



# EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms Paula Heath

v

Clevedon Town Council

Heard at: Bristol

On: 17 to 19 February 2025

Before: Employment Judge C H O'Rourke  
Mr H J Launder  
Mr K Ghotbi-Ravandi

## Appearances

For the Claimant: in person

For the Respondent: Ms H Suleman - consultant

## REASONS

(Having been requested subject to Rule 62 of the Tribunal's Rules of Procedure 2013)

### Background and Issues

1. The Claimant had been employed by the Respondent Council as the Town Clerk and Responsible Finance Officer (RFO), from 2009, until her dismissal for alleged gross misconduct with effect 15 September 2022.
2. As a consequence, the Claimant brings a claim of unfair dismissal, breach of contract in respect of pay in lieu of notice and detriment on the grounds of protected disclosure.
3. While the Respondent initially disputed that the Claimant had made a protected disclosure, they accepted, during this Hearing and in closing submissions that she had in fact done so. The disclosure relates to concerns she raised in June 2021, with Dr Young, a councillor, the then chair of the Finance and General Policy Committee, as to alleged concerns about the mechanism for the claims by a councillor for repair materials for an allotment. As stated, this was accepted to be a protected disclosure, and we consider the matter no further.
4. In respect of the claim of unfair dismissal, the issues are as follows:
  - a. Has the Respondent shown the reason for dismissal? The Respondent states that the Claimant committed gross misconduct in respect

of two matters. Firstly, that she had a conflict of interest in relation to the appointment of an IT contractor, with whom she was in a relationship. That alleged conflict was compounded, the Respondent said, by her failure to ensure that the contractor had public liability insurance, which fact she did not report to the Council. Secondly, it was alleged that she had committed the Council to a financial liability of £300,000, for the development of a skate park, without the authority of the Council. Further, that she had a conflict of interest by being a trustee and treasurer of the charity involved in that development. The Respondent said that these were potentially fair reasons for dismissal. The Claimant says that the true reason for her being disciplined, which resulted in her dismissal, was her protected disclosure.

b. Next, did the Respondent have a genuine belief in the Claimant's 'guilt', based on as much investigation as was reasonable in the circumstances? The Claimant disputed the allegations against her. In respect of the IT contractor allegation, she said that she had removed herself from control of that contract, passing it to her deputy, who she blamed for any oversight in respect of the insurance issue. In respect of the skate park, she asserted that, firstly, there was no contractual commitment entered into and secondly that she had the requisite authority for the steps she took.

c. Did the Respondent follow a fair procedure? The only substantive disputes we noted from the Claimant were that the letter of suspension was vague as to the charges against her, stating merely '*operational concerns*' and that she also complained of the Respondent delegating the investigation and disciplinary process to a third party.

d. Was dismissal within the ranges of responses of the reasonable employer, in the circumstances in which the Respondent found itself? The Claimant did not dispute this issue.

e. In the event of a finding of unfair dismissal, the Respondent contends that the Claimant's conduct contributed to her dismissal and that therefore any compensation awarded should be reduced accordingly.

### **The Law**

5. We reminded ourselves of s.98 of the Employment Rights Act and that when hearing a case of unfair dismissal, a Tribunal's powers are limited, specifically that we are not permitted to substitute our judgment for that of the employer. Rather, it is for us to say whether both the decision to dismiss (**Iceland Frozen Foods –v- Jones [1983] ICR 17 EAT**) and the way in which the investigation was conducted (**J Sainsbury Plc –v- Hitt [2003] ICR111 CA**) fell within the range of responses of the reasonable employer, in the circumstances in which the Respondent found itself. If the dismissal or the conduct of the investigation falls within the range, it is fair, if outside, then it is unfair.

### **The Facts**

6. We heard evidence from the Claimant and on her behalf from Mrs Linda Hedley, who had assisted the Claimant during this process. From the Respondent, we heard evidence from three current or former councillors, Dr Hannah Young, Mr John Forbes and Mr Richard Westwood.

7. The Respondent is a small employer (four employees including the Claimant), but they could call upon outside resources for legal advice.

8. Chronology

November 2019 - the IT contractor was appointed.

24 June 2021 - a Ms Boundy, the admin officer raised concerns with Dr Young about the Claimant's and the IT contractor's access to her emails. The only relevance of this discussion was, we find that it prompted the Respondent to enquire further into the IT contract.

June 2021 - at some point around this time the Claimant made her protected disclosure.

25 September 2021 - the Respondent received an invoice, for £1100 plus VAT from a building contractor in relation to the skate park.

November 2021 - on being chased for payment, the Respondent commenced a review of the project.

5 November 2021 - the Claimant was suspended [106].

Jan and Feb 2022 - an investigation was undertaken which advised that disciplinary proceedings would be appropriate.

16 March 2022 - the Claimant was invited to a disciplinary hearing [199].

29 August 2022 - following numerous adjournments of the proposed disciplinary hearing, mainly due, we find, to the Claimant's multiple grievances, it took place on this date.

