EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs Aime Armstrong	**v**	North Northamptonshire Council

Heard at: Norwich (hybrid)

On: 12, 13, 14, 15, 16, 19, 20, 21 September 2022
Discussion: 22 and 23 September 2022

Before: Employment Judge Postle

Members: Mr B Lynch and Mr C Davey

Appearances
For the Claimants: In person
For the Respondent: Mr Gidney, Counsel

RESERVED JUDGMENT

1. The Claimant was not unfairly dismissed, pursuant to Section 98 of the Employment Rights Act 1996.

2. The Claimant was not automatically unfairly dismissed, pursuant to Section 103A of the Employment Rights Act 1996.

3. The Claimant's claim that the Respondents failed to make reasonable adjustments under the Equality Act 2010 is not well founded.

4. The Claimant's claim that she undertook equal work, pursuant to Section 65 of the Equality Act 2010 is not well founded.

5. The Claimant's claim that she was victimised in relation to the protected characteristic of sex, under the Equality Act 2010 is not well founded.

6. During the course of this Hearing the Claimant formerly withdrew an allegation there was a bullying culture as a qualifying disclosure, that claim is therefore dismissed upon withdrawal.

7. Further, the Claimant formerly withdrew her suspension as an act of victimisation. That claim is therefore dismissed upon withdrawal.

8. The Claimant also accepted during the course of this Hearing, that her claim of a public interest disclosure to an external body, namely 'Ernst and Young', could not be the reason for dismissal because that occurred post dismissal in any event and is therefore dismissed upon withdrawal.

REASONS

1. The Claimant brings claims to the Tribunal as follows:-

   1.1 Claims that she was automatically unfairly dismissed following making public interest disclosures, pursuant to s.103 of the Employment Rights Act 1996 ("ERA"):

   - The Claimant relies on 8 qualifying disclosures;

   1.2 The Claimant brings a claim of ordinary unfair dismissal. The reason advanced by the Respondents is conduct;

   1.3 The Claimant brings claims under the Equality Act 2010 ("EqA") for the protected characteristic of disability. That the Respondents failed to make reasonable adjustments, relying on two PCPs, namely did the Respondents have a PCP of always suspending employees facing allegations of gross misconduct? and, Did the Respondents have a PCP of requiring face to face interviews when recruiting for roles?

   In this respect the Respondents accept that the above are capable of amounting to a Provision, Criterion or Practice;

   1.4 The disability relied upon is mental impairment of Cyclothymia and Bi-Polar;

   1.5 The issue of the knowledge is in dispute, the Claimant saying that the Respondents would have been aware around July 2015 when she provided a Medical Report confirming the diagnosis of Cyclothymia to her then Line Manager, Kathy Everett.

   The Respondents say their knowledge became known from 28 September 2018 following the receipt of an Occupational Health Report;

   1.6 The Claimant brings further claims of victimisation, under s.27 EqA 2010. The protected act relied upon is the Claimant's equal pay claim and emails from 19 and 26 February 2018, which the Respondents accept is capable of amounting to a protected act.

The Claimant asserts that the Respondents subjected the Claimant to detrimental treatment by suspending her on 19 April 2019 and dismissing her on 14 June 2019;

1.7 Further, the Claimant brings a claim that in her role as HR Manager she undertook equal work, pursuant to s.65 EqA 2010, to that of Greg McDonald in the role of Head of Economic and Commercial Development.

The Respondent contends that the roles were evaluated and given different values by an approved Local Government Job Evaluation Study and as such cannot be the subject of a challenge pursuant to s.131(5)-(6) EqA 2010.

2. A List of Issues was provided at the outset of the Hearing, which the Tribunal went through and the Claimant and the Respondent agreed those were the issues to be determined.

3. In this Tribunal we have heard evidence from the Claimant through a prepared witness statement. The Claimant had a further witness statement from a Helen Rowe that was said to be in relation to whether the alleged PCPs amounted to PCPs. However, as the Respondents agreed that the Claimant's PCPs did amount to a proper PCP there was no need for this witness to be called and cross examined.

4. For the Respondents we heard evidence from:

- Mr Glenn Hammons, who conducted the disciplinary;
- Miss Helen Howell, who conducted the appeal against the dismissal;
- Miss Sam Maher, an HR Advisor;
- Mr Graham Thurston, who carried out the Job Evaluation;
- Mr Rob Harbour, who considered the Claimant's equal pay grievance and bullying grievance; and
- Miss Helen Harrison, who heard the appeal against the outcome of the equal pay and bullying grievance.

All those witnesses giving their evidence through prepared Witness Statements.

5. The Tribunal had the benefit of a Bundle of some 3,007 pages.

6. The Tribunal also had the benefit of very helpful opening arguments by both the Claimant and the Respondent in writing, together with written submissions in closing again by both the Claimant and the Respondent and as they are in writing, the Tribunal do not feel it is necessary to rehearse those. The Tribunal thank both the Claimant and the Respondent's Counsel Mr Gidney for their assistance in providing such helpful notes.

The Law

Qualifying Public Interest Disclosures

7. The Claimant relies on eight disclosures. In each of those it is not claimed they caused her detriment pursuant to s.47B. The Claimant's case is that the principal reason for her dismissal was the making of those protected disclosures.

8. Whistle blowers are protected from suffering dismissal from their employer as a consequence of making protected disclosure of alleged wrong doing, s.43B of the ERA states:

> "(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, …"

9. The reasonable belief statutory test is a subjective one. The act makes it clear that there must be a reasonable belief of the worker making the disclosure.

10. Qualifying disclosures must involve a disclosure of information, i.e. it must convey facts rather than merely raise an allegation. It is absolutely essential there must be a disclosure of information. It is not sufficient the Claimant has simply made allegations about the wrong doer especially where the claimed whistle blowing occurs within the Claimant's own employment as part of a dispute with her employer.

11. The question is whether there is sufficient information that satisfies s.43B ERA 1996 and that is a matter of fact for the Tribunal. It is true that the more the statement consists of unsupported allegations the less likely it will be to qualify.

12. It is then necessary to determine that the worker has a reasonable belief that the disclosure is made in the public interest and tends to show that there is one of the six statutory categories of failure. Again, it is an absolute essential part of the equation that the disclosure of information given is in the reasonable belief it is made in the public interest and not just in that worker's own personal interests.

13. There must be an actual or likely breach of a legal obligation. The fact that a worker making the disclosure thought that the employer's actions were morally wrong, professionally wrong, or contrary to his own internal rules, is not sufficient.

