] Councillor John James reported that job descriptions for four members of office staff had been sent to Mr Thomas at Carmarthenshire County Council and Mr Thomas was due to provide feedback within the next few days.
22. Mr Fox was made permanent in September 2016. On 12 September 2016 Councillor John James reported at a Civic Committee meeting [398 – 401] that the sub group had met with Mr Thomas a fortnight ago and that “he had complimented them on the preparation of the job descriptions which had been submitted to him. He had further apologised for the delay in reverting to them.” It was said that they were waiting to hear back from Mr Thomas regarding “person profiles” to enable the overall job evaluation exercise to be finalised. On 10 October 2016 [402 – 406] Councillor Hedley-Jones reported that job descriptions and person profiles were in place for the four office staff and members of the task group were to shortly meet individually with the staff to discuss the proposed new job descriptions.
23. The claimant was invited to a meeting with the Job Evaluation Committee on 31 October 2016. She was told that the respondent needed to agree a job description with her before it could be passed to Mr Thomas for a pay evaluation. The claimant was given a draft job description. She suggested some amendments. On 10 November 2016 Councillor Hedley-Jones [407- 410] updated the Civic Committee, saying that all other job descriptions had been completed other than the caretaker and cleaner. The minutes record following a query from Councillor Shirley Matthews, Councillor Hedley-Jones saying it should not take much longer for the overall process to be finalised.
24. On 9 January 2017 [411 – 414] the Civic Committee reported that further individual staff meetings were needed for staff feedback on the job descriptions. Further information would then be needed from Mr Thomas on grades/salaries and a further meeting with him. The minutes say “If Cllr John James is unable to facilitate such a meeting swiftly, then alternatively, the job descriptions are to be sent to Mr Thomas for him to provide grades. Cllr Ken Edwards indicated that once members of staff had agreed new job descriptions, then any potential increases in salary would be payable from that date. Therefore, back pay may be payable, although figures are unknown as yet.”
25. The claimant was due to meet the Job Evaluation Committee again on 17 January 2017. She prepared a briefing pack in advance including a proposed revised job description and a job evaluation assessment for her role using the profiling in the NALC Agreement. In her covering letter [415 – 416 and A47 to A77] the claimant drew attention to the fact that

nearly 2 years had elapsed since the respondent had agreed the need to conduct a full evaluation of staff roles. She said that the process of asking Mr Thomas to formulate a score based on her job description was not accepted practice for a Clerk. She again emphasised that from her perspective the NALC Agreement should be used and asked them to reconsider the basis of the evaluation of her role. She requested a response by 31 January 2017 and also raised the prospect of the SLCC being requested to complete the job evaluation process. Her own evaluation said she considered she should be on SCP 52 – 55. At a Civic Committee meeting on 13 February 2017 [417 – 420] it was reported that the Job Evaluation Committee were due to meet again with the claimant. The minutes also note that the claimant could continue to authorise up to 10 hours a week overtime for the TSO, Mr Fox, on an ongoing temporary basis, but that he needed to provide an estimate in advance to the claimant for her to authorise and that his hours would be reviewed by the Committee on a monthly basis. Mr Fox had been present at the Civic Committee meeting for parts of it.

26. On 15 February 2017 the Job Evaluation Committee were having meetings with the office staff about the job evaluation process. The claimant thought she was be called to a similar meeting but instead Councillor James and Councillor Edwards told her she would not be having a meeting. She was told that instead a written response was being prepared to the detailed points she had raised in her letter of 16 January. She was told there would then be another meeting after that.
27. The claimant says that around this time there was a change in Mr Fox's attitude and behaviour towards her. She says that he started to show a lack of respect and started to send rude and undermining emails. On 16 February 2017 the claimant emailed Mr Fox about the situation regarding overtime pay [422-423]. The claimant had told Mr Fox the position about overtime, but he been back to speak with the Councillors on the Job Evaluation Committee. Mr Fox had then told the claimant they had said he could work as many hours as necessary provided a note was kept. The claimant said in her email that she had discussed it again with Councillor James and that the claimant's position was correct. Her email said she had agreed with Councillor James she would put it in an email for clarity. She copied in Councillors James, Edwards, Hedley-Jones and Owens. She also spoke to Mr Fox about it. Mr Fox's response is at [421-422] where he kept the Councillors copied into the exchange and asked in a somewhat tetchy way what format he should record his work in. He also asked about receiving a contract of employment, the holiday procedure, a backlog of his pay and said there was an absence of formal staff meetings. The claimant responded [425-426] on 2 March 2017 saying, amongst other things, that she felt they met informally most days, but offering to hold more formal meetings. The claimant discussed the email from Mr Fox with Councillor John James expressing dissatisfaction with Mr Fox's manner towards her.
28. Mr Fox responded [424 – 425] again in turn. He raised a point of disagreement about IT and said he would discuss it with the Civic Committee. He again referred to an absence of staff meetings, having to keep a log for his hours, and complained about holiday policy

procedures. He said from his perspective that “I feel over the last few weeks and through stages of your engagement during the job evaluations there is some change in character. If I have personally have offended you or are not supporting you enough in my role as Technical Services Officer then please let me know.” He referred again to arranging a meeting with the Civic Committee. Councillor Owens accepted in oral evidence that Mr Fox, in continuing to copy in the members of the Job Evaluation Committee into his emails with the claimant about various issues, was undermining her. Councillor Owens did not rule out the possibility that Mr Fox was trying to influence the Job Evaluation Committee.

29. The claimant was excluded from the job description/job evaluation process other than her own assessment. Mr Fox had been having some interaction with (or members of) the Civic Committee and the Job Evaluation Committee that did not involve the claimant. He had raised the issue of overtime pay with them. That interaction was taking place is also shown by his subsequent email of 15 March in which he described, from his perspective, the claimant being unhappy with him attending (without her) before the Civic Committee. Mr Fox also talks about helping the job evaluation group with the ground staff and going forward. He later on said that he had also had some involvement in the claimant’s own post. The subsequent special panel report also confirms that Mr Fox was consulted on some posts in the job evaluation process. Likewise, later on, Councillor John also confirmed this when giving his evidence to Mr Egan. Mr Egan later found it established that Mr Fox had established a direct route of contact into Councillor James. The claimant was aware that Mr Fox was having some interactions with members of these Committees, but she did not know the exact details of what was being discussed. It unnerved her and she felt it was unfair for other managers to be consulted about their staff and yet she, as the head of the management chain, was not involved from that management perspective.
30. The claimant emailed Councillor John James on the evening of 5 March 2017 [427] as she considered she had received another aggressive and disrespectful email from Mr Fox. Her email said “As indicated to you, I had been prepared to overlook Lee’s first email. However, his most recent email is a further example of misconduct and disrespect for authority. Accordingly, could you please ensure that we can discuss this issue tomorrow, for me to establish your preferred method for me to discipline Lee?” The claimant says that she was intending to start a disciplinary process against Mr Fox by holding an investigation meeting but that she wanted to have the support of the respondent and that she was aware of potential awkwardness as Mr Fox’s wife and Councillor John James were both standing as the Labour candidates for two County Council seats in the forthcoming elections and were campaigning together. Mrs Fox and Councillor James were also seeking election/re-election to the Town Council. The claimant says that she was also mindful that, from her understanding, the respondent did not have any disciplinary policies or procedures in place as a draft Employee Handbook had never been formally adopted.
31. The claimant and Councillor John James spoke on 6 March 2017. Councillor John James was not a witness in this case and the Tribunal was therefore only able to take an account from the claimant. The claimant says that when she raised potential disciplinary action

Councillor John James did not agree, did not agree that Mr Fox's behaviour was totally inappropriate and said that he had to "play things down the middle." Councillor James suggested an apology from Mr Fox may suffice. The claimant said that Mr Fox needed to be spoken to. Councillor James agreed to meet on 7 March when Mr Fox would also be in.

32. The next day, however, Mr Fox reported sick [428]. Unknown to the claimant at the time some contact passed separately between Councillor John James and Mr Fox. In particular, Councillor James emailed Mr Fox on the morning of 7 March saying "If you wish we could meet at 8:45 this morning. Melanie has requested that the three of us meet at 12:30pm today. I'm not attending facilities but will be available to meet with you prior to the meeting." Mr Fox responded to say that he had reported sick and that "regarding the other issues yes I would be glad to meet up and discuss the way forward as I just seem to be getting emails which seem to be misleading. I would however wish to pursue a full complaint on a couple of issues. Do I go through yourself?" [429]
33. The claimant did not tell Councillor James that Mr Fox was unavailable as she had other matters to discuss. Councillor James did not turn up to their meeting. He turned up approximately an hour later with Councillor Kenneth Edwards. The claimant had wanted to discuss a draft meeting agenda with Councillor James, which included an agenda item about Mr Fox's conduct, but Councillor James did not have much time to discuss it. Councillor James told the claimant he was aware Mr Fox was not in work that day as he had spoken with Mr Fox that morning.
34. On 8 March Mr Fox returned to work and sent an email which mentioned that he had requested a meeting with the Civic Committee about the fact the claimant had said he should take sickness absence rather than a day's holiday and her refusal to pay overtime for time worked on a sick day (that he would be paid sick pay for) [432]. Mr Fox copied Councillor James into the email exchange. The email exchange continued, and Mr Fox said he had requested a meeting due to the nature of his sickness. He asked Councillor James (who was still being copied in) to "arrange a meeting as discussed yesterday and escalate a few minor issues" [431].
35. The claimant was concerned that the prospect of Mr Fox meeting with the Civic Committee was not normal procedure. She emailed Councillor James about this, again seeking the original meeting be rearranged urgently [434]. She said the issue with Mr Fox was taking up too much of her time and she felt the situation was starting to have an adverse effect on her health due to the simultaneous demands being made on her time. The claimant suggested a meeting on 10 March. She suggested the same to Mr Fox [431]. Councillor James (who remained in the email exchanges between the claimant and Mr Fox) said he agreed that a meeting was needed as soon as everyone was available. He said that it should include Councillor Edwards as Vice Chair, but he said he himself was unavailable on the suggested dates. Councillor James then said the item on the agenda relating to Mr Fox should be pulled as they would not have had the meeting by the date of the Civic

Committee meeting on 13 March. He said they should explain to the committee that it was down to the fact that they had not had the opportunity to meet.

36. The claimant spoke to Councillor James on 9 March and objected to this. Councillor James suggested a meeting may be possible at 5:30pm on 10 March. The claimant also raised the potential for another Councillor to take Councillor James' place if he felt it was awkward due to Mr Fox having been directly contacting him. She says that he seemed angry and said the claimant was questioning his credibility. Councillor James also told the claimant that Mr Fox was making complaints about her. The claimant was shocked to hear this.
37. Councillor James subsequently confirmed the meeting would go ahead. The claimant then told him she was unhappy about not having advance details of Mr Fox's complaints. She said she wanted brief details in writing. The claimant also said that the basis of the meeting seemed to be changing as originally it had been to investigate Mr Fox's behaviour but now it seemed to be her who was being investigated. Councillor James said that he would speak with Mr Fox and he then telephoned the claimant again to confirm that the written information would be provided from Mr Fox.
38. On the afternoon of 10 March Councillor James telephoned the claimant to say he and Councillor Edwards thought it would be best to meet only with the claimant that afternoon and to meet with Mr Fox at a later date. He said the majority of Civic Committee members had also agreed the item regarding Mr Fox's conduct would not be discussed. The claimant said she considered her complaints against Mr Fox should be investigated first, that it was separate to anything Mr Fox was seeking to raise, and she thought Mr Fox was seeking to deflect attention away from himself. The claimant said she did not see much point in the meeting going ahead and that she could provide full written details of her concerns so that the Civic Committee agenda item could proceed. Councillor James said the discussion would not take place at the Civic Committee meeting until they had all the facts. He also said he had been asked to look into an issue relating to holiday leave the claimant had recently taken. Councillor James alleged the claimant had said she would not be taking leave February half term and that he had a witness to her saying this. The claimant told Councillor James that she had in fact said she was hoping to take leave, but it would be subject to her ensuring her work was done and she would have to do some work at home anyway. She says Councillor James said again he had a witness and the claimant said she was concerned about this. She says Councillor James said that she was "falling out with all members of the Council." The claimant says she told Councillor James she did not agree with this. She says until this situation with Mr Fox emerged she had always had a good and friendly relationship with Councillor James for many years and she had to work closely with him as the then Mayor. She also told him that she did not see any purpose in the meeting going ahead as Mr Fox was not going to be there.
39. The claimant felt unsupported by Councillor James and felt he was favouring Mr Fox. She was upset. She spent the weekend thinking matters over. She formed the view Councillor

James had an allegiance to Mr Fox as a result of Councillor James' personal and political connections to Mrs Fox, due to them campaigning together in the Town and County Council elections. She did not know how best to deal with it because it was important, as Town Clerk, that she maintained a good relationship with the Mayor. The claimant decided to approach the Chair of the Audit Committee, Councillor Theodoulou. She sent him a text message [847-848] on 10 March saying that there had been a development she was uncomfortable with and asking for a chat. Councillor Theodoulou's response was that it may not be wise for the claimant to say too much as if there was an appeal it was better if he stayed eligible for that. He added that if the claimant needed to talk urgently in his role as chair of audit then he was free Monday afternoon. The claimant said in response to Councillor Theodoulou that she was feeling pretty awful after the conversation with Councillor James. She said one of the comments made was that she was "falling out with all the members of the Council." She said she would need Councillor Theodoulou's intervention as chair of audit.

40. The claimant decided to put her concerns in writing, in a 9-page letter, with attachments [A5-13 and A23 to A36]. The claimant set out the history from her perspective as to what had happened with Mr Fox and Councillor James. The claimant said it was a significant concern to her that Councillor James seemed reluctant to investigate the issues which she had raised about Mr Fox despite her suggesting it may be preferable for him if the matter was looked into by another Councillor. She said that whilst he had emphasised his impartiality "I am fully aware that he is in a compromised position as he is standing alongside the TSO's wife, Mrs Amanda Fox as the two Labour candidates for the forthcoming County Council elections. This fact is being widely publicised on social media and I attach a copy of a post by Mrs Amanda Fox on Facebook from Friday 10th March, which has been shared by her husband, the TSO."
41. The claimant also referred to the response she had prepared about the job evaluation process and that she had still not had a meeting with the four Councillors involved and said, "I clearly feel that the fact that I challenged the method by which the evaluation of my role as Town Clerk was being undertaken has not been well received." The claimant referenced to the fact that at the Committee meeting on 13 February there was a long discussion about whether the claimant could attend the annual SLCC conference for Wales and that it had been emphasised that the respondent "was not signed up to SLCC." Ultimately there had been a vote in favour of the claimant attending. She said that Councillor James had also made an inappropriate comment that the claimant had "applied to go elsewhere" in reference to the claimant applying for the role of Town Clerk at Llanelli Town Council. The claimant said that matters had been brought to a head as a result of her concerns about the way in which the TSO's behaviour had been handled but there were additional matters which were causing her considerable concern, namely:
 - "The excessive delay in undertaking the job evaluation process and the lack of information/feedback provided to me.

- The apparent fact that Pembrey & Burry Port Town Council does not recognise SLCC and the joint NALC/SLCC 2004 National Agreement.
 - The fact that I have been excluded from every part of the job evaluation of the other Council staff, despite that I am the Council's Proper Officer and responsible for all members of staff.
 - The statement made by the Mayor and Chair of the Civil Governance and Personnel Committee, Cllr John James that I am "falling out with all members of the Council", which suggests to me that I no longer have the confidence of the Councillors of Pembrey & Burry Port Town Council.
 - The fact that Cllr John James has indicated that the TSO is making complaints about me, but to date, no information has been provided."
42. The claimant concluded: "I therefore await hearing from you with your urgent observations." The claimant hand delivered the letter to Councillor Theodoulou on the Sunday evening. She was distressed and briefly discussed what was in the letter. She said that the worry was making her unwell and she did not know if she would be able to attend work the next day. She was particularly anxious about attending the Civic Committee meeting. Councillor Theodoulou told the claimant he would give priority to her letter.
43. The claimant did not feel able to attend work the next day and she emailed Councillor James saying she would not be in. The Civic Committee minutes from 13 March 2017 [441–443] record a question being asked as to whether previous clerks had been members of SLCC and who paid the claimant's membership. It also records it being said that any staff not satisfied with the outcome of the job evaluation process would have the right of appeal to the Chair of the committee who would constitute an appeal panel. The minutes also record that the item on the agenda relating to the TSO's emails sent to the Town Clerk was not discussed. The claimant did not hear from Councillor Theodoulou that day so on the 14th the claimant send him a text message [849] saying she was still feeling pretty lousy but that was anxious to return to work. She asked if there was any progress. He telephoned to say that he had prepared a report which was to be considered the next day.
44. On 15 March 2017 there was the monthly Council meeting [444]. Councillor Theodoulou circulated a report [1388-1399]. The claimant did not see the report at the time. The report sets out Councillor Theodoulou's understanding that the claimant was complaining about two things. He termed the first as being the claimant's dispute with Mr Fox, her attempts to deal with him, the response from Councillor James and his committee. He termed the second as being the length of time it has taken to re-evaluate the claimant's post. Councillor Theodoulou recorded that he contacted an experienced ex-Clerk for advice whose advice was to take the matter to the full council. Councillor Theodoulou recorded that he then spoke to Councillors Owen and Edwards and left a message for Councillor James. He said this was to ensure he was being open and transparent. Councillor Theodoulou said in evidence he did not actually get to speak to Councillor James. Councillor Theodoulou recorded that he had then decided to call a meeting of the two other main chairs; Councillor Phillips and Councillor Matthews and also invited Councillor John. The report recorded that the group's

recommendations were that a further group be authorised to investigate the issues (other than the pay evaluation which was not considered to be an audit matter) and report back to Council as a matter of urgency. It recommended that the persons implicated in the letter have sight of it and be asked to submit a written statement that would be copied to the claimant. It said the group may then wish to interview individuals involved. The claimant alleges that she approached Councillor Theodoulou in confidence and that in speaking to so many individuals, particularly the Labour Councillors, was a serious mishandling of the situation.

45. The Council [444] approved the appointment of a special panel to investigate the claimant's formal complaint, take into account submissions from other parties, and then report back to the Town Council. The claimant complains that at the Council meeting her complaint was circulated to attendees including Councillor James. Mr Theodoulou says that it was only his report that was circulated and not the claimant's actual complaint. He says that the minutes where they say "The Town Council considered the formal complaint from the Clerk, in writing, received by the Chair of the Audit Committee" could be seen as slightly misleading but that they were not intended to indicate that the claimant's complaint was actually circulated. The Tribunal accepts his evidence, and that the formal complaint was not actually handed over and circulated. The claimant also points out that Councillor James was at the meeting and did not declare an interest and leave the meeting whilst the discussions were taking place. Councillor Theodoulou said in evidence that he personally thought Councillor James should have done so, and had expected him to do so, but that he also could not recall Councillor James actually saying anything when it was discussed. The special panel appointed was Councillor Robert John, Councillor Andrew Phillips and Councillor Moira Thomas. It was specifically appointed to be cross party.
46. Also on 15 March Mr Fox emailed Councillor James saying he was forwarding on an email he had drafted the previous week with a list of questions for the Civic Committee. He said he would prefer to raise them via Councillor James rather than direct to the claimant. Mr Fox's list included reference to an email he said the claimant had sent him on 16 February saying she was confused about why Mr Fox was attending a meeting with the Civic Governance Committee and that it should go through her. He said the claimant had seemed agitated and that he had explained he had been helping the job evaluation group with the ground staff and going forward. He also complained about IT security issues, how holidays were handled (including about the February half term that Councillor James had challenged the claimant about), the lack of formal staff group meetings, that (in effect) he felt micromanaged by the claimant about having to approve and prioritise his work, that the claimant allocated work to him, and that the claimant had said to another staff member she was unhappy about his wife standing for election. The email seems to refer to an earlier discussion between Mr Fox and Councillor James.
47. On 18 March Councillor James emailed the claimant to see if she would be in the following week and therefore the claimant chased Councillor Theodoulou again. He told the claimant that the special panel had been set up, that speedy progress would be made and if needs be there could be multiple meetings in the week. The claimant

returned to work on 20 March. The claimant said she received further rude messages from Mr Fox which she felt unable to challenge. She emailed Councillor Theodoulou saying that it was also causing an uncomfortable atmosphere in the office. She asked about what progress had been made and asked whether she should contact Councillor John directly [455]. The claimant did then email Councillor John on 21 March [446]. He responded to state that in the absence of a formal complaint the claimant's letter would be dealt with under the grievance procedure save that the issue of the claimant's job description would remain under its existing procedure [447]. It is not clear to the Tribunal why Councillor John referred to the claimant's complaint as not being a formal one.

48. On 27 March 2017 the claimant received an email from Councillor James asking her to attend a meeting about her job evaluation on 30 March [451]. The claimant asked whether she would receive anything in writing in advance, referring to the fact she had previously been told a letter was being prepared. Councillor James responded to say the Job Evaluation Committee had agreed for a meeting to take place so that the claimant could enlarge on what she had submitted to them previously, and that she would then receive a written reply from the committee. He said they did not feel they could send the claimant a letter at that stage as one had not been sent to other members of staff after their initial interviews but that the claimant would receive a written response after the current stage was exhausted [450].
49. On 30 March the claimant emailed Councillor John to confirm that she did wish her letter to be viewed as a formal complaint [453]. Her email concluded "Subsequently, I felt that Cllr John James frustrated what had been intended to happen and I have set out full details of why in my letter. It was due to this and comments he made to me that I felt that I had no option other than to send my lengthy letter to the Chair of the Audit Committee. I felt that otherwise, the situation would not be properly dealt with and could escalate even further."
50. The claimant attended a meeting with the Job Evaluation Committee on 30 March 2017. Councillor Owens told the claimant at the outset that the respondent would not be using the NALC Agreement as a basis for her job evaluation. The claimant says that Councillor James and Councillor Ken Edwards bombarded her with questions about her roles and responsibilities as if it were a job interview and that Councillor James and Councillor Edwards set out to take her by surprise and "grill her". [1263] appears to contain the questions and shows that the claimant was being asked about things raised in the job evaluation process/her submissions about where she considered she should be, such as "Can you give us some examples of the strategic plans that you have personally initiated and developed."
51. On 4 April 2017 the claimant met with the special panel about her grievance.
52. At some point around this time some of the Job Evaluation Committee met with Paul Thomas to, from their perspective, complete the claimant's job evaluation. The Tribunal has very limited evidence as to what happened at the meeting or who was involved. It would appear from Councillor Owens' witness statement that it may in fact only have

been Councillor Kenneth Edwards. However, we are satisfied that some form of meeting with Mr Thomas did occur who, in conjunction with Councillor Edwards at least, did some form of evaluation under the Carmarthenshire County Council scheme. There was also some effort made to undertake a comparative exercise under the NALC Agreement. It seems likely that the intention was for Mr Thomas to follow it up with some form of formal report but that never arrived.

53. The best records that the respondent has been able to provide are some papers held by former Councillor Ken Edwards disclosed not long before the hearing in this case [1260 onwards]. They appear to be various handwritten annotations on existing documents which means it is difficult to fully understand them. But they do include a reference to “points awarded by Paul Thomas using C.C. Scale.” A separate note also refers to “Paul’s assessment SLCC Level 2 Scale 35 →38” and “Careful in response to her demands. Evaluate each part of her demands. Using SLCC guidelines.” There is also a handwritten page comparing the claimant’s scoring as against Paul Thomas’ scoring [1274]. There are references to the claimant as “she is piggy backing on others” and that Paul was going to draft a response to the claimant’s letter. It says that Paul’s view was that the claimant’s assessment was over egged and whereas the claimant was seeking profile 4 for a large town, Paul suggested profile 2/3 at 35-38 spinal point. Other notes say, “Paul to give us a rebuttal to her argument” and “We then point out the incorrect nature of her claim” and “We give her the job description and the CCC equivalent pay scale.” It says, “Paul to give it more consideration, and then give us his findings.” Annotations on the claimant’s draft job evaluation prepared by her, dispute things such as the claimant’s attendance at sub committees and working groups, her responsibilities for things as opposed to being the responsibilities of others such as the TSO, disputing that the respondent was a large town, and disputing that the claimant was responsible for “supervising, directing and co-ordinating employees in many areas of activity.” There are handwritten alternative scorings resulting in a conclusion of LC Profile 2. They also include annotations that seem to make observations about the claimant such as “All about her! Not all staff”, that the NALC Agreement were “Her chosen arbitrators”, that they would “assess all staff equally” and “She’s still harping on about Llanelli.” It is said “She accepted role, knowing our parity with C.C.C. pay scale” and (in relation to the claimant pressing for a resolution) “We will not be pressurised.” It also says, “We the Council choose our own salary structure.”
54. One note, presumably completed by Councillor Ken Edwards, states that the Civic Committee had agreed at the outset that the working party would review all roles and salaries, out of fairness to all employees. It states that the working party decided to begin with the Town Clerk role first and then the Admin staff before the ground force and care taking staff. That said Councillor Owens’ witness statement says that the approach taken was the other way: to start with the staff first and work up the management chain to the claimant at the top.
55. On 18 April 2017 the claimant received a letter from Councillor James [459 – 460]. The letter said that it was and remained the policy of the respondent to adopt the Carmarthenshire County Council process for the evaluation which had been first introduced in 2006 and that town clerks since then had been employed in accordance

with that structure. The letter enclosed a job description which was said to define the role that the committee wish the Town Clerk to fulfil. It said that where deemed appropriate the job description had taken into account the claimant's submissions. The letter also said: "Out of respect for your wishes we also evaluated, for comparative purposes, your job description using the SLCC scheme that you presented to us. It was not surprising that it had similar criteria for assessment to the CCC scheme and the outcome, following discussions with, and submissions by, yourself that both schemes gave a very similar result." The claimant was told that the job responsibilities fell within Grade 1 of the Carmarthenshire salary scale points 34 to 38 and that the claimant was currently on job grade 36 with a salary of £31,288. The claimant was told in view of her length of service her job grade would be increased to 38 and her salary to £33,106 (pro rata) "effective from the date of this letter." The claimant was given 7 days to appeal. Councillor Owens says that the letter was sent with the aim of trying to draw the matter to a close.