15 September 2022 - following approval by the Full Council, on 14 September 2022 [387], in which it voted thirteen for dismissal, with one against and one abstention, the Claimant was dismissed [388].

28 September 2022 - the Claimant's appeal against dismissal was heard and her dismissal was upheld.

9. Detriment on grounds of protected disclosure. The Claimant stated that the taking of disciplinary proceedings against her, which is obviously a detriment was because of her (accepted) protected disclosure. We find that that is not the case, and we do so for the following reasons:

a. The Claimant was unable to prove, on the balance of probabilities that this was the reason for her being disciplined, resulting in her dismissal, which

failure she seemed to accept in cross-examination, stating that she could not *'prove what other people were thinking'*.

b. Beyond making the assertion, she was unable to provide any other corroborative evidence to support it, such as, for example, communications between the decision makers that at least implied a link between her protected disclosure and the disciplinary proceedings.

c. She did not shake the evidence of either Dr Young or Mr Forbes on this point. Both of them gave clear and forthright evidence, which we have no reason to doubt, namely that they viewed her disclosure, at the time, as a very minor matter, which did not linger in their minds and in particular, in Dr Young's case, did not form part of her considerations in deciding to commence disciplinary proceedings, some five months later. We accept her evidence as to her surprise when, for the first time (the matter not having been raised in the Claimant's appeal), the protected disclosure and the disciplinary proceedings were linked in the Claimant's claim to this Tribunal.

d. The Claimant was unable to support, with evidence, her assertion in closing submissions that there was evidence of animosity towards her, influencing the decision to discipline her.

10. Conclusion on Detriment. We find therefore the Claimant was not disciplined because of her protected disclosure and accordingly this claim fails.

11. Unfair Dismissal. We consider the issues in that claim below.

12. Has the Respondent shown the reason for dismissal? Having found that the protected disclosure was not the reason for disciplining her and which process lead to her dismissal, then the only reason can be her alleged misconduct.

13. Did the Respondent have a genuine belief in the Claimant's misconduct on reasonable grounds following as much investigation as was reasonable in the circumstances? We conclude that it did, for the following reasons:

a. In respect of the IT allegation, the Respondent had emails sent to and from the Claimant to the IT contractor, in October 2019, in which she appeared to invite him to provide a tender and he responded, providing one, addressed to her email address, and entitled 'Dear Ms Heath' [183]. This is despite the Claimant stating that she had delegated this task to her deputy to avoid any indication of conflict of interest. The Claimant said in evidence that it was common for the three people in the office to use each other's computers and that on this occasion, her deputy must have used the Claimant's computer, hence her email address appearing on it. We found this explanation implausible, as why, if each office worker had their own computer, they would use somebody else's and also why, if the deputy had originated the email, she had signed it off with the Claimant's name and the contractor had replied using that name? We find it much more likely that these are the Claimant's emails and that therefore she had not removed herself from this process.

b. The deputy gave evidence to the investigation to the effect that the Claimant took charge of arranging the details of the contract, to the extent of phoning the contractor to get him to provide missing information from his tender, which, she said, would not have been done for any other contractor providing a tender. The Claimant asserted in this Hearing that the deputy had in effect lied on this point and when asked what possible motivation she might have to do so, said that the deputy hoped to secure her role. It is, however, the case that the deputy never applied for or took on the Town Clerk role, after the Claimant's departure, on any permanent basis and the Respondent's evidence was that the deputy was underqualified to fill it. We don't therefore accept this assertion.

c. The Claimant provided no evidence to counter the Respondent's allegation that the Contractor had not been obliged, as would be the norm, to provide evidence of public liability insurance, only belatedly providing it for the last year of his engagement. This is despite the fact that he and the Claimant are and were in a relationship at the time. The Claimant sought to blame her deputy for this failure, stating that she belatedly found her to be incompetent. The deputy's evidence to the disciplinary investigation was that she had no involvement in or knowledge of the insurance requirement, but which should have been something the Claimant should have been aware of. We also find the Claimant's stated belated discovery of the deputy's alleged incompetence to be implausible, bearing in mind that they had worked together, in very close proximity, for some considerable time and that therefore any such incompetence would have been apparent at a much earlier point.

d. Turning then to the skate park allegation - we conclude also, in that case that the Respondent had a genuine belief in the Claimant's misconduct and had carried out as much investigation as was reasonable in the circumstances, for the following reasons:

i. Despite the Claimant asserting that she had the requisite authority to sign a service level agreement and to accept a tender from the building contractor and to transfer £50,000 to the Trust, she failed to provide any corroborative evidence whatsoever, such as committee or full council minutes, or other correspondence to support this assertion.

ii. She was unable to challenge Dr Young's statement that only full Council could approve a project of this scale (£300,000) and that a sub-committee could not do so, without such specific approval. Dr Young stated that routinely the sub-committee could only authorise expenditure of up to £1000.