14. Finally, an employee wanting to rely on the whistle blowing protection bears the burden of proof on establishing the relevant failure.

Equality Act 2010 – s.27 - Victimisation

15. A person victimises another person if (the Respondent) subjects (the Claimant) to a detriment because (the Claimant) does a protected act.

> "27 Victimisation
>
> (2) Each of the following is a protected act.
>
> (a) bringing proceedings under this Act;
> (b) …
> (c) …
> (d) making an allegation that [the Respondent] has contravened the Act."

16. A protected act must be a complaint that the Equality Act 2010 has been contravened, in other words a complaint of discrimination.

17. The object of the victimisation provision is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory rights, or intend to do so.

18. The crucial question is for the Claimant to prove facts from which the Tribunal could conclude that an unlawful act of victimisation, i.e. that the alleged victimiser has treated them unfavourably and did so on the grounds of the protected act. In other words, did the victimiser because of a protected act subject the Claimant to unfavourable treatment. The relevant question therefore is to look at the mental processes of the person said to be victimising.

19. The explanation for the unfavourable treatment does not have to be a reasonable one, it may be that the employer has treated the Claimant unreasonably. The mere fact that the Claimant was treated unreasonably does not suffice to justify an inference of unlawful victimisation. Where the Claimant has proved facts from which the conclusions may be drawn that the Respondent has treated the Claimant less favourably on the grounds of a protected act, then the burden of proof moves to the Respondent. It will then be for the Respondent to prove that it did not commit, or as the case may be, is not to be treated as having committed the act. To discharge that burden it will be necessary for the Respondent to prove on the balance of probabilities that the treatment was in no sense whatsoever on the grounds of the protected act. That requires the Tribunal to assess not merely whether a Respondent has proved an explanation that it is adequate to discharge the burden of proof on the balance of probabilities that the protected act was not a ground for the treatment in question.

Employment Rights Act 1996 – s.98 – Ordinary Unfair Dismissal

20. The starting point is always s.98 ERA 1996, which states:

> "(1) In determining for the purposes of this part whether the dismissal of an employee is fair or unfair, it is for the employer to show–
>
> (a) the reason (or, if more than one, the principal reason) for the dismissal, and
> (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2) A reason falls within this subsection if it-
>
> (a) …
> (b) relates to the conduct of the employee
>
> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
> (b) shall be determined in accordance with equity and the substantial merits of the case."

21. Therefore the correct approach for the Tribunal to adopt in considering s.98(4) is to look at the words of s.98(4) and in doing so consider the reasonableness of the employer's conduct, not simply whether they (the Members of the Employment Tribunal) consider the dismissal to be fair. In other words, not to substitute our own view.

22. In judging the reasonableness of the employer's conduct, an Employment Tribunal must not substitute its decision as to whether the right course to adopt is that of the employer. In many cases there is a band of reasonable responses to the employer's conduct within which one employer might reasonably take one view and another quite reasonably take another view.

23. Therefore, the function of the Employment Tribunal is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable response which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair, if the dismissal falls outside the band it is unfair.

24. There is well trodden guidance the Tribunal follows in the well known case of British Home Stores v Burchell [1979] IRLR379. That is:

> "Did the Respondent carry out a reasonable investigation into the Claimant's alleged gross misconduct? Such an investigation does not have to be a counsel of perfection, it must nevertheless be reasonable."

25. Did the Respondent have reasonable grounds for its belief that the Claimant had allegedly committed gross misconduct?

26. Was the dismissal within the band of reasonable responses that was available to the Respondent?

27. Was the dismissal in all the circumstances fair?

28. Did the Respondent comply with the procedural requirements of s.98 of the Employment Rights Act 1996?

Equality Act 2010 – s.20 – Failure to Make Reasonable Adjustments

29. An employer has a duty to make reasonable adjustments within the Act for a disabled employee if the employer has a provision, criterion or practice (PCP) which puts the disabled person at a substantial disadvantage in comparison with a person who is not disabled to remove that disadvantage.

30. In considering what is reasonable it is necessary to have regard to:

    30.1 the extent to which taking a step would remove the disadvantage;
    30.2 whether it would be practical;
    30.3 the financial costs incurred and the extent to which the employer's activities would be disrupted;
    30.4 the employer's financial and other resources;
    30.5 the availability of assistance; and
    30.6 the nature of the Respondent's activities and the size of the undertaking.

31. The Employment Code of Practice gives guidance on the sort of adjustments that are likely to be considered as reasonable. Namely, minor physical adjustments to premises, allocating duties to another person, transferring a disabled employee to fill an existing vacancy, altering hours of work or training, assigning a disabled employee to a different place of work, absences during working hours for treatment, providing training or mentoring, acquiring or modifying equipment, modifying instructions or manuals, modifying tests or assessments, providing a reader or interpreter and providing supervision and other support. The list is not exhaustive.

32. Furthermore, there must be knowledge of the disability and knowledge that the contended adjustment would remove or reduce the disadvantage for a duty to make reasonable adjustments to accommodate it to exist.

33. The test of reasonableness is an objective standard, the question must not be looked at only from the perspective of the Claimant.

34. It should be noted perhaps at this stage there is one aspect of the Claimant's claim that is potentially out of time by approximately six weeks. Namely, that is in relation to adjustments for the interview for the role of HR Shared Services. The Tribunal therefore has to determine whether it be just and equitable to allow that to proceed. The onus is on the Claimant to convince the Tribunal that it is just and equitable to extend time and the exercise of that discretion is the exception rather than the rule. The same considerations apply in considering just and equitable as they would in s.33 of the Limitation Act 1980 for extending time limits in personal injury cases. They are as follows:

    34.1 the length and reasons for the delay;
    34.2 the extent to which the cogency of the evidence is affected;
    34.3 the extent to which the Respondent has co-operated with requests for information;
    34.4 the promptness of the Claimant once she knew of the facts giving rise to a cause of action; and
    34.5 the steps taken by the Claimant to obtain appropriate advice when he or she knew of the possibility of taking action.

35. For the sake of completeness at this stage, the Tribunal take the view the Claimant being the Head of HR being seen as knowledgeable in Employment matters and has clearly in these proceedings demonstrated a knowledge of Employment Law. Apparently her husband is a Union Advisor. The Tribunal are satisfied that the Claimant would and should have known of the time limits involved in bringing such claims and in those circumstances the Tribunal, bearing in mind it is the exercise of a discretion and a high hurdle, do not think it is just and equitable to allow the claim out of time. That claim is therefore dismissed.