56. On 19 April 2017 the Special Panel produced an interim report [461]. The report said they had considered the written submissions from the clerk and Mr Fox and had spoken to them and Councillor James. They recorded their belief that the crux of the problems lay with the influence of the Civic Committee and in particular the job evaluation initiative. It records that an initial error lay in not including the claimant in the evaluation process for all employees and that "We know of no other organisation where the chief executive (which is what in effect the role of Clerk is) is not involved or consulted in this process. This is particularly puzzling given that the T.S.O. was consulted in relation to an evaluation of certain other posts." The interim report recorded a particular concern that the job evaluation for the claimant was still not complete. It also recorded concerns that the Governance Committee Councillors had involved themselves in the day to day management of employees without reference to the claimant. It referred to Mr Fox having been told different things about overtime arrangements separately to the claimant which "no doubt further damaged the relationship between the Clerk and the T.S.O. which led to their communicating by email only." The report recorded a lack of clear concise and sensible communication between all and said that "little wonder then that the Clerk feels she has lost the respect of Councillors and the other staff member concerned." The report added "This is not to say there is no concern over the Clerk's day to day management of staff and the work in hand. Her job description clearly sets out her responsibility of supervising all employees and we believe that she must clearly illustrate carrying out that role fairly and effectively." Initial recommendations were made that councillors and all staff members be reminded of their individual and collective responsibilities, all instructions and communications to be set out in writing, any employee having a grievance should follow the method set out in policy and the parties involved be told the issues and their resolution be noted and retained on file [461-462]. The interim report said that when the deliberations were complete a full report would be submitted. The claimant did not receive the interim report at the time. We were told that an interim report was submitted because of the impending elections which it was anticipated may disrupt the completion of the process.
57. A full Panel report was prepared. There are two different versions of it [463-464 and 1401-1402]. The claimant did not receive either version at the time. The version starting

at [463] referred to what had been set out in the interim report and added that the claimant argued that the constant emails from the TSO should be viewed as a form of harassment. It concluded that there was some justification for that view, but that it should be seen “in the context of the Clerk not exercising her stated responsibilities for the supervision of all staff, which may have prevented the rapid deterioration of this situation.” It said there was also a collective responsibility amongst all councillors in the time taken over matters such as the employee handbook, the job evaluation process, the lack of progress on signing contracts, which did not portray the Council in a positive light. The report repeated the initial recommendations and added that there should be a designated Councillor appointed to whom concerns could be directed, and the early creation of a Disciplinary Committee to undertake further enquiries.

58. The version starting at [1401] refers to other evidence. In particular, that a witness had come forward saying that the TSO had said “Melanie and Shan are going to be sacked”. It said there was clear evidence that the actions and comments of the TSO fell below what is acceptable behaviour for employees. It says, “We are of the view that this should be regarded as Gross Misconduct.” The respondent’s witnesses said in their oral evidence to us that Councillor Phillips had not been re-elected which led to deadlock between the two remaining Councillors on the panel and that is why two reports were produced. It was also said that [1401] was an initial draft and that the witness referred to refused to be identified and stand by the evidence given, such that it was decided to remove the reference. An email at [468] with a subsequent date of 16 May 2017 shows Lisa Bryan (Councillor Lisa Mitchell) emailing Councillor Bob John saying “Lee has repeatedly told me that Melanie should not be in her post and that two people (suggesting Shan and Melanie) would not have their jobs for long.” Councillor Mitchell also referred to Mr Fox as being hard working, and good at this job, but that he likes to take the reigns to get things done his way and had often stated it was “all about tactics.” She asked if there was a way that the matter could be dealt with in order that they could move on positively without Mr Fox losing his job, but she would leave it with Councillor John. It is this evidence from Councillor Mitchell that the Special Panel report was referring to. Councillor Theodoulou thought that the version at [463] was the final one, although the version at [1401] was later put before Mr Egan. None of the reports of the Special Panel directly referred to the specific concern the claimant had raised about the conduct of Councillor James.

59. Returning to the job evaluation process, the claimant wrote to say she was appealing [465]. The claimant said that there had been no discussion at the meeting on 30 March about her intended new job description or a discussion about her objections to the original draft job description or her proposed amendments. She said it significantly changed her terms of employment and contained fundamental errors. The claimant complained that there had been an evaluation without there being a mutually agreed job description. She asked for copies of both evaluations undertaken by the Committee. She pointed out that she had been on SCP36 since January 2014 and should have progressed on an annual basis in that grade range such that she would have reached SCP 38 at an earlier date. She disputed that the grade range was an appropriate one for her role. She asked to be allowed to provide a full response once she had been given the evaluation documentation. The claimant’s salary remained at SCP 36.

Councillor Theodoulou told us that this was because the claimant had not contacted Carmarthenshire County Council to tell them to put her pay up.

60. The claimant received a letter from Councillor James dated 27 April 2017 [466-467] proposing a further meeting with the Job Evaluation Committee about the job description. It did not happen because the local elections were due on 4 May 2017.
61. The election results represented a sea change for the respondent. Labour lost their long-held majority to the Independent group. It was a double blow for the Labour councillors because they had previously approached Councillor Owens, an independent Councillor, to see if he was agreeable to being the next Mayor. The respondent's witnesses told us that was probably because the Labour group had run out of Mayoral candidates due to the Councillors either having previously held the role or not wanting to take it on. Presumably in proposing Councillor Owens the Labour Councillors did not anticipate losing their majority. For the Labour group it meant not only losing majority control of the Council, but they had also passed over to the Independent councillors, the Mayorship. Councillor Ken Edwards did not stand as a Councillor, but his wife, Mrs Linda Edwards was successfully elected, as was Mr Fox's wife. There were also two other new Labour Councillors; Councillor Karen Morris and Councillor Bob Walpole.
62. A substantial number of the specific allegations in this case relate to alleged actions by Labour Councillors. No Labour Councillors were called by the respondent as witnesses in this case. This troubled the Tribunal as we needed to make findings of fact about certain allegations, potentially having heard no direct evidence from the respondent's perspective and the particular individuals who have specific allegations made against them. We therefore asked Counsel why this was. The respondent's Counsel said that initially Mr Kenneth Edwards was due to potentially be a witness but had withdrawn through ill health. Counsel said that otherwise the decision made as to witnesses was a privileged matter. That is of course the respondent's prerogative, but it makes clear to the Tribunal that who would be called as the respondent's witnesses was something that had been carefully considered before a decision was made.
63. Following his election as Mayor, Councillor Owens asked the claimant whether she wished to consider withdrawing the allegations made in her letter of 12 May. He suggested it may be better for her to allow matters to be dealt with in a different way. The claimant told him she did not wish to do so, and he told her he would ensure the matters raised were properly addressed. We accept there was nothing sinister in that enquiry by Councillor Owens.
64. On 4 June 2017 Councillor Linda Edwards sent Mr Fox an email saying, "Hopefully Melanie will be out sorting the toilet problem tomorrow though as I speak there are pigs flying over our house." The claimant did not see this email at the time.
65. At a meeting of the Civic Committee on 12 June 2017 [474-478], Councillor Owens (now both Mayor and Chair of the Civic Committee) referred to an agreement from the previous Town Council meeting that a disciplinary panel was to be set up comprising himself, Councillor Stephen James and Councillor Mary Wenman. He recommended

that expert advice be taken first and approval was given to contact One Voice Wales. Councillor Owens also referred to the fact the claimant's evaluation remained outstanding and it was agreed that the claimant would meet with Councillors Shepardson and Moira Thomas with a view to agreeing a final job description. The minutes also record the claimant referring to the evaluation not being undertaken in accordance with the NALC Agreement and she suggested that as advice was being sought from One Voice Wales anyway, advice could also be obtained regarding the NALC Agreement being used as basis for the evaluation of a Clerk's role. This was agreed by the Civic Committee. The meeting about the job description took place on 20 June where they were able to largely agree the description although a few matters were to be referred back to the Committee [480].

66. On 20 June 2017 the claimant also sent an email to Councillor Owens [480] asking again to see the documentation relating to the evaluation by the Job Evaluation Committee and Carmarthenshire County Council. Councillor Owens responded on 26 June [484] to say the job description would hopefully be agreed at the next Committee meeting prior to it being forwarded to Carmarthenshire County Council for evaluation. He said, as explained to the claimant, that actual working papers on the previous evaluation had not been received from the County Council but the committee had accepted that the evaluations for all the staff had been carried out by professional staff employed by the authority. He said that the position of the respondent remained that job evaluations would be carried out by the Council. He said he would pass on the claimant's requests for further information to the newly constituted Civic Committee and that he was keen to bring the matter to a closure.
67. The claimant's job description was agreed at the Committee meeting on 10 July 2017 [486-490]. The minutes record Councillor Owens stating the claimant had requested the documents for the earlier evaluations and that it was agreed that the claimant was entitled to see how the evaluation had been carried out to date. The minutes also state that Councillor Owens referred to the fact that the Clerk had consistently expressed the view that her evaluation should be carried out in accordance with the 2004 National Agreement. He therefore confirmed that when a representative of One Voice Wales attends on Thursday 13th July, he would enquire what One Voice Wales' view is on this issue.
68. Councillor Owens had a discussion with Mr Egan from One Voice Wales on 13 July. Mr Egan then produced a consultancy proposal advising that the handling of the claimant's grievance should follow the Acas Code of Practice and recommending that there should be a new investigation with a grievance hearing and a right of appeal. He also recommended investigations in respect of the claimant's disciplinary allegations against Mr Fox and also more recent allegations made by a Councillor (Councillor Theodoulou confirmed in evidence this was him) also against Mr Fox about the conduct of Mr Fox at a Facilities Management Committee. Mr Fox had also made a counter complaint against Mr Theodoulou. Mr Egan's proposal also included a quote for a fixed price of £180 to assess the grading of the post of Town Clerk using the NALC Agreement [491-493]. On 21 July Councillor Owens emailed Mr Egan [1413-1414] saying the Council had decided to accept his recommendations in relation to the grievance from the Town

Clerk. In relation to disciplinary allegations concerning the TSO, he said the Council wanted to explore the option of an informal resolution if possible, as recommended by the Acas code. He said if that resolution was not possible, they would revert to Mr Egan. In relation to the Claimant's job description, he said that this lay with the Civic Committee and he would revert to them and then to Mr Egan if they wanted him to undertake some work in that regard. Councillor Owens also stated that the agreed job description was currently being evaluated by Carmarthenshire County Council in accordance with the respondent's current policy. Mr Egan said he would start on the grievance investigation.

69. On 25 July Mr Fox wrote to Councillor Owens saying there was a conflict of interest with seeking professional guidance from One Voice Wales. He asked for an independent arbitration [1416-1417]. Mr Egan sent Councillor Owens a form of wording saying he had no conflict of interest [1415-1416], which was forwarded on to Mr Fox. On 27 July Councillor Owens also told the claimant and Mr Fox that the Council's instruction was that the claimant should attempt to informally resolve the disciplinary allegations concerning the TSO [1422]. Mr Egan wrote to Councillor Owens with letters to be sent out about the investigatory interviews for the grievance investigation and said "I will have to hold off on the letter to Lee until such time as I receive the electronic version of the grievance letter which I will need to redact non-relevant information relating to his position in the matter" [1423]. On a date unknown Councillor Owens had written to Mr Fox [A107] asking him to attend an investigation meeting with Mr Egan about the claimant's grievance.
70. On 28 July 2017 Councillor Owens wrote to the claimant [504] confirming that Mr Egan would be undertaking an investigation of her grievance. The Tribunal does not have the Respondent's minutes regarding exactly what Mr Egan was to be authorised to do (particularly from 19 July 2017). On the basis of the evidence before us we find that it was to investigate the claimant's grievance only at that time. It was not a disciplinary investigation nor was Mr Egan was instructed to evaluate the claimant's post. We reject Councillor Owens' assertion in evidence that Mr Egan was instructed on 19 July 2017 to undertake a comparative job evaluation. There are no documents confirming that formal instruction and it does not accord with Councillor Owens email of 21 July. Further if Mr Egan had been instructed at that point in time he would have got on and done it.
71. The claimant met with Mr Egan on 3 August 2017. That same day Mr Egan also met with Ms Loudon, and Councillor Theodoulou. The next day he met with Councillor John James and Councillor Hedley-Jones. He met with Councillors John and Owens on 7 August. On 10 August Mr Egan sent Councillor Owens a letter and list of questions to send to Mr Fox [A108- 109], which included such matters as the degree of contact between Mr Fox and Councillor James.
72. On 14 August 2017 (and whilst the claimant was absent on annual leave) Mr Fox resigned, handing in a letter to Councillor Owens [505]. Mr Fox did so without having spoken to Mr Egan. Councillor Owens gave Mr Fox the opportunity to reconsider his position. On 15 August Mr Fox confirmed that he had not changed his mind. When handing over his resignation Mr Fox said to Councillor Owens that he could not work

with Councillor Theodoulou and that earlier in the year he had been told by Councillor James to “get ready to take over from the Clerk” [557]. Councillor Owens did not do anything with this information at the time. He accepted in evidence there was an element of not wanting to rock the boat with the Labour group at a fractious time.

73. Mr Fox’s resignation as TSO became an extreme source of friction in the Council. For reasons that are not fully clear to the Tribunal (limited in particular by the respondent’s choice of witnesses), the Labour Councillors appear to have taken the view that Mr Fox, despite having himself decided to resign, had been unjustly treated including by Councillor Theodoulou. Mr Fox was of course the husband of one of the Labour Councillors. Some, at least, of the Labour Councillors, appear to have formed a concerted plan to try to get Mr Fox reinstated. On 18 August 2017 the Labour group of Councillors held a meeting in the respondent’s premises. As Councillor Owens says in his witness statement, it is likely that this was a meeting of the Labour group to discuss Mr Fox’s resignation. On 21 August 2017 Councillor Moira Thomas telephoned the Carmarthenshire County Council’s deputy monitoring officer about Mr Fox’s resignation and a Code of Conduct allegation about Councillor Theodoulou. The monitoring officer redirected Councillor Thomas back to the claimant as Clerk [506].
74. On 22 August 2017 the claimant sent an email to Councillor James [507] about the Labour Councillor meeting which had taken place on 18 August 2017. The email said that no booking had been made for the meeting room. The email said that if it was a meeting of the local Labour Group, then a formal booking should have been made and an invoice raised. The email said that alternatively if the meeting was held by Labour Council members to discuss Town Council business then a meeting would be inappropriate as a meeting of Labour Councillors was not a formally constituted committee of the Council. The email said “As you will be aware from the Code of Conduct training presented by the Deputy Monitoring Officer of Carmarthenshire County Council...there is a requirement for members to act objectively. If there is a predetermination on any issue, then there is a risk that a Councillor is in breach of the Code of Conduct.” The email said that the Mayor had told her that he had previously informally agreed that the meeting room could be used by Labour Councillors but that he felt that unfortunately he did not have the opportunity of giving it sufficient consideration at the time. The email said that the Mayor had asked the claimant to inform Councillor James that such meetings should not take place in the future. The email was sent by the claimant on the instruction of Councillor Owens.
75. In the Tribunal’s judgement, the Labour Group of councillors were feeling increasingly angry. The implications of the election outcome, and in particular their loss of control, were becoming clearer to them. There was no easy route to get Mr Fox reinstated. The claimant’s email of 22 August 2017 was in all likelihood a “red rag to a bull”, as it was limiting the Labour group’s ability to meet, making them feel as if they were being picked on and indirectly suggesting they may be in breach of the Code of Conduct, whilst emphasising the change in the power base. On 23 August 2017 Councillor James emailed the claimant, now calling her “Dear Mrs Carroll-Cliffe” (as opposed to Melanie or Mel) and asking if a meeting held by Councillor Theodoulou and other Independent

Councillors who had recently held a meeting had similarly been required to make a booking.

76. On 26 August Councillors Moira Thomas and Bob Walpole tried to call an extraordinary meeting of the Civic Committee on 30 August to discuss Mr Fox's resignation [511]. Councillor Owens responded to say that a decision such a meeting could not be held was based on advice from the Clerk, Deputy Monitoring Officer and instructions from the Ombudsman. Mr Fox had made a complaint to the Ombudsman about Councillor Theodoulou. Councillor Owens said to us that the advice from the monitoring officer was that as a complaint was before the Ombudsman about why Mr Fox had resigned then a meeting could not discuss it [510]. Councillor Owens also said in his response to Councillors Thomas and Walpole that he was asking the Clerk to clarify whether the meeting should have been called through her office rather than the committee being contacted direct. Councillor Walpole responded on 30 August to say that they were of the opinion that the claimant had a conflict of interest in the matter. His email also said the meeting was going ahead that night [509]. The claimant says that Councillor Owens later challenged Councillor Walpole about this, and that Councillor Walpole withdrew this allegation of a conflict of interest. It does, however, show that feelings were running high.
77. That afternoon (30 August 2017), the claimant was in the main office and Councillor Linda Edwards came in. Councillor Linda Edwards mentioned the extraordinary meeting taking place that evening. The claimant responded by saying she did not know whether the meeting would be going ahead. The claimant says and we accept (we did not hear evidence from Councillor Linda Edwards) that Councillor Edwards came up to close to her and said in an intimidating manner and voice: "The meeting IS going ahead". The exchange was witnessed by the Administrative Officer, Ms Loudon, who immediately reported it to Councillor Owens. In the Tribunal's judgement, this was likely to have been born of the strength of feeling within the Labour Councillor group as to the treatment of Mr Fox, combined with the curtailment of their power over things such as calling meetings and agenda items. The claimant as Town Clerk became seen as one of the sources of their obstacles and allied to the Independent group. It led also to the Labour Councillors at times corresponding with the claimant (as Councillor James had done on 23 August 2017) in a very formal manner in emails, instead of their old friendlier style. The Tribunal accepts it is likely that this was a decision collectively made to treat the claimant more formally. The claimant says, and we accept, that at a subsequent meeting with Mr Egan and Councillor Walpole on 30 November 2017 Councillor Walpole admitted that the behaviour stemmed from the claimant's email of 22 August 2017 about room bookings.
78. The meeting on 30 August 2017 in the end did not go ahead. On 31 August 2017 Mr Egan sent various individuals the summary of their meetings for approval or amendment, saying that it would feature in the report. Councillor Owens also emailed Mr Egan that day [1449] saying "Thank you for sending me your draft report which is both comprehensive and informative." He sent email addresses for Mr Egan to be able to get approval of witness summaries and said "As soon as you are able finalise the report I would like to discuss in detail with you how best to proceed recognising we have

quite a lot of open sores between factions in the council that I am trying to heal. I would be willing to meet you in Ammanford if that makes sense.”

79. The next Civic Committee meeting was 11 September 2017 [516–518]. The claimant raised the fact that she had not had the documentation about the earlier job evaluation. In relation to the fresh evaluation Counsellor Owens advised that this needed to be chased up with Carmarthenshire County Council. Councillor John expressed his dissatisfaction with events since the last committee meeting and said he had spoken with the Ombudsman and if there was any repetition he would make a complaint. He also referred to issues apparently involving the harassment and verbal abuse of staff and said if it occurred any further he would report it to the police. Councillor Owens said that he did not yet have the grievance report from Mr Egan. He said that summaries of individuals’ discussions with Mr Egan had been sent out to those interviewed but not all had been returned. Some individuals said they had not received them, and Councillor Owens said he would chase it up again. There was some discussion about the resignation of Mr Fox and a decision was made to advertise for a replacement TSO on a full-time basis. Councillor Owens says that this followed a long discussion about Mr Fox’s resignation.
80. A full Town Council meeting took place on 21 September 2017 [1030 – 1041]. The Labour Councillors had held a meeting the day before. The witnesses that we heard from were all in agreement that it was the worst meeting they had ever been to in their professional lives. There was a large number of members of the public in attendance (far more than normal), including Mr Fox. It seems likely there had been a plan in place to get people to attend. Councillor Owens in his witness statement describes the behaviour of several Labour Councillors as being disgraceful.
81. The claimant says that the Labour Councillors were deliberately hostile towards her and set out to belittle her. She refers to Councillor Thomas alleging that papers for the meeting for Councillor Morris (who needed them on a particular colour paper) had not been properly delivered. The claimant said that a second set had been hand delivered to Councillor Morris in the correct format that afternoon. She says that Councillor Morris stayed quiet and refused to confirm this and that Councillors James and Thomas continued to query why Councillor Morris did not have them at the meeting.
82. Councillor Thomas also complained about emails received from Councillor Owens and a claim about breach of financial regulations. This related to a hotel booking for a trip for the “Britain in Bloom” awards ceremony. Councillor John had understood that Councillor Thomas had booked 2 twin rooms for herself and Councillor Matthews. He had reported it to the Mayor. Councillor Thomas denied making the booking and said she was upset with Councillor Owens’ email. Councillor Matthews said that it was a provisional booking and that it had been done with the claimant’s knowledge. The claimant denied that she had been aware of the booking being made. She says that she was effectively being accused of lying by Councillors Matthews and Thomas. It is evident from the minutes that Councillor Thomas was also expressing dissatisfaction with the tone of the emails sent about it by Councillor Owens, and it led to another debate about whether there should be a separate meeting to try to resolve the dispute

or whether Councillor Owens should apologise (which it appears he did, to move matters on).

83. The claimant says that Councillor Linda Edwards also started nit picking with her about minutes such as unnecessarily raising points of grammar. For example, one correction raised on the 21 September related to an erroneous apostrophe [1034]. She says that whenever these things were said at the meeting there was public participation, with the members of the public in attendance heckling, jeering and whooping.
84. Later on in the meeting the minutes of the Civic Committee came up for consideration. There ensued a stand-off between Councillor James and Councillor Owens. Councillor Owens and the claimant said that any discussion about the TSO needed to be in camera. Councillor James that there should be a public discussion about it, and (as described by Councillor Owens) started playing to the gallery, drawing public applause. Councillor James said the public or press did not need to be excluded, and that Mr Fox himself should be allowed to speak. In effect, the Labour Councillors were seeking to hold a public discussion about the reinstatement of Mr Fox which would include Mr Fox himself. Councillor Owens says he considers it was a pre-planned effort to take revenge against him for refusing to discuss Mr Fox's resignation and that Councillor James was playing to his supporters with the intent of making Councillor Owens out to be the villain. He says that Councillors Thomas and Fox also supported these efforts and targeted him for personal criticism. The claimant at times, in her job as Clerk, was advising Councillor Owens as Mayor, in exchanges just between the two of them. At some point in what was evidently a charged and difficult exchange, Councillor John James questioned why the claimant was speaking to the Mayor rather than speaking out loud. The claimant says that this was done to undermine and humiliate her. Councillor Owens says that it was aimed at him. He says that Councillor James said, "why are you not going to answer, who are you asking now, why not ask the caretaker?" Councillor Owens said that the claimant was caught in the cross fire. There was a 5-minute break. On the return some form of comment was made by Councillor James relating to Mr Fox and an individual councillor, which Councillor Owens understood to contravene the Ombudsman's instructions. Councillor Owens decided to suspend the meeting.
85. On 22 September Councillor John [521] emailed the claimant saying "I am contacting you to express my disappointment and disgust at the treatment you suffered at the hands of Councillor John James, Moira Thomas, Shirley Matthews and other "Labour" councillors at the council meeting last night. Your integrity was brought into question by those concerned, whereby you were accused of lying as to certain matters involving council activities. I can only apologise for their disgraceful behaviour which, in my opinion, broke the bounds of acceptable behaviour and almost certainly broke the rules within the code of conduct for councillors. Should you decide to pursue those matters, I offer my full support in whichever way you deem necessary." The claimant decided not to take action at time, as she did not want to make relationships worse and Councillor Owens told her he intended to lodge a complaint himself with the Ombudsman.