iii. It appeared to us that the Claimant had adopted a somewhat cavalier attitude to the management and financial aspects of this project, giving the impression that she 'knew best' and could progress this matter without the inconvenience of getting councillors' formal approval, as opposed to general expressions of support for the potential of the project. As Town Clerk and RFO she was the principal advisor to the

Councillors, ensuring their actions were within the law and appropriate regulations and she clearly failed in that respect, herself breaching such requirements.

iv. This failure is compounded by the Claimant's decision to become an influential trustee of the skatepark charity and its treasurer, creating, at very least, the impression of a clear conflict of interest, which, we reiterate, as Town Clerk, she should have recognised and avoided.

14. In respect of the Claimant's submissions on this issue, we comment as follows:

a. In respect of the IT tenders, she stated that her deputy opened those tenders and that she had no involvement in making changes to the one from her partner and that she was not in the office at the time. However, as we have found, the fact of the emails and the deputy's evidence contradicts that assertion, which we don't accept.

b. The Claimant's assertion that if there was a problem, the IT contract should have been simply left to expire without renewal did not address the issue as to her entering into a conflict of interest in respect of it.

c. She queried as to why, if this matter was so important it had not been investigated earlier, but it was Dr Young's clear evidence (which we accept) that it was not until the admin assistant's complaints in June 2021 and which lead to further enquiries that the extent of the Claimant's involvement in the contract became apparent, thus leading to a formal investigation.

d. In respect of the skatepark, the Claimant asserted that the matter should have been dealt with as a separate issue, but there is no logical reason why that should be the case. Once the information became apparent to the Respondent, they were duty bound to investigate it and as the issue related also to the Claimant's duties as Town Clerk it was entirely appropriate to deal with it along with the IT issue. There was no prejudice to the Claimant in doing so.

e. The Claimant repeated her assertions as to having the necessary authority to carry out the actions she did in respect of the skate park, but as stated in our findings above, she provided no corroborative evidence of such authorisation. Her stated reliance on similar documents or plans provided by Somerset County Council, to use as templates, did not relieve her of the requirement to obtain approval from the Respondent, on whom sole liability rested for the handling of the project. While she stated that there '*was no reason to question the commitment of the Council to the project*' she could not simply seek to rely on expressions of approval by individual councillors, or even a sub-committee, without the requisite formal approval, of which, we reiterate, she provided no corroborative evidence.

f. Whether or not the Council had the funds to reinstate the land on which the existing skatepark stood, or had a duty to maintain the skatepark, did not excuse her from obtaining the requisite authority for her actions, to include accepting tenders, or transferring money to the charity, which, again, we reiterate, she has failed to provide corroborating evidence for.

g. We reiterate our conclusions as to the Claimant's cavalier attitude towards her responsibilities to the Council and the Councillors and which perhaps indicated a view on her part, following her long experience that she 'knew better' and could sidestep irksome restrictions to get on with projects that she felt the Council was keen to advance. However, that was not her role and indeed she should have been the one person in the Council ensuring rigid adherence to such requirements.

15. We conclude therefore that the Respondent did have a genuine belief in the Claimant's misconduct.

16. As to dismissal being in or outside the range of reasonable responses, this was not a matter disputed by the Claimant and we find, in any event, in view of the Claimant's very responsible position of Town Clerk and RFO, which role the Councillors could not realistically closely supervise that it was reasonable for the Respondent to conclude that she could no longer be trusted and that therefore dismissal was the only option.

17. As to fairness of procedure, we deal with the Claimant's substantive concerns as follows:

a. Failure to spell out the allegations in the suspension letter: by this point of course the investigation had not commenced and therefore it would have been reasonable for the Respondent to give only a broad indication of its concerns. In any event, the Claimant relatively soon afterwards became fully aware of the allegations against her and certainly before she attended the disciplinary hearing, which applying the ACAS Code, is the crucial point.

b. The involvement of a third party: there is nothing in the ACAS Code preventing an employer from engaging a third party to conduct its disciplinary processes, particularly, as in this case, individual councillors may have felt they lacked both the expertise and the time to engage in such a process.

18. We don't therefore find any substantive failures in procedure by the Respondent.

19. Accordingly, therefore, we find that the Claimant was fairly dismissed, for gross misconduct and that this claim fails.

20. Breach of contract in respect of notice. Having found that the Claimant was fairly dismissed for gross misconduct, the Respondent was not in breach of contract in failing to give notice or pay in lieu of such notice (s.86(6) ERA).

21. Judgment. The Claimant's claims of unfair dismissal, breach of contract in respect of notice and detriment on grounds of protected disclosure fail and are dismissed.

**Employment Judge O'Rourke**

Bristol

Dated 22 March 2025

Reasons sent to the parties on  
11 April 2025 By Mr J McCormick

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