Equal Pay

36. The Claimant has contended that her role of HR Manager undertook equal work as defined by s.65 of the Equality Act 2010 to Gregg McDonald in the role of Head of Economic and Commercial Development.

37. The assessment of whether work is of equal value is contained under s.131 EqA 2010. Particularly:

> "131 Assessment of whether work is of equal value
>
> (5) Subsection (6) applies where-
>
> (a) a question arises in the proceedings as to whether the work of one person (A) is of equal value to the work of another (B), and

(b) A's work and B's work have been given different values by a job evaluation study.

(6) The Tribunal must determine that A's work is not of equal value to B's work unless it has reasonable grounds for suspecting that the evaluation contained in the study-

(a) was based on a system that discriminates because of sex, or
(b) is otherwise unreliable."

The Facts

38. The Claimant was employed by the Respondent as a Human Resources Manager from 29 November 2010 until her summary dismissal for gross misconduct on 14 June 2019.

39. The Respondent now being amalgamated with other Local Authorities to form the North Northamptonshire Council, previously the Claimant was employed at the East Northamptonshire Council. The present Respondent is now a much larger organisation than the Claimant's former employer East Northamptonshire Council which then employed approximately 200.

Public Interest Disclosures alleged to have been made

40. The first qualifying disclosure was in regard to identity checks for temporary election workers. The Claimant asserts that in an email to the then Chief Executive, David Oliver, on 29 June 2017 (see page 492), she is responding to what she believes is a request by Mr Oliver that temporary election workers be paid immediately regardless of whether her view was they had been checked as to their right to work. Mr Oliver in that letter, was not asking or instructing her to employ temporary election workers without checks, merely that they be paid as they had already been engaged as temporary election workers as soon as possible. There appears to have been no further disclosure about this incident.

41. The second alleged disclosure was in respect of 'golden hello' payments said to have been made to a newly employed Principal Planning Officer Mr Wishart. The Claimant says she raised the matter on a number of occasions, particularly to Sharn Matthews during a well being meeting on 27 September 2017, to Mr Glenn Hammons orally in a meeting on 26 February 2018 and finally in writing as part of the Claimant's Grievance submission to a Miss Laurie Gould on 24 May 2018 (see pages 475 – 476); what she says there is that on 13 September 2017 she was instructed to draft an offer letter which agreed to pay off an existing car loan and offer a new loan for a motor vehicle which the Claimant asserted was contrary to the Respondent's Pay Policy. The Claimant did write the offer letter to Mr Wishart on 26 September 2017.

42. The third alleged disclosure regarding an equal pay complaint made by the Claimant in an email to Mr Hammons on 19 February 2018 (see page 1147). This is the first of two equal pay complaints made by the Claimant. The complaint raised two points: firstly the Claimant joined the Respondents eight years earlier and she was placed at the bottom of spinal column point for her grade, whereas others (both male and female) had been placed higher; and secondly that she had only received the standard contractual bank holidays whereas others (both male and female) had received additional holiday. The Claimant was expressing both complaints as,

> *"I should have been appointed higher up Grade 9 and I should have been offered higher starting salary and leave entitlement."*

It should be noted neither of these complaints are pursued at this Hearing. What is clear, is that this is a complaint personal to the Claimant about her pay structure.

43. The fourth and fifth alleged disclosures are in respect of non-recoupment of a redundancy payment / breaches of the Modifications Order in respect of two ICT Manager, Mr Ian Peters and Ms Alison Curtis, who both applied for and were granted voluntary redundancy in August 2017. The Claimant asserts she raised the matters as follows:

43.1 To Mr Hammons orally in a meeting on 26 February 2018; and

43.2 In writing as part of the Claimant's Grievance submission to Miss Gould on 24 May 2018 (see pages 476 - 477). The Claimant was complaining that she had been requested to draft redundancy letters that would protect the Managers' redundancy payment even if they obtained further employment within four weeks with another Local Authority. The Local Government Modifications Order sets out circumstances and time scales in which employees departing one Local Authority for another may lose their entitlement to a redundancy payment.

44. The issue appears to have been whether the redundancy letters drafted contained a paragraph warning the departing employees of the Modifications Orders and if not whether they had been on Mr Oliver's instruction against the Claimant's advice. The actual redundancy letters sent out by the Claimant contain no warning (see pages 964 and 966). Letters sent to other departing staff had indeed contained such a warning, (see page 1345). The dispute appears to be Mr Oliver stating he gave no such instruction and simply relied upon the Claimant as Head of HR at the time to send out letters in the correct form. It would appear there is no legal obligation to warn employees of the existence of the Order in their dismissal letters (Schedule 2 of the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999, in which it sets out circumstances where a redundant employee will lose their entitlement to redundancy payment if they join another qualifying employer

within four weeks. It would appear the practice is to warn employees of this fact, but it would not be in breach of any legal obligation.

45. The sixth alleged disclosure regards the Claimant's second equal pay complaint in her role as HR Manager (which is graded 9). She says she should have been graded 10, equivalent to the Head of the Joint Planning Unit and the Head of Economic and Commercial Development. The Claimant asserts she raised this as follows:

    45.1 In an email to Mr Hammons on 19 February 2018;

    45.2 To Mr Hammons by email and orally in a meeting on 26 February 2018 (see page 1148) where the Claimant seeks to address a personal Grievance about her pay structure and at the same time includes four other individuals in her claim, three female and one male. In doing so without their knowledge or consent; and

    45.3 Further, to Mr Thurston on 3 May 2018 in the Claimant's written summary of her equal pay complaint (see page 1151) and in an equal pay Grievance with Mr Thurston on 8 May 2018 (see page 1155).

46. The seventh alleged disclosure is in regard to a perceived bullying culture within the then East Northamptonshire Council. The Claimant says she raised this on the following occasions:

    46.1 To Sharn Matthews in a meeting on 27 September 2017;

    46.2 Mr Hammons orally in a meeting on 26 February 2018; and

    46.3 In writing as part of the Claimant's Grievance submission to Miss Gould on 24 May 2018 (see pages 477 and 478);

47. The eighth alleged disclosure was effectively a repeat of disclosures 1 – 7 above, with the addition of a new complaint post dismissal to Ernst and Young the Respondent's external Auditors on 30 October 2019 (see page 556).