86. He did so on 27 September [526-526], complaining that Councillor John James and Councillor Thomas had conducted a pre-planned revenge attack in retaliation for emails he had sent and because of his insistence that the Council comply with the directions of the Ombudsman and the Monitoring Officers not to discuss matters relating to Mr Fox. Councillor Owens alleged that Councillor James was attempting to encourage the public to cast him as the bad guy and that his behaviour was disrespectful to the office of Mayor and bullying in tone. He said that Councillor James' underlying motivation was his absolute determination to get Mr Fox reinstated at all costs. He complained that Councillor Thomas had deliberately attempted to embarrass him by alleging that Councillor Owens had upset her by in turn alleging that she had made a Facebook post (a photograph of the Wales in Bloom award, of Mr Fox, and Councillors Matthews and Thomas captioned "the winning team") when it was evident that he had never alleged she had posted the photograph. He also alleged that Councillor Thomas brought up the emails about the hotel booking to embarrass him at the public meeting. He also said, "It is my understanding that the Clerk also has an issue with the hotel booking matter."
87. Towards the end of September 2017 Mr Fox decided to apply for the new TSO job that was advertised. Councillor John James became chair of the Finance Committee. The claimant says that this was awkward as Councillor James would delay in getting in touch with her about matters such as agendas, or not respond at all.
88. By 9 October 2017 Mr Egan's report had been received. On 24 October the claimant emailed Councillor Morris [536] saying that at a Civic Committee meeting held on 9 October, Councillor Owens brought the envelope containing the report to the meeting where its contents were not looked at or discussed. She explained it was agreed that Councillor Owens would request an executive summary be prepared and that Mr Egan attend to meet with the committee to go through this.
89. The notes taken by Mr Egan, as part of the complete grievance report, record the claimant stating she was seeking was clarification of her line management role and for the matters concerning the TSO's conduct and behaviour, together with the complaints from Councillor Theodoulou, investigated as allegations of gross misconduct. Councillor Theodoulou had told Mr Egan that he personally had asked for two alleged incidents of gross misconduct against Mr Fox to be investigated and that the Mayor had asked him to arrange an investigation of the actions of the TSO relating to tendering arrangements for the rendering of a building to assess whether financial regulations had been followed and whether the TSO had exceeded his level of authority.
90. Councillor John James told Mr Egan, in relation to the situation between the claimant and Mr Fox, that he did not think the disciplinary route was the right one and the focus should be on mediation. He said that he had rung Mr Fox on the morning of the arranged meeting to confirm arrangements and it was then Mr Fox had said he was unwell. He said he had not been intending to undermine the claimant's position as line manager. He admitted having said that it was necessary to "play things down the middle" and that was a reference to the breakdown in the relationship between the claimant and Mr Fox. He said that was partly due to too much email communication and that he was intending to be fair to both parties. He said the item was pulled from

the agenda about Mr Fox because arrangements were already in place for the meeting to try to achieve an informal resolution. Councillor James told Mr Egan that his comment about not knowing what way things were going was a reference to not knowing whether an informal resolution would be reached. He disputed saying that the claimant was falling out with members and said he had said she seemed to be at odds with an increasing amount of people. He also said that “having breached standing orders [in taking her grievance to the audit committee] the Town Clerk demonstrated to him a determination to dictate the terms of how her concerns should be managed as she had done so with her job evaluation in wishing to ignore the evaluation method the Town Council had used in the past.” Councillor Thomas met with Mr Egan to deliver a pre-prepared statement which said that she was cancelling the interview as she did not consider him or One Voice Wales to be independent.

91. Councillor John stated to Mr Egan that the TSO had been directly involved in the job evaluation process as it related to staff reporting directly to the TSO. He said that the claimant had understandably felt left out on a limb and that the Council should have engaged Carmarthenshire County Council to assist in the management of the job evaluation process. He said the Special Panel’s final recommendations that the TSO’s conduct should be treated as alleged gross misconduct was influenced by the evidence of a witness who subsequently declined to formalise what she had said. He also expressed his view that the TSO considered himself critical to the decision-making process and contributed to meetings with his own views but also occasionally implemented matters involving staffing and financial resources that were not fully supported by the Council. He said it was a source of friction. Councillor Owens said to Mr Egan that the TSO had been upset about the method of communication used to communicate with him about the issue of additional hours working and things had started to snowball from there.

92. An extraordinary Town Council meeting took place on 13 October 2017 [531-533]. The claimant requested the attendance of officers from the local police station to try to ensure the meeting proceeded more smoothly. The public attendees were given a guidance leaflet prepared by the claimant. It was convened to discuss a letter received from Mr Fox’s solicitors seeking Mr Fox’s reinstatement. Councillor Stephen James alleged that his family and other councillors had been subjected to intimidation by friends and family of Mr Fox. Councillor John alleged that he had been sworn at and that Councillor Mitchell had also been intimidated. Councillor Theodoulou proposed that Mr Fox’s solicitors should be told that any proceedings would be vigorously contested. Councillor Walpole proposed that the letter of resignation be rescinded, and Mr Fox reinstated. The claimant advised that the respondent could not rescind the letter as the resignation had come from Mr Fox and that the new role had been advertised with 17 applicants. She says that she was bombarded with lots of questions from Labour Councillors. Councillor Walpole’s proposal did not achieve a majority vote. Councillor Theodoulou’s proposal (as amended by Councillor John James) was then approved. The minutes record the Mayor referring to the problems caused by the issues surrounding the TSO’s resignation and appealing for the council to be united to enable it to carry out its functions. He said in evidence that he was concerned about the effect the rift between the Labour group and the Independent Councillors was having on the

Council's reputation. He says that aggression was being directed at Independent Councillors who were even accused of driving out Mr Fox because his wife was a Labour Councillor.

93. The next ordinary Town Council meeting then took place on 18 October 2017 [1042 – 1059]. Councillor Owens stated that the report from Mr Egan had been received and that Mr Egan would be attending to meet with members of the Civic Committee [1049]. The minutes also show continued bad feeling following on from the last meeting, with Councillor John reading out a personal statement of his views about potential misconduct and other Councillors expressing their disagreement with him.
94. The claimant says that life continued to be difficult for her in work as she was always anxious before every meeting worrying about what the Labour Councillors would say or do next to criticise her. She says that they would continue to “nit-pick” about things and that Mr Fox and others would also try to waste her working time by sending her numerous emails and unwarranted Freedom of Information requests. She says they were orchestrated as the communications would then be questioned by the Labour Councillors at the next meeting. Efforts to get Mr Fox appointed to the new TSO role continued. On 24 October 2017 Councillors Thomas, Linda Edwards, and Walpole emailed the claimant and Councillor Owens complaining about advice given by Councillor Owens to do with not shortlisting Mr Fox for the new job.
95. On 6 November 2017 Councillor Owens and Councillor John made further complaints to the Ombudsman against the Labour Councillors and about a press report in a local publication [540–541]. The claimant also received an email from a newspaper editor complaining about the way in which the claimant had handled his enquiries [544-566]. Councillor Owens told us that the journalist was a supporter of the Labour group and friendly with them.
96. At some point Mr Egan attended and met with the Civic Committee in relation to his report. The Tribunal does not have any information about what was said, although minutes of the subsequent Civic Committee meeting on 13 November [558-561] show that Mr Egan had produced a PowerPoint presentation which had been unanimously accepted by all members. Those subsequent minutes also refer to Counsellor Walpole having prepared minutes of the meeting with Mr Egan (which were not produced in these proceedings nor the PowerPoint). Councillor Owens also stated on 13 November that a grievance panel made up of himself, Councillor Hedley-Jones and Councillor Walpole was being set up. The minutes also say: “There was also a discussion in relation to the outstanding evaluation of the Clerk’s role. The Chairman indicated that in order for this to be progressed, the Town Council could either take on a formal SLA from Carmarthenshire County Council in order to formalise the evaluation or alternatively, One Voice Wales could be engaged. A quotation of £180 had been provided by Mr Egan for this to be undertaken and this would be carried out under the NALC/SLCC 2004 National Agreement.”
97. The minutes from 13 November also show that the situation regarding Mr Fox was rumbling on. There had been a complaint from Councillors Walpole, Thomas and

Edwards, alleging that Mr Fox had not been shortlisted, by a majority of the Civic Committee, due to him issuing proceedings. The members in attendance at Civic Committee meeting disagreed saying that various matters had been taken into consideration in not shortlisting Mr Fox including Mr Fox's assertion he could not work with Mr Theodoulou, and that Mr Fox would face disciplinary action were he to return.

98. At the Town Council meeting on 15 November 2017 Councillor Owens told members that the full report from Mr Egan was available for Council members to read in the office. That did not include the claimant. On 16 November Councillor Owens emailed Mr Egan to say [1470] that the full Council had approved his involvement as outlined in the proposals, namely clerk job evaluation, provision of policies, training on appraisals and attendance at grievance hearings. On 23 November 2017 the claimant was sent the summary findings and recommendations from Mr Egan's report [566-569]. She was not sent the whole report. The covering letter [564-565] said that the report containing conclusions and recommendations had been considered by the Civic Committee and endorsed as a response to the claimant's grievance. The letter said the Grievance Panel needed to meet with her to receive her views on the response on 30 November 2017. The letter said that after the meeting she would receive a letter with the outcome of the Panel's deliberations.
99. Mr Egan's summary findings included that Councillor John James had been attempting to bring the claimant and Mr Fox round a table with a view to seeking a mediated solution, but that the open dialogue that Councillor James appeared to have with Mr Fox resulted in Mr Fox alleging complaints against the claimant. Mr Egan said there were inherent difficulties in Councillors engaging directly with employees outside of the remit of normal line management and it would be sensible to have a protocol in place. It was said there were clear examples of the TSO taking an unacceptable approach towards the claimant in day-to-day management matters. Mr Egan said that Councillor James' other option would have been to tell the claimant to deal with Mr Fox herself through line management arrangements, but that this might have been problematic given the absence of a disciplinary policy to follow. He found it was understandable for the claimant to decide not to take part in the joint meeting as Councillor James had said she was facing complaints, and anyone would want to have the opportunity to study them in advance and take advice. Mr Egan concluded that Councillor James had good intentions in seeking a mediated solution but the events which took place produced a complex situation which even an experienced manager of staff would find difficult to deal with and the results produced uncertainty about how to take matters forward, resulting in frustration in all round.
100. Mr Egan recommended a set of policies that the respondent should introduce and an employee appraisal scheme. He also said the claimant's exclusion from the job evaluation process which affected her staff would appear difficult to justify. His view was there was no compulsion on the respondent to agree to the claimant's request to use the NALC Agreement but that it was essential an employee was fully aware of the process being used, to receive the detailed results, and have the opportunity to appeal. Mr Egan recorded that Councillor James had denied saying the claimant was falling out

with all members of the Council, and that what he had said was that the claimant was not pursuing her concerns in the right way.

101. The claimant attended the grievance panel meeting on 30 November 2017 with Councillors Owens, Hedley-Jones, Walpole and Mr Egan. Prior to the meeting Mr Egan provided an updated consultancy proposal [837-838] in respect of grading the claimant's post, providing a set of core employment policies and training on them, and assistance with the grievance hearing and appeal. The minutes for 30 November at [574 – 576] show Councillor Owens saying the recommendations had been accepted by the Civic Committee, the purpose of the meeting was to seek a response from the claimant with the objective of resolving the grievance, and "he added that in addition to the approved recommendations contained in the investigation report, it had also been agreed that One Voice Wales undertake a job evaluation of her post using the 2004 National Agreement on Pay. The Town Clerk would receive a copy of the report of the job evaluation."
102. The claimant asked to receive the full grievance report. She was told that this would need to be agreed with the Civic Committee. The claimant also disputed some of the report's findings, saying that it was she who had pushed for a meeting, and that she considered that Councillor James had been trying to get rid of her and replace her with the TSO. She expressed her concern that she was subject to ongoing hostility by those who continued to support Mr Fox in relation to his job advert for the new TSO post. She said that her letter of grievance of 12 March had been fuelled by pure exasperation with trying to achieve resolution and her frustration with the way Councillor James was handling the matter.
103. The notes record Councillor Owens saying he acknowledged the claimant's concerns but hoped a resolution of the grievance might pave the way for more effective working within the Council. The claimant said she remained concerned about the hostility by some Councillors towards her.
104. The notes also say that the claimant was told the job evaluation would be undertaken in early January 2018. The claimant said she considered the result of the evaluation should be backdated to 2015. She was told the Council had agreed any backdating would be from August 2017 when her new job description was approved. The claimant said she would appeal this as she was not responsible for the delay. The claimant says that she asked for amendments to be made to Mr Egan's minutes of the meetings and that she did not receive an amended version. We do not know what amendments the claimant sought.
105. On 11 December 2017 [589] the claimant emailed Mr Egan with some documents. She said, "due to the Council's insistence up until recently that the evaluation of the Town Clerk's post should be carried out in accordance with Carmarthenshire County Council's structure, I forwarded, as instructed, a final agreed version of my job description to Mr Paul Thomas at the County Council during August 2017, but never heard anything further." She said that at the recent meeting Councillor Hedley-Jones had said he had been prevented from providing a copy of the comparative evaluation undertaken

previously by Councillor John James. She said she wanted to have sight of it. A Civic Governance meeting also took place that day. Councillor Owens said that he and the claimant were to initially consider the draft policies received from Mr Egan. The meeting notes record that there was a “full and frank” discussion between members about events and relationships over recent months and that it was agreed that matters should be put aside in order to make progress, albeit there were certain issues still to be resolved. Councillor Owens directed that future issues should be directed via the Clerk as Proper Officer. The minutes also include non-Labour members expressing concerns about confidentiality and trust being broken on a number of occasions, especially relating to Mr Fox’s resignation and there was a discussion about the need for all members to work together [583].

106. On 21 December 2017 Mr Fox sent the claimant an email (in relation to an exchange about access to his shortlisting information) which said, “As I was heavily involved in the setting of the criteria for the position of TSO my training plan was fulfilled to suit the position of the role, I also had a large input to the clerks role too.”
107. Over the months since Mr Fox’s resignation, the claimant was told by various individuals of a potential previous plot by some Labour Councillors to oust her and replace her with Mr Fox. The claimant had referred to it in her grievance meeting. The claimant learned that Councillor Mitchell had told Councillor John back in May 2017 about being told by Mr Fox that the claimant and Ms Loudon would not have their jobs for long. The claimant also learned (although not immediately at the time) of what Mr Fox had said to Councillor Owens on his resignation about being told to “get ready to take over from the Clerk.” At some point Councillor John (a retired police officer) told the claimant he was considering whether it was a matter that should be referred to the police. In January 2018 Councillor John gathered some information. Councillor Hedley-Jones told him of a conversation he had previously had with Councillor Ken Edwards where Councillor Hedley-Jones had said after a committee meeting that if things continued as they were, they were in danger of losing their Clerk. He said Councillor Edwards’ response had been “well, would that be a bad thing?” and that they already had a ready replacement in Lee Fox [596]. From the information before the Tribunal, it appears that ultimately Councillor John decided not to take the matter to the police.
108. On 16 January 2018 [1486] Mr Egan asked the claimant to send him some information to help with the pay assessment. She did so on 21 January 2018 [1485]. The claimant says that meetings and committees continued to be difficult and upsetting. On 29 January 2018 Mr Fox sent the claimant (and many other individuals internal and external to the Council) an email [1497] with a complaint about an issue that had arisen with the RNLI where both he and Councillor Mitchell volunteered. It apparently related to a comment allegedly made by Councillor Mitchell as to whether Mr Fox had been out with the lifeboats when previously off work sick. It would appear to have caused a substantial amount of bad feeling and in turn an added layer of dispute as to whether the alleged comment could be referred to or relied upon elsewhere if made in camera at a council meeting. The email accused the claimant of being unprofessional in not placing an actual signature on a letter and political bias in acting on behalf of a councillor “in the independent camp” without the authority of full council. The claimant

says that in mid-February Councillor Theodoulou told her she needed to watch her back and she was top of the Labour Councillors' "hit list" [617].

109. On 5 February 2018 Mr Egan told the claimant that he had sent his pay evaluation outcome to Councillor Owens. The report is at [598 – 608]. Mr Egan's evaluation was that the post should be graded on LC3 (Points 48 – 51) equating to a salary of £42899 to £46036 a year pro rata. He said the two reasonable options for the respondent would be that or to determine a single point within the range subject to annual review. He also said the respondent would need to consider whether the claimant's grade should be backdated beyond 10 July 2017. Mr Egan's letter to Councillor Owens of 5 February 2018 is at [1495]. He says, "please let me know if you wish me to make any changes." Mr Egan said in evidence that any scope for changes would in fact be limited to correcting, for example, factual information underlying the assessment that he had made. The claimant did not receive Mr Egan's report at the time (and indeed remained without his earlier full grievance report). The claimant asked when she would be given a copy of the pay evaluation report and Councillor Owens told her that he was intending to discuss it with the committee chairs before reverting to her.
110. On 26 February 2018 Councillor James wrote to the claimant on behalf of the "Labour Group." The email referred to the minutes of the closed section of the extraordinary general meeting of 13 October 2017, which had been presented at the full council meeting on 21 February 2018. The email said it was unfortunate that they had not been given notice that the minutes were to be the subject of consideration as they would have drawn inaccuracies to the claimant's attention at the time. The email said that the decision to present the minutes at the end of a meeting which had already overrun was not good practice. The email said that Councillor Lisa Mitchell's "comments re Mr Lee Fox at that meeting have been absurdly sanitised to the point of effective misrepresentation." It was said that Councillor Mitchell had accused Mr Fox of being out on the boat with the RNLI when on sick leave. It said the Council could be in danger of becoming embroiled in further legal action at a future date. It also said, "the adverse comments made by Councillor Theodoulou and Cllr Stephen James regarding inappropriate and potentially criminal behaviour by Mr Fox at the same meeting appear to have been omitted entirely which, once again, rather argues against the accuracy of the minutes." The email also complained that agendas for the last 3 council meetings lacked the necessary detail. It also said that presenting the minutes some four months after the meeting was not "an acceptable standard of competence displayed both by yourself and your staff." It also said that the current practice of removing minutes from the website was unwise, likely to be in breach of the law, and could be a serious criminal offence if it involved retrospective manipulation of minutes.
111. The claimant found the allegations to be very hurtful and distressing. She forwarded the correspondence on to Councillors Owens, John and Theodoulou stating that it showed blind support for Mr Fox and that the Labour group members clearly had a completely different recollection of events regarding 13 October. She said she felt unable to continue tolerating the obvious and unfounded harassment from Labour members, which seemed to be intensifying rather than improving and that it was having an

adverse effect on her health and wellbeing. She asked to discuss it with them and Councillors Owens and Theodoulou met with her the next morning.

112. The claimant also told Councillor John [617] that she wanted to take action herself as she felt she continued to be victimised by Councillor John James and other Labour members, as they perceived her to be responsible for the demise of Mr Fox as a result of her original grievance. She asked Councillor John for copies of the information he had previously been collating. She said the time had come to take action as relationships could not get worse than they already were. The claimant says that similar allegations also seem to be made against non-Labour Councillors such as Councillor Geraint Davies.
113. The Chairs Committee referred the email/letter from the Labour group to the Audit Committee which came before Councillor Theodoulou, Councillor Walpole (a Labour Councillor) and Councillor Freeman on 1 March 2018. The claimant was called to the meeting with her note book from the Council meeting. The claimant's notes were examined and found to have no inconsistency compared with the minutes. She said she knew nothing about the removal of minutes from the Council website. The minute clerk was also called, and his notes examined, although he was new in post and his minutes contained less detail than within the claimant's. Councillor John James was called before the Audit Committee and was asked for information on what evidence or examples had led to his accusations. He said that he had sent the letter on behalf of the Labour Group and did not personally have the information requested. It was agreed that he would have time to obtain this and the committee would meet again on 13 March. On 12 March Councillor James sent Councillor Theodoulou an email stating that he would not be attending and that "The group feels that the information presented is enough at this time whilst taking into consideration it considers the Audit committee is the most inappropriate body to deal with this issue."
114. The Audit Committee concluded that there appeared to be no evidence to substantiate the accusations made by the Labour Group regarding the sanitisation of minutes and removing minutes from the website. The Audit Committee concluded that in relation to the other complaints, that the minutes and the agendas had not been treated any differently than what had been common practice. It noted that approval of the minutes had previously been deferred by the Mayor because other meetings had overrun.
115. The claimant was increasingly upset and asked Councillor Owens if she could take a week's leave for some respite which was granted. She then visited her GP who signed her off work on 12 March 2018. The Audit Committee prepared a report that was submitted to the Chairs Committee on 23 March [627 – 633]. It records the claimant saying that she saw it as part of a campaign of bullying by some Labour Councillors, that she had had enough and was going to take it all the way.
116. In April 2018 the claimant sought some assistance from the Association of Local Council Clerks (ALCC) [647]. The claimant continued on sickness absence and Councillor Owens would periodically visit the claimant. The claimant says that he was not able to reassure her that the situation in the Council was improving and that he

would talk about ongoing problems there. For example, when Councillor John was installed as Mayor in May 2018, she was told that the Labour Councillors had walked out in protests at comments made. The claimant was also aware of what was happening from social media. In late April 2018 Councillor Owens visited the claimant so that they could complete a stress questionnaire together [668 – 670]. On 26 April Councillors Owens and John wrote to the Ombudsman complaining about Councillor John James' email and stating that the claimant maintained it was part of an ongoing campaign of harassment by Labour Councillors and had a serious detrimental impact on her health [671-672]. The claimant was also referred to occupational health.

117. On 23 May 2018 the claimant asked ALCC what action they would take in her behalf [675]. She was told they could advise her on her actions such as a grievance, a code of conduct complaint, assistance with a return to work, but that they could not do much about individual councillors. They had also said that Mr Egan could not release the pay evaluation to them as it had to come from the Council. On two occasions Councillor Owens asked the claimant to do some work completing minutes [659].
118. In April 2018 one of the Independent Councillors resigned referring to personal attacks having a direct impact on him and his family. This triggered a by-election and in May the claimant learned that the Labour group's candidate was Mr Fox. Politically the situation remained incredibly divisive. At the end of his term [1132-1139] as Mayor, Councillor Owens spoke in impassioned terms about the divisions, and the conduct of the wider Labour membership on Facebook which he said had been referred to the police. He said he considered the Labour Councillors had not done enough to control it. He talked about the impact that personal attacks on him had had on him and his family. Councillor John was elected in as the next Mayor (opposed by some Labour Councillors but they lacked the majority to obstruct the appointment). Councillor John read out an acceptance speech that again was highly critical and as he read it out various Labour Councillors walked out of the meeting. By 11 June 2018 [1213] the Labour Councillors were refusing to attend committee meetings for the foreseeable future saying it was not safe to do so in the face of intimidation.
119. On 19 June 2018 the Ombudsman declined to investigate the complaint against Councillor James [689-692]. The Ombudsman said that the claimant was not subject to the Code of Conduct and that it was an employment matter outside of the Ombudsman's jurisdiction. The Ombudsman said that the allegations in the email should have been addressed at a meeting rather than writing to the Clerk but that this was not itself a breach of the Code. The Ombudsman also said that whilst the claimant may have been upset or taken offence with a complaint about her performance, the Ombudsman did not consider this evidence of failing to treat her with respect or bullying behaviour. The Ombudsman did express concern at the tone of the language in the letter and said that Councillor James would be written to so that he would be mindful in the future of the way in which his communications may be interpreted by others.
120. The claimant decided to submit her own Ombudsman complaint [693 – 704]. She says she decided to do so when she learned ALCC could not assist her and also it was one of the steps ALCC had suggested. On 29 June she submitted a code of conduct

complaint against all 8 Labour Councillors to the Public Services Ombudsman for Wales. The claimant said in evidence that she hoped the Ombudsman would investigate her complaints and that whilst she hoped it would personally be of assistance to her, she also strongly believed that there was a public interest element as the respondent is a public body and these were publicly elected Councillors. The claimant sent her complaint on 29 June 2018 [693 – 704]. The claimant set out a history of events and said that it was impossible for her to return to work while the issues of bullying and harassment had not been addressed. She alleged breach of paragraphs 4(b) and (c) of the Code in that the Councillors had failed to show respect and consideration for her on many occasions and she had been subjected to bullying and harassing behaviour over a lengthy period. She also alleged a breach of paragraph 7(a) which says a councillor must not “In your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage.” The claimant alleged Councillor James was trying to create a disadvantage for her in forcing her out and create an advantage for Mr Fox in turn. The claimant also alleged that Councillor James was in breach of paragraph 6(1)(a) in bringing the Council into disrepute in respect of the meeting on 21 September 2017.

121. On 23 August 2018 the claimant received a letter to say her complaints were not going to be investigated [708 – 731]. The Ombudsman said that the allegations made by the claimant were serious and indicated a significant concern about the relationship between the claimant and the Councillors but that the Ombudsman was not persuaded the issues were code of conduct matters, and he could not consider employment matters. The claimant was advised to contact Acas for advice on how to move forward.
122. In the Ombudsman’s decisions the earlier conclusions about the letter of 26 February were repeated. It was said in relation to 21 September 2017 that the Labour members challenged actions undertaken by the claimant in her role as Clerk, and the questions may have been difficult, the Ombudsman was not persuaded there was evidence of a breach of the Code. Likewise it was said a cooling of the relationship between the claimant and Councillors was not a breach. The Ombudsman was not satisfied there was sufficient evidence of a conspiracy to remove the claimant and said it would be a disproportionate use of resources to investigate the point further. The Ombudsman said that efforts to arrange the extraordinary meeting would appear to have been an attempt to prevent a potential legal situation for the Council, and whilst the proposal may not have been appropriate, the Ombudsman was not persuaded there was evidence to suggest the motive was sinister.
123. In relation to Councillor Linda Edwards, the Ombudsman said that the comment in the June email to Mr Fox was unpleasant and reminded Councillor Edwards that as a member of the council she was the claimant’s employer and should consider carefully her language. Councillor Edwards was also reminded of the need to raise any concerns about the claimant’s work through proper processes. In respect of the 30 August, the Ombudsman noted that Councillor Edwards denied that the incident took place. The Ombudsman noted that the claimant had said it was witnessed by another member of staff but said that due to the time that had elapsed it was unlikely the Ombudsman

would be able to make a finding. An investigation was therefore said to be disproportionate. In respect of Councillor Morris, the Ombudsman said it was impolite for her not to confirm she had received the correct papers, but it was not a breach of the Code. Turning to Councillor Matthews, the Ombudsman said there was a dispute of recollections as to whether the claimant was aware of the provisional hotel booking but that the minutes did not suggest Councillor Matthews had actually called the claimant a liar.

124. Following the Ombudsman conclusion, the respondent referred the claimant to occupational health [735] saying they wanted to support the claimant back to work and to put in place strategies to help. The referral said the three Committee Chairs would provide any support necessary and the Monitoring Officer would be working with the Councillors on Code of Conduct and behaviours in the workplace, together with HR advice and support. The occupational therapist produced a report dated 6 September 2018 [738] following 6 appointments. She reported that the claimant was still experiencing significant stress and uncertainty in relation to work which had escalated following the Ombudsman outcome. The therapist said the claimant was fearful and anxious about returning to what she perceived to be a hostile work environment which had not changed and was not being addressed. The therapist said the claimant had found the support helpful and if the respondent wished to support additional sessions she would advise re-referral to the service.
125. In September 2018 the claimant was moved to half pay. On 16 September she emailed Councillor Owens expressing concern about being asked to sign documents when he visited. She asked to not be contacted on work related matters until her health had improved [746]. Councillor Owens replied to say it was a “one off” request and had not been intended to make the claimant feel unwell. It was a form about pay for a member of staff and Councillor Owens says that he wanted to make sure the staff member was paid properly and no one else knew how to do it as it was within the claimant’s remit.
126. Sometime in September the claimant decided to take some legal advice and met with her solicitor. She then decided to write to the Ombudsman to ask if there could be a review of her complaints as there was no right of appeal.
127. On 24 September 2018 the occupational health physician provided a report [749 – 750]. This noted that the claimant was waiting a further response from the Ombudsman and said the claimant wanted to receive the final report from the Ombudsman before contemplating a return to work as his comments may influence management changes of a positive nature. The doctor said: “There appears to be an impasse at present as you mention a positive approach to arrangements enabling Mrs Carroll-Cliffe’s return to work whilst she perceives that a return to work would be detrimental to her psychological health due to lack of managerial change. May I suggest that mediation might be a way forward when all concerns can be openly expressed to the satisfaction of all concerned. Then, I believe, Mrs Carroll-Cliffe would very likely return to work.”
128. The Ombudsman refused to conduct a review. On 28 September 2018 the claimant’s solicitor wrote to Councillor John [751-752]. The letter summarised the claimant’s

concerns and suggested a without prejudice round table meeting. The letter also requested a copy of Mr Egan's job evaluation report. Councillor Owens (as chair of the Civic Committee) responded in a letter dated 18 October 2018 suggesting a meeting with him, Councillor John and a HR manager from Carmarthenshire County Council, who were by then providing HR support under a formal Service Level Agreement. He proposed a date of 25 October 2018 [755]. The letter did not reach the claimant's solicitor until 22 October 2018. The solicitor was unable to make the meeting given the limited notice and suggested 30 October 2018 [760] but in Cardiff not Carmarthen. He also suggested a short telephone call on the 25 October. The solicitor said that ahead of the meeting the claimant wanted to see Mr Egan's report about her job role. The respondent was unable to make 30 October. Councillor Owens also said that the remit of the meeting would not include reference to the job description and evaluation [759]. He further said "However as Clerk she is fully aware of the Council's policy on job evaluation and that the exercise carried out by One Voice Wales was for comparative purposes only and not binding on the Council nor the Clerk. It was only intended to enable further discussion to take place on the matter and which will be progressed on her return to work." The claimant's solicitor said that the report should be provided if the conference call was to go ahead. It was then emailed through [A111-A112]. During the telephone call the claimant was asked to set out in writing what would help facilitate a return to work.

129. On 14 November 2018 the claimant's solicitor sent two further letters to the respondent. The first is at [762 - 765]. It said that the claimant's particular concern was that if the respondent had no ability to sanction individual Councillors, and if there was no means to intervene in unprofessional behaviours then how could the claimant do her role properly. The letter set out 17 steps it was said if were undertaken together with assurances the matters would be monitored and promptly acted upon, the claimant felt she may be able to move towards a return to work. These were, in short form:

- (i) Continued referral to occupational health for guidance on how to properly manage the claimant back into her role;
- (ii) Written acknowledgment that Mr Fox's behaviour was sufficient that disciplinary action would have been taken against him (had he not resigned);
- (iii) A full copy of Mr Egan's grievance report and the opportunity to potentially request further clarification to which the respondent would be required to respond;
- (iv) Written confirmation the respondent would enforce a conduct policy for members of the public during council meetings and the meeting chair would take appropriate action to evict a member of the public in breach;
- (v) Weekly meetings with the Committee Chairs;
- (vi) An internal Councillor Code of Conduct in relation to interaction with staff and an agreement that breaches would be addressed at Council meetings;
- (vii) Copies of all responses provided by Councillors to the Ombudsman be given to the claimant. It was said "Our client is aware from the Ombudsman that there have been some outright denials of events";

- (viii) A written explanation why the job evaluation report had been withheld;
 - (ix) Carmarthenshire County Council to provide a copy of the previous evaluation;
 - (x) A formal letter from Carmarthenshire County Council about the earlier evaluation detailing the terms of engagement and persons involved there and in the respondent;
 - (xi) To see the Job Evaluation Committee's comparative evaluation;
 - (xii) Individual written explanations from the Job Evaluation Committee detailing why the earlier evaluation was withheld;
 - (xiii) Individual written explanations from the Job Evaluation Committee detailing why the claimant had been excluded from the entire staff evaluation process whilst the TSO was in attendance at various meetings including "having a large input into the clerk's role";
 - (xiv) A written explanation from Councillor James why the email of 26 February was sent to the claimant and why he did not go to the Audit Committee meeting on 13 March;
 - (xv) Full written explanation from the Labour group of their collaboration with a member of the press from Llanelli Online "resulting in significant harassment of our client through numerous malicious emails";
 - (xvi) Written explanation from Councillor James as to why there was a campaign of hostility directed at the claimant. It was said: "This has been admitted to by Labour Councillor Bob Walpole on 30th November 2017 who confirmed that it stemmed from an email being sent by our client, on behalf of the Mayor, regarding the use of Council facilities for Labour Group meetings. It was also said "Our client then requests the opportunity, if necessary, to scrutinise this explanation with Councillor James in the presence of the full Town Council";
 - (xvii) Written explanation as to why the claimant was going to be forced out of her position and replaced by Mr Fox.
130. The second letter [766 – 768] sought confirmation that the pay evaluation would be adopted and backdated to June 2015. It was said: "We would ask that her contract be formally varied to reflect this new position and that arrears are paid to her "grossed up" to place our client in the same position as she would otherwise have been in, had the increase been properly applied for the purposes of tax."
131. Responses to the claimant's correspondence had to go before the full Council. On 13 December 2018 they authorised the response at [779 – 780] of the same date. The letter said, in effect, that the respondent had thought the parties were working towards a round table meeting about supporting the claimant in a return to work. It said the letter setting out the "steps" was a helpful start but that they did not consider written communication alone was the way to resolve the matter. It was said that the respondent could and would offer support including:
- The Council had maintained contact during the claimant's absence;
 - Councillor Owens had made welfare visits;

- There had been two referrals to occupational health including to get advice about a potential return to work;
 - A phased return to work;
 - Part time working;
 - Home working;
 - Mediation;
 - Regular meetings with 3 Committee Chairs who were keen to support the claimant to return;
 - Monitoring Officer to provide training to all Councillors on the Code of Conduct and behavioural standards;
 - Human Resources Service Level Agreement set up to provide HR advice to the claimant going forward as Clerk;
 - Code of Conduct issued by Ombudsman had been approved at the Town Council meeting in November 2018;
 - Model Protocol on Member/Officer Relations already approved.
132. It was said that it was intended this would form the basis of discussions and the claimant would have the opportunity to put her own suggestions forward. In relation to the job evaluation, it was said they “will be happy to open discussions with Melanie via our usual employment procedures.” The letter said the respondent was intending to write to the claimant to arrange a meeting.
133. The claimant’s solicitors replied on 21 December 2018 [781-782]. The letter asked again for the full grievance report and the earlier job evaluation paperwork. It questioned what the last response in relation to the claimant’s pay and “usual employment procedures” meant, saying it was an evasive response and seemed to be dependent on a return to work. The letter said that to avoid any ambiguity going forward a response on all the individual points would be sensible.
134. A further Town Council meeting took place on 2 January 2019 [783 – 785]. Councillor Theodoulou started working on who in the Council could respond to what. Councillor Walpole was to liaise with the Labour party members to formulate their response on matters involving their group or individual councillors. The responses were then to come back to full council. A vote was passed that a response be made to as many of the conditions in the letter as possible in a positive way and to encourage the claimant to return to work. Also the Labour group were to meet and provide a response to Councillor Theodoulou and the other Committee Chairs. A further meeting took place on 16 January 2019 [786 – 790]. A draft response to the claimant’s points was circulated, discussed and voted upon. Two of the Labour Councillors, Councillor Morris and Councillor Thomas had already left by this point. On some of the responses the various members declared an interest and then abstained from voting.

135. On 21 January 2019 the claimant's solicitors sent a further letter about delay [791-792]. Councillor Theodoulou then provided the respondent's response on 29 January 2019 [793- 795]. The responses were (again in short form):

(i) they would continue to engage with occupational health where required in order to obtain support and advice on a return to work. They already had an OH report which they were intending to discuss with the claimant when they met with her;

(ii) "Lee Fox had been found to have treated the Town Clerk with disrespect and an aggressive approach by an independent investigation by One Voice Wales. It is impossible and inappropriate to speculate on what would have happened to Mr Fox had he not resigned";

(iii) The grievance report was being sent by post but without the individual statements as they were confidential. It was said "We will be prepared to release these if you gain authorisation from the individuals for us to do so";

(iv) They would enforce a conduct policy on members of the public attending meetings;

(v) Weekly meetings with the three Chairs was reaffirmed;

(vi) The Model Protocol had been adopted in respect of internal business and council staff;

(vii) "We cannot furnish you with copies of responses provided by Councillors concerned, to the Public Services Ombudsman for Wales as the Council has not received these. Such statements are not included in any information sent to the Council by the Ombudsman";

(viii) "The full One Voice Wales report was made available to the Council in February 2018. This did not leave sufficient time for the committee to consider the report in detail or for the Council to receive full copies prior to the Town Clerk's absence which began at the beginning of March. The Chair of Governance considered there was no need for an immediate approach to deal with their report which was requested for comparative purposes only and when it was made clear that it would not be binding on the Council or the Town Clerk";

(ix) "no report exists in the office of the Town Council and the advice given to the Town Council by Carmarthenshire County Council (CCC) was, I understand, verbal";

(x) "To our knowledge there are no written terms of engagement with CCC. The person involved from the County Council was Paul Thomas... The lead person from the Town Council was Councillor John James";

(xi) We are not aware of a written comparative between the Council and the NALC/SLCC evaluations;

(xii) We are not aware of the existence of a CCC evaluation or comparative evaluation, so it was not possible to furnish something that did not exist;

(xiii) The committee took the view that the job evaluation of other staff may have had an influence on the Town Clerk's evaluation at the time she was seeking a review of her grade, and this was why she was not involved in discussions. "We can find no record of Lee Fox's involvement with the evaluation panel and therefore cannot comment on this";

(xiv) "The email from Cllr John James was sent on behalf of Labour members and was not agreed by or endorsed by the Town Council. The Council was not involved in any decision-making process or resolution in relation to this and your client is therefore advised to approach Cllr John James and the Labour Group directly for an explanation. However, the Town Council did become involved after Melanie raised a grievance on receipt of that email and immediately referred the grievance to the Audit and Resolutions Committee who investigated the issue and found no evidence to support the substantive complaints in the email. The Local Government Act prevents Councillors taking action of a disciplinary nature against other councillors. The only recourse available to the Council was to refer the matter to the Ombudsman which the Chair of Governance and Personnel and the Mayor duly did as part of their duty of care."

(xv) The Town Council was not involved in any decision making in relation to this matter and again it was suggested the claimant seek an explanation directly from the Labour Group. They also confirmed they had made a report to the press regulator;

(xvi) "The Town Council as the Town Clerk's employer was not involved in this issue in any way. Please take this up with the Labour Group if you need further information";

(xvii) "We can assure you that there is no Council resolution to this effect. As far as we are aware there has been no involvement in anything of this nature by the Council as your client's employer. If, as stated, the Town Clerk has evidence of any individual or individuals making such a statement she should take this up directly with them."

136. On 1 February 2019 the respondent sent the claimant a copy of Mr Egan's grievance report without the witness summaries (the claimant only had sight of the latter during these proceedings). On 5 February 2019 the respondent also wrote to the claimant to try to arrange a meeting [796-797]. On 11 February 2019 the claimant wrote resigning with immediate effect [A78-82]. The letter says her resignation was in response to a series of occurrences culminating in the letter received by her solicitor on 30 January 2019 and receipt of the hard copy of Mr Egan's grievance report on 1 February 2019. We return to what it says about the claimant's reasons for resigning in our analysis of the claimant's constructive unfair dismissal claim below.

The relevant legal principles

Protected Disclosure

137. Under section 43A Employment Rights Act 1996 (“ERA”), a worker makes a protected disclosure in certain circumstances. To be a protected disclosure, it must be a qualifying disclosure. A qualifying disclosure must fall within section 43B ERA and also must be made in accordance with any of sections 43C to 43H. Section 43B says:

“(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.”

138. Section 43C provides:

“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

(b) where the worker reasonably believes that the relevant failure relates solely or mainly to

(i) the conduct of a person other than his employer, or

(ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

139. Section 43F provides that a disclosure can be a qualifying disclosure if made to a prescribed person and the worker reasonably believes that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and that the information disclosed, and any allegation contained within it, are substantially true.

140. There are therefore a number of requirements before a disclosure is a qualifying disclosure. First, the disclosure must be of information capable of tending to show one or more of the types of wrongdoing set out at Section 43B. In order to be such a disclosure *“It has to have sufficient factual content and specificity such that it is capable of tending to show one of the matters in subsection (1)”* (Kilraine v London Borough of Wandsworth [2018] ICR 185). Determining that is a matter

for evaluative judgment by the Tribunal in light of all of the facts of the case. The question is whether, taking into account the evidence as to context, the information is “capable” of satisfying the other requirements of the section i.e., could a worker reasonably believe that it tended to show one of the specified matters (Twist v DX Limited UKEAT0030/20).

141. Second, the worker must believe the disclosure tends to show one of more of the listed wrongdoings. Third, if the worker does hold such a belief it must be reasonably held. Here, the worker does not have to show that the information did in fact disclose wrongdoing of the particular kind relied upon. It is enough if the worker reasonably believes that the information tends to show this to be the case. A belief may be reasonable even if it is ultimately wrong. It was said in Kilraine that this assessment is closely aligned with the first condition and that: *“if the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable to tending to show that listed matter, it is likely that his belief will be a reasonable belief.”*
142. Fourth the worker must believe that the disclosure is made in the public interest. Fifth, if the worker does hold such a belief, it must be reasonably held. The focus is on whether the worker believes the disclosure is in the public interest (not the reasons why the worker believes that to be so). The worker must have a genuine and reasonable belief that the disclosure is in the public interest but that does not have to be the worker’s predominant motive for making disclosures: Chesterton Global Ltd v Nuromhammed [2018 ICR 731]. In particular it was said *“I am inclined to think that the belief does not in fact have to form any part of the worker’s motivation – the phrase “in the belief” is not the same as “motivated by the belief”; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.”*
143. In Chesterton it was also said that there was no value in seeking to provide a general gloss on the phrase “in the public interest” but that the legislative history behind the introduction of the condition establishes that the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest. The question is to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but relevant factors may include:
 - (a) the numbers in the group whose interests the disclosure served
 - (b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed;
 - (c) the nature of the wrongdoing disclosed;
 - (d) the identity of the alleged wrongdoer.
144. It was also said that the broad intent behind the legislation is that workers making disclosures in the context of private workplace disputes should not attract the statutory protection accorded to whistleblowers. However, there may also be cases where the disclosure is of a matter that relates to an interest that is personal in character but there are nevertheless features of the case that make it reasonable to regard the disclosure as being in the public interest as well as in

the personal interest of the worker. The question is to be answered by the Tribunal on a consideration of all the circumstances of the particular case.

145. It was said in Dobbie v Paula Felton t/a Feltons Solicitors UKEAT/0130/20/00 that “*Generally, workers blow the whistle to draw attention to wrongdoing. That is often an important component of why in making the disclosure they are acting in the public interest.*” In Simpson v Cantor Fitzgerald Europe [2020] EWCA Civ 1601 Bean LJ drew a distinction between the claimant making disclosures about being deprived of commission he thought was rightfully his (not a protected disclosure) as opposed to making a disclosure about commission containing information which in the individual’s actual and reasonable belief tended to show malpractice such as the commission of a regulatory offence (which if established was likely to have met the public interest test).
146. The Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. The Tribunal must recognise that there may be more than one reasonable view as to whether a particular disclosure was in the public interest. Sixth, the disclosure has to be made to an appropriate person.

Whistleblowing/ Protected Disclosure detriment

147. Under Section 47B(1) a worker has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. Under section 47B(2) the section does not apply where the detriment in question amounts to a dismissal within the meaning of Part X (because dismissals are governed by Section 103A within Part X ERA).
148. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment (see Jesudason v Alder Hey Children’s NHS Foundation Trust [2020] EWCA Civ 713 applying Derbyshire v St Helens MBC [2007] UKHL 16 and Shamoon v Chief Constable of Ulster Constabulary [2003] ICR 33.)
149. There must be a link between the protected disclosure or disclosures and the act (or failure to act) which results in the detriment. Section 47B requires that the act should be “on the ground that” the worker has made the protected disclosure. In Manchester NHS Trust v Fecitt [2011] EWCA 1190 it was said that “*section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer’s treatment of the whistleblower.*” This is a “reason why” test. The Tribunal has to look at why (consciously or unconsciously) the decision maker acted as he or she did. It was said in Jesudason that:

“Liability is not, therefore, established by the claimant showing that but for the protected disclosure, the employer would not have committed the relevant act which gives rise to a detriment. If the employer can show that the reason he took the action which caused the detriment had nothing to do with the making of the protected disclosures, or that this was only a trivial factor in his reasoning, he will not be liable under Section 47B.”

Protected disclosure constructive dismissal

150. Section 103A ERA provides:

“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 a protected disclosure.”

151. When asking what was the reason or principal reason for a dismissal it is again a “reason why” question. In Price v Surrey County Council and the Governing Body of Wood Street School [2011] UKEAT/0450/10/SM it was said:

“Thus it is the “making” of the protected disclosure which is the focus of attention, and which must be the principal reason for the dismissal...In this case, by contrast, Mrs Price’s forced resignation came about, not because of the making of her complaint as such, but because of the inadequacy in one important respect of the authorities’ response to it.”

152. In a constructive dismissal protected disclosure case it is important to remember that the focus is on the employer’s reasons for their conduct and not the employee’s reaction to that conduct. In Salisbury NHS Foundation Trust v Wyeth UKEAT/0061/15/JOJ the Employment Appeal Tribunal applied Berriman v Delabole Slate Ltd [1985] ICR 546 CA and said:

“In such a case, the ET will have identified the fundamental breaches of contract that caused the employee to resign in circumstances in which she was entitled to claim to have been constructively dismissed. Where no reason capable of being fair for section 98 purposes has been established by the employer, that constructive dismissal will be unfair. Where, however, the reason remains in issue because there is a dispute as to whether it was such as to render the dismissal automatically unfair, the ET then has to ask what was the reason why the Respondent behaved in the way that gave rise to the fundamental breaches of contract? The Claimant’s perception, although relevant to the issue why she left her employer (her acceptance of the repudiatory breach), does not answer that question.”

Protected disclosure - burden of proof

153. Where a claimant has established that there has been a protected disclosure and she has suffered a detriment, it is for the employer to show that the detriment was not because of the disclosure; that is, that the disclosure did not materially influence - in the sense of being more than a trivial influence - the employer's treatment of the Claimant (see Fecitt).

154. In a protected disclosure unfair dismissal claim, the employer bears the burden of proof of showing the reason for the dismissal. Where an employee disputes the reason given by the employer, an evidential burden arises to cast some doubt on the employer’s reason. The employee has to demonstrate some evidential basis for questioning the employer’s reason. The stages as explained by the Court of Appeal in Kuzel v Roche Products Ltd are: (a) has the claimant

shown that there is a real issue as to whether the reason put forward by the respondent was not the true reason? (b) if so, has the employer proved the reason for dismissal? (c) If not, has the employer disproved the section 103A reason advanced by the claimant? (d) if not, dismissal is for the section 103A reason. However, if the employer does not show to the satisfaction of the Tribunal their asserted reason, it does not follow that the Tribunal is obliged to find the reason is as put forward by the claimant. That said, the Employment Appeal Tribunal also endorsed the proposition that in practice in many cases the Tribunal can make findings of fact about what was operating in the mind of the decision makers and therefore, in practice, only a small number of cases will ultimately turn upon a burden of proof analysis.

“Ordinary” Constructive Unfair Dismissal

155. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is dismissed by his employer if:

“the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”

156. Case law has established the following principles:

- (1) The employer must have committed a repudiatory breach of contract. A repudiatory breach is a significant breach going to the root of the contract. This is the abiding principle set out in Western Excavating v Sharp [1978] ICR 221.
- (2) A repudiatory breach can be a breach of the implied term that is within every contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (Woods v WM Car Services (Peterborough) Ltd [1981] IRLR 347 and Malik v Bank of Credit and Commerce International SA 1997 ICR 606, HL.) There seems to be something of a conflict of authority about whether this test should be broken down into two separate questions (and if so which order they should be addressed in) or whether it is one unitary test. (See for example, on the one hand Hilton v Shiner Ltd [2001] IRLR 727 EAT and (Abbey National Plc v Fairbrother UKEAT/0084/06RN which favour somewhat differing two stage approaches and more recently the Court of Appeal in IBM United Kingdom Ltd v Dalgleish [2017] EWCA Civ 1212, which hold there should be a unitary approach on the basis that the concepts are intertwined). It seems unlikely, in practical terms however, that whichever approach is adopted would make a difference to the analysis of this case.
- (3) Whether an employer has committed a breach of that implied term must be judged objectively. It is not enough to show merely that an employer has behaved unreasonably. The line between serious unreasonableness and a breach is a fine one. A repudiatory breach does not occur simply because an employee feels or believes they have been unreasonably treated.