Tribunal Conclusions on Public Interest Disclosures

First alleged Disclosure

48. This regarded the alleged identification checks for temporary election workers. What the Claimant was asked to do by Mr Oliver was to process and pay temporary election workers that had already worked at an election on 17 May 2017 but had still not been paid by the end of June 2017. The Claimant in her email of 29 June 2017 was refusing to pay them, as in her view a handful of those temporary workers (see page 492) had not had identity checks completed. Quite simply, if one looks at the email that does not disclose information tending to show a breach of a legal

obligation, it does not provide information tending to show that she had been instructed to employ staff without doing the appropriate identification checks, or information tending to show that any particular worker had been employed by the Council without such identity checks. Clearly, that does not qualify as a public interest disclosure.

Second alleged Disclosure

49. This was in relation to 'golden hello' payments (see pages 475 – 576). Here the Claimant was asserting she was asked to draft the letter offering a golden hello payment in breach of the Respondent's Pay Policy. It does not appear to be a departure from any of the then Respondent's Pay Policy; not that the Tribunal have been shown. Even if it were, it is not information tending to show any breach of any legal obligation. The Claimant seemed to accept this when cross examined that a breach of a policy is clearly not a breach of a legal obligation.

50. This alleged disclosure fails to satisfy the requirements for being a public interest disclosure.

Third alleged Disclosure

51. This is a breach of the Redundancy Modifications Order (pages 476 – 477). Here the Claimant asserts that David Oliver asked her to draft letters that would protect employees leaving the Respondents through redundancy in which their redundancy pay out, even if they found alternative work with another Local Authority, would protect them from having to repay their redundancy payments. What actually happened was two redundancy letters went out without the warning, namely that if employees obtained new Local Authority work within four weeks they would have to pay back their redundancy pay (see pages 964 and 966). It is clear that such letters do not breach the Modifications Order and nothing within these Regulations provides information tending to show a breach of the Modifications Order. This again the Claimant accepted in cross examination these redundancy letters did not breach the Modifications Order as whilst it may be good practice to include the warning, it is not obligatory.

52. Clearly in those circumstances, this alleged public interest disclosure does not meet the requirements to be a qualifying protected disclosure.

Fourth alleged Disclosure

53. This is the complaint to Miss Gould in relation to the bullying culture within the then Respondent's East Northamptonshire Council. What the complaint appears to set out is a number of personal factors that the Claimant has with her relationship with Mr Oliver, the then Chief Executive. None of these would amount to a breach of a legal obligation as they are all personal to the Claimant. There is absolutely no public interest in the

allegations at all and in any event, the Claimant withdrew this claim that of a bullying culture disclosure when she was cross examined on the point.

Fifth alleged Disclosure

54. This relates to the second equal pay complaint made to Glenn Hammons on 26 February 2018, to Graham Thurston in written submissions on 3 May 2018 and orally on 8 May 2018. Again, this is a personal complaint about her pay, it is not in the public interest and therefore cannot amount to a public interest disclosure. The other alleged disclosure was post dismissal to Ernst and Young as that cannot, under any circumstance, be a reason for the Claimant's dismissal, even if it amounted to a public interest disclosure.

Events leading up to and including Dismissal

55. Some time towards the end of 2017, the Chief Executive Mr Oliver in conjunction with the Claimant, agreed to commission independent reports to review the then Respondent's HR service. Particularly:

55.1 What the HR Team should be doing, i.e. what Managers in Service Areas should be doing; and

55.2 What resources the HR Team needs, to be able to fulfil that role effectively.

56. The East Midlands Council were requested to complete the review, particularly Lisa Butterfill the HR and Development Manager. Around that time there was also ongoing discussions between the then Respondent's Chief Executive regarding the sharing of services / amalgamation of Local Authorities. The Report came out towards the end of December 2017, (pages 981 – 989). Collateral to that Report appears to have been concerns being raised with Miss Butterfill by members of staff within the Claimant's Team. Particularly,

- Her approach (particularly in relation to the JE Scheme) was described as dictatorial, restricting and frustrating rather than enabling;
- Conversations regarding seeking advice had resulted in conflict and a defensive position;
- Lack of trust in talking to Aime (the Claimant) about confidential issues and indiscretions. I was advised of examples (without any names being mentioned) of when Aime had passed on confidential information to others. Individuals described how Aime had shared confidential information with them about others which made them think she may do the same to any confidential information they may have shared with her. This was mentioned on several occasions by different Managers;
- Generally felt to be a *"hands off"* approach rather than supporting and taking accountability;

- Some Managers described how they preferred to receive HR advice from Aime in writing rather than a verbal conversation because they did not trust what they were being told;
- Aime was described as a destructive and warring, with a hidden agenda, working against what they were trying to achieve and apportioned blame to others; and
- Quite a lot of things are left open to interpretation which Managers felt could cause inconsistencies and unfairness – problems down the line.

57. This information was then shared with Sam Maher who in turn forwarded it to the then Chief Executive David Oliver in an email of 13 February 2018 (page 1682). David Oliver then forwarded this information to the newly appointed Executive Director who, around the same time, had staff approach him about various issues regarding the Claimant and how she conducted herself.

58. There were specific approaches made by Jenny Walker, a middle Manager, to Mr Hammons about the Claimant including her in the Claimant's equal pay Grievance of 26 February 2018 when emailed to Mr Hammons. Ms Walker was concerned the Claimant had included her in the equal pay complaint without her knowledge or consent. It was around the same time when Palden Dorje Environmental Protection Officer and a Union Branch Secretary approached Mr Hammons and informed him there had been a number of complaints from staff members regarding the Claimant about breach of confidence. Miss Dorje also raised concern regarding the Claimant's performance and her impact on the Respondents (page 1691).

59. Furthermore, around the first week in March 2018, Miss Dorje informed Mr Hammons having spoken with the Claimant for some advice regarding sensitive and personal information regarding her son, the Claimant had subsequently divulged this information to a third party.

60. In the second week in March 2018, Mr Hammons received a further complaint following a meeting between Kirsty Squires, the Data Protection Officer, and Mr Hammons (page 1694) at which Miss Squires informed him that the Claimant had breached her confidentiality in discussing with other work colleagues confidential information which Miss Squires had asked to be kept confidential.

61. Mr Hammons decided that given the Claimant's position of trust as HR Manager, that she should be suspended pending an investigation into the issues. the Claimant was suspended on 19 April 2018 (page 1696). In that letter, allegations of gross misconduct were set out and the Claimant was advised were to be investigated. In particular:-

    61.1 breaching confidence by passing on confidential information to others, which is particularly serious in view of her role of HR Manager;

61.2 being argumentative and confrontational with staff members, including Managers; and

61.3 creating a negative and hostile working environment which had caused the breakdown of work relationships and substantial disruption to the Council.