- (4) The employee must leave, in part at least, because of the breach. However, the breach does not have to be the sole cause, there can be a combination of causes provided an effective cause for the resignation is the breach; the breach must have played a part (see Nottingham County Council v Meikle [2005] ICR 1 and Wright v North Ayrshire Council UKEAT/0017/13).
 - (5) The employee must not waive the breach or affirm the contract by delaying resignation too long.
 - (6) There can be a breach of the implied term of trust and confidence where the components relied upon are not individually repudiatory but which cumulatively consist of a breach of that implied term.
 - (7) In appropriate cases, a “last straw” doctrine can apply. This states that if the employer's act which was the proximate cause of an employee's resignation was not by itself a fundamental breach of contract the employee can rely upon the employer's course of conduct considered as whole in establishing that he or she was constructively dismissed. However, London Borough of Waltham Forest v Omilaju [2005] IRLR 35 tells us that the “last straw” must contribute, however slightly, to the breach of trust and confidence. The last straw cannot be an entirely innocuous act or be something which is utterly trivial. Moreover, the concepts of a course of conduct or an act in a series are not used in a precise or technical sense; the act does not have to be of the same character as the earlier acts.
 - (8) In Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978 the Court of Appeal set out the questions that the tribunal must ask itself in a “last straw” case. These are:
 - (a) What was the most recent act (or omission) on the part of the employer which the employee says caused or triggered his or her resignation?
 - (b) Has he or she affirmed the contract since that act?
 - (c) If not, was that act (or omission) by itself a repudiatory breach of contract?
 - (d) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which viewed cumulatively amounted to a (repudiatory) breach.
 - (e) Did the employee resign in response (or partly in response) to that breach?
157. There is a body of case law which talks about the approach that should be taken where the conduct said to lead to a breach of the implied duty involves the exercise of a discretion or the making of a sort of decision which should be treated in the same way as the exercise of a discretion. In IBM Holdings Ltd v Dalgleish the Court of Appeal drew a distinction between cases where the employer is exercising an express or implied discretionary power and cases where the concern is simply with the conduct of the employer. In the former

- category the discretion is required to be exercised in accordance with the duty of mutual trust and confidence, but the test applied is the rationality of the employer's exercise of its contractual discretion, applying Braganza v BP Shipping Ltd [2015] UKSC 17. In the latter category the test is that formulated in Woods as further explained in Malik.
158. An example of this is Abbey National v Fairbrother in which it was said employers have a measure of discretion in deciding how to conduct a disciplinary procedure or a grievance procedure. It was held an employer must not act irrationally or perversely in the course of such procedures. They must not take account of irrelevant material or fail to take account of relevant material. They must not take decisions that no reasonable employer would take. It was also said that the conduct of the grievance procedure should also be looked at as a whole and only if it has been conducted in a manner which no reasonable employer would have conducted it can it be said the employer did not have reasonable and proper cause for his conduct. In Blackburn v Aldi Stores [2013] IRLR 846 EAT it was held that a failure to adhere to a grievance procedure is capable of amounting to or contributing to a breach of the implied term of trust and confidence but whether it does is a matter for the Tribunal to assess on the facts. For example, the fact that an indicative timetable is not met will not necessarily contribute to or amount to a breach of the term of trust and confidence. On the other hand, a wholesale failure to respond to a grievance may amount to or contribute to, when assessed against the relevant test.
159. In Glendale Managed Services v Graham and others [2003] EWCA Civ 773 it was held that an implied term in contracts of employment that an employer will not treat his employees arbitrarily, capriciously or inequitably in respect of matters of pay may be seen as being simply one part of the more general obligation not to destroy the mutual trust and confidence between employer and employee. A similar observation was made by the Employment Appeal Tribunal in GEC Avionics Ltd v Sparham EAT/714/91 that the duty, when dealing with pay, not to behave arbitrarily, capriciously or inequitably is an illustration of the duty of good faith and fair dealing which underlies the mutual trust that has to exist between employer and employee. Likewise case law such as Clark v Nomura International Plc [2000] IRLR also establishes that in respect of a discretionary power to award bonuses (for example) the test is also one of irrationality or perversity which is equivalent to acting in a way which no reasonable employer would act in the circumstances in question.
160. The claimant relies on three other claimed implied terms in respect of her constructive unfair dismissal claim. It did not appear to the Tribunal that evaluating these would improve the claimant's position when compared to considering her claim for breach of the implied term of trust and confidence which incorporates the same factual complaints the claimant makes for other alleged, narrower in ambit, implied terms. As such this summary of the legal principles has not covered these.
161. If it is established that the resignation meets the definition of a dismissal under section 95(1)(c), the employer has the burden of showing a potentially fair reason for dismissal before the general question of fairness arises under section 98(4).

Breach of Contract

162. The claimant seeks to bring contractual claims in respect of a breach of contract wages claim and a constructive wrongful dismissal claim. The Tribunal has jurisdiction to hear breach of contract claims under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (with some exceptions) where the claim arises or is outstanding on the termination of the employee's employment. A claim must be presented (in the sense at least of commencing Acas early conciliation) within 3 months beginning with the effective date of termination of the contract giving rise to the claim.
163. It is not in dispute that if the claimant succeeds in her constructive unfair dismissal complaint, she will also succeed in a constructive wrongful dismissal complaint (having resigned without notice). We therefore say no more about the relevant legal principles in that regard. The purported separate breach of contract wages claim we address further in our discussions and conclusions below.

Section 38 of the Employment Act 2002

164. The respondent concedes they failed to give the claimant a statement of her employment particulars. Under section 38 of the Employment Act 2002 if the claimant succeeds in one of her other qualifying complaints the Tribunal must (unless there are exceptional circumstances which make an award or an increased award unjust or inequitable) make an award of at least 2 weeks' pay and may if it considers it just and equitable increase that to 4 weeks' pay (subject to the statutory cap on a week's pay).

Discussion and Conclusions

“Ordinary” Constructive Unfair Dismissal

The claimant's salary upon appointment

January 2013 – the respondent failed to ensure the claimant's salary was commensurate to her position (regarding either other Town Clerks in similar Councils or with reference to the standardised NALC/SLCC salary benchmarking guidance)

165. We address first the claimant's ordinary constructive unfair dismissal claim, addressing each particular complaint made in turn in the list of issues. Where they overlap, we sometimes group these together. This first complaint refers to the start of the claimant's employment with the respondent on a salary point that the claimant, an educated, experienced and qualified lawyer, had contractually agreed with them. The claimant did not, for example, negotiate with the respondent about her pay pre-employment. It therefore seems somewhat of an oddity to suggest that the respondent agreed the term with the claimant and yet were already in breach of the implied term of trust and confidence.
166. But in any event, the respondent's setting of the salary scale on appointment was not in bad faith or capricious or irrational. It was based on the GLPC Scheme used by Carmarthenshire County Council and used for their previous Town

Clerk. The respondent was not obliged to use the NALC Agreement. They were not members of NALC or signed up to its terms. It was not irrational to use an alternative pay scheme such as GLPC.

167. The Tribunal accepts that once the claimant brought legitimate concerns about her pay to the respondent, and once the respondent committed into evaluating her pay, then the respondent had to conduct themselves in a manner which was not going to harm trust and confidence. We return to that below. But that does not, in our judgment, become an obligation on the respondent as at the start of the claimant's employment, when the claimant had just agreed that very pay term with them, to have unilaterally on their own accord initiate a pay evaluation process for her. As the respondent says, there is no general obligation on an employer to treat its employees in a reasonable manner.

Updating the claimant's job description

February 2015 to July 2017 the respondent persistently delayed in engaging with the claimant in respect of updating her job description, knowing that this would (or should) have fed into her salary benchmarking

168. Updating the job description was the precursor to the pay evaluation, whatever pay evaluation method was going to be used. Even taking into account that the respondent's Councillors are, in effect, part time volunteers, they were also the claimant's employers with the responsibilities that entails. They chose to take on the task of updating the job descriptions as opposed to instructing someone external to do so. They were at liberty to make that choice, and the Tribunal can see the sense in the Councillors being involved the process of determining what the staff in each role profile should be doing for the Council. However, in doing so they took on the responsibility of ensuring that it happened within a reasonable timescale and was undertaken professionally.
169. The Tribunal finds there was unreasonable delay on the part of the respondent in undertaking and completing the job description process. The need to look at job responsibilities and pay scales was accepted by the Civic Committee in February 2015. The claimant's job description was not agreed until July 2017; well over two years later.
169. It took from February 2015 to November 2015 to decide to set up the Job Evaluation Committee. That was too long. It was within the respondent's discretion to decide to look at all the job profiles as opposed to prioritising the claimant's, or vice versa. It was also within their discretion to decide to work from the bottom up rather than top down; there are advantages and disadvantages to either approach. However, the time taken remained unreasonable.
170. The first four draft job descriptions for office staff were not sent to Mr Thomas until June 2016. The claimant was then not given the draft updated job description for a discussion about it until October 2016 (nearly a year after the Job Evaluation Committee was set up). The next meeting, at which amongst

other things, the claimant then handed over some proposed amendments, was not until January 2017. There was nothing inherently wrong in the claimant seeking to make some amendments to her own job description. The anticipated meeting on 15 February 2017 did not go ahead for the claimant, so she was not seen again until 30 March 2017.

171. The respondent's re-amended job description was then sent to the claimant on 18 April 2017 together with the proposed pay change. The job description had not been agreed with her in advance and, as such, that then delayed things further. The claimant pointed this out in her pay appeal. That was a right of appeal that the respondent had given her to exercise so there is nothing improper in her doing so. It seems to the Tribunal that, in part, the delay in agreeing the claimant's job description with her got caught up in some wider hostility towards the claimant about her persistently pushing for the NALC Agreement to be used as the method of evaluation and for her pressing for her pay evaluation to be done, and prioritised. It contributed, for example, to Councillor James just giving the claimant the formal letter of 18 April 2017 as opposed to having a discussion with her about it. But the job description was always going to be needed whatever evaluation method was used. The respondent did not have the skills or experience required to keep separate any issues they may have with the claimant separate from the task of setting a job description (or indeed the wider job evaluation). The delay was then compounded by the fact it was election time.
172. It took the appointment of Councillor Owens as new Mayor and chair of the Civic Committee to get the claimant's job description moving towards agreement. After the Civic Committee meeting on 12 June 2017 the claimant met promptly with Councillors Shepardson and Thomas and agreement was reached subject to final approval of the Civic Committee on 10 July 2017. Following Councillor Owens taking over it was promptly resolved (which of itself tends to suggest the claimant's stance on amendments was not unreasonable) but that does not mean that the whole period of dealing was not unreasonable. Councillor Owens accepted in evidence (he had been on the Job Evaluation Committee throughout) that it had overall taken too long. The delay was unreasonable, was without proper cause and was conduct that damaged trust and confidence bearing in mind it was intrinsically linked to the claimant's pay review. The respondent argues that there were numerous roles to evaluate. There were however only 12 jobs to go through, and some of those were duplicates such as the groundsmen. It was also a process of updating job descriptions. They were not all being drafted from scratch.

The grievance

12 March 2017 – the respondent failed to engage with the claimant in any meaningful manner in respect of the grievance she raised on 12 March 2017. They failed to act reasonably towards her in promptly investigating the grievance and in progressing this to a conclusion, contrary to best practice and the Acas code.

The respondent did not release to the claimant the full investigation report into her grievance until February 2019 despite having commissioned it in July 2017 and receiving it themselves in or around September/October 2017. Despite outwardly suggesting that they intended to try and resolve the grievance issues, the respondent did nothing to assist the claimant in resolving the matters raised.

When the claimant eventually received both of Mr Egan's reports, she concluded beyond reasonable doubt that the respondent had contrived to deliberately keep both out of her possession because they knew that neither report was favourable to them. In doing this, the respondent cannot have intended to resolve either matter or else they would not reasonably have adopted this stance.

The claimant avers that a reasonable employer who was abiding by its implied duty of trust and confidence would have ensured that these reports were provided to the claimant in good time and would have arranged to discuss them with her. The explanations of delay and the ongoing failure of the respondent to address the issues showed no desire to resolve matters. Furthermore the respondent's repeated failure to address these issues was contrary not only to the expressed desires of the claimant to resolve matters but also the advice from the Occupational Health physician.

INVESTIGATING THE GRIEVANCE

173. The Tribunal does not find that the respondent initially failed to engage with the claimant in a meaningful manner in respect of her grievance or in promptly investigating it, set within the context and circumstances at the time. Councillor Theodoulou took advice including from an experienced former Clerk and prepared a report for the full council. He anticipated that Councillor James would declare an interest and leave. He could not ultimately make Councillor James do so. In any event we accept Councillor Theodoulou's recollection that Councillor James did not speak. The claimant was the Town Clerk. She knew full well that decision making power lay in the hands of the full Council or an authorised committee. She said she wanted someone to take action and yet on the other hand seems to say that Councillor Theodoulou should have kept everything confidential. It is said that Councillor Theodoulou should have taken professional advice from One Voice Wales or taken advice from the monitoring officer. He was faced with a difficult situation with a complaint, in part, involving the Mayor. The criticisms made of him are in the Tribunal's view a counsel of perfection made with the benefit of hindsight. We do not consider he acted unreasonably faced with the situation he was in.
174. The full council decided to appoint the Special Panel, deliberately made up of cross-party representation. Whilst there appeared to be some initial confusion about whether the claimant's complaint was a formal one or not, that was quickly ironed out. The Special Panel actually took steps to look into the matter and produce their interim report relatively quickly on 19 April. The date of the final reports is not known or definitively in which order they were produced. What went wrong with the Special Panel process, however, was a lack of clarity in its terms of reference and what would happen once the report was given. It also was not given to the claimant despite the fact that it was her grievance. There

was also some disruption caused by the election, which is understandable. Councillor Owens, in his new roles, then checked with the claimant that she wished to continue with her complaints. We did not consider there was anything inappropriate in him checking that with her given the change in personnel and the change in power base following the election. When the claimant said she did wish to pursue it, he did not seek to dissuade her but took steps, via the Civic Committee to seek some advice from Mr Egan. He then met with Mr Egan on 13 July and Mr Egan was instructed on 21 July to independently investigate the grievance. The claimant does not dispute that it was appropriate to instruct Mr Egan. Thereafter production of the grievance investigation report lay outside the Council with Mr Egan, albeit Councillor Owens facilitated setting up investigation meetings. Some delay was then caused by getting witness summaries out to individuals and approved and sent back to Mr Egan who then produced his report by 9 October 2017.

175. There was then a process of the Civic Committee approving the grievance recommendations before them being provided to the claimant and the meeting being held with the claimant on 30 November 2021. The progression of the grievance through to the meeting on 30 November 2021, within its prevailing context, was therefore not unreasonable.

NOT GIVING THE CLAIMANT THE FULL REPORT

176. However, the Tribunal does find that the respondent acted unreasonably and without proper cause in not providing the claimant with a copy of the full grievance report (including the witness summaries/statements and the appendices which included things like the Special Panel report which the claimant had not seen) when first releasing Mr Egan's report to the claimant and thereafter until it was all finally disclosed, particularly bearing in mind the claimant was asking to see the full report. The respondent appears to have failed to appreciate that the claimant's grievance was *her* grievance. Unless (which did not occur in this case and is a relatively unusual occurrence) a particular situation has arisen whereby a witness gives evidence to a grievance investigation under conditions of confidentiality, it is the Tribunal's industrial experience that it is standard practice to release a full grievance report to the individual bringing the grievance, including witness summaries/statements. This reflects the fact it is their grievance that is being addressed and they are entitled to understand what conclusions have been reached and why. To not provide the full report also removes from the individual the opportunity to, for example, lodge any meaningful appeal. Mr Egan, the respondent's own witness, accepted in evidence that it would ordinarily be good practice for the employee to receive the full grievance report unless there was for example a data protection reason and he said that he did not understand at the time that the respondent was not intending to release the full report to the claimant.
177. The respondent says the full report was not provided to the claimant due to the amount of paperwork in the full report, concerns about data protection and the fact that the Civic Committee felt the executive summary covered relevant matters. However, to say the claimant should not be burdened with paperwork,

is simply paternalistic and inappropriate; it was her grievance, she was a trained lawyer and the Town Clerk. Data protections concerns should not be a barrier. As already set out above it is standard and usual practice in grievances for the full report to be provided unless there is a specific confidentiality/anonymity issue. Otherwise, that the statement/summary will form part of the report is covered with the individuals at the individual evidence gathering stage; they know they are giving information for the purpose of the grievance investigation. There is no evidence anyone did so under agreed conditions of confidentiality. They were told by Mr Egan their summaries would be included in the report. Finally, it is not the Civic Committee's role to decide what they think is best for the claimant or themselves decide that the summary was a good enough representation. It was her grievance and they, in effect, dispossessed the claimant of her own grievance in not providing full disclosure to her.

RESOLVING THE GRIEVANCE

178. In terms of addressing the issues raised in the grievance, the Tribunal does not accept the wholesale allegation that the respondent did nothing in to assist the claimant in addressing the issues. There are, however, some aspects where the respondent's conduct was lacking. The claimant's grievance to a sizeable extent was about the actions of Mr Fox. Both the Special Panel and Mr Egan found that there was a disciplinary case to answer. A misconduct process could not happen because Mr Fox resigned. Thereafter the respondent did not allow Mr Fox to rescind his resignation and he was not shortlisted when he applied for the next TSO role. That part of the grievance was addressed to the extent the respondent could.
179. The claimant's grievance also complained about a lack of support in dealing with Mr Fox (particularly by Councillor James) and the way in which Mr Fox was allowed to deal directly with the committees and undermine her authority as well as other allegations about what she saw as bad feeling towards her. Mr Egan concluded that Councillor James had good intentions in seeking a mediated solution between the claimant and Mr Fox but that things became complicated and produced uncertainty and a lack of clarity about how to take things forward, resulting in frustration all round. He recommended a protocol be in place for working arrangements between officers and members to try to prevent the situation arising where someone such as Mr Fox could have a direct line into a committee circumventing the claimant. He also recommended a set of employment policies be drafted and adopted. These were all recommendations that the respondent accepted. Action had therefore been taken based on Mr Egan's findings.
180. The claimant's grievance also complained about the handling of the job evaluation, including her exclusion from the process in respect of other staff. Mr Egan said that the time delay and the exclusion of the claimant would appear to be difficult to justify and that the respondent needed to be transparent with the claimant about the process. He recommended that there be a policy on job evaluation and that staff should be given the detailed results of the process and the right of appeal. The Tribunal does accept the respondent failed to assist the

claimant in progressing this aspect of her grievance through to a conclusion. Whilst the respondents on the face of it addressed this part of the claimant's grievance by telling her that Mr Egan would conduct a pay evaluation using the NALC Agreement and she would have the right of appeal; when it came down to it, they did not honour those things. We return to this further below.

181. In summary therefore, other than the pay evaluation, the respondent did by and large address the issues raised in the grievance. They did not, however, give the claimant a copy of the full report. They also did not completely finalise the grievance process. You cannot resolve a grievance if the individual concerned has not seen the full report. The claimant was not sent a final grievance outcome letter or offered the right of appeal. It was unreasonable on the part of the respondent, having said they were going to adopt such a process, to fail to see it through to a complete conclusion, albeit that is not something that the claimant was herself chasing, other than to see the complete grievance report.

WHY THESE THINGS HAPPENED

182. The Tribunal does not find that the respondent contrived to deliberately keep the full grievance report out of the claimant's possession because they knew it was not favourable to them. The executive summary provided to the claimant was unfavourable to the respondent, but they provided it and agreed to Mr Egan's recommendations. In terms of why the executive summary was produced, the Tribunal is satisfied that Mr Egan was asked, on behalf of the Civic Committee, to produce an executive summary for circulation amongst Council members, to reduce the size of the document with all its appendices. The whole report itself was then available for reading in the office. The respondent then fell into error in not giving the claimant full access.
183. The Tribunal considers and finds that initially the respondent did this because they genuinely mistakenly thought the executive summary would be enough for the claimant. When the claimant then asked at the meeting on 30 November to see the full report the Tribunal finds that the respondent did not give it to the claimant partly because of a mistaken but genuinely held belief that it would give rise to data protection considerations to release to the claimant what individuals had specifically said. It is also likely that they wanted to minimise the risk of any more bad feeling being stirred up at a time in which the political situation remained very difficult. It was the time at which Councillor Walpole had confirmed there was anger at the claimant in the Labour camp for having sent the email about the room booking. They were aware the claimant was not someone who was likely to let things go. It was also still thought, bearing in mind their lack of experience in grievance processes, that the claimant had been given enough information to understand the conclusions and recommendations. They failed to understand that fundamentally this was the claimant's grievance.
184. It was alleged during the hearing before us that the respondent had sought to keep evidence from Mr Egan and/or that Mr Egan had been asked to remove content or to prepare the executive summary in a certain way to keep information from the claimant. We do not find it established that evidence was deliberately

kept from Mr Egan. Councillor John told Mr Egan what had happened with Councillor Mitchell (without naming her). Mr Fox did not resign until after Councillor Owens had seen Mr Egan. The most he can therefore be criticised for is not going back to say what Mr Fox had said when resigning. We considered that was a counsel of perfection made with the benefit of hindsight. The other evidence about any plan to replace the claimant with Mr Fox reached Councillor John later on. We also do not find it established that Mr Egan was asked to remove information from the report so that the claimant would not see it. The executive summary was a summary. We accept that Mr Egan did not know the respondent was not going to give the claimant a full copy. It is, however, understandable the claimant was suspicious about what had happened, particularly bearing in mind the delay in giving the full report to her.

185. The respondent's formal completion of the grievance then drifted away because they thought they had progressed it to a resolution. The respondent until then had been following Mr Egan's lead but that lead on the grievance had itself drifted away as Mr Egan would have thought his role was complete. The final steps in sending a final outcome letter and offering the formal right of appeal then became forgotten about as they thought it was all finalised. To address a final point made by the claimant, the Tribunal cannot see how it can be said the respondent's actions ran contrary to the express recommendations of occupational health.

The Conduct of some Labour Councillors

From February 2017 to March 2018 the Claimant was undermined by Labour Councillors – August 2017 Councillor Walpole and Councillor Thomas called an extraordinary council meeting in order to intimidate the claimant

From August 2017 to November 2017 James, Thomas, Walpole and Linda Edwards were the main Labour Councillors who exerted pressure to reinstate Mr Fox

186. We do not find that Councillors Walpole and Thomas called the meeting (or to be more accurate tried to call the meeting) with the intention of intimidating the claimant. They were trying to call the extraordinary council meeting because they wanted to get Mr Fox reinstated. That had just become, and continued to be for a long time, a key aim of some of the Labour Councillors.
187. We do not consider the aim of getting Mr Fox reinstated was about harming or upsetting the claimant. They just wanted Mr Fox reinstated. Some Labour Councillors thought Mr Fox, in resigning, had been a victim of injustice. A key factor was that they thought he was a victim of the Independent group, particularly at the hands of Councillor Theodoulou. The claimant would also have been seen as contributing to the demise of Mr Fox through her complaints about him, but that does not mean that it was all about targeting her. They also thought, unlike some others, that Mr Fox had been good at his job. Further, it is likely they had loyalty towards him as the husband of one of their Councillors. It is also likely that the Mr Fox situation became a part of the wider power struggle between the Labour group and the Independent group. It became a means by which some of the Labour Councillors sought to challenge, undermine, and

embarrass the now controlling Independent group, and Councillor Owens as Mayor.

188. The claimant said in evidence that calling the EGM must have been aimed at her because the councillors were bypassing the usual procedure and not going via her as Town Clerk. We do not, however, agree that this means the purpose of their actions was to intimidate the claimant. They thought that people like Councillor Owens, the monitoring officer, and the claimant as Town Clerk were all frustrating their efforts to have Mr Fox's resignation discussed and voted on at a meeting, hence their attempt to take control by calling an EGM. It also was part of a power struggle the Labour group of councillors had with the Independent group. It is likely the Labour group, even if unfairly, saw the claimant as being part of that problem and allied to the Independent group. Hence again that they were trying to take direct control of the agenda. Further it was said at the time, even if later withdrawn by Councillor Walpole, that they considered the claimant may have a conflict of interest given her own complaints about Mr Fox. It is likely that was another reason for the way in which they went about it
189. That all said, we do find that it is likely that the Councillors in question would not have been overly concerned that one of the potential knock-on consequences was that the claimant would feel intimidated or undermined by their efforts regarding Mr Fox. The impact of that on the claimant was collateral damage that it is likely they would not have felt averse to. But that does not make it the *purpose* of their actions in calling the extraordinary meeting.
190. The reasons why upsetting the claimant may have been seen as acceptable collateral damage are likely to have been multifactorial. Firstly, they probably thought it was the kind of challenge she should expect to face in her role as Town Clerk. Secondly, as stated, it is likely some Labour Councillors saw the claimant as affiliated to the Independent group. Thirdly, the claimant's relationship with some Labour Councillors had become increasingly strained for some time. There were, in turn, a variety of factors feeding into this. The handwritten notes on the initial pay evaluation demonstrate a sense of increasing frustration with the claimant persistently seeking her pay evaluation being undertaken under the NALC Agreement, in her chasing her pay review and asking that she be treated as an individual case with some urgency. The notes also give a sense of some residual resentment about the claimant having previously applied for a job at Llanelli Council.
191. On the evidence before us, we also find that it is likely that prior to the election there was some contemplation by some Labour Councillors such as Councillor James and Councillor Kenneth Edwards as to the potential for Mr Fox to take over as Town Clerk. Mr Fox had a direct route of communication to some of them. He was attending meetings and engaging with the Job Evaluation Committee. People describe him as being someone who would proffer opinions and views. Some Councillors thought Mr Fox was doing a good job. He was the husband of a Labour member who was going to stand for election. The Job Evaluation Committee was concerned with the claimant's job description as Town Clerk. It is likely that got tied up in wider discussions about what the job

should entail, whether the claimant was doing what they wanted her to do, whether they thought she was doing a good job, and what Mr Fox might have to offer instead. It is likely some thought he would do a better job.

192. That was all at a time, as we have said, that it seems likely there was a growing sense of dissatisfaction by some Labour Councillors to the claimant's persistence about her pay, about what she saw as her role and her responsibilities. They felt she was pushing for things or dictating how they should be done when they considered it was the claimant who worked for them. It is likely all these things were feeding into each other.
193. However, we do not consider that after the election the prospect of Mr Fox taking over as Town Clerk was a goal by the Labour group going forwards. The election outcome is not something they would have predicted. It was a sea change. They had lost the power base, and by then had other things to concern themselves with, including even getting Mr Fox reinstated as just TSO. To suggest that as a minority party they thought they would both get Mr Fox reinstated, then oust the claimant and appoint Mr Fox a Town Clerk seems unrealistic post the election result. However, that history is relevant to what had been happening in relationships in the Council in the months prior to August 2017 and why some Labour Councillors would not have been overly troubled by the prospect of the claimant being upset as a side effect of their actions regarding seeking the reinstatement of Mr Fox.
194. That the claimant had made her own complaints about Mr Fox and lodged her grievance would also have been relevant to those Labour Councillors who were probably unconcerned about the prospect of the claimant being upset about their efforts to get him reinstated. It would have fed into a sense of there being no "love lost" towards the claimant. But we do not consider this means that the claimant was seen as the villain and the main source of Mr Fox's perceived misfortune, when compared to the situation with Councillor Theodoulou, for example. The Special Panel, whilst unable to reach an ultimate conclusion, had already agreed there was some inappropriate conduct towards the claimant by Mr Fox (which included a Labour Councillor, Councillor Thomas in that decision making). But it was also conduct which they felt was part of a wider picture of a breakdown in communication and the relationship between the claimant and Mr Fox which they had felt the claimant had contributed to in her management style. It therefore was in turn tied up with their own rumblings (even if the claimant would say such rumblings were unfair) as to the claimant's own performance.
195. Ultimately we therefore do not find that the attempt to call the extraordinary general meeting to seek the reinstatement of Mr Fox was called in order to intimidate the claimant. Thereafter, there was ongoing pressure by some Labour Councillors to get Mr Fox reinstated, most notably at the meetings on 21 September 2017, 13 October 2017 and 13 November 2017 and the efforts to get Mr Fox shortlisted and appointed to the new TSO position. For the reasons already given, however, we do not consider that the purpose of that was to mount an attack on the claimant. It was all fundamentally about supporting Mr Fox and the political battle post-election between the Labour group and the

Independent group where the claimant was acceptable collateral damage. Some Labour Councillors also became even more upset when the claimant sent about room bookings for meetings. That would have again fed into that sense that the claimant was favouring the Independent group and again contributed to a lack of concern about the claimant becoming upset.

196. The claimant also relies on the conduct of Councillor Linda Edwards on 30 August 2017. On the evidence before us, we find that it did happen as the claimant describes (and Councillor Owens accepted it had been reported to him at the time by Ms Loudon). We did not hear from Councillor Linda Edwards herself. We accept it was borne of the strength of feeling at that time about Mr Fox and the wish for the meeting to go ahead, the views held about the claimant, as above and a lack of particular concern about upsetting her. However, it was an inappropriate and intimidatory way to speak to the claimant. That conduct was without reasonable and proper cause and was likely to damage mutual trust and confidence.

On 21 September Mr Fox and Labour Councillors allowed to heckle and jeer at the claimant, intimidation

197. We find that at the meeting on 21 September 2017 much of the conduct was directed at Councillor Owens as Mayor and now, if even in an unofficial sense, as head of the Independent Councillors. It was most likely part of a Labour group strategy, having lost control of the Council post-election, to embarrass, discredit and undermine him and the now controlling Independent group and to try to make him and them look like they did not know what they were doing. It was a political battle ground. It was also particularly charged because Councillor Owens was refusing to allow Mr Fox's resignation to be discussed which was an issue of importance by itself to some of the Labour Councillors but also became a continuous theme of that wider political battle.
198. The claimant, at times, became caught in the cross fire of that dynamic which had become even more charged following the claimant, on Councillor Owens' instruction, having sent the email about the booking of rooms for group meetings. It was clearly an incredibly difficult experience for various individuals involved that day and it is understandable that both the claimant and Councillor Owens would have taken away from it their own personal perspectives that they were the one being targeted. This is why Councillor James' comments about why Councillor Owens was seeking advice from the claimant (to suggest Councillor Owens did not know what he was doing), was perceived subjectively by both Councillor Owens and the claimant to be aimed at them.
199. The claimant was, at times, caught in the cross fire for various reasons. In part, it was because she was doing her job as Town Clerk to advise the Mayor (which Councillor James as the former Mayor himself would have well known). The claimant (even if unfairly) was also seen as affiliated to the Independent group. There was also some instances at the meeting where there was conduct more personally directed at the claimant. In particular, Councillor Thomas' complaint about the hotel booking (which appears directed, for different reasons at both the

claimant and Councillor Owens), Councillor Thomas' complaint about the colour of Councillor Morris' meeting papers and Councillor Linda Edwards picking at grammatical points in minutes.

200. The conduct that was focused on the claimant was conduct which was without reasonable and proper cause. We are satisfied that the points were not taken in their own genuine sake but as a means both to pick on the claimant (as well as being part of the wider political battle) and was conduct likely to damage mutual trust and confidence.
201. The actual heckling and jeering at the meeting came from members of the public and not Labour Councillors as alleged. It is therefore not something that we find the respondent was liable for. We are satisfied that Councillor Owen did try to regain order at the meeting and ultimately adjourned the meeting. It was therefore dealt with appropriately.

In or around 26 February 2018 Councillor James and others alleged that the claimant had sanitised minutes and removed them from the website

202. The situation regarding Mr Fox had continued since September 2017 as did the rift in Council between the Labour group and Independent group. It appears the stated commitment in the Civic Committee meeting of 11 December 2017 to draw a line in the sand and move on was ineffective. Mr Fox was still pursuing complaints about the shortlisting criteria. The situation between Mr Fox, the RNL and Councillor Mitchell blew up and seems to have caused extensive additional bad feeling with the claimant being caught in the cross fire and accused of having taken sides with Councillor Mitchell/ the "Independent camp". That was then the background for the Labour group email to the claimant of 26 February 2018.
203. The Tribunal does not agree with the respondent's assertion that the email of 26 February was not a detriment to the claimant. It accused the claimant of absurd sanitisation of minutes (regarding Councillor Mitchell) to the point of effective misrepresentation. It also accused the claimant of omitting alleged adverse comments also made by Councillors Theodoulou and Stephen James again about Mr Fox. It accused the claimant of preparing poor agendas and not displaying an acceptable standard of competence. It potentially accused the claimant, as a qualified solicitor, of a criminal offence relating to the retrospective manipulation of minutes. It greatly upset the claimant and her personal and professional integrity. It was reasonable for someone in the claimant's position to regard it as hurtful and a detriment.
204. They were allegations without reasonable and proper cause; the subsequent Audit Committee investigation by the respondent found as such. Even if they were not allegations that were sanctioned by the full Council, it was conduct by the Labour Councillors involved, standing in the shoes of the being the claimant's employer, that was likely to harm mutual trust and confidence. The respondent in these proceedings does not deny they are liable for that conduct. The fact that it was not the view of the entire Council or that the Chairs Committee and the Audit Committee took prompt action in calling Councillor James to account, or that the

Audit Committee later found it unwarranted, or that it was reported to the Ombudsman, does not prevent it causing the harm that it did at the point in time that it happened. The Labour Councillors concerned never explained their actions or apologised, and indeed Councillor John James just declined to continue to cooperate with the Audit Committee. This left it hanging over the claimant and left her with her ongoing sense of unease about whether she could safely be in work and what might happen next.

The pay evaluation report

February 2018 – The respondent having committed to seeking an independent assessment of the claimant’s salary first obtained a report in February 2018 but failed to increase her salary in line with the recommendation prior to her resignation; the claimant was entitled to assume she would be receiving a pay rise (including a back dated pay rise) based on the respondent’s actions

February 2018 to October 2018 – The respondent failed to share with the claimant the outcome of an independent report specifically commissioned to consider the salary and evaluation of the role of Town Clerk and thereafter failed to engage with the claimant in finalising the review of her position

When the claimant eventually received both of Mr Egan’s reports, she concluded beyond reasonable doubt that the respondent had contrived to deliberately keep both out of her possession because they knew that neither report was favourable to them. In doing this, the respondent cannot have intended to resolve either matter or else they would not reasonable have adopted this stance.

The claimant avers that a reasonable employer who was abiding by its implied duty of trust and confidence would have ensured that these reports were provided to the claimant in good time and would have arranged to discuss them with her. The explanation of delay and the ongoing failure of the respondent to address the issues showed no desire to resolve matters. Furthermore, the respondent’s repeated failure to address the issues was contrary not only to the expressed desires of the claimant to resolve matters but also the advice from the Occupational Health physician.

205. The Tribunal considers that the respondent did act unreasonably and without proper cause in not sharing Mr Egan’s pay evaluation report until pressed to do so by the claimant’s solicitors, and on condition of a meeting going ahead.
206. We do not find or accept that Mr Egan’s report was obtained as a background comparative report to a main assessment being done by Carmarthenshire County Council. The Tribunal is satisfied in the summer of 2017 an initial decision was made *not* to instruct Mr Egan to prepare a pay evaluation report because it was intended at that time the evaluation would be done by Carmarthenshire County Council based on the agreed job description. That Carmarthenshire County Council evaluation, which was to be undertaken by the Council as an informal favour, then went undone. Obviously that kind of favour arrangement is very difficult for someone in the respondent’s position to control. By 13 November 2017 Councillor Owens had realised that approach was not going to work, and he advised the Civic Committee that the options were *either* to

- take on a formal SLA with the Council to formalise the evaluation or to engage Mr Egan for £180 using the NALC Agreement.
207. The Tribunal is satisfied and finds that a decision was made to go with the second option alone, i.e., to engage Mr Egan to undertake the pay evaluation knowing he would use the NALC Agreement. It is likely that those involved in the decision making were conscious of the time that had been passed and the need to bring matters to a conclusion. The cost of £180 would have been seen as good value. It is likely that those making the decision probably also thought, bearing in mind the earlier Councillor Kenneth Edwards /Paul Thomas assessment had apparently found little difference between the NALC Assessment and the County Council one, that the answer was likely to come out similar to that before in any event. It is also likely that it was considered to be a step that would contribute to bringing the claimant's outstanding grievance to an end, and a way to offer the claimant something positive to move forward with.
208. Therefore at the grievance meeting on 30 November 2017 the claimant was told that, as well as taking the grievance recommendations forward, One Voice Wales would be undertaking a job evaluation of the claimant's post using the NALC Agreement. She was not told that it was simply a comparative exercise to a Carmarthenshire County Council evaluation. Moreover that makes no sense as a proposition, as there is no evidence of a Carmarthenshire County Council evaluation being obtained. The SLA with Carmarthenshire County Council was not entered into at that point in time. Mr Egan's grievance report recommendations included that the respondent needed to be clear with the claimant about which process was being used and that the claimant was entitled to receive the detailed results, whatever process was adopted. That is what the respondent was also doing at that point in time when instructing Mr Egan to do the pay evaluation and when informing the claimant of this at the meeting on 30 November 2017.
209. The understanding of the parties at the time Mr Egan was instructed was that he would undertake a pay evaluation using the NALC Agreement and that the evaluation produced would then be the guiding report as to what would happen next in terms of the claimant's pay.
210. The Tribunal finds it likely that when Mr Egan produced his report at the beginning of February 2018 it caught the respondent (or those who saw it) by surprise. Its outcome was higher than expected following the initial assessment undertaken by Councillor Kenneth Edwards and Mr Thomas.
211. The Tribunal considers it likely that Councillor Owens, and any other Councillors who were in receipt of the report at that time found its contents unpalatable. They were troubled about the potential political fall-out that would then follow. It was higher than expected and presumably more than budgeted for, achieved using the NALC Agreement which some Councillors had previously opposed using. Despite Councillor Owens desire to heal factions, relationships within the council continued to be severely strained. The dispute relating to Councillor Mitchell, Mr Fox, the RNLI and other councillors was ongoing and causing bad feeling that

- was now affecting third parties outside of the Council. We consider it likely that, at that point in time, there was a deliberate strategy for those involved to bury their heads in the sand and not do anything with the report. The desire to do nothing would have been compounded by what then happened with the further deterioration in relationships arising out of the email of 26 February 2018 from the Labour group and the ensuing Audit Committee investigation. Those involved at the respondent would not have initially known that the claimant was going to report sick. But once she did, it offered an easy out in terms of being able to try to justify to themselves just sitting on the report. Relationships within the Council did not grow any easier as time went on, as by April 2018 the prospect of Councillor John taking over as Mayor was causing significant disruption, with Labour Councillors saying that they did not consider him fit. By June 2018 relationships were that bad that Labour Councillors were refusing to attend committee meetings.
212. The Tribunal considers that it is implicit within the above arrangements and expectations about the instruction of Mr Egan, that Mr Egan's pay report would be shared with the claimant. But even if the respondent needed the formal approval to disclose it to the claimant that could and should have been done. All involved knew how long the pay issue had been outstanding and the need to bring it to a swift conclusion. The Chairs Committee (who Councillor Owens told the claimant he needed to discuss it with) were regularly meeting. The Civic Committee met on 8 February 2018 and whilst there are no minutes available, they are likely to have met in March 2018 too (it would appear March minutes are not available because of the disruption caused by the claimant commencing sickness absence). The Full Council met on 21 February 2018, and again presumably on a date in March 2018, and thereafter on 10 April and 18 April. The committees in general met on at least a monthly basis (other than 1 month in the summer).
213. The Tribunal does not accept that the claimant's absence from work justified the respondent not engaging with her about Mr Egan's pay report. Indeed, given the claimant was absent from work due to work related reasons it was a reason to do something with it. Mr Egan's pay report did not automatically bind the respondent to simply apply its conclusions. The claimant's own case is ultimately not advanced on that basis. However, as above, it was the report that was to be the guiding approach. The report had been prepared on the basis of data given by the claimant to Mr Egan, which had not been reviewed by the respondent at all. The respondent would have been entitled to discuss the report and revert to Mr Egan on any issues or queries they had with it, although as Mr Egan commented on in his oral evidence, there was limited scope for changes. The formula that he applied was in a sense a set formula. The scope for legitimate changes would only lie in any dispute about the data that was put in; such as for example, the budget of the Council or the number of committees or meetings attended and the like.
214. If the respondent wanted to raise any issue with Mr Egan's report then the fundamental basics of a fair approach would include being clear what their issues

- were, it being evidence based, and being clear with the claimant about what was happening, when and why. The Tribunal does not consider that the claimant's absence from work reasonably justified the respondent not seeking to engage in such an approach. It is said by the respondent that there was no wish to further upset the claimant as they would have been presenting Mr Egan's report but then saying there may be some difficulties with it. The Tribunal, however, considers that it could and should have been reasonably handled in a way that did not upset the claimant. The claimant was their Town Clerk; the respondent knew that the claimant knew how the Council functioned in terms of decision making. Even with the claimant being on sick leave there should have been scope for adult dialogue with her. It could easily have been said to her that Mr Egan's report had been received, but that the Council were likely to have some queries for Mr Egan about the data that the report had been based on as they had not previously had an input. The respondent could then have got on with it. It is likely the claimant would have seen these as positive developments overall. Mr Egan said in evidence, initially at least, that he remembered a couple of councillors telling him they disagreed with the assessment. If so, no one on behalf of the respondent went back with specific points of challenge prior to the claimant's resignation, when they could and should have done so. Even in the course of this litigation the respondent has not been able to set out exactly what it is they say Mr Egan got wrong.
215. In terms of any matters that needed the claimant's input, the claimant could have been asked whether she was well enough to engage on those issues at that point in time, or whether she wanted it left until she was well enough. It was not appropriate for the respondent to make assumptions about what the claimant's health dictated without actually asking her about it. But in any event the Tribunal considers that the true reason for the respondent's conduct was because the report was seen as unpalatable. The claimant's sickness absence then because the excuse that overlay that real reason. That the claimant did not pursue Councillor Owens about the report, or that it was not the main thing keeping her off work at the time, does not absolve the respondent of responsibility for taking it forward.
216. The failure to share the report with the claimant and to engage with her about it or otherwise take it forward was without reasonable and proper cause and was conduct that was likely to damage the relationship of trust and confidence. It is particularly significant damaging conduct because it is set against the extensive background of delay and mismanagement of the whole job description and pay review process. It is also particularly significant damaging conduct because the instruction of Mr Egan was presented to the claimant as part of the resolution of her grievance and was presented to the claimant as something that was supposed to be a positive route forward.
217. In terms of the related point about giving the claimant a pay rise, the Tribunal does not accept that the respondent was automatically required to increase the claimant's salary in line with Mr Egan's recommendation and indeed ultimately the claimant's case was not put on this basis. To act in a manner compatible with

maintaining mutual trust and confidence would require the respondent engaging in a process as discussed above, and then once any issues with the data as applied by Mr Egan were addressed, making a rational, reasonably prompt, non-capricious decision in good faith about the claimant's pay that also reflected the expectation that Mr Egan's report was the agreed guiding framework. It would also involve properly consulting with the claimant. That did not happen because the process stalled at the outset, as already discussed, because in effect the respondent sat on Mr Egan's report to avoid having to do these things. It is in that sense, part of the same finding of breach of trust and confidence that we have already made. It is a process which, if done fairly and appropriately, should not have taken long.

218. The respondent says that the intention had been to get a further report from Carmarthenshire County Council, discuss both reports with the claimant and then make a decision on which scheme to use and what salary to award the claimant. The Tribunal does not find that was the respondent's initial intention. We have already found that a firm decision was made to instruct Mr Egan and use his report as the guiding report. If once Mr Egan's report was obtained there was then an intention to instruct Carmarthenshire County Council as an alternative, then that is not reflected in any minutes that we have been referred to. Given the way in which decisions are made by the respondent the absence of minutes makes no sense. Further, if that was the respondent's intent then they could have got on with it, and consulted the claimant, as already addressed above. That none of these things actually happened tends to suggest there was no such decision to instruct Carmarthenshire at the time.
219. But in any event, the Tribunal would not find that such an intention or action to belatedly instruct Carmarthenshire was one which would accord with maintaining the relationship of mutual trust and confidence. It would, if it had actually happened, significantly harmed mutual trust and confidence as it went wholly against the basis on which Mr Egan was instructed (as against the whole history of the pay review situation and the fact Mr Egan was instructed as part of resolution of the claimants' grievance). It would have, in effect, amounted to the respondent engaging in a process of forum shopping attempting to find an evaluation that suited their purposes and therefore would not, in that sense, have been in good faith.
220. The Tribunal can see nothing that directly says occupational health were saying that the claimant's pay situation needed to be resolved. Certainly the claimant had been pushing historically for it to be resolved, but as stated, it was not something she had been pushing as a priority in her sickness absence because her priority concerns at that time lay elsewhere. This specific allegation made by the claimant at 12Cj does not therefore assist the analysis in this case in any meaningful way.

The Claimant's sick leave

12 March 2018 – 12 February 2019 – The respondent failed to properly engage with the claimant during a period of lengthy sick leave in any attempt to resolve the issues which the claimant and later the OH Physician identified as the root cause of her stresses

221. Aside from the handling of Mr Egan's pay report, the Tribunal does not find that the respondent failed to engage with the claimant during her sick leave. Councillor Owens regularly visited the claimant, a stress assessment was conducted with her and she was referred to occupational health for advice and support. There were times at which with hindsight it may be said that Councillor Owens' actions were clumsy; for example, in asking the claimant to complete some minutes or sign some documents, and in talking to the claimant about negative things that were happening in the Council. However, these kind of visits are difficult for any line manager. They have to make conversation about something whilst there. If the claimant had asked Councillor Owens to stop talking about how things were in the Council, no doubt he would have stopped. There is no evidence the claimant asked him to do so. She was also aware of what was happening by her own engagement with social media in any event. He spoke about Mr Fox failing in his own election bid, as being something that was likely to cheer the claimant up and potentially help with a return to the workplace. Asking the claimant to do some work related activities was clumsy and borne of some naivety on Councillor Owens' part and the fact the respondent was in a difficult position with paperwork and not having a Clerk. But he stopped when asked to do so. It is not conduct that, viewed objectively, harmed trust and confidence.
222. Occupational health recommended mediation to try to bridge the gap in getting the claimant back to work. The claimant accepted in evidence that she did not want to go through with this. It is therefore not conduct that can be levelled at the respondent's door. They were seeking a round table meeting.
223. We return to the specific points below, but in a general sense the respondent did (other than the Egan pay evaluation) engage with the claimant's proposals, put through her solicitor, as to how it was said she could envisage a return to work happening. The respective minutes show how the Council was engaging with the proposals and formulating a response to them. That there were delays is borne of the way in which the respondent functions and the need for Council discussion, voting and approval and to take their own advice. The claimant would have well understood this although it would have helped if the respondent had, at times, sent holding responses.
224. The Tribunal does, however, find that in one respect the respondent did act without reasonable and proper cause and in a manner likely to harm mutual trust and confidence. The occupational health therapist said in the report of 6 September 2018 that the claimant could be seen for more sessions if a re-referral were made. The claimant said she found the sessions helpful, but more sessions were not funded. Councillor Theodoulou said in evidence that the reason they were not funded was because the claimant had engaged solicitors. That is not

reasonable and proper cause. This was therapy which was helping the claimant and would be likely to assist with a return to work process.

The list of steps to facilitate a return to work

On 25 October 2018, the respondent, during a telephone conference with the claimant's solicitor requested that the claimant provide a list of steps to facilitate her return to work, which was duly provided on 14 November 2018. The claimant was hopeful that it would "bring all matters out into the open" and that these matters would be satisfactorily addressed by the respondent to enable her to return to work. Despite responding in a letter of 13 December 2018, the respondent ignored almost all of what was raised.

Finally, when the respondent wrote to the claimant's solicitors on 29 January 2019 in an attempt at a more substantive response to the claimant's list of steps to facilitate a return to work (as set out on 14 November 2018), these further responses to each step were either evasive, misleading, untrue or completely outrageous. It became clear to the claimant that the respondent did not intend to assist her in resolving her grievance and provide a safe working environment.

225. The Tribunal does not agree that the respondent ignored almost all of the claimant's proposals. The letter of 13 December 2018 was predicated on the basis that the parties were working towards a round table meeting where matters were going to be discussed. The occupational health physician had recommended mediation. It seems to the Tribunal that it was eminently sensible and appropriate on the part of the respondent to seek to arrange that meeting and to take the view it would be better to discuss detailed matters there. Their comment that written communication alone was not likely to be the way to resolve matters was a sensible observation. Long multi-factorial letters about contentious and emotive issues tends to lead to misunderstandings, comments being taken out of context, and the hardening of people's views. That can sometimes be avoided by face to face communication where people can see and hear things like body language and tone, where discussions can be more dynamic and focus on what it turns out is particularly important to those who are involved, explanations for any misunderstandings can more readily be given and matters can be discussed and viewed and decided upon in a more holistic way. The letter of 13 December 2018 therefore, again sensibly, simply set out a summary from the respondent's perspective of what support they could offer on a return to work. It was intended to form a basis for discussion.
226. It struck the Tribunal that it was a matter of considerable regret in this case that the round table meeting or a mediation never took place. We were not presented with the detail of exactly what happened. However, it is not said by the claimant that this was a failure on the part of the respondent or that the blame for this should be levelled at their door.
227. We do, however, find that it was inappropriate for the respondent to have said that they would not discuss the job evaluation other than through their "usual employment procedures" or once the claimant had returned to work. As addressed above, that was reflective of a strategy of avoidance on the respondent's part about Mr Egan's pay evaluation report.

228. In any event, the respondent's approach to responding to the claimant's list of suggested steps did shift to preparing a written response. We do accept that was generally done in good faith; the minutes show that it was the respondent's understanding that was what was needed in order to try to encourage the claimant to return to work. The Tribunal is satisfied that trying to respond positively towards the claimant's requests where possible was the overall general aim; it was voted through by the Council without opposition, save that various Councillors abstained from voting having declared interests. That it is also recorded in the minutes. That the Council needed to present a strong defence does not run contrary to this or is inappropriate. It is statement of the obvious; they were receiving lengthy solicitors' letters with the obvious implication that there could be legal proceedings on the horizon. Some of the claimant's demands were also themselves unrealistic, unreasonable and were not focused on assisting the claimant in achieving a return to work.
229. The claimant takes issue with the individual responses given in relation to each proposed step. However, what matters in this complaint is the conduct which it is said contributed to the claimant deciding to resign. The best place to look at that is the claimant's resignation letter. In the claimant's resignation letter she did not protest about the respondent's response to each of the 17 steps. In our deliberations we therefore focus on the particular steps the claimant did actually take issue with in her resignation letter.
230. (i) The claimant had sought continued referral to occupational health for guidance on how to properly manage her return to work. The respondent said they would continue to engage with occupational health where required in order to provide support and advice on a return to work. The respondent said they also already had a report they were intending to discuss with the claimant when meeting with her. The claimant's resignation letter complained that nothing had been done in recent months, the occupational health report was months old, and that the respondent saying they would meet with the claimant to discuss the report and matters raised was sweeping issues under the carpet, was mere lip service, and not an attempt to actually assist the claimant back to work.
231. We have dealt already above in respect of re-referral to the therapist for further therapy. But in respect of the advice from the occupational health physician, the doctor had in effect identified workplace issues as being a barrier to the claimant returning to work, and suggested mediation as way to try break that impasse. The respondent saying they wanted to meet with the claimant to discuss the report was not sweeping things under the carpet or lip service. It was doing what occupational health had recommended. It was not an evasive, misleading, untrue, outrageous response nor was the respondent in general not intending to assist the claimant in resolving issues and returning her to the workplace.
232. (iii) The claimant had sought a full copy of the Egan grievance report and the opportunity to request further clarification to which the respondent would be required to respond. The respondent then sent the full report but without the individual statements saying they were confidential and that "we will be prepared to release these if you gain authorisation from the individuals for us to do so."