62. The Claimant was further warned in the letter that if the behaviour is substantiated, it would amount to gross misconduct and a serious breach of mutual trust and confidence. The Claimant was suspended on full pay.

63. It is clear sometime towards the time the Claimant was suspended in early May, Mr Johnson was appointed as an Independent Investigator to carry out an investigation into the allegations that had been made against the Claimant. The Claimant was advised of this by email in 15 May 2018 (page 1698).

64. It was on 21 May 2018, the Claimant informed Mr Hammons by email that she had a mental health disability and was requesting further adjustments in relation to the internal processes being undertaken (page 1703). In that email she says,

> *"As you are aware I have a mental health disability that ENC have been aware of since 2015 when I shared my psychiatrist Report with Katie. There was also an update from Occupational Health in January 2017. These documents should be on my electronic file."*

The letter then goes on to request various reasonable adjustments, in particular:-

> *"1. No longer than three hours in one day (meetings);*
> *2. Frequent breaks (every hour);*
> *3. Meetings to be held in neutral location;*
> *4. All statements and evidence to be provided at least a few days before any meeting, ideally 5 days;*
> *5. All facts and documents via email; and*
> *6. Emails only during working hours, not at weekends."*

65. On 7 June 2018, Mr Hammons responds to the Claimant by email in which he agrees to the various reasonable adjustments being requested and suggests a potential referral to Occupational Health.

66. Following further emails between Mr Hammons and Mr Johnson, an Occupational Health Assessment was arranged for 28 September 2018 (pages 2002 and 2007).

67. In the interim period on 10 September 2018, Mr Johnson's Disciplinary Investigation Report was received (pages 1708 – 2001). That Report is

294 pages, including 53 Appendices, involved 24 interviews with staff and of course the Claimant.

68. Mr Hammons, having considered the Report, found there was sufficient evidence to proceed to a Disciplinary Hearing in relation to the following allegations:-

68.1 Breaching confidence by passing on confidential information to others which was particularly serious given her HR role as HR Manager, namely the Claimant disclosed to others:

a. confidential information concerning Kirsty Squires (i.e. her pregnancy);
b. confidential information concerning the termination of Katy Everitt's employment and the circumstances leading up to the termination of her employment; and
c. confidential information regarding Palden Dorje's son's external employment situation.

68.2 Being argumentative and confrontational with staff members without justification, namely:-

a. undermining the management approach of Mike Deacon, Head of Environment Services and creating tension by claiming that he was exposing the Respondent to an Employment Tribunal claim by Frank Harrison without justification in August 2017;
b. unnecessary interrogation of and making accusations against Beverley Darlow regarding Janine Daniels for 80 minutes during a meeting in December 2017; and
c. being aggressive and obstructive in meetings and walking out of unfinished meetings in a state of anger.

68.3 Creating negative and hostile working environment which has caused the breakdown in working relationships, as follows:-

a. that the Claimant exhibited to individuals or groups her contempt for the Corporate Management Team Group and having undermined the Respondent's CMT – Senior Officer;
b. that the Claimant intimated to Palden Dorje that the Claimant would be seeking to cause damage to the Respondent and certain Senior Managers through information she held about them;
c. that she deliberately conveyed CMT's request or decisions to middle Managers in a negative or false manner; and
d. that she included a number of officers of the Respondent within her equal pay claim without their knowledge or permission.

68.4 The Claimant committed serious breach of mutual trust and confidence, namely:-

a. as a result of her above conduct;
b. that many Managers had no trust in her as HR Manager as a result of her own antipathy towards Senior Management and the way she conducted herself in her role (including being erratic in her advice, her inability to act discretely and attempts to frighten or out smart Management); and
c. that she breached the Respondent's Code of Conduct.

69. Mr Hammons also noted that a number of other allegations contained in the Investigation Report were either,

69.1 capability matters (and so not within the scope of the disciplinary process); or

69.2 not sufficiently substantiated based on the evidence collated.

70. He therefore disregarded those allegations for the purposes of the disciplinary process.

71. On 4 October 2018, Mr Hammons sent a letter to the Claimant by email inviting her to attend a Disciplinary Hearing on 23 October 2018 (pages 2012 – 2016). In that email he set out the allegations that the Hearing would consider as above, enclosing the Investigation Report and the evidence collated as part of the investigation, together with a copy of the Respondent's current Disciplinary Procedure. The Claimant was advised if the allegations were substantiated they would amount to gross misconduct and a serious breach of mutual trust and confidence which could result in her dismissal (page 2014). The letter confirmed that Mr Hammons would conduct the Disciplinary and Miss Mayer from East Midlands Council would be there as HR support. The Claimant was advised of her right to be accompanied by a Trade Union Representative or work colleague. He also confirmed that previous adjustments that had been requested in relation to the investigation process would also be extended to the Disciplinary Hearing. Particularly that the meeting would be held at a neutral venue, not last longer than three hours per day and appropriate breaks taken. The Claimant was also advised an Occupational Health Assessment was being arranged to consider what, if any, further reasonable adjustments would be necessary.

72. Mr Hammons received a copy of the Claimant's Occupational Health Report on 11 October 2018 (pages 2833 – 2835), which advised that the stress of attending further Hearings would have a detrimental affect on the Claimant's health. The Claimant also sent in a sick note on 19 October 2018 which stated,

"Work stress, low mood and anxiety"

Signing her off sick until 18 November 2018. At that stage there was no recommendation that suspension should be lifted.

73. On 22 October 2018, Mr Hammons received a letter from the Claimant's Trade Union Representative (pages 2021 – 2022), which confirmed the Claimant was not fit to attend a Disciplinary Hearing and that the scheduled Disciplinary Hearing was to be postponed.

74. In November 2018, on the recommendations of Occupational Health, Mr Hammons wrote to the Claimant via her Trade Union Representative seeking consent for access to her medical records from her GP, psychiatrist and subsequently Mr Hammons wrote to her GP and psychiatrist. Mr Hammons was requesting information regarding the Claimant's health and prognosis and whether there were any reasonable adjustments needed to assist the Claimant's return to work and / or the disciplinary process (pages 2839 – 2850).

75. On 22 November 2018, Mr Hammons received a letter from the Claimant's GP (pages 2852 – 2853) which indicated the Claimant had been diagnosed with Bi-Polar disorder and was not fit to attend any meetings, interviews or hearings at the present time. It also stated future hearings should not last longer than three hours, have appropriate breaks, adequate notice and a neutral location. These had already been granted. Mr Hammons received a further Report dated 5 January 2019 from the Claimant's psychiatrist which confirmed that the Claimant had Bi-Polar Affective Disorder and was recommending the same adjustments suggested by the Claimant's GP (pages 2854 – 2859).