- The claimant in her resignation letter said she had been trying to obtain a copy of the full grievance report for nearly 18 months, that having just received it, she was very disappointed that the witness statements had been removed and that there was a suggestion she contact witnesses direct to obtain authorisation. She pointed out the that the Councillors had been given the opportunity to read the full report without such authorisation and there remained a lack of openness and transparency. She also said that the report made strong recommendations, particularly in relation to the job evaluation process, that had been completely ignored. She said she now understood why it had been kept from her because of its damning content and that if there was a real desire to resolve matters the recommendations would have been followed a long time ago. The Tribunal understands that the latter relates to the pay report rather than the grievance report.
233. We have already addressed above that it had been unreasonable on the part of the respondent throughout to have withheld the full grievance report from the claimant. It was also unreasonable for the respondent, when finally sending the full report, to omit the witness summaries. In the Tribunal's judgement, it is standard practice in a grievance investigation for the appended witness statements/summaries to be provided to the individual bringing the grievance. They are part of the grievance report. Sometimes, although rarely, situations arise where individuals will only provide statements under conditions of anonymity or confidentiality but that is not the case here. No such arrangements were put in place with Mr Egan when he prepared his report and liaised with the witnesses. The respondent says that the suggestion that individual authorisation be obtained was aimed at the claimant's solicitors and not the claimant. Even if so, it was not reasonably a step that the claimant's solicitors should be required to take. The failure to provide the complete grievance report dispossessed the claimant of her own grievance and created the impression there was something to hide. It is understandable the claimant viewed it as a lack of openness and transparency. It was conduct without reasonable and proper cause and which would be likely to damage trust and confidence.
234. The recommendations about job evaluation made in the grievance report were that the respondent should provide staff with the detailed results of the job evaluation process pertaining to their posts and establish appeals machinery to deal with any appeals that confirm with criteria to be set for such appeals. It was also recommended that the Council develop a policy on job evaluation to include all process elements ensuring that openness and transparency is reflected in its composition. The claimant was already in possession of these recommendations from the grievance report executive summary she previously received. The pay evaluation recommendations in the grievance report had therefore not been hidden from the claimant. That said, when the claimant received the Egan pay report in late October 2018 it would have been a legitimate conclusion for her to have reached that the respondent did not appear to have engaged in openness and transparency regarding the pay report and the pay evaluation process, contrary to what Mr Egan recommended in the grievance recommendations and

- which the respondent had previously told the claimant they accepted and would progress.
235. (vii) The claimant had asked for a copy of the Councillors' individual responses to the Ombudsman, saying she understood there had been some outright denials. The respondent said they could not provide these to the claimant as the Council did not hold them and were not part of what the Ombudsman sent to the Council. The claimant in her resignation letter says that the response shows no attempt to investigate the matter and that was cursory and dismissive and transferred the onus on to the claimant to move things forward when she was unwell. The Tribunal does not consider the respondent's approach here to be unreasonable. These were individual responses sent personally by the individuals to the Ombudsman as regulator. It is the Tribunal's industrial experience that such correspondence would ordinarily be considered to be personal to those individual Councillors. Moreover it is difficult to see what positively their provision would have achieved in terms of returning the claimant to the workplace. It is difficult to see that the Labour Councillors would have written things that the claimant would be happy to read or that she agreed with. What then could sensibly have happened? The Ombudsman had already declined any further review. In the Tribunal's view this is a matter where the claimant was unable to let matters lie. She wished to keep picking away at it, but it was not something that was likely to facilitate her return. The respondent did have reasonable and proper cause for their response on this point.
236. (viii) The claimant sought a written explanation from the Chair of the Civic Committee why the Egan pay report had been withheld from her. The respondent said there had not been sufficient time for the committee to consider the report in detail or for the Council to receive full copies before the claimant's absence began in early March. It said that the Chair considered there was no need for an immediate approach to deal with the report which was requested for comparative purposes only and when it was made clear it would not be binding on the Council or the Town Clerk. The claimant's resignation letter said this response was totally unacceptable to her. She said that the respondent had receive a report it found unpalatable and had backtracked to stop her receiving the recommended pay rise. She referred to the minutes of 30 November 2017 and said that at the time the basis of the instruction of Mr Egan was very clear and that it was only after completion of the report did the respondent change this. She said she considered this a fundamental breach of trust.
237. Our findings already made accord with what the claimant said here. The respondent was seeking to backtrack from the instruction of Mr Egan because they found the report unpalatable. The respondent's position in their letter of 29 January 2019 would have very clearly sent the message to the claimant that they were not intending to use Mr Egan's report as the guiding report in term of resolving the claimant's long outstanding pay review, that they were trying to recast it after the event as simply a comparative and completely non-binding report and distance themselves from it. It would have legitimately reinforced the belief that the respondent had been burying the report because they did not like

- its content. It would have left the claimant with no idea as to what was supposed to be happening next in terms of pay nearly 4 years after the whole pay evaluation process started. The content of the letter on this point was without reasonable and proper cause and seriously damaged mutual trust and confidence.
238. (ix) and (x). The claimant's letter had required Carmarthenshire County Council to provide a copy of their original pay evaluation to include all calculations. It also requested a formal letter from Carmarthenshire County Council about that evaluation fully detailing the persons involved and the terms of engagement. The respondent's letter said that the report did not exist in the office of the Town Council and the advice given by Carmarthenshire County Council "was, I understand, verbal". It also said that to their knowledge there were no written terms of engagement with Carmarthenshire County Council. It said that the people involved were Mr Thomas and that the lead person from the respondent had been Councillor James. The claimant said in her resignation letter that she had never previously been told that the advice was verbal and that she felt she was being deliberately misled which went to the heart of trust and confidence. She said that saying that no report existed in the office and that the advice "was, I understand, verbal" was deliberately evasive as Councillor Theodoulou was not a member of the job evaluation committee and he would not necessarily be in possession of the full facts. She said that the response about terms of engagement was also evasive as members of the job evaluation committee must know whether there were written terms of engagement or not.
239. Councillor Owens had previously told the claimant that he understood the advice received from Carmarthenshire was verbal. The claimant was therefore not correct to say that she had never been told it was verbal advice. However, it is possible the claimant may have become confused in her understanding and recollection given she had also been told that she was entitled to receive a copy of any documents that did exist, and which she had therefore been chasing. The claimant had also genuinely thought some meaningful documents would exist if a proper pay evaluation and comparison had been done. Councillor Owens said to us in evidence that he thought the committee was intending to just see what they could produce (albeit even that was never done until just before this Tribunal hearing and was ultimately simply the various documents with their hand annotations retained by Councillor Kenneth Edwards). Ultimately what the respondent's letter said about that earlier exercise was factually correct. No written report did exist, the advice given had been verbal, and there were no written terms of engagement. The response in that sense was therefore not evasive and the claimant was not being deliberately misled at that time. However, the harm that was really done here was that the claimant was finally learning that she had been given two pay evaluation outcomes that did not appear to have a proper basis behind them (or at least that was properly documented that the claimant would be able to understand and potentially appeal). This was compounded by the respondent saying they were not intending to abide by the Egan pay evaluation. It meant there was no properly documented

- pay evaluation that the respondent was showing any willingness to abide by. It left the claimant with no real pay evaluation outcome 4 years down the line.
240. (xi) and (xii). The claimant sought a copy of the job evaluation committee's comparative evaluation and individual written explanations from each member of that committee detailing why the evaluation had been withheld from her. The respondent's response said they were not aware of a written comparative between the two evaluations and so it was not possible to give something that did not exist. The claimant's resignation said that this was a fabrication as the letter she had received with the amended salary proposal from Councillor James said a comparative evaluation had been done and she said that it would not be possible to do that kind of evaluation without it being done in writing. She said that Councillor Hadley-Jones had also told her he had been prevented by Councillor James in providing her with anything. She questioned how she could continue with dialogue with the council when there was clear evidence of misinformation.
241. Viewed objectively the Tribunal, as already dealt with above, does not find that the respondent was engaging in misinformation at that time. The claimant was operating under the misunderstanding from her perspective that there was a full written evaluative comparison between a Carmarthenshire County Council assessment and one using the NALC Agreement. That did not exist. That is what the respondent was communicating to the claimant. The fact that there was no such report was something that did not paint them in the best of lights, but it was something that they were nonetheless confirming to the claimant and in that sense they were therefore operating with some openness. Factually, it would have been more accurate for the respondent to have said that the notes that Councillor Kenneth Edwards had kept existed. However, the Tribunal considers it likely that Councillor Theodoulou and those assisting him with writing the response probably did not realise at the time that Councillor Kenneth Edwards (who was no longer a Councillor) still had them. The evidence given to us was that it was only in the run up to the Tribunal hearing that it came to light he may still hold something. It is, regrettable as that may be, the kind of situation that fairly frequently occurs in the run up to Tribunal hearings and the Tribunal accepts that it is likely that is what happened. The Tribunal does not find that this conduct (in terms of what was said in the letter) was of a level that was likely to damage trust and confidence. However, it links to the wider observation made above in relation to points (ix) and (x) about the claimant finally learning the inadequacy of the records relating to the first process.
242. (xiii). The claimant sought written explanations from each of the members of the job evaluation committee detailing why she had been wholly excluded from the entire staff evaluation process when Mr Fox had been in attendance at various meetings and had "a large input into the clerk's role." The respondent said that the committee took the view that the job evaluation of other members of staff may have had an influence on the Town Clerk's evaluation at a time when she was seeking a review of her grade. It was said that it was for this reason she had been not involved in the discussions. The respondent also said, "We can find no

- record of Lee Fox's involvement with the evaluation panel and therefore we cannot comment on this." The claimant in her resignation letter said this was a fabrication as she had a clear recollection of Mr Fox attending meetings with the job evaluation committee and that she had spoken to him about how he was attending these when she was not included. She referred to Mr Fox's email of 21 December 2017 and the special panel's reports. She said that whilst she appreciated there was little that could be done in hindsight to correct these historic issues, the continued refusal to acknowledge the issues, combined with a willingness to misrepresent the position was contrary to the trust and honesty she should be able to expect from her employer.
243. The respondent's response on this point was untrue, evasive and not to their credit. Various Councillors knew of Mr Fox's engagement with the job evaluation committee and the respondent should have been capable of being honest with the claimant about that involvement. Bearing in mind the claimant's wider historic complaints about her sense that Councillor James had been favouring Mr Fox and what the claimant had been told about the potential historic plan to get Mr Fox in the role of Town Clerk, such an evasive response was inevitably going to heighten the claimant's sense that something inappropriate had been happening and that the Council were taking steps to hide it from her. It is conduct that was without reasonable and proper cause and was likely to damage mutual trust and confidence.
244. (xiv). The claimant asked for a full written explanation from Councillor James as to why the email of 26 February 2018 had been sent to her and why he had failed to attend the second Audit Committee meeting. The response from the respondent said that the email of 26 February 2018 had been sent on behalf of the labour group members and was not agreed or endorsed by the Town Council. It said, "your client is therefore advised to approach Cllr John James and the Labour Group directly for an explanation." The response referred to the action taken by the Audit Committee which had found no evidence to support the allegations. It referred to the fact that disciplinary action could not be taken against councillors and therefore the only recourse had been to refer the matter to the Ombudsman, which had been done. The claimant in her resignation letter said that she was very upset and appalled to be told that she must directly approach the very Councillors she had complained about and which had led to her being absent from work with ill health. She said it showed no attempt to understand the issues she faced or was a way to put the issue beyond resolution. She said it was also amounted to the respondent saying that they could not provide her with a safe working environment meaning her return to work was impossible.
245. Mr Theodoulou said in evidence that the letter had not been intended to suggest that the claimant personally contact the Labour group. He said it was intended for the claimant's solicitor. He also said that he accepted that the respondent remains vicariously liable for individual actions by Labour councillors but that it was also important to get the message across to the claimant that what had happened had not been officially sanctioned by the Council and that indeed they

had found the allegations unproven and had taken steps to do what they could to obtain redress against the Labour councillors involved.

246. Viewed objectively, the Tribunal does not find that the intention was for the claimant's solicitors to contact the Labour group. The letter clearly states, "*your client* is therefore advised to approach Cllr John James and the Labour Group." The Tribunal can understand why the respondent may have been concerned about answering this kind of question from the claimant. It is something they had investigated and dealt with. It is difficult to see, whatever response was given by those Labour Councillors involved, how it would have been something that that claimant wanted to hear, how it would have been an answer she found acceptable or how it would help aid the claimant return to work. However, it was inappropriate for the respondent, as the claimant's employer, to tell her that if she wanted the answers to these questions the respondent was not going to assist her with that, and she would have to make direct personal contact with the very individuals she had been complaining about (and who also were her employers.)
247. It referred the claimant back to very individuals she was complaining about and would have understandably given the claimant the impression that the respondent was stepping away from, and not accepting as the claimant's employer any responsibility for the actions of those Labour councillors. It understandably gave the claimant the impression that the respondent (or the Labour councillors involved) were deliberately evading giving the claimant an explanation. It would have understandably made the claimant question how the claimant could safely return to work if she was going to be told if something happened involving a Labour councillor then it was separately between her and that councillor/ that group. What was said to the claimant was therefore without reasonable and proper cause and was likely to harm the relationship of mutual trust and confidence.
248. (xv) The claimant asked for a full written explanation from the Labour Group about their collaboration with the reporter from the Llanelli Online which it was said had resulted in significant harassment of the claimant through malicious emails. It was said that this association had been openly admitted by Councillor Morris. The respondent said in response that the Town Council was not involved in decision making about this and "we would suggest that Melanie seeks an explanation directly from the Labour Group." It added that efforts had been made to complain to the press regulator. Again, the Tribunal would understand the responding declining to comply with such a request. It was a poorly judged request and not one likely to facilitate the claimant's return to work. However, the problem is again with the way in which they framed their response. The claimant in her resignation letter made the same point that she was being referred back to the very people that she was complaining about. The manner of the response on this point was inappropriate for the reasons already given above and was conduct without reasonable and proper cause and was likely to damage the relationship of mutual trust and confidence.
249. (xvi) The claimant asked for a full explanation as to "why there was a deliberate campaign of hostility" against her. The claimant said that this had been admitted

- by Councillor Walpole and that he had said it stemmed from the email sent by the claimant on behalf of the Mayor about the use of facilities for Labour group meetings. She sought the opportunity to scrutinise the explanation with Councillor James in the present of the full council. The response again said that the Town Council as employer was not involved in this issue and that it should be taken up with the Labour Group "if you need further information." This particular response did not directly suggest that it was for the claimant to personally make contact with the Labour group. Nonetheless the Tribunal does not find it an appropriate response. Again, we can understand why the respondent may have quite rightly considered it an inappropriate and unhelpful request that was not going to help get the claimant back into the workplace and was a poorly judged request reflective of a reluctance to let matters rest. But what was actually said to the claimant in response to the request was not appropriate for reasons similar to those already set out above. It clearly seems to be saying that the respondent is not responsible for the actions of Labour Councillors and loses sight of the fact they were all the claimant's employer whether acting individually or collectively.
250. (xvii). The claimant asked for a full written explanation from the respondent as to why she was apparently going to be forced out of her position and replaced by Mr Fox. The respondent said they wanted to assure the claimant that there was no resolution to this effect and that "as far as we are aware there has been no involvement in anything of this nature by the Council as your client's employer. If, as stated, the Town Clerk has evidence of any individual or individuals making such a statement she should take this up directly with them." The claimant said in her resignation letter that she was aware that most, if not all, Councillors had subsequent knowledge of the plot held by some Labour Councillors. She referred to emails in her possession and the fact that Councillor John had talked about making enquiries with the police. She referred to discussions with other independent Councillors who were convinced there had been such an intention on the part of some Labour Councillors.
251. Again, the Tribunal does not consider that this was a sensible request on the claimant's part. A reassurance was a sensible response. If the respondent wanted to seek further detail from the claimant then the appropriate course would have been to invite her to provide the information to the Audit Committee. It was not to send the claimant back to the individuals concerned. The response also should not have said "so far as we are aware there has been no involvement in anything of this nature by the Council... as ...employer." The Tribunal has found as a matter of fact that it is likely there was such a plan held by some Labour Councillors prior to the election. We have also found that various Independent Councillors were told or were suspicious that this had been happening, and at one point Councillors John had been collating evidence about it. The respondent's response attempted to evade all this by trying to say it had not been done as the claimant's employer (even those they admit in these proceedings they are vicariously liable for the acts of individual councillors). It also attempted to evade responsibility and refer the claimant back to the very people she was complaining about, by saying she should take any evidence she had up directly

with the individuals involved. It was conduct that would damage trust and confidence.

Did the conduct amount to a fundamental breach of contract and did it contribute to the claimant's decision to resign?

252. We have found that the respondent acted without reasonable and proper cause and in a manner which damaged trust and confidence in the following ways (in short summary form):

(a) the length of time to complete the claimant's job description (which fed into her job evaluation) between February 2015 and July 2017;

(b) Councillor Linda Edwards conduct towards the claimant on 30 August 2017;

(c) the conduct at the meeting on 21 September 2017 that was targeted at the claimant;

(d) not giving the claimant a full copy of the grievance report including appendices when first sent to her and thereafter (November 2017 onwards);

(e) not concluding the claimant's grievance and giving the claimant a final grievance outcome letter or right of appeal (November 2017 onwards);

(f) not honouring the grievance outcome in terms of being open with the claimant about the pay evaluation process, its result and or the offer of a right of appeal (February 2018 onwards);

(g) the complaint from the Labour Councillors of February 2018;

(h) not properly documenting the initial pay evaluations and not giving the claimant the Egan pay evaluation report between February 2018 and October 2018. in effect, burying that report and not otherwise progressing it in that time and thereafter;

(i) Not funding further therapy because the claimant engaged solicitors (September 2018);

(j) In the letter of 29 January 2019:

(i) evading engaging on the Egan job evaluation report by saying it would be discussed separately as part of the respondent's "usual employment processes" and backtracking on the instruction of Mr Egan and his pay evaluation report findings by asserting his report was only for comparative purposes and would not be binding. Revealing there were no proper documents for the earlier two pay evaluations leaving the claimant with no proper pay evaluation outcome;

(ii) not providing (in conjunction with the letter of 1 February 2019) the witness summaries for the Egan grievance report and saying the claimant would herself have to gain authorisation from the individuals involved for them to be released to her;

(iii) telling the claimant they could find no record of Mr Fox's engagement with the job evaluation committee which was untrue;

(iv) effectively side-lining responsibility for the email of 28 February 2018 by saying it had been sent on behalf of Labour Group members and therefore the claimant should approach Councillor James and the Labour Group directly for an explanation. Saying the same in respect of the alleged collaboration with a reporter from Llanelli online;

(v) effectively side-lining responsibility for answering the claimant's questions about her allegation there had been a campaign of hostility against her by saying it did not involve the respondent as employer and should be taken up with the Labour Group;

(vi) saying the Council had not been involved in any suggestion of replacing the claimant with Mr Fox and that if the claimant had evidence she should take it up with the individuals concerned.

253. The Tribunal would find that the handling alone of the claimant's pay, culminating in the backtracking from Mr Egan's pay evaluation report was a fundamental breach of the implied term of trust and confidence, set in the context of all that had happened in that regard and the fact that it was offered to the claimant as a grievance resolution. But in any event the wider conduct identified above (including the handing of pay) was a course of conduct comprising several acts and omissions which viewed culminatively amounted to a (repudiatory) breach of that implied term. The Tribunal is also satisfied that such a breach was an effective cause of the claimant's resignation.
254. The respondent argues that she affirmed the breach by waiting too long. The Tribunal does not agree. The letter from the respondent was dated 29 January 2019. The claimant resigned on 12 February 2019. The Tribunal does not consider that the gap between the two or the acceptance of sick pay in that period demonstrates that the claimant was calling on the performance of the contract such as to be consistent with the continued existence of the contract. It is akin to the kind of period in Waltons & Morse v Dorrington [1997] IRLR 488 EAT where a delay of few weeks did not amount to affirmation. It was a reasonable period for the claimant to think about her position and decide to resign.
255. To the extent that the respondent seeks to argue that the claimant cannot rely upon the principle in Kaur on the basis that there was no course of conduct, the Tribunal does not agree with the respondent's summary of the law. This is not a discrimination case. There is no obligation on the claimant to demonstrate a continuing state of discriminatory affairs or something akin to that. As is made clear in Omilaju the final straw act does not have to be of the same character as the earlier acts and the concept of a course of conduct is not used in a precise or technical sense. What matters is that the conduct is of a kind that damages the relationship of trust and confidence so that culminatively it amounts to a fundamental breach. Furthermore the content of the letter of 29 January 2019 was certainly not entirely innocuous.

256. The claimant therefore resigned in circumstances in which she was entitled to terminate the employment contract without notice by reason of the respondent's conduct. The claimant was dismissed. The respondent has not asserted a fair reason for dismissal under section 98(4) (although it disputes that the principal reason was not any protected disclosure – to which we return below). The claimant's ordinary constructive unfair dismissal claim is therefore well founded and is upheld.

Wrongful Dismissal

257. As the claimant has succeeded in her ordinary constructive unfair dismissal claim her wrongful dismissal (notice pay) breach of contract claim also succeeds.

Protected Disclosure

The claimant's grievance

258. Much of the claimant's grievance letter was concerned with the detail of her complaints about Mr Fox and also the handling of the pay situation. It did also set out her concerns about how Councillor James had responded to the situation regarding Mr Fox and some other matters troubling her. The claimant, in particular, said:

"It is also of significant concern to me that Cllr John James seems reluctant to investigate the issues which I have raised regarding the TSO, despite me even suggesting that it may be preferable for him if the matter was looked into by another Councillor. Although Cllr John James has emphasised his impartiality to the point that he took issue with me even suggesting that I was questioning his credibility, I am fully aware that he is in a compromised position as he is standing alongside the TSO's wife, Mrs Amanda Fox, as the two Labour candidates for the forthcoming County Council elections..."

As set out in the claimant's counsel's closing submissions, the claimant also referred to Councillor James pulling the agenda item about Mr Fox on the basis that the facts were not yet known, him not having given the claimant information about Mr Fox's counter complaints, suggesting that it was the claimant putting obstacles in the way of meeting, raising the holiday issue with the claimant and saying that the claimant was falling out with all the members of the council.

259. The claimant says in her witness statement that in producing her grievance letter she decided to make a whistleblowing complaint. She says that she considered that Councillor James was in breach of the Code of Conduct, and therefore in breach of a legal obligation, in failing to declare an interest, in conducting himself in a manner that may bring his office into disrepute, attempting to use his position to confer an advantage onto Mr Fox and creating a disadvantage for herself. She says she also believed that her disclosure was in the public interest as the respondent is a public body and Councillor James was an elected Town Councillor, County Councillor and was seeking re-election to both. The respondent, in effect, disputes that the claimant genuinely held those beliefs as at the point she produced and handed over her grievance letter.