76. The Claimant's sickness absence ended on 19 January 2019 (page 2851). Following a period of annual leave, Mr Hammons and the Claimant and obtaining further Occupational Health advice in order to determine how best to proceed with the disciplinary process (pages 2860 – 2865). Mr Hammons considered it was now appropriate to rearrange the Disciplinary Hearing given that the recent Occupational Health Report confirmed that the Claimant's health had improved and that she was now fit to attend and participate in a Disciplinary Hearing (page 2868).

77. On 5 April 2019, Mr Hammons sent an email to the Claimant inviting the Claimant to a re-scheduled Disciplinary Hearing to take place on 1 and 2 May 2019, together with a copy of his previous letter dated 4 October 2018 and the Respondent's relevant Policies. The letter confirmed that the information contained within 4 October 2018 (previous invite to Disciplinary) was still relevant, including the allegations against the Claimant. The letter outlined the arrangements for the rearranged Hearing and that reasonable adjustments be applied following the medical advice the Respondents had received. The Claimant was reminded of her right to be accompanied.

78. Prior to the Disciplinary Hearing, the Claimant raised a number of questions. In particular whether all employees who had submitted a

statement would be attending and which witnesses would be available each day to enable the Claimant to prepare. The Claimant was also asking for clarification as to which allegations had been withdrawn and which allegations were being proceeded with.

79. Mr Hammons responded by email of 15 April 2018 that the allegations within the Disciplinary Invite Letter made it clear the allegations that were being pursued. He also confirmed that whilst he had written to 17 witnesses to assess their availability to attend the Disciplinary Hearing, only 10 had confirmed they were able to attend and questions that the Claimant had prepared for the 7 remaining witnesses would be sent to them. He also informed the Claimant that the reason he had written to only 17 witnesses was due to the fact three of the individuals who had given statements were on long term sickness absence or no longer working for the Respondents.

80. The meeting commenced on 1 May 2018 with the reasonable adjustments the Claimant requested and was to reconvene on 2 May 2018. Minutes are to be found at pages 2088 – 2103.

81. The Claimant had raised a question on the first day of the Disciplinary Hearing and requested confirmation of the allegations that had been excluded from the disciplinary process and accordingly Mr Hammons sent an email to the Claimant confirming those that had been excluded and the specific allegations that remain were those listed in the original invite letter in October 2018.

82. The Claimant, during the course of the Disciplinary Hearing had the opportunity to question witnesses in attendance and as time ran out a further Hearing would have to be scheduled once the Claimant had returned from a holiday. The meeting was to be reconvened on 5 June 2018. In the intervening period, the Claimant had requested further witnesses to attend the adjourned Hearing, Mr Hammons requested clarification as to the relevance of these witnesses. For reasons best known to the Claimant, she did not respond. Therefore those witnesses were not called for the adjourned Hearing.

83. Prior to the adjourned Hearing, the Claimant was sent a recording of the Hearing on 1 and 2 May 2018 and the Claimant was given an opportunity to provide a revised statement of case if she wished to do so prior to the Hearing in June. The Claimant did not provide any further statement for the adjourned Hearing. Clearly the Claimant was given an opportunity to question all witnesses and to give her side of the story and respond to each and every allegation.

84. In summary, the Claimant felt she had not committed acts of gross misconduct and gave a number of reasons why she believed the allegations against her were misguided.

85. The Disciplinary Hearing concluded with Mr Johnson summing up his Investigation Report regarding the specific allegations against the Claimant and the Claimant having a final word summing up her response. The Hearing was then adjourned to allow Mr Hammons to review all the information before making a decision.

86. Mr Hammons concluded as follows:-

Confidential Medical Information concerning Kirsty Squires -

86.1 There was sufficient information to support the allegation that the Claimant did reveal information regarding Miss Squires' pregnancy in the witness statements of Mrs Dorje and Miss Tompkins. Although the date of the actual breach may have been confused, what Mr Hammons was able to conclude was that at some stage involving a pregnancy of Miss Squires, the Claimant had without authority disclosed that information to third parties.

Confidential Information concerning the termination of Kath Everitt's Employment and the circumstances leading up to the termination of her employment –

86.2 Mr Hammons was able to conclude there was sufficient evidence to support the allegation the Claimant had passed on this information concerning the termination of Katy Everitt's employment. Particularly that he had spoken to Miss Tompkins and she had confirmed in her evidence that the Claimant had told her that Miss Everitt was seeking to take the Respondents to an Employment Tribunal and thus had disclosed such information to a third party.

Confidential Information regarding Mrs Dorje's son's external employment situation –

86.3 Mr Hammons concluded there was sufficient evidence that the Claimant had disclosed this personal information to a third party, namely the Chief Executive. The evidence being that Mrs Dorje stated she had shared the news that her son had lost his job with the Claimant, she had asked for some advice and this was in turn corroborated by Mr Oliver's evidence in which he stated that the Claimant had informed him that Mrs Dorje's son had been dismissed. Clearly this was a breach of confidential information.

Being argumentative and confrontational with staff members without justification –

86.4 The allegation was undermining the management approach of Mr Deacon, Head of Environmental Services and creating tension by claiming that he was exposing the Respondent to an Employment Tribunal claim without justification. Here Mr Hammons was satisfied that Mr Deacon had provided a clear account of what

occurred at the time and had provided contemporaneous evidence that he had raised the issue directly with Mr Oliver and even sought external HR advice. Apparently the Claimant had not provided a response to this allegation other than to cast doubt on Mr Deacon's account. Mr Hammons felt he was able to uphold this given the facts.

Unnecessarily interrogating and making accusations against Beverley Darlow regarding Janine Daniels for 80 minutes during a meeting in December 2017 –

86.5 Again there was sufficient evidence in Mr Hammons mind to substantiate the allegation given there was clear corroborating evidence from witness statements and Miss Darlow's contemporaneous notes of the meeting to support the fact that the Claimant had unnecessarily interrogated and made accusations against her, particularly Mr Jennings had commented that the Claimant's approach to the meeting was harsh and poor. The Claimant had sought to justify her conduct by stating there was a difficult situation and the meeting was not set up well. Mr Hammons was satisfied that the Claimant had exhibited an argumentative and unwarranted confrontational approach in this matter and that was unacceptable in her role as HR Manager.

Being aggressive and obstructive in meetings and walking out of unfinished meetings in a state of anger –

86.6 Mr Hammons did not uphold this. It was a wide allegation with lack of detail.

Creating a negative and hostile working environment which caused the breakdown of working relationships –

86.7 This is in relation to the Claimant exhibiting to individuals contempt of the Corporate Management Team and undermined the Respondent's Corporate Management Team / Senior Officers. Again, Mr Hammons was able to uphold this allegation particularly as statements provided by witnesses indicated a pattern by the Claimant of her intent to disparage and undermine the Respondent's Corporate Management Team and Senior Officers.

That the Claimant intimated to Mrs Dorje that the Claimant would be seeking to cause damage to the Respondent and certain Senior Managers through information she held about them –

86.8 Mr Hammons upheld this allegation on the grounds that there was evidence to substantiate this based on the fact that independent statements provided by Mrs Dorje and Michelle Drewery clearly supported this allegation.

That the Claimant deliberately conveyed Corporate Management Teams' requests or decisions to middle Managers in a negative or false manner –

86.9 Mr Hammons did not uphold this, there being insufficient detailed evidence to support the allegation.

That the Claimant included a number of Officers of the Respondent within her equal pay claim without their knowledge or permission –

86.10 Here there was sufficient evidence to substantiate this. The email that the Claimant had sent on 26 February 2018 had copied into it a number of employees and the Claimant had expressly stated that she had submitted this grievance without those individuals' knowledge or consent. Clearly that was an allegation that Mr Hammons was entitled to uphold.

That the Claimant committed a serious breach of mutual trust and confidence –

86.11 Mr Hammons concluded that having upheld a number of allegations of gross misconduct, he then considered whether the Claimant had behaved in a way which had destroyed the relationship of trust and confidence between herself and the Respondent / Managers; particularly in her capacity as HR Manager which inevitably involves access to a high degree of confidential information and a role which requires maintaining good working relationships. He concluded on the evidence that the Claimant had lost the trust of her colleagues based on her behaviour and on the witness evidence that a number of employees were actively avoiding the Claimant and that they had to put everything in writing to cover themselves and / or also preferring advice from other HR Advisors. In those circumstances it is clear why Mr Hammons upheld that there was a loss of trust. Furthermore, Managers had no trust in the Claimant as an HR Manager as a result of her attitude towards Senior Management and the way she conducted herself. He accepted there was some positive statements relating to the Claimant, but the balance was the Claimant had lost the faith and trust of colleagues and Managers.

86.12 Mr Hammons also concluded that the Claimant had effectively breached the Respondents Code of Conduct. In summary, expecting employees to give the highest possible standard of service, core values and further that the Claimant had breached the confidentiality section of the Respondent's staff handbook which stated that her confidentiality breach amounted to gross misconduct.

87. Mr Hammons having considered all the evidence including the Claimant's evidence and mitigating factors which included the Claimant's clean disciplinary record, length of service, perceived lack of support, feedback

and direction and her health condition. Nonetheless, in view of the seriousness of the allegation decided that summary dismissal on the grounds of gross misconduct and serious breach of trust and confidence was the only option available to him.

88. Mr Hammons subsequently confirmed his decision in writing by letter to the Claimant on 14 June 2019 (pages 2181 – 2192). That sets out the clear reasoning as to why he took the decision to dismiss for the Claimant's misconduct. The letter confirmed the Claimant had a right of appeal.

89. The Claimant subsequently did appeal against the decision by letter of 17 June 2019. The grounds of the Appeal were that the dismissal was in retaliation for the Claimant's equal pay claim, bullying, harassment and whistle blowing allegations, that Mr Hammons was bias, the Investigation Report was unfair and biased and that the Respondent's staff Management Policy was not followed, and that the Respondents had discriminated against her on the grounds of her gender and disability. The Appeal would be heard by a panel of three Councillors and the Claimant and Respondent would be allowed to circulate a statement of case and document bundles for the Appeal Hearing. The Appeal Hearing would only review the original decision and would not be a full re-hearing. The procedure was confirmed to the Claimant by way of a letter (pages 2193 – 2196).

90. Prior to the Appeal Hearing the panel were provided with documents relating to the Disciplinary Procedure, the Investigation Report, the Claimant's Hearing statement for the Disciplinary, the notes of the Disciplinary, the Dismissal Outcome letter, the Claimant's Dismissal Disciplinary Appeal, a submission statement and accompanying documents and the Management statement case and response to the Claimant's Appeal.

91. Again, it appears to have been a thorough Appeal Hearing taking place across four days between 4, 5 November 2019 and 11, 12 November 2019. The Claimant was accompanied by her Union Representative. The Panel of Governors had HR Advisors at their disposal.

92. The Appeal upheld the decision to dismiss for the reasons given at the Disciplinary stage. It would appear the Claimant does not question the procedure followed at the Appeal, merely that the Panel should have asked her how she was feeling and whether her mental condition impacted on her decision making. The Appeal Panel were relying on Occupational Health experts in the field to advise them as to whether such mental problems would have impacted on her ability to do her day to day work.

93. The outcome of the Appeal was sent to her in a letter dated 13 February 2020 (pages 2400 – 2404) and the reasons. The Panel were satisfied that the Claimant had committed acts of gross misconduct and that trust and confidence the Respondent had placed in her as the Respondent's HR

Manager had been breached by her actions. Therefore, summary dismissal was appropriate in the circumstances.

The Tribunal's Conclusion on Dismissal

94. The Tribunal accepts that the investigation carried out by Mr Johnson was painstaking and thorough, albeit if he did go outside the parameters of his original remit. However, Mr Hammons was quick to correct that and make sure that the Disciplinary Process stuck strictly to allegations in relation to conduct matters. He did not stray into capability which would be dealt with in an entirely different way. When one looks at the number of witnesses interviewed, it can hardly be said that the investigation was not thorough and did not explore all avenues that the investigation was intended to follow.

95. The Tribunal reminds itself that it does not have to be a counsel of perfection. It needs to be thorough and reasonable. The Tribunal conclude on the evidence before them that such investigation was a reasonable investigation.

96. The Tribunal then have to consider whether Mr Hammons had reasonable grounds to form a genuine belief in the conduct having taken place. It is clear to the Tribunal that Mr Hammons did have reasonable grounds to form a reasonable belief that the conduct complained of by a number of members of staff had clearly taken place. It was not a bias view and it had nothing to do with any alleged public interest disclosures, or the Claimant making claims in her personal capacity about her grading. The Tribunal are clear that the only reason for the Claimant's dismissal was her conduct.

97. The Tribunal are also clear, when one looks at the Claimant's conduct, and the position the Claimant held that would have impacted on Mr Hammons decision to dismiss.

98. Was that decision within the band of a reasonable response of a reasonable employer open to Mr Hammons? Clearly it was given the nature of the conduct and the Claimant's position she held within the Respondent's organisation.

The Disability and the Question of Knowledge

99. It is accepted that at all material times the Claimant was disabled by reason of the mental impairment of Cyclothymia (from diagnosis on 22 July 2015 until the condition developed into Bi-Polar Disorder in October 2018) and then thereafter Bi-Polar Disorder until her dismissal on 14 June 2019, satisfies the definition of Section 6 of the Equality Act 2010. It is also accepted that the duty to make adjustments is not triggered until a Respondent knows of the disability. It is noted that the Claimant's pre-

employment health questionnaire (D2209) and all the medical evidence prior to 16 July 2015 makes no reference to the Claimant's disability during that period. The Claimant relies on the original Report of Doctor Vilanova which diagnosed Cyclothymia on 16 July 2015 (see page 481). The Claimant says that she provided this to her Line Manager Katy Everitt at this time. Whilst there is no evidence to support this contention as the Claimant attended a Wellbeing Review with Ms Everett on 20 August 2015, approximately three weeks after the diagnosis, that review makes no reference to the condition. The Tribunal agrees that at that stage it would be inconceivable that the Claimant could have provided the Report to Katy Everitt of her condition and then makes no mention of it during the course of such a Wellbeing meeting.

100. It is also noted that all later Wellbeing meetings at which the standard form we have seen lets managers to discuss any disabilities remains silent on the issue of disability. There is a succession of them running through the years 2016, 2017 and early 2018. We then have the Claimant's suspension on 19 April 2018 and the commencement of her next period of absence due to stress on 15 May 2018 (F2832). The Claimant having written to Mr Hammons by 21 May 2018 that she had a mental health disability and was requesting further adjustments in relation to the Disciplinary Hearing; Mr Hammons says that is the first time he was aware that the Claimant had a mental health condition.

101. At that stage Mr Hammons then went to the Claimant's personnel file from which he would have found further evidence that the Claimant was suffering from Cyclothymia. It is at that point that Mr Hammons must have had the actual or constructive knowledge of the facts constituting the Claimant's disability. If he was in any doubt he should have immediately arranged an Occupational Health Report, he did not do this until much later in the year.

102. The Tribunal are therefore satisfied that the Respondents had actual or constructive knowledge of the Claimant's disability by May 2018.

Failure to Make Reasonable Adjustments

103. The first PCP relied upon relates to the suspension of employees facing gross misconduct allegations. That was accepted by the Respondents as a practice. The suspension is clearly a continuing act therefore in time. Suspension is normally an appropriate route in allegations of gross misconduct and of course is covered by the Respondents Disciplinary Policy (page 209). It was acknowledged by the Claimant that such a course of action, namely suspension, would be appropriate in allegations of gross misconduct. The suspension took place on 19 April 2018 and of course the Respondents must have knowledge of the disability in order to consider any disadvantage. The knowledge, as the Tribunal have determined, came about in May 2018 and it is at that point, if suspension

was a disadvantage to the Claimant, the Respondents should have considered whether such reasonable adjustments were appropriate; namely to lift the suspension.

104. The Tribunal took the view that given the allegations and the Claimant's role as HR Manager, to lift the suspension would have caused undoubtedly difficulties in the relationship within the Claimant's team, and with Managers and Senior Officers. It would have been quite simply a huge operational difficulty of lifting the suspension in the circumstances and with the allegations, before the Respondent given the Claimant's role as Head of HR.

105. In those circumstances the Tribunal did not feel that the Respondents had failed to make a reasonable adjustment.

106. The second PCP relied upon by the Claimant is the requirement that candidate's interviews for jobs have a face to face interview. Again, the Respondents accept this was their practice. Originally the Claimant had been invited for an interview for the shared HR Services Manager on 25 February 2019 (page 2033) and she says that this requirement placed her at a substantial disadvantage in comparison to any other candidate who was not suffering from Bi-Polar and therefore requested an adjustment to the interview process, namely to be allowed to provide written answers to questions which would be provided to her in writing.

107. The first point to make is the Tribunal have already determined that this claim is out of time for reasons canvassed above. Further, the Claimant did not advance reasons in any event as to why it would be just and equitable to extend time. Notwithstanding this, the Tribunal nevertheless have concluded that following Occupational Health advice would have put the other candidate at a distinct disadvantage. It was therefore felt that the best way forward was to park the interview process until the conclusion of the Claimant's disciplinary process and in the interim period appoint a temporary post holder. Thereafter both candidates would be on an equal footing to attend interviews. Therefore the Tribunal, notwithstanding the fact the claim is out of time in any event as we have already said, would not find this was a reasonable adjustment that should have been made by the Respondents.

Equal Pay Claim

108. The Claimant's contention that she in her capacity as HR Manager undertook equal work to Greg McDonald in the role of Head of Economic and Commercial Development. The Respondent contends that the roles were evaluated and given different values by an approved Local Government Job Evaluations Scheme and as such cannot be the subject of challenge, other than whether the system discriminates because of sex or the Job Evaluation Scheme is otherwise unreliable.

109. The Claimant seemed to accept when cross examined, she could not say that the Job Evaluation Scheme, carried out by Mr Thurston an Independent HR expert, was either unreliable or tainted by sex.

110. Mr Thurston in giving evidence, gave a detailed and rational explanation as to how he graded the Claimant's role at Grade 9 and the Head of Economic and Commercial Development at Grade 10 and his reasoning for re-evaluating the roles.

111. The Claimant tried to argue that she was responsible for payroll within her department within the Respondent's organisation. Mr Thurston explained that there was a difference between counting the accountability in that the Head of Economic and Commercial Development was responsible for a large capital budget, whereas the Claimant was not so responsible within the HR department.

General Comments

112. The Tribunal have not found it necessary to find facts in relation to the Claimant's Appeal regarding the equal pay determination, given the Claimant does not assert that the Job Evaluation Scheme is unreliable.

113. Nor have the Tribunal found it necessary to provide factual information regarding the Claimant's Grievance and Appeal, given that they are not matters before the Tribunal now that needs any determination as a matter of law.

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Employment Judge Postle

Date: 19 December 2022

Sent to the parties on: 11 January 2023

For the Tribunal Office.