260. We do not find that at the relevant time the concept of Councillor James being in breach of the Code of Conduct was in the claimant's contemplation. What was on her mind was trying to express her frustrations about managing Mr Fox, her other frustrations with the Council and that she felt Councillor James was hindering her rather than helping her. She was also offering up the suggestion that Councillor James was reluctant to deal with and help her with Mr Fox because he was campaigning with Mrs Fox. She felt confused about how she felt Councillor James was behaving towards her and was positing that as a suggestion to explain Councillor James' behaviour. Her thoughts at the time about Councillor James' behaviour were at an embryonic stage. It had not been that long ago that she had actually been taking her problems with Mr Fox to Councillor James for assistance. If she had always thought that Councillor James was compromised in relation to Mr Fox, she would or should never have taken it to him to start with. Her role was to help Councillors and guide them on these kinds of conflict (and indeed to manage her staff).
261. Moreover the claimant was knowledgeable on the Code of Conduct. Part of her role was to guide Councillors in relation to it. The claimant is a qualified lawyer (albeit not an employment lawyer). She is also a thorough and precise person. When producing documents she writes at considerable length. Much of what she wrote was concerned with things other than the conduct of Councillor James. All of these things lead us to conclude that if the claimant genuinely had formed the belief at that time that Councillor James was in breach of the Code of Conduct, she would have expressly written that in her grievance letter. That the claimant formed that belief later down the line does not mean that she believed it at the actual time. The claimant's counsel says that Councillors would have in mind Code of Conduct complaints without expressly referring to the Code. For example, in complaints that Councillors made about each other to the Ombudsman. However, we do not agree that this is the way in which the claimant would conduct herself. She is a far more thorough and precise individual.
262. We also do not consider that at the relevant time the claimant genuinely believed that she was making her disclosure in the public interest. We consider that the claimant's beliefs at the time were about her own private interests, about what was happening to her and the powerlessness she was feeling. We agree, as put forward by the respondent's counsel, that if the claimant had genuinely believed there were other interests beyond that, she would have at least alluded to some issue beyond and in addition to how the matters complained of personally affected her. Again, the claimant is someone who is precise and lengthy in what she writes. If she genuinely thought it at the time, she would have written about the potential wider implications of Councillor James' actions and comments. That the matter may be capable of being in the public interest does not mean that the claimant herself subjectively believed it to be so at the time. We do not find that she did.
263. We similarly do not consider that the claimant at the time genuinely subjectively believed that the respondent was failing to comply with any other legal obligation,

- about for example Mr Fox or her pay evaluation, or that she genuinely believed that she was making a disclosure about any such matters said to be in the public interest as opposed to the claimant's private interests. Again, if she had thought that at the time she would have said so.
264. It is also said that the claimant reasonably believed the information she disclosed tended to show that her health and safety had been, was being, or was likely to be endangered. The claimant relies on an attachment to her grievance letter which contained the email she had sent to Councillor James on 8 March 2017 about Mr Fox's behaviour and arranging a meeting in which she said "I therefore need to get matters resolved as a matter of urgency. As you will appreciate, this issue is taking up too much of my time and is distracting from my normal day to day work. I also feel that this situation is starting to have an adverse effect on my health, due to the simultaneous demands being made upon my time."
265. We do not consider that the claimant reasonably believed the information she was disclosing tended to show that her health and safety had been endangered or was likely to be. The claimant is a qualified lawyer and a precise individual. Again, if she genuinely believed that she would have put it within the body of the long letter itself, as opposed to being contained within an email of one appendix. Moreover, we do not consider that she genuinely believed that the information tended to show that her health and safety was being *endangered*. The expression connotes a degree of seriousness that is in line with the statutory purpose of the whistleblowing legislation. The claimant's expression to Councillor James had simply been that having lots to do, including handling Mr Fox, was starting to have an impact on her health. We do not consider that amounted, either subjectively to the claimant, or objectively in the claimant's situation, to a disclosure of information that met the threshold for *endangerment* of health and safety.
266. We therefore do not find that the claimant's grievance was a protected disclosure. We have in any event, below, gone on to address the complaints of detriment and dismissal.

The claimant's complaint to the Public Services Ombudsman

267. The respondent accepts that the claimant's complaint to the Ombudsman was a disclosure of information and that the claimant may have had a genuine belief that the matters she was reporting, including breaches of the Code of Conduct, amounted to breaches of a legal obligation. The respondent also does not dispute that viewed from the claimant's context, such a belief would be reasonably held (even though the Ombudsman did not ultimately uphold the complaints).
268. The respondent does, however, dispute that the disclosure was made in the public interest. The respondent says that the claimant's disclosure was entirely about matters relating to her and how she felt she had been treated.
269. The Tribunal finds that the claimant did not believe her disclosure was made in the public interest. We are conscious that there can be mixed beliefs. A belief

- the disclosure is in the public interest does not have to be predominant. We are also conscious that what we have to consider are the claimant's beliefs and not her motivation/what she was seeking to achieve. However, what she was seeking to achieve does to an extent help show what the claimant's belief was when she made her disclosure.
270. The claimant was off work, sick. She believed she was being harassed by a group of Labour Councillors and their associates and that there may have been a campaign to get her out. She thought her route to returning to work and being able to do her job as Town Clerk, unhindered, lay with the sanctioning of the Councillors concerned. She made her disclosure of information to the Ombudsman in the belief of the genuineness and seriousness of her own personal situation. We do not find, looking at the specifics of her complaints, that it was made in a personal belief in a wider public interest. In the particular circumstances of the claimant's situation, we do not find that the fact that she was complaining about public servants to a regulator of itself means she held a belief her disclosure was being made in the public interest. The Ombudsman was just the body that held the ability to impose sanctions where the Council themselves could not and was the claimant's last resort in terms of getting the individuals held to account so that she could return to work. It was a complaint to the Ombudsman, but it was an inwards looking complaint. Her complaint was not serving the interest of a wider group of people.
271. We therefore do not find the claimant made a protected disclosure. But if we are wrong about this, we have in any event gone on to consider the complaints of whistleblowing detriment and dismissal.

Protected Disclosure Detriment

- On the 18 April 2017 the respondent conducted an unfair job evaluation process and only increased the claimant's salary to SCP 38*
272. This alleged detriment can only relate to the first claimed protected disclosure. As already discussed above, it is likely that certain Labour Councillors were frustrated with the claimant *before* she presented her grievance letter. It can be seen from the handwritten records Councillor Kenneth Edwards later produced, they were annoyed with the claimant for having been pressing for her pay evaluation to be completed, in asking that hers be a priority, in pressing for the NALC Agreement to be used, and because they felt she was trying to dictate terms to them. They thought the chain of command should work the other way round. It is likely that some, rightly or wrongly, held concerns about the claimant's performance and some had held conversations about whether Mr Fox might have something more to offer them as Town Clerk rather than the claimant. Whilst a job description and pay evaluation process should be objective and be about the job not the person, it is likely that these things became intertwined their minds. They questioned whether the claimant had the kind of responsibilities that she said she did in terms of her job description and therefore questioned her appropriate level of pay. Given Mr Fox's access to the Job Evaluation Committee or members of it, and he is described as being someone who would voice his

opinions, it is likely to some extent his views also become tied up in that negative briefing and analysis process. Indeed, the claimant's suspicions about what was going on are linked in part to the deterioration in her relationship with Mr Fox in the first instance which then led to her grievance. Mr Fox himself in his emails had said his involvement with the Job Evaluation Committee seemed to be causing difficulties. The claimant herself in her own grievance letter said she felt that her challenging the job evaluation method had not been well received. She also said she felt there was some ill feeling towards her through having applied for the Town Clerk job at Llanelli Town Council which again all pre-dated the sending of the grievance letter.

273. The claimant and Councillor James had also had a disagreement about how the TSO situation should be handled. The claimant had wanted to pursue disciplinary action. She wanted it included as an agenda item. Councillor James wanted to get everyone round a table. It has always struck this Tribunal that whatever Councillor James' allegiances to Mr Fox may have been, getting round a table to sort out what was a management dispute between the claimant and Mr Fox that was leading to fractious chains of emails was a sensible first step to do, albeit complicated by the way in which the respondent is structured. However, the disagreement over that was then a further source of friction.
274. Councillor James had also expressed some annoyance when the claimant had suggested maybe another Councillor should deal with Mr Fox given that Councillor James previously had discussions with Mr Fox. He had also expressed some frustration with the claimant saying she was unhappy about attending the meeting on the early evening of Friday 10 March if complaints from Mr Fox were going to be thrown at her, as he felt that he and Councillor Edwards had put themselves out in arranging the meeting that the claimant had been pressing for, with (he felt) the claimant then putting obstacles in the way. He had also raised the issue of holidays with the claimant, with their debate about what had been said and whether Councillor James had a witness. That had led to him suggesting the claimant was falling out with all members of the Council. Councillor James later said to Mr Egan that what he was saying was that the claimant was not going about things the right way. It strikes the Tribunal this shows the growing level of tension, building from a variety of sources prior to the grievance ever being lodged. Indeed, it is that same background, but from the claimant's perspective, that led to her lodging the grievance with Councillor Theodoulou to start with.
275. The claimant's grievance included the claimant's concern that Councillor James may be compromised in relation to Mr Fox as well as other things. Councillor James later expressed his annoyance to Mr Egan that the claimant had gone down the route of taking her complaint to Councillor Theodoulou as he did not consider it complied with his understanding of the standing orders. The special panel was then set up to look into the claimant's grievance.
276. The claimant attended the meeting before the Job Evaluation Committee on 30 March 2017. She felt bombarded with questions. We consider that the questions that the claimant was asked on the 30 March 2017 were questions that were

- genuinely held based on the documents the claimant had produced. However, we also consider that the manner in which she was asked the questions was likely to have been influenced by a degree of antagonism held towards the claimant at that time. We consider that antagonism may have been influenced to an extent by the claimant's complaint about Councillor James in her grievance. We consider the claimant raising her grievance, and including within it her complaint about how Councillor James had responded to the situation with Mr Fox, was probably another small additional source of annoyance held by some, including Councillor James himself, towards the claimant on top of an already deteriorating relationship. However, we do not think, in the scheme of everything, it was likely to be a major source of annoyance. For one, Councillor James had the straightforward explanation to give that he was just trying to get everyone round a table. We would describe its influence as being marginal but more than trivial.
277. The claimant then received the letter about her pay which was just left for her without discussion. The pay evaluation had been done with the assistance of Mr Thomas. It does not seem to be suggested that he held any animosity towards the claimant having raised a grievance (if indeed he even knew about it).
278. We do, however, consider that, particularly given the close timing of events, the fact the claimant had complained about Councillor James in her grievance is likely to have paid a small overall part in a negative picture of the claimant's work and responsibilities being fed into the pay evaluation. Mr Thomas could ultimately only deal with the information he was given by the respondent. We do accept that is likely to have then fed into the pay figure the claimant was given in the letter. It is also likely to have paid a role in the abrupt manner in which that outcome was communicated to the claimant. We would find that the claimant's complaint about Councillor James was a marginal but more than trivial influence.
279. The general poor-quality record keeping of the job evaluation process done at that time, however, was simply down to the route that the respondent had decided to take in getting informal assistance from Mr Thomas which meant there was no formal report or records. This was not due to the claimant's grievance. It was simply a poor process.
280. We do not find that the decision to use the Carmarthenshire County Council scheme as the principal evaluation method was influenced at all by the claimant's grievance. It had already been stated on several occasions that this was the scheme that the respondent used. Mr Thomas had been involved in the respondent's processes for some time, which involved an evaluation using the Carmarthenshire County Council scheme. They were using it because it was the scheme that they had always used to date, there was a sense of wanting to treat all staff equally, and because they could utilise the services of Mr Thomas for free.
281. We do not find that the delays in the process until that time were influenced by the claimant's complaint against Councillor James. They were longstanding prior

to that point. Likewise the claimant's exclusion, and Mr Fox's inclusion, from the pay evaluation processes was longstanding prior to her grievance.

From February 2017 to March 2018 the claimant was undermined by Labour Councillors.

In August 2017 Clls Bob Walpole and Moira Thomas called an Extraordinary Council meeting in order to intimidate the claimant.

From August 2017 to November 2017 Clls John James, Moira Thomas, Bob Walpole, Linda Edwards were the main Labour Councillors who exerted pressure to reinstate Mr Fox

282. The first part of this pre-dates the grievance letter and so does not work as a matter of causation. We have already found there was a deterioration in relationships and a degree of animosity held towards the claimant prior to her grievance being brought. We have already found that the attempt to call the Extraordinary meeting was made because those involved were seeking the reinstatement of Mr Fox and trying to control the agenda to achieve that as well as being part of the machinations of the political battlefield at that time (together with concerns as to whether the claimant was conflicted). We have found the purpose was not to intimidate the claimant.
283. We have also already found that some Labour Councillors would not have been concerned at the prospect of the claimant feeling intimidated or upset by their efforts to get Mr Fox reinstated or reappointed as collateral damage to their main aims. Our reasoning for that is set out above. Within that reasoning we identified that the lodging of the claimant's grievance was one relevant factor in a multifactorial analysis. In turn the claimant's complaint about Councillor James was only a small part of that grievance. Ultimately our conclusions on this point are the same as above in relation to the pay evaluation decision of 18 April 2017. We consider that the claimant's complaint about Councillor James in her grievance was a small additional annoyance on top of an already complicated situation. The grievance itself was still open as at the time of the earlier efforts to reinstate Mr Fox. We consider it would have again played a marginal but more than trivial part in the reasons why some Labour Councillors would have viewed the claimant as acceptable collateral damage in their efforts to reinstate Mr Fox. But we also consider that influence would have continued to wane as time proceeded, and in particular once the grievance process concluded from the respondent's perspective. Further, as time went on it is likely that antagonism towards the claimant was increasingly to do with the sense that the claimant was allied to the Independent group, which was significantly contributed to by the claimant's email about room bookings.
284. We would apply the same analysis in relation to Councillor Linda Edwards' conduct towards the claimant on 30 August 2017.

On 21 September 2017 Mr Fox and Labour Councillors allowed to heckle and jeer at the Claimant, intimidation.

285. We not found as a matter of fact that Labour Councillors heckled and jeered at the claimant. We have not found as a matter of fact that Mr Fox and others were allowed by the respondent to heckle and jeer at the claimant. Councillor Owens took steps to stop the behaviour on 21 September 2017.

286. We have also found that much of the conduct by some Labour Councillors on 21 September 2017 was directed at Councillor Owens and the controlling group of Independent Councillors rather than at the claimant. However, we also found that there were some incidents which were aimed at the claimant. In particular, part of what was said about the hotel booking, the complaint about paper colour and the nit-picking over minutes. We would apply the same analysis as above, that the conduct directed at the claimant was only marginally influenced by the claimant's grievance complaint about Councillor James, but it was still more than trivial.

In or around 26 February 2018 Councillor John James and others alleged that the claimant had sanitised minutes and removed them from the website

287. The email was a detriment. Any reasonable employee in the claimant's situation would have felt upset about what was said and that is sufficient to amount to a detriment. It accused the claimant of serious impropriety.

288. We do not, however, consider that the claimant's March 2017 complaint against Councillor James was by this time a material influence upon the allegations made against the claimant in February 2018. Time had passed. The grievance investigation had concluded as far as the Labour Councillors would have been concerned. This complaint was a result of the claimant being caught up in the political infighting between the Labour Councillors and the Independent Councillors, and the ongoing battle about the attempts to reappoint Mr Fox. In particular, it is likely the claimant was seen as siding with the Independent Group, especially in relation to the dispute that had arisen about what Councillor Mitchell may have said at an earlier meeting about Mr Fox and the RNLI.

Up to February 2019 the respondent failed to inform the claimant that a fair evaluation process had been completed or act on the recommendation made by Mr Egan

289. The pay report was released to the claimant's solicitors in October 2018 not February 2019. We do not consider that the claimant's March 2017 complaint or her Ombudsman complaints had a material influence on the handling of Mr Egan's pay report. The report was sat on because it produced a figure higher than expected which was viewed as unpalatable and likely to cause further political fallout. That suppression strategy had already been adopted before the claimant made her complaint to the Public Services Ombudsman.

The respondent did not release the investigation into her grievance until February 2019 and when it did so, the respondent did nothing to engage the claimant in any formal grievance procedure. Despite outwardly suggesting that they intended to try and resolve the grievance issues, the respondent did nothing to assist the claimant in resolving the matters raised.

Up til February 2019 there was a complete failure to resolve the grievance in a timely manner.

Up until February 2019 failed to provide a copy of Mr Egan's report in a timely manner.

290. These allegation are not entirely factually correct. The claimant was given the executive summary of the report in November 2017. There had been a formal grievance procedure in the sense of Mr Egan's investigation and the grievance meeting held with the claimant on 30 November 2017. As already dealt with above, the respondent did take some steps to assist the claimant with resolving the matters raised. They accepted Mr Egan's recommendations and took the steps he recommended such as the adoption of policies and the model protocol. They instructed Mr Egan to do the pay evaluation (although of course ultimately that had an unsatisfactory ending). The respondent could not themselves discipline the Labour Councillors.
291. What the respondent did fail to do is to give the claimant the full grievance investigation report or to formally conclude the grievance by giving the claimant the full report, a formal outcome letter and the right of appeal. We have already dealt with the reasons for this above. In short, the respondent fundamentally lost sight of or never understood this was the claimant's grievance and she was central to it. They also genuinely but mistakenly believed that to disclose the wider report/ the witness summaries may give rise to privacy/data protection issues. They also wanted to minimise the risk of politically more bad feeling being stirred up at a difficult political time by individual witness summaries being picked apart. The formal completion of the grievance drifted away as the respondent believed they had brought it to a conclusion and the claimant was not chasing further steps.
293. The Tribunal does not consider that the fact that the claimant's grievance included a complaint against Councillor James influenced these things. The Council was now led by an Independent majority. The claimant's complaint about Councillor James' response to the Mr Fox situation had been investigated by Mr Egan who had principally concluded that Councillor James had been trying to get the parties round the table. That there were suspicions about whether Labour Councillors had previously thought about whether Mr Fox would make a good Town Clerk was not news to people. The Independent members had not deliberately sought to keep from the claimant (or Mr Egan) the various pieces of information that had been gathered about this.
294. We also do not consider any of these things were influenced by the claimant's complaints to the Ombudsman. The Ombudsman complaints happened after the above had already been set in train.

Up until February 2019 there was a complete lack of support from the respondent for the claimant.

295. We have not made a finding of fact that there was a complete lack of support from the respondent for the claimant. The claimant's grievance was taken

forward by Councillor Theodoulou. The Special Panel was appointed and reported. Mr Egan was then instructed to take the grievance forward and his recommendations were accepted. The Audit Committee took prompt action in relation to the February 2018 email. When the claimant was on sick leave she was regularly visited by Councillor Owens, a stress assessment was undertaken, and the claimant was referred for occupational health support. The respondent did generally wish and tried to integrate the claimant back into the workplace.

Finally when the respondent wrote to the claimant's solicitors at the end of January 2019 and then again at the start of February, it made it clear to the claimant that it did not intend to assist her in resolving her grievance and addressing her stress and anxiety at work.

296. The respondent did not say in their correspondence that they were not intending to assist the claimant in resolving her grievance or addressing her stress and anxiety at work. We have found that the general intent was to get the claimant integrated back into the workplace. Some of what the claimant was seeking was entirely unrealistic and unreasonable and would not have helped with that reintegration and the respondent would have been justified in refusing it. In some respects, however, the respondent also did not respond appropriately in what they said when declining some of the claimant's requests. In particular, in not being upfront about Mr Fox's involvement with the Job Evaluation Committee, in seeking to dissociate itself as responsible for actions of the Labour Councillors and in, in effect, dismissing Mr Egan's pay evaluation.
297. We have already found the handling of the pay evaluation was not linked to the claimant's claimed protected disclosures. In relation to dissociating the Council as a whole from the actions of the Labour Councillors, the response that was sent to the claimant's solicitors was one which had been voted on by the Independent majority. The Labour Councillors had declared interests and did not vote. The Tribunal considers that the respondent's stance at this time this was born from a misunderstanding at the time of legal responsibility for the acts of individual Councillors or groups of Councillors, and a wish to get the position of the Council as a corporate body (that they did not do these things) communicated to the claimant. It is also likely that there was a wish to move forward and not engage in re-opening old wounds. Councillor Theodoulou said that the Labour Councillors were reluctant to hand over to the Council answers to the questions the claimant's solicitor's letter raised. As we have said we do not dispute that was a sensible strategy to decline to answer some points raised; some of the claimant's requests were unreasonable. It was the way in which the message was communicated to the claimant that was the problem.
298. In any event, we cannot see a basis for saying that such decision making was materially influenced because the claimant had in March 2017 complained about Councillor James. That, as we have said was a minor annoyance to some Labour Councillors as against many other factors, and its influence had waned over time and had been investigated by Mr Egan and a further investigation turned down by the Ombudsman.

298. It was also not influenced by the fact the claimant had made complaints to the Public Services Ombudsman about some Labour Councillors. There would be no reason for the Independent group in a voting majority to victimise the claimant for this. Some Independent Councillors had themselves made their own complaints. All witnesses before us were also agreed that it was incredibly common at time in the Council for Ombudsman complaints, and counter complaints to be brought. They had become a part of normal Council life and the political battlefield. Furthermore the complaints had not been upheld. A wish for matters that they felt were in the past and had been dealt with to be left there, is not the same thing as victimising the claimant for having made the complaints to start with.
299. We have not found that the claimant made protected disclosures. But if she did, we have found that any detriments causally linked to the first claim protected disclosure had ceased at the very latest by February 2018. The protected disclosure detriment would therefore have been lodged outside the time limit in any event. The claimant does not seek to argue that it would not have been reasonably practicable for her to have lodged the claim within time. The detriment claim therefore would not have succeeded for time limit reasons in any event.

Protected Disclosure Dismissal

300. Again, this complaint cannot succeed because we have not found that the claimant made protected disclosures. But we will in any event address the point. The question here for the Tribunal is what was the reason the respondent behaved in the way that it did that gave rise to the fundamental breach of contract. The Tribunal here is satisfied that the reason or principal reason was not that the claimant made one (or both) of her claimed protected disclosures.
301. The reason why the respondent did was they did is complicated and multifactorial, as set out above. The ultimate rejection and suppression of Mr Egan's pay report was fundamentally because the result was seen as unpalatable. Much of the conduct also boils down to the claimant being caught up in the political fallout between the Labour group and the Independent group, attempts at times to heal that, the obsession amongst some with the cause relating to Mr Fox, a lack of experience and competence in following good HR processes, as well as some degree of animosity towards the claimant by some Labour councillors again for a variety of reasons.
302. We have already found above that the claimant's complaint against Councillor James played a very minor part in some of the earlier detriments and its causative role waned as time went on. We have found that the claimants Ombudsman complaints really were not material given the dysfunctional operation of the Council at that point in time and the fact the Council was operating under an Independent majority. If the claimant had made protected disclosures, we would therefore be unable to conclude in any event that the small causative link we have found for some of the early detriments (in the sense of also being conduct without reasonable and proper cause which served to

undermine trust and confidence) could be sensibly be said to constitute the reason or principal reason for the respondent's breaching conduct as a whole.

Wages - Breach of Contract Claim

303. The claimant's free-standing breach of contract claim came to unsatisfactory conclusion before us. It was included in the list of issues that was discussed at the start of the hearing. In closing submissions the respondent's counsel then told us that their position was that no separate wages breach of contract claim had been pleaded. It was said this had been brought to the attention of the claimant's counsel, but they had omitted to bring it to the attention of the Tribunal at an earlier stage.
304. It was disappointing it was left with the Tribunal in this way. Both parties have been represented throughout. The case had been through case management and if there was an issue about what was pleaded or exactly what the complaint was about there was plenty of opportunity to have raised it with the other party or the Tribunal at an earlier stage. The earlier version of the list of issues agreed between the parties in accordance with the Tribunal case management orders simply recited what was in the pleadings and in doing so both parties had deprived themselves of the opportunity to flush out anything that needed to be. If that was short sighted, then that was their call. The parties should have taken responsibility for that part of the case preparation and the Tribunal should be able to trust represented parties to do so.
305. The Tribunal therefore decided that the appropriate way to proceed was to look to the original pleadings and then most recent list of issues that was presented to us as agreed.
306. The claim form included a claim for "other payments". The ET1 rider in the heading above paragraph 46 refers to breach of contract "and/or constructive dismissal. The rider also alleges "The Respondent has failed to pay back pay of wages back to the date of when the job evaluation process was requested. The Claimant contends that the backpay should be paid." The "prayer" section at paragraph 60 includes a claim for damages for breach of contract. The extent of any freestanding breach of contract claim separate to a constructive dismissal claim could have been more clearly set out, but the bones of such a complaint are there.
307. It is therefore then appropriate to turn to the agreed joint list of issues and assess the breach of contract claim on the basis of what is presented to us there. That says:

Did the Respondent breach an express or implied term of the Claimant's contract of employment in relation to the Claimant's wages?

(i) Failing to pay her at scale 38 as a result of the evaluation carried out by the County Council?

(ii) Failing to pay her at the scale recommended by Mr Egan as part of the appeal process against the initial evaluation?

(iii) Failing to give her notice pay?

308. The notice pay claim has been dealt with. In relation to (i) the Tribunal is unable to conclude that it was an express or implied term of the claimant's contract of employment that she would be paid at scale 38 as a result of the evaluation carried out by the County Council. The presentation of a pay evaluation at scale 38 in reality was an offer to vary the claimant's contract of employment. The claimant did not accept that offer as she decided to appeal. There was nothing wrong with her appealing and what happened next was not her fault. But we are unable to construe there ever having been an acceptance of that offer.
309. Turning to (ii) again we are unable to find it was a term of the claimant's contract that she would be paid at the scale recommended by Mr Egan in his pay evaluation report. The claimant accepts that it was not automatically binding upon the respondent. The respondent failed to do anything with Mr Egan's report when they should have done so but the Tribunal does not consider that amounts to the pleaded case of a failure to pay the claimant at the scale recommended by Mr Egan.

Conclusion and next steps

310. In conclusion, the claimant's complaints of constructive unfair dismissal and wrongful dismissal succeed. The complaints of protected disclosure detriment, protected disclosure dismissal and the wages breach of contract claim do not succeed and are dismissed. The claimant's claim has succeeded in part and her complaint under Section 38 of the Employment Act is therefore also upheld. The amount of any sum payable under Section 38 is a matter for any remedy hearing.
311. The parties should write to the Tribunal within 28 days with their proposed directions for a remedy hearing (ideally jointly) and with a time estimate for a remedy hearing. It may be that Employment Judge Harfield will be able to approve the proposed directions but, if not, a short case management hearing can be arranged.

Employment Judge R Harfield

Dated: 30 May 2021

JUDGMENT SENT TO THE PARTIES ON 11 June 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS