



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103706/2022

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Held in Glasgow on 17 to 25 March 2025

Employment Judge L Doherty

10
Ms L Edgar

**Claimant
Represented by:
Mr R Clark -
Solicitor**

15
Scottish Water

**Respondent
Represented by:
Mr M McLaughlin -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Tribunal is that the respondent's defence under Section 69 (1) of the Equality Act 2020 (the EQA) succeeds, and the claim is dismissed.

REASONS

1. The claimant complains of a breach of the equality clause implied into her contract of employment. This was a Preliminary Hearing (PH) to consider the
25 respondent's defence under Section 69 (1) of the Equality Act 2020 (the EQA). The claimant was represented by Mr Clark and the respondent by Mr McLaughlin, both solicitors.

Issues

2. The parties had agreed a list of issues as follows:

30 1 *Was the difference in pay between the claimant and the Comparator in the period 23 August 2021 to 4 July 2022 because of the Comparators:*

1.1 *Skills.*

1.2 *Experience; and*

1.3 *Potential*

2 *In relation to the respondent's reliance on the Comparator's skills, experience and potential when fixing his pay at the point of employing him and maintaining it at a higher level than the Claimant's pay until the date of lodging this claim, were each of them:*

2.1 *genuine, and not a sham or a pretence.*

2.2 *significant and relevant to the difference in pay.*

2.3 *not related to the difference in sex.*

2.4 *a material difference between the Claimant and the Comparator?*

3 *If so, has the respondent shown that reliance on the material factors(s) does not involve treating the Claimant less favourably because of her sex? (s69(1)(a) of the Equality Act 2010).*

15 **The Hearing**

3. For the respondents, evidence was given by:

- Ms Georgina Reid, the claimants line manager in the period from 23 August 2021 to 4 July 2022 (the relevant time);
- Mr Scott Fraser, a member of the interview panel for the band B post of Corporate Affairs Specialist (CAS);
- Ms Linda Brown, an HR advisor with the respondents.

4. The claimant gave evidence on her own behalf.

5. The parties produced a joint bundle of documents.

25 **Findings in fact**

The claimant

6. The claimant commenced employment with the respondent on 7 April 2003. She has worked in various posts. In 2015 the claimant was seconded to the role of Regional Project Communications Advisor in the Corporate Communications Team. This role was made permanent in 2016 after an interview process. In August 2017, Regional Project Communications Advisors became Corporate Affairs Officers (CAOs) following a restructure of the job role profiles. The claimant continues that hold the position of CAO. The claimant's salary as at 2021 was £30,605.

10 *The respondent -pay and grading*

7. The respondent is a public body with responsibility for the delivery of water services in Scotland.
8. As of 2022, the respondents operated a pay and grading system, which pay bands running upward from F to A, with a salary range for each grade. Salary band C ran from £30,605 to £42,572. Salary band B ran from £34,609 to £47,149.
9. Each job role in the respondents Corporate Affairs Team (CAT) is aligned to a pay band.
10. Decisions relating to the pay bands are negotiated with the recognised trade unions, Unite, Unison and GMB.
11. The Corporate Affairs Officer (CAO) is a Band C role. The Corporate Affairs Specialist (CAS) is a Band B role. From July 2021, the Band C salary range was £30,605 to £42,575.
12. Annual pay negotiations take place between the respondent and the recognised trade unions.
13. In 2021 and 2022, employees who held roles which aligned with pay bands A-F received an incremental pay increase following the pay negotiations. The incremental pay increase is linked to the organisation's overall performance.

In 2021, employees within the claimant's pay band (Band C) received a 2% increase effective from 1 July 2021.

14. Prior to 2020, the respondent operated a performance management programme called Aspire. Employee objectives were recorded on Aspire.
5 These objectives were performance related.
15. Prior to 2020, there were three main ways in which an internal employee could receive a pay increase. These were:
- Through the annual incremental increase to the pay bands agreed through pay negotiations with the unions.
 - 10 • Through their personal performance in line with the Aspire programme. There were two 'gateways' that an employee could achieve depending on their performance each year, either 'good or very good' (Gateway One) or 'outstanding' (Gateway Two). Achieving Gateway One resulted in a specific percentage pay increase. Achieving Gateway
15 Two resulted in a slightly higher percentage pay increase. An employee's line leader determined which Gateway was applicable to the employee each year.
 - Through promotion to another role within the organisation.
16. Achieving 'Gateway One' meant that the individual's work was consistently
20 and reliably at the level expected of a fully contributing role holder. The majority of staff achieved a Gateway one.
17. As a result of the respondent's pay and grading structure, it was difficult for employees to move up within the pay scale of the band assigned to their job.
18. The respondent stopped using Aspire in 2020 as a result of the Covid-19
25 pandemic. This meant that individual performance related pay increases were frozen from 2020 onwards.
19. The respondent advised employees in April 2020 that it would not make pay awards based on individual performance during the Covid-19 pandemic.

20. In September 2022 the respondent introduced a new performance management programme called My Story. It is not currently related to pay.

Recruitment Policy

21. The respondent had a Recruitment Policy which provided *inter alia* that;
- 5 22. *Our selection process recognises the need to identify individuals that can meet the technical requirements of the job now, whilst also thinking ahead to what skills and capabilities may be needed in the future.*
23. Section 4.3 deals with Salary on Appointment and provides:
- 10 *When appointing the successful candidate, the recruiting manager may take a number of factors into account, such as:*
- *The skills, experience and ability of the candidate*
 - *Their current salary*
 - *The salaries of peers*
 - *The internal and external market rate for the job*
- 15 24. *Appointments may be made under the base salary for the band when a development plan is in place. Internal candidates may be offered up to a 5 per cent increase on their current basic salary. Any proposal to make an offer out with the terms of this guidance must be approved by People Connect before any offer is made to a candidate.*
- 20 25. A recruiting manager had the discretion to appoint an external candidate on salary within the range salary range of the band at which the post sat.

Corporate Affairs Team

26. Different teams within the respondent organisation deal with various aspects of the business. As at 2017, the Corporate Communication Team became the
- 25 Corporate Affairs Team (CAT). A large part of the work of CAT involved managing external and internal stakeholder relationships. For CAT purposes external stakeholders included the Scottish Government, Local Authorities

and Elected Members, Community Councils, MPs, SMPs, and Regulatory Bodies. Internal stakeholders included alliance delivery partners. Managing these relationships required the communication of information about work or projects carried out by the respondent or messages the respondent wished to convey in order to build confidence and trust, enhance its reputation and business outcomes.

27. The respondents had a separate Customer Service Centre which dealt directly with managing customers and dealt with customer complaints.

The role of Corporate Affairs Officer (CAO)

28. There were a number of teams in CAT including three teams split on a geographical basis (West, North and Southeast). In 2020 /21 the role of CAO sat within CAT at band C.

29. The job description for CAO role provided:

Key Accountabilities/Tasks:

- 1 *Participate in the development and delivery of communications and engagement plans, which will promote SW activity and keep all key audiences fully informed, aware and engaged.*
- 2 *Dealing with enquiries from stakeholders including the media, both proactively and planned, and responding effectively to unplanned day-to-day requests to provide clear, factual and accurate information which represents SW's position.*
- 3 *Use the full range of digital channels including website and appropriate social media as part of our communications delivery to maximise audience reach and engagement.*
- 4 *Creating audience-appropriate content which is clear and consistent and meets the needs of our customers, stakeholders and staff and aligns with business objectives.*

5 *Recording, monitoring and evaluating all communications and engagement activity to support customer experience measurement and ensure continual improvement and innovation.*

5 6 *To work collaboratively with colleagues in all parts of Scottish Water and associated partners to ensure that all aspects of the capital programme that impact on customers, stakeholders and reputation are communicated effectively allowing a joint team approach to delivering customer excellence.*

Key Technical Skills and Knowledge

10 *Essential skills/knowledge*

- *Ability to develop, plan and implement effective intelligence led and high impact communications plans.*
- *The ability to gather intelligence from a range of sources, (ie. operational performance data, corporate management information and financial information from the annual report, regulatory targets or reports) and to use this intelligence effectively to develop and inform communications plans.*

Knowledge:

- 20 • *Understanding of SW group activity, SW performance objectives including CEM, local knowledge including geographical and people (ie key influencers) and the SW investment programme. The role holder must have the ability to assess this information and its potential impact and outcomes on our customers and stakeholders.*
- 25 • *Knowledge of the political structure & environment (ie governance, such as Scottish Government, DWQR, WICS, SEPA, HSE; political; both at national eg MSPs and at local level eg councillors and community councillors.*
- *Understanding of external and internal factors which may have an impact on Scottish Water, for example increasing expectations from*

our customers and the growth of social media as a channel of engagement and communication.

- *Knowledge of how the media and social media operates in a Scottish context such as awareness of local newspapers, websites, blogs, radio stations and community groups who communicate in an online community environment.”*

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30. In practice the role of the role CAO involved a variety of tasks, mainly around the creation of content. These included updating the respondent's website, writing press releases, responding to internal and external stakeholder enquiries, creating material to promote the respondent's campaigns, and creating digital or social media content. An excellent standard of written communication skills with a high level of accuracy in written work was required to execute these tasks. The role also required the ability to build relationships with stakeholders and to work under pressure, including being able to respond quickly and accurately to situations. Time was regularly spent meeting with internal teams and stakeholders. The role also required the ability to work quickly and under pressure as CAT have a considerable amount of crisis management communication work.
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Role of Corporate Affairs specialist (CAS)

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31. The Role of CAS sat at band B of the salary grade. The role comprised of all of the duties of a CAO together with additional duties around developing a strategic overview and leadership tasks, including mentoring and development of best practice. It also required the post holder to take on management responsibilities of the Band A Manager post when required.

Recruitment exercise 2021

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32. In November 2020 Ms Reid was appointed the manager of the West Team. At that time there were two CAO's in the Team, the claimant and a Ms Laura Boyce. Another CAO was allocated to the team, but she worked in a different area. Ms Reid was salary band A and the two CAO's were salary band C.

33. When Ms Reid joined the team the claimant showed her the tasks that she, the claimant, carried out. She also showed Mr Reid where work was stored and provided her with lists of contacts which she kept.
34. By 2021 the team was busy and Ms Reid considered it under resourced. She found that she had to regularly step down from her management duties to carry out the work of a CAO. On review a decision was taken to rationalise the three geographical teams in order to have an A, B and C grade job in each team. This identified a vacancy for B and C band roles across the three teams and resulted in a recruitment exercise taking place in July 2021 for a CAS (band B) and CAO (band C).
35. The recruitment panel comprised the three team managers, Ms Reid, Mr Fraser and Mr Steele. Around 18 applications were received for the band B role. The panel conducted a joint sift of the applications on the basis of the CV's submitted. From this, they created a shortlist of eight applicants, who were considered to be most suitable for interview.
36. A number of internal candidates applied for the post, and a decision was taken to offer all internal candidates an interview. The rational for this was that of was felt to be fair to employees who wanted to progress on the basis that the interview could be helpful to their development.
37. Both the claimant and Ms Boyce applied for the CAS role.
38. The claimant telephoned Ms Reid before the application process closed. She asked Ms Reid about the CAS role. She said that she was thinking of applying for the role but did not think that she would get it because she had not had the same development opportunities as others. She also said that she was concerned that as a CAS she would have to work more than her contracted hours, and that as a TU representative that was something which she had always discouraged others from doing. She said that she had not made up her mind about applying. Mr Reid told the claimant that whether she made an application for the job was entirely her own decision. Mr Reid encouraged her to focus on her own strengths rather than the strengths of others.

Claimant's CV

39. The claimant's CV in support of her application for the CAS role detailed her work history with the respondents. From Sept 2003 until December 2005, she held the position of Administrator/Personal Assistant. From December 2005
5 to August 2006, she held the position of Business Analyst. From August 2006 to April 2007, she held the position of Developer Services Administrator. From April 2007 to July 2012, she held the position of Training Adviser. From July 2012 to November 2015, she held the position of Commercial Analyst. From March 2015 she held the position of CAO. The claimant's CV provided a
10 summary of the work carried out by her in each of these posts. She listed her key skills as:

- *Excellent communication & interpersonal skills;*
- *Excellent office skills & Strong organisational ability;*
- *Very good knowledge of MS Windows, Office & Internet Excellent research and reporting skills; and*
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- *Enthusiastic team player.*

40. In the Employment History section of her CV the claimant gave details of her post at CAO from March 2015 to present . It stated:

20 *"As a Corporate Affairs Office my role is to ensure the public are aware of upcoming work in their area, confirm the work has little impact as possible and that we leave a positive legacy. I liaise and attend meeting with Community Councillors, Community groups, Alliance Partners and internal teams. My role includes, responding councillor enquires, creating press releases, uploading project information into our social media channels. I maintain the Web page for the west region, I complete Community Engagement Plans for every
25 project submitted (CEP) and I also approve letters submitted by our operational alliance partners and review correspondence for our Iron works Alliance partner Kier."*

41. The claimant's CV contained a considerable number of grammatical errors and spelling errors.

42. Ms Reid did not consider the skills the claimant highlighted were communications based, but rather considered that they were mostly administrative skills around handling data and creating reports, which she did not consider were relevant for the senior position. Ms Reid did not consider that the key skills identified in the claimant's CV were the skills which the respondent was looking for in the CAS role.

Matt Bingham's CV

43. Mr Matt Bingham (MB) applied for the CAS role and was selected for interview. His CV detailed his work history. From November 1999 to November 2000, he had worked as a News Editor with Radio Clyde. From November 2000 to April 2006, he had worked as a Reporter with STV. From April 2006 until November 2008 he had worked freelance as a Broadcast Journalist. From November 2008 until October 2019, he worked as a Communications Officer Media Relations with Inverclyde Council. MB's CV summarised the work he had carried out in each of these positions.

Inverclyde Council

44. MB work summary under the Inverclyde Council post stated:

- *Coordination of all Council press and media communications including social media and internal publications.*
- *Delivered new advertising process through social media platforms as part of budget saving.*
- *Emergency/ crisis communications and 24/ 7 emergency press and media cover. Successes include leading crisis response to Swine Flu outbreak in 2009.*
- *Maintaining and building contacts with services, key stakeholders and community groups -vital in identifying proactive positive stories.*

- *Notable achievements included the annual tally of twins starting primary school which regularly attracted national and international press attention.*
- *Excellent relationships with journalists and news organisations.*

5 *Notable successes include supporting media at numerous electoral events including a Westminster by-election which attracted national press interest.*

45. Ms Reid considered that the job duties which MB described under his Inverclyde Council role were the duties of a CAO, albeit the duties were carried out in a different organisation. This was on the basis that Inverclyde
10 Council was a public body, and operated in a similar way to the respondents as a public Utility company. One of the similarities was that the stakeholders were almost identical to both organisations other than the Regulators.

46. Ms Reid considered that the work outlined at bullet point 2 demonstrated an ability to work independently and under pressure. The respondent operated a
15 24/7 emergency press rota on a voluntary basis, however the claimant did not take part in this.

47. Ms Reid considered that the work outlined at bullet point 3 demonstrated an ability to see the 'big picture' for the purposes of strategic overview.

48. Ms Reid considered that the work outlined at bullet point 4 demonstrated
20 good relationships with journalists which was something which she considered CAS/CAOs should aspire to as it was helpful to getting information across.

Broadcast Journalist - 4/2000 to 11/2008

49. MB's CV stated under this heading:

- 25 • *Freelance reporter, presenter and producer for media companies including ITN, Sky News and local radio stations;*

- *Stories covered included Glasgow Airport Terror Attack (ITN/ NBC), World 's End Murder trial and arrest of Peter Tobin for Vicky Hamilton murder (ITN) and Madeleine McCann disappearance (ITN);*
- *Presented live French Top 14 Rugby for Setanta; and*
- *Producer/reporter for STV's Scottish Rugby Roundup.*

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50. Ms Reid considered that the work outlined under this heading demonstrated an ability to work at a senior level independently, including the ability to present and promote work and to produce and edit film. She considered that MB's work in broadcast journalism demonstrated an ability to work under pressure to meet deadlines. She also considered that the number of high profile stories he covered demonstrated adaptability to subject matter and that he had good verbal and written skills.

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51. MB's CV also contained a skills section in which he identified his skills as follows;

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- *Experienced and adaptable media professional*
- *Strategic and corporate communications*
- *Excellent copywriting skills*
- *Social media engagement*
- *Media operations knowledge*
- *Relationship building*
- *Exemplary written and verbal communication*
- *Press and Public Relations*
- *Website Development*

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52. The skill set MB identified was considered by Ms Reid to be essential to the Band B role of CAS. She considered that experienced and adaptable media professional indicated a skill required by the team to make decisions. She

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considered strategic and corporate communications indicated the ability to take a strategic view. She considered excellent copywriting skills were a given as a necessary skill. She considered social media engagement was very useful as it indicated experience in how to utilise different social media platforms. She considered media operations knowledge was very useful in that it demonstrated an understanding of how the media react to situations. She considered that relationship building and exemplary written and verbal communication skills were a given as necessary skills. She considered that press and public relations was very helpful due to the degree of press activity involved in communications. She considered website development indicated a skill that was an added bonus to the job.

53. Ms Reid was aware that MB had left Inverclyde for personal reasons and that he had undertaken very little work in the period from October 2019 to the date of the recruitment process.
54. Ms Reid did not know MB, but from her own earlier career in journalism she was aware of him and understood him to be highly thought of within that industry.

Interview process

55. The respondent had an Interview Guide Template which contains notes for interviewers about how the interview should be conducted.
56. The panel of three managers who had conducted the sift also conducted the interviews. They carried out the interview for the CAS first, followed by the CAO interviews.
57. All of the candidates were asked the same questions. Two members of the panel asked the questions with the other writing the answers on a rotating basis.
58. Candidates were numerically scored on their answers following a panel discussion which took place immediately after the interview.

59. For the CAS role, all of the candidates were given a written exercise in which they were given 45 minutes to prepare a press release on the basis of information provided.
- 5 60. The candidates' answers were assessed and scored against what was categorised as *behavioural questions* (questions 1 to 7) and *technical skills and knowledge* questions (questions 8 and 9) and the written exercise they were asked to complete). The assessment framework for questions 1 to 7 was divided into *I Listen; I Do; I Talk; and I Feel* each of which was scored out of 4. Questions 8 and 9 were each of which was scored out of 4, as was the written exercise.
- 10 61. Question 8 was: *The current media landscape is evolving and changing all the time. Can you tell us what channels do you think SW should be using to influence customers and stakeholders? Why? And what experience you have?*
- 15 62. Question 9 was: *Who do you think are SW's most important stakeholders and why?*

Claimant's interview

63. The claimant was interviewed on 22 June. The panel did not consider that the claimant was a high performing candidate at interview.
- 20 64. The panel scored the claimant at 2/4 for *I Listen*. It assessed that she had provided strong examples but that they were quite narrowly focused on customer and community communications and engagement around construction projects. The panel considered the claimant's answer demonstrated an awareness on her part of the need to build trust in the relationship with key stakeholders, but that she had provided limited evidence of experience of doing this around broader issues. The panel considered that they would like to have seen clearer evidence of her ability to operate at a senior level in line with the requirements of the CSA role.
- 25 65. The panel scored the claimant's answer for *I Do* at 2/4. It considered the examples she provided reflected her commitment to advocate for customers
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and communities in the context of the respondent capital works programme, including the ability to manage setbacks, but she had provided limited evidence of experience of operating at a senior role and or dealing with complex and challenging issues.

- 5 66. The panel scored the claimant's answer at *I Talk* at 2/4. It considered that she provided good evidence of working with teams in relation to construction projects and Top up Tap launches. It also considered however that they would have liked to see more evidence of her ability to operate at a senior level, and of dealing with sensitive and/or complex issues with external stakeholders.
- 10 67. The panel scored the claimant's answer at *I Feel* at 2/4. It considered that she demonstrated strong customer focus in several examples drawn from involvement with construction projects but that a greater diversity of examples could have strengthened this. It also considered that the claimant reflected some awareness of areas for personal development and/or lower confidence and that it would have been positive to have reflected evidence of activity to address these proactively.
- 15 68. On the Technical Skills, Knowledge and experience question 8, the claimant scored 2/4. The panel considered that the claimant had reflected some understanding of changing communications environment and skills, as well as importance of understanding audience and maintaining a range of methods to make information accessible to all. It also considered that the claimant had demonstrated limited direct experience of producing and delivering digital content and that this this would be an area for potential development.
- 20 69. On the Technical Skills, Knowledge and experience question 9 the claimant scored 2/4. The claimant did not identify any of the key stakeholders on her answer. The panel considered the claimant's answer, despite some prompting, did not reflect understanding of Scottish Water's business environment or strategic outlook, but that was reflected to a limited extent by answers to behavioural questions, which partially met expectations in this area.
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70. The claimant scored 1/4 on the written exercise. The document the claimant produced contained numerous spelling mistakes and grammatical errors. The panel considered that the claimant had presented much of the key information, but that there were significant errors, both in the information presented and in the standard of written English. They also considered the headline of the press release and introduction could have presented Scottish Water's role as more active and it could have reflected more empathy with customers affected.
71. The panel produced summary conclusions on a candidate's performance which are used as feedback to the candidate.
72. The panel's summary conclusions on the claimant's performance at the interview were that the examples she provided reflected her strong commitment to advocating for customers and communities in the context of the respondent capital programme and operational maintenance work. It also considered that she was experienced and proficient in her current area of expertise.
73. The panel considered that the claimant would benefit from further developing her technical skills and experience in a broader range of the activities that Corporate Affairs carries out. This was particularly stakeholder management in relation to incidents and complex issues and proactive communication using a range of channels and tools.
74. The panel considered the claimant reflected some real strengths in the examples given, but not all of them are at the core of the role of CAS. They considered that they would have liked to have seen more evidence of ability and willingness to operate at a senior level.
75. At the conclusion of her interview the claimant asked was there anything she would like to add, she was noted as responding: *"that will be a challenge, might struggle at first, learning and developing, looking for help of colleagues, using skills I have gained so far. Hopefully my confidence will build. I haven't done before."*

76. The claimant scored a total of 8 for behavioural questions and 5 for technical skills and knowledge questions, giving a total of 13. The highest scoring candidate achieved 24.

MB's interview

- 5 77. MB was interviewed on 23 June. The panel considered that MB was a very high performing candidate at the interview.
78. The panel scored MB's answer for *I Listen* at 4/4. It assessed that he had provided an abundance of evidence of trust building, turning negatives into positives and behavioural change communications. It considered MB had provided good examples of his work which demonstrated that he could listen and develop solutions.
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79. The panel scored MB's answer at 4/4 for *I Do*. It considered that he had provided evidence of delivering successful projects and campaigns throughout proactive communications and provided an example which demonstrated that he could explain what correct communication meant in the handling what could be a PR disaster .
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80. The panel scored MB's answer at 3/4 for *I Talk*. It considered that MB had provided evidence of relationship building both internally and externally and of his willingness to compromise within a team. It also considered that his answer demonstrated a good grasp of different digital platforms and their uses, and that he was very adept at digital content creation. He lost a mark in that they considered he did not talk about further development opportunities.
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81. The panel scored MB at 3 /4 for *I Feel*. It considered that MB had provided good evidence of customer orientation and the challenges of finding time to be proactive, while being reactive. It considered that he had provided evidence of having done his research into Scottish Water and had been surprised to find out how much they do, quoting a recent issue with Roughing Reservoir. They considered he was very focused on positive story-telling but was perhaps less aware of the level of reactive communication and stakeholder management required.
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82. For question 8, the Panel scored MB 2/4 on the basis that they considered he displayed a good knowledge of all digital platforms to target different demographics and their uses and was comfortable creating digital content. They assessed him as less confident on new and emerging social platforms.
- 5 83. MB's answer to question 9 identified all of the respondent's key stakeholders, other than their regulatory body. The panel scored MB 2/4, on the basis that they considered that he displayed a good understanding of customer and elected representatives but did not highlight regulators as important.
- 10 84. In the written exercise, the press release which MB produced contained no errors of spelling or grammar. The panel considered that it was an excellent press release; that it was well written; and that it had contained all the salient points, including the COVID guidelines. It was assessed by the Panel as 4/4.
85. The panel's summary conclusions on MB were:
- 15 a. *This was an extremely good interview, displaying excellent skillset and Matt had obviously researched Scottish Water*
- b. *Very focused on positive storytelling potential within Scottish Water.*
- c. *Also displayed an understanding of the role and input of comms on achieving our ambitions. But a need to greater understand our significant role in reactive comms; and*
- 20 d. *Very close decision for appointment and was inspired to give positive feedback based on this to establish if Matt had any interest in pursuing the Corporate Affairs Officer role.*
86. MB total score was 23. This was made up of 14 for behavioural questions and 9 for technical skills, knowledge and experience.
- 25 87. MB was not appointed to the CAS role. That appointment went to Laura Boyce, who scored one more mark (24), after interview than MB. The respondent favoured appointing internal candidates where possible, and it was felt that Ms Boyce has displayed a willingness to learn and develop. They considered that that MB had more of a skillset than Ms Boyce, but that she

had industry knowledge and had stepped up into a management role to lead the West CAT team when Ms Reid was not at work, and for that reason it was felt that she deserved the promotion. Had Ms Boyce not been appointed, MB would have been offered the CAS job.

5 *Offer to MB of CAO role*

88. The panel were keen that MB was considered for the CAO role.

89. Ms Reid contacted MB to advise that he had not been successful in his application . She asked if he would be interested in accepting the CAO role band C role. MB told her that he would be interested provided the salary offered was suitable, and that he would be interested in the role if the
10 respondent agreed to pay him the salary he earned at Inverclyde Council when he left, which was £35,000.

90. Ms Reid discussed MB's salary with Mr Allan Thomson, Head of Corporate Relations. The proposed salary figure she discussed with Mr Thompson was
15 £36,500. Ms Reid explained that she considered that it was appropriate to make an offer on this basis as it reflected what MB would have earned had he still been employed at Inverclyde Council, and that this would act as an incentive. She explained that she considered in recruiting MB at this level the respondents were getting a B grade candidate for a C grade salary which
20 represented excellent value. She was keen to recruit him into her team as she considered he would provide a skill set which her team needed. Allan Thomson agreed with this approach as the salary Ms Reid proposed fell within the C band salary range.

91. MB was prepared to accept the CAO post at this salary level. He was not
25 interviewed for the post as the interview panel and questions at interview for the CAO post were the same as the CAS post.

The West Team

92. The claimant worked 37 hours per week and that on average she spent the following amount of time undertaking the following:

- (1) 6-8 hours per week in meetings with key stakeholders
- (2) 10-15 hours per week undertaking research
- (3) Two hours per week travelling to meetings
- (4) Five hours per week writing up notes/creating folders.
- 5 (5) Five hours per week in internal/other meetings.

There were aspects of the CAO role which Ms Reid did not consider the claimant could perform well, or could not do without supervision or assistance. Ms Reid considered that the claimant was good at organisation and could carry out aspects of her CAO role which involved organisational skills and processing information. She also considered that the claimant had formed good working relationships. She did not however consider that the claimant had excellent communication skills. She considered that the claimant's writing skills were below the standard necessary for the CAO role.

- 10 93. Ms Reid's experience of the claimant's written work was that the majority of what she produced contained errors in grammar and spelling. This meant that either Ms Reid or Ms Boyce had to check and frequently amend the claimant's written work, including press releases and e-mails to external stakeholders, in particular elected representatives.
- 15 94. Ms Reid's experience of the claimant's work in maintaining the Webpage was that it was mainly involved uploading photographs into a template with limited content creation.
- 20 95. Of the key accountabilities/tasks in the CAO job description above, Ms Reid considered that the claimant could partially fulfil task 1 (participate in the development and delivery of communications and engagement plans which will promote SW activity and keep all key audiences fully informed and engaged), but that she did not have the skills to carry out all of what was required of that task. She considered that the claimant did not have the skill set to create and deliver the communications engagement plans (CEP), and the communications document which accompanied it.
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96. Ms Reid did not consider that claimant could fulfil task 2 (dealing with enquiries from stakeholders including the media, both proactively and planned, and responding effectively to unplanned day-to-day requests to provide clear, factual and accurate information which represents SW's position) without assistance. She did not consider that the claimant's writing skills were such that she could provide clear and accurate information. She considered the same applied to task 4 (creating audience-appropriate content which is clear and consistent and meets the needs of our customers, stakeholders and staff and aligns with our business objectives).
97. The key skills and knowledge in the CAO job description which Ms Reid considered that the claimant did not possess were:
- Excellent written communication skills
 - A high level of accuracy in written work
 - In depth knowledge and understanding of principles of effective communication and media and the application of these principles in a work environment to achieve desired outcomes.
98. In the period from her appointment Ms Reid had a number of one to one conversations with the claimant in which she concentrated on what was going well and encouraged her to develop the skills she considered the claimant was good at, which were around organisation and data processing. She shared writing tips with the claimant and also the wider team. Ms Reid did not speak to the claimant about what she considered to be her poor writing skills. It was her expectation that the claimant would be aware that there were issues with her writing skills as the claimant continued to have to submit her written work for review and her work was often amended. Ms Reid expected the claimant to learn from that.
99. Ms Reid did not put the claimant into a development plan. The Aspire Performance Programme was suspended during the COVID-19 period. Ms Reid planned to give it a year from when she took up the managers post so that she could monitor where there were gaps in performance or a need for

development and she intended to address it at that stage. Ms Reid asked Ms Boyce to mentor and train the claimant, and she hoped that would raise the performance standard. She considered that Ms Boyce was better suited to this than she was as she thought the claimant might feel intimidated by being trained and mentored by her manager.

100. The respondent's new performance management programme, My Story, came into effect in September 2022.
101. The claimant was never put onto a performance review under My Story. By that time, she had lodged a grievance and Ms Reid did not feel it was appropriate to do so.
102. Ms Reid was keen to recruit MB to her team.
103. Ms Reid considered that the West Team did not lack experience or skills related to the workings of the respondent organisation. She did however consider there was a skills and experience gap in the team in that it lacked communications skills in terms of the writing skills, creation of digital content, engagement with social media and engagement part of the CAO role. She wanted to recruit someone who was experienced in the Communications aspects of the CAO role and could take up this workload, freeing herself and Ms Boyce for other tasks. It was Ms Reid's experience that she was having to regularly stand down from her managerial duties to carry out communications tasks at CAO level and that this was interfering with her doing her job. She and Ms Boyce wrote the majority of the press releases. She considered that MB had the skills and experience necessary to fill that gap and could '*hit the ground running*'. She considered this to be the case because of his journalist skills, and his writing skills and his experience of working with Inverclyde Council. She considered this work would be very helpful as he had been doing the job of a CAO in a public body sharing many of the main stakeholders at the respondent. She also considered that by recruiting MB into the Team the respondents were getting a B grade candidate into a C grade role.
104. At interview the panel also felt that MB's previous experience of working in the media including social media was becoming more relevant to the

respondent organisation. The interview panel considered that MB's experience in broadcast journalism was regarded as very interesting to the respondents. The communications element of CAT has a number of employees with a background in journalism and it was considered that MB's background in journalism was likely to bring a range of skills in terms of the production of written content. It was also considered that MB background in journalism could be of assistance to the respondents in dealing with the press, on the basis that this he was likely to know what the press were looking for and could use that knowledge to the respondent's advantage in getting their messages across.

105. MB accepted the job offer and commenced on 23 August 2012 at a salary of £36,500.

Claimant raises salary level of MB - November 2021

106. At some point in September/October 2021 the claimant approached Ms Reid and asked about a pay rise as she was unhappy that she remained at the bottom of the C grade salary range. Ms Reid told the claimant that she would pass on her concerns to her manager, Mr Thomson and discuss those with him.

107. On 1 November 2021 the claimant emailed Mr Lironi, the Head of Corporate Services advising that she MB had advised her that his starting salary was half way above the starting rate of band C. She advised that she had asked for a pay rise as she has been at the bottom of band C for 7 years since she started as a Communications Advisor, transforming to a CAO.

108. The claimant indicated that if MB's salary was based on his experience then it only fair that her salary should also be based on her experience as she had just under 18 years' experience in the water Industry and 5 plus years' experience as a CAO.

109. The claimant advised that she had consulted with Unison and was concerned this could be viewed as a breach of the EQA and that legal action might follow.

110. Mr Lironi passed this matter to Linda Brown for advice.

111. Ms Brown emailed Mr Lironi advising him that the claimant's situation was not unique. She remained at the bottom of the salary band as due to the nature of the pay bands and structure of pay awards in recent years, as the bands have shifted more than the individual's salary, with the result that employees do not progress through the band.
112. In relation to the suggested equal pay issue, Ms Brown advised that females were paid more than the claimant and MB on the same role profile. Likewise, there was a male colleague paid the same as the claimant.
113. Ms Brown advised the claimant had been treated in accordance with the TU jointly negotiated pay awards over the years, and therefore she did not see a case for a salary review.
114. She indicated that the claimant should be told that MB's salary was set at a level commensurate with his skill set and necessary to attract him into the organisation.
115. Mr Lironi emailed the claimant with this information.
116. Ms Brown copied Ms Reid into her email to Mr Lironi. Ms Reid responded that MB had applied for the B grade role and she had to make a difficult choice between two candidates. She advised it was a '*no brainer*' to get someone with MB's skill and experience in the C grade role. She advised that it would not matter if it was a man or a woman.

Work done by MB and the claimant

MB's work – press releases/ stakeholder letters

117. When MB joined the claimant provided him with assistance in that she showed him the tasks that she did; gave him a Contact list on the project teams; showed him where folders were stored; showed him where the respondents stored information; and showed him the respondent's CEP work.

118. In the early stages of MB's employment some of the work emails sent by Ms Boyce or Ms Reid, including those sent to the claimant, were sent to him.
119. Examples of MB's work include that he prepared a press release on 2 September 2021 which Ms Reid considered to be well written, contained all of the salient points, and its style was as close to the respondent's tone of communication as she could expect of someone so recently appointed. The only thing she would have changed in it was a reference to 'fresh' drinking water, as the respondents did not refer to drinking water as 'fresh'.
120. On 6 September 2021, MB sent Ms Reid a draft of a communication which was to be sent to stakeholders regarding a project in Stonehouse. She considered this to be a good piece of work. It did not contain any spelling or grammatical errors. She considered it conveyed all of required information about a significant capital investment and demonstrated engagement with the stakeholders who were most heavily involved. It did not require any revision.
121. On 7 September 2021, MB fed back positive feedback from a stakeholder, a local councillor, relating to the press release he created.
122. On 8 October 2012 MB issued a press release relating to major work in Oban which was disruptive to a school. The Oban project was a costly and long running one which had started off negatively. MB came to it towards the end, with no prior knowledge of it. He volunteered to travel to Oban and interviewed people involved in the project. This press release he produced was considered by Ms Reid to be very well drafted. She considered that it set out a very rounded story; contained all of the important information; was written in a way that was likely to engage the local community; acknowledged the disruption caused and highlighted that the respondents were putting something back into the community.
123. On 14 April 2022, MB drafted a press release and stakeholder letter both dealing with an urgent and reactive situation involving disruption to water supplies. Ms Reid considered both of these to be good work, properly flighted towards its target audience.

124. On 15 July 2022, MB drafted an 'end of works' press release over two pages dealing with the completion of works in Oban. It was commonplace for the respondent to issue a press release on the completion of works. This was regarded by Ms Reid as a good piece of work in that it summed up what was involved in the project, was written in a nice tone, and evidenced the benefits it would provide to the community. It also thanked the community and proactively shared one of respondent's core messages about saving water.
125. Within around 6 weeks of his employment MB was considered by Ms Reid to be exceeding her expectations. His written work required little or no revision and he showed initiative in trying to achieve better outcomes or solutions for the respondent. Ms Reid found MB's work to be of a very high standard.

The claimant's work- press releases/ stakeholder letters

126. Ms Reid or Ms Boyce checked press releases and correspondence drafted by the claimant. These were not infrequently require amendment.
127. An example of this is a press release drafted by the claimant at the request of Laura Boyce on 26 August 2021 contained errors in spelling and grammar. It was very basic in content and Mr Reid considered significant information was missing from it (the location of a road closure and any reference to the respondent's customers). The claimant's draft was revised by Ms Boyce to correct the errors of spelling and grammar and to include the missing information. She sent it back to the claimant advising it had been 'tweaked'.
128. On 12 July 2022, the claimant drafted a press release which containing errors in grammar and in spelling. This was revised by Ms Boyce.
129. An end of works press release was drafted by the claimant on 19 July 2022, dealing with a significant investment by the respondents (£3.1 million), albeit a smaller investment than the Oban work press release dealt with by MB. It ran to five short paragraphs and contained errors in grammar. One of the paragraphs did not make sense. It was not considered to be a good piece of work and had to be amended before issue.

130. On 21 January 2021, the claimant drafted an e-mail response to an elected member in response to a constituent complaint. The email contained errors in grammar and spelling. The first paragraph of the email comprised one long sentence and was difficult to understand. This was revised by Laura Boyce.
- 5 131. In August/September 2021, Ms Reid asked the claimant to look into an elected members complaint on behalf of a constituent. Ms Reid accepted that the claimant may have had some difficulty in accessing the information needed to deal with the query, however she did not consider that the claimant had answered the query raised, and she emailed her on 1 September stating
10 that the claimant's email response needed a *wee tweak* and that she was not sure if it fully answered the query .

Social media- MB and the Claimant

132. In November 2021, the respondent had to deal with a major issue on Kilmarnock Road, a Glasgow road, as result of a collapsed sewer. This was
15 a complex and sensitive issue for the respondents and Ms Reid asked MB to lead on communications for it. She used this project to test the extent of his abilities.
133. On a voluntary basis, MB created a series of social media posts for Twitter and Facebook which ran through the whole of the project. He also used his
20 film and editing skills to visit the site and make four short videos which were shared on social media, so that the works could be visualised and stakeholders could be kept updated. The team were usually only able to use still images because they did not have access to film and editing skills.
134. There was one spelling erroring the name of the project manager, however
25 Ms Reid considered this work to be effective and very impressive.
135. The respondents were carrying out work in the area of Braidholm Street, Glasgow, which disrupted the road to a local school. MB made a video, using one of his own family members who was school age, which provided direction and information about a safe walk to school. This was shared on social media
30 and was well received by the school and Parent Teacher Association. It was

regarded by Ms Reid as creative and very helpful as achieving positive outcomes for the respondent.

136. The claimant updated the respondents' Loch Katrine Top Up Tap website. The narrative on the site was provided by templates and she uploaded photographs. The claimant up uploaded information and photographs in order to keep the respondent's Webpage updated. This work was not considered by Ms Reid to be complex in that it did not involve the creation of significant written or digital content.

Community Engagement Plans (CEPs)- MB and the Claimant

137. CPEs are produced at the outset of the project detailing the project, outlining the key parties involved in the project, the communications necessary to customers/ stakeholders/partners as a result of it, and the method of communication to be used. It is a living document, which is used by the project team throughout the life of the project and can be altered to reflect circumstances as they changed. The more complex the work, the more information is required.
138. MB produced a very detailed CEP in around May 2022 for major and challenging work in Greenock. He identified around 25 or more stakeholders; all of their contact details; and the potential impact of the works on each. He identified a variety of mitigating actions to be taken. He also identifies for each stakeholder the means of communication, which included emails, briefings, press releases and visits; and when this should be done for each stakeholder, identifying varying but generally lengthy periods of notice for each.
139. MB created all of the communications content for the Greenock project, including videos all written communications and press releases. He had an animation created to explain the traffic management involved.
140. This was regarded as an excellent piece of work. It proved very useful for everyone working on the project.
141. The claimant produced a CEP in around May 2022 for complex and challenging work in High Street in Glasgow. She identified four stakeholder

groups in general terms, with no contact details. She identified the same mitigation action for each stakeholder, which was to notify them of the work and what the respondent would do to minimise the impact of the work where possible, without providing any further detail of this. She identified sending a postcard/letter to domestic and business stakeholder a minimum of two weeks before the works began; emailing councillors and stakeholders (unidentified) two weeks before, but giving councillors slightly more notice than customers to give them a 'heads up'; and using the press/Facebook/Twitter and the webpage two weeks before the work began to notify road users.

- 10 142. This was not regarded as a useful document as it was so lacking in relevant detail and a new plan had to be created.

Promotion

143. MB was promoted to a B grade post in Communications at some point after July 2022. The claimant has not applied for promotion.

15 **Note on Evidence**

144. While there are a number of matters upon which there was no dispute, there were some which were relevant to the Tribunal's determination of the issues. Further, the credibility of Ms Reid was a main plank of Mr Clark's submissions, and therefore the Tribunal dealt with the credibility and reliability of the witnesses and the relevant disputes in the evidence.
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Ms Reid

145. Mr Clark's submitted that Ms Reid was unrelentingly critical of the claimant and that her evidence was not motivated by any reasonable or objective assessment of the claimant's abilities but rather her anger at the fact that she considered her professionalism had been challenged by the claimant, and that the claimant has subsequently brought a victimisation claim. He pointed to what he said was an outburst by Ms Reid at the end of her cross examination in which she directly complained that the actions of the claimant amounted to an attack on her professionalism.
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146. The tribunal formed the impression that Ms Reid was upset at the suggestion that her decision on how much to pay MB was motivated by his sex; indeed she volunteered that she was upset in the passage of evidence referred to by Mr Clark. That however did not lead the tribunal to conclude that her evidence lacked any credibility as to her assessment of the claimant's performance at work or her skills and abilities. While it is correct that Ms Reid was critical of the claimant's writing skills and her evidence was to the effect that the claimant's engagement with social media was fairly limited, she did accept that there were aspects of the job which the claimant could perform well, identifying what she considered were her very good organisational skills; her ability to undertake processing work; and her good relationship building. In cross examination, Ms Reid accepted there were a number of elements of the CAO job description which the claimant had the requisite skills and abilities to perform. It was put to her in cross examination that she was saying that the claimant was not "*completely hopeless*". She responded robustly that she was not saying that. She indicated that she considered the claimant was potentially capable of achieving a Grade B post, although not in Communication but potentially elsewhere in the organisation. The fact that Ms Reid made these concessions did not suggest that her criticism of claimant was 'relentless', as suggested by Mr Clark.
147. Mr Clark also submitted that Ms Reid's criticism of the claimant's performance and abilities was inconsistent with the claimant's evidence that she had worked as a CAO for six years without any criticism at all from her line managers and the fact that that she had always been assessed as competent via the respondent's "Aspire" performance management programme. Ms Reid has never raised the claimant's performance in the 1-1 sessions that she had with the claimant prior to the commencement of these proceedings.
148. However, there was not inconsiderable evidence before the Tribunal to support the conclusion that Ms Reid had a reasonable basis for her assessment of the claimant's skills and abilities. The Tribunal was taken to examples of the claimant's work, as set out in the Findings in Fact, which contained errors in spelling and grammar which had to be corrected. The

press release which the claimant prepared at interview contained numerous such errors and was regarded as a poor piece of drafting in terms of content by not just Ms Reid, but also by the interview panel. The claimant's CEP contained basic information, which supported Ms Reid's assertion that it was not useful to the project team and had to be redrafted. The claimant's own evidence as to her engagement with social media was that she updated the respondents Webpage which involved going into system and creating a web page by adding information about what works were being carried out, when and why; upload a picture; and sometimes tag a Community Council if they wished this. This was effectively the same as Ms Reid's evidence about what the claimant did, together with the Top Up Tap website.

149. Against this background, the Tribunal did not conclude that the fact that the claimant had achieved Gateway 1 and had done the job of a CAO since 2015 without performance issues being raised with her, was a sufficient basis on which to conclude that Ms Reid's evidence about her assessment of the claimant's skills and abilities completely lacked credibility and was motivated by her anger at the claimant's compliant.

150. Mr Clark also submitted that there was no contemporaneous evidence that Ms Reid was planning to subject the claimant to performance management and her evidence that she intended to do so was a fabrication. He submitted that when Ms Reid was asked in cross examination if she could point to any evidence in the bundle to support her evidence that the claimant was not performing the only document that she was able to refer to was the email that she sent to the claimant in September 2022, in which she stated *"Hi Lynne, needs a wee tweak.. and not sure it fully answers the query regarding the continuous interruptions to supply?"*

151. The Tribunal however found the reasons why Ms Reid had not subjected the claimant to any kind of performance management to be persuasive. Aspire, the respondent's performance programme, was paused because of COVID-19. 'My Story' was not implemented until September 2022. Ms Reid was only appointed in November 2020 and it was plausible that she would monitor the claimant's performance for a year and then have a conversation with her

about performance issues at the end of that, as she suggested. Ms Reid's evidence was that her one to one's with the claimant focused on the positives of her performance, however she also said that she had given the claimant writing tips and that she had asked Ms Boyce to mentor and train her. In response to the suggestion in cross examination that the 1 September email was the only document criticising the claimant was not correct and that there would have been other emails similar to that one. The Tribunal did not consider that it lacked plausibility that Ms Reid would monitor the position for a year and plan to have a conversation at the end of that period, to address development areas.

152. Mr Clark also submitted that Ms Reid's credibility was damaged in that she denied that the claimant trained her when she first started in the team. This, he submitted, was not expected to be a particularly contentious issue, as it would be commonplace for an existing member of any team to provide training to a new employee, and the reason she denied this is that she did not want the Tribunal to get the impression that the claimant was competent enough to provide any training, as this was contrary to the respondent's false narrative that the claimant is incompetent.

153. Mr Clark's question to Ms Reid did not identify any specifics of what type of training was said to have been provided by the claimant to Ms Reid. Ms Reid's response to the question was that she already had the skills and did not need training to so her job as a manager. The claimant's evidence was that she provided training to Ms Reid in that she showed her the tasks that the claimant carried out, where work was stored and provided her with lists of contacts. This is not likely to be viewed as management training and it appeared to the Tribunal that the reason for Ms Reid's denial that the claimant trained her turned on the lack of specificity on the proposition put in cross examination, and her interpretation of training, as opposed to the claimant's interpretation of training. The Tribunal therefore drew no inference adverse to Ms Reid's credibility as a result of this denial.

154. Ms Clark also placed considerable reliance on a factual dispute between the claimant and Ms Reid in relation to a telephone call in which Ms Reid alleges

that the claimant expressed concern that she was not suitable for the role of CAS for various reasons. The fact that such a conversation took place was forcefully denied by the claimant who gave evidence she would not have applied for the role of CAS unless she thought she was able to perform it and wanted the role.

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155. Mr Clark invited the Tribunal to find that this this conversation was a fabrication on the part of Ms Reid in order to give the Tribunal the impression that the claimant did not have confidence in her abilities and to support the respondent's defence to the claim. He asked the Tribunal to note that the respondent's representative did not cross examine the claimant's evidence that the alleged conversation did not take place.

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156. Mr Clark accepted that, in terms of the issues which the Tribunal had to consider, nothing was turned on whether the conversation took place.

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157. In considering this, the Tribunal take into account that there was a clear factual dispute as to whether the conversation took place or not and that the claimant's evidence was not challenged in cross examination. Mr McLaughlin submitted was due to an error on his part. Notwithstanding this omission, the Tribunal had the opposing evidence of Ms Reid and the claimant as to what took place.

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158. The Tribunal accepted, Ms Reid said, that it was common for employees to speak to their manager about a post they were considering applying for, which rendered it plausible that the claimant would do so. Further nothing turned on whether the conversation took place, which makes it less likely that Ms Reid would lie about it. While Mr Clark submitted that Ms Reid's evidence was part of the respondent's agenda to paint a negative picture of the claimant, one of the matters Ms Reid said the claimant talked about in the telephone call was raised by the claimant herself in the course of her interview. When she was asked was there anything she would like to add she was noted as responding: *"that will be a challenge, might struggle at first, learning and developing. Looking for help of colleagues. Using skills I have gained so far. Hopefully my confidence will build. I haven't done before."* On balance, taking these factors

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into account, the Tribunal was prepared to accept the evidence of Ms Reid on this matter

Mr Fraser and Ms Brown

- 5 159. There were no significant issues of credibility or reliability arising from the evidence of Mr Fraser or Ms Brown.

The claimant

- 10 160. The credibility of the claimant's evidence is not central to the Tribunal's determination of this claim. Mr McLaughlin however made submissions as to the claimant's credibility and reliability on the basis of what he categorised were her evasive answers to questions and her answers to questions which he suggested were made up as the evidence went along.

- 15 161. The Tribunal did not always find the claimant to be a credible or reliable witness. She was evasive in answering questions, she sometimes lacked consistency and she struggled on occasions to make appropriate concessions. For example, the claimant sought to suggest that her performance at interview was adversely impacted by the short notice she had of it. In cross examination, she initially gave evidence to the effect that she considered she performed well at interview. She later modified that position, saying that she considered she did well at the interview given the notice she had of it. The claimant went on to take issue with the interview notes, saying not everything she said was properly noted and denying some of what was noted, for example her answer to a question where she indicated that she might struggle at first and would be looking for help from colleagues. The
20 interview notes had not been challenged by Mr Clark, that the claimant has been in possession of them for a considerable period of time, but could give no plausible explanation as to why her position on this only emerged in cross examination. The Tribunal was satisfied that the interview notes did represent an accurate summary of the claimant's answers. They were spoken to by Ms
25 Reid and by Mr Fraser and there was no challenge to their accuracy in cross
30 examination or on submission.

162. The claimant was asked in cross examination if she accepted there were many errors in the press release she prepared for interview. Despite having heard Ms Reid's evidence on this and having seen the interview notes, she asked "*what errors?*" She did however go on to concede that it was "*not her best work*", but she sought to explain this by saying that she had project management meetings to go to, so she cut short the time to carry out the exercise to about 20 minutes. Even if the claimant had short notice of the interview, it lacked plausibility in that she would have limited herself in this way in a matter as important as a job interview, and her evidence on this point was not convincing.
163. The claimant's evidence as to the number of press releases she drafted lacked reliability. In evidence in chief, she said that did 10-15 per month. She said that she did about "*100 a year*". She was asked how many she did over a five year period and answered "*a good few hundred, quite possibly 300*". The Tribunal take into account that the figures provided were approximate, however the claimant's estimate as to how many press releases she had prepared differed by a factor of 200, which was not inconsiderable and called into question the reliability of her evidence on this. The Tribunal did not in fact consider there was any material dispute between the claimant's evidence and Ms Reid's evidence as to the extent to which the claimant's press releases were amended. The claimant said that not that many were criticised, but sometimes they would be *tweaked*. The evidence before the tribunal support the position that the claimant was subject to direct criticism in relation to press releases, but rather that they were revised and she was provided with a copy of the revised version. The Tribunal accepted Ms Reid's evidence that she and Ms Boyce prepared the majority of the press releases.
164. Nor did the Tribunal conclude that there was any material dispute as to the claimant's evidence as to how her working week was and how it divided up in terms of time. In his submissions, Mr Clark referred to the claimant's unchallenged evidence that she worked 37 hours per week, the tasks she undertook and average amount of time she spent undertaking them. The Tribunal accepted this evidence. There was however little in that list to

indicate that the claimant was undertaking the writing or social media aspect of the communications officer role, which supported Ms Reid's position that these were the skills she needed to recruit into her team

Submissions

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165. Both parties made written submissions which they supplemented with oral submissions. In the interests of brevity, these are not set out here in full, but are dealt with below, and above under the Note on Evidence, where relevant.

Consideration

10 166. There was significant agreement as to the relevant law which the Tribunal had to apply.

167. The relevant statutory provision is Section 69 of the EQA, which provides:

15 (1) *The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which—*

(a) *does not involve treating A less favourably because of A's sex than the responsible person treats B, and*

20 (b) *if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.*

(2) *A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.*

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(6) *For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's.*

168. The claimant does not rely on section 69 (1) (b), (indirect discrimination).

169. Mr Clark also referred the Tribunal to ECHR Statutory Code of Practice in relation to equal pay, paragraphs 9 , 27, 31 and 76 and 78, accepting that it does not itself impose legal obligations, but helps explain the legal obligations under the EQA.

5 170. The Tribunal began by considering the guidance given in *Glasgow City Council v Marshall and others* [2000] 1 WLR 333 in which Lord Nicholls, set out what was required to establish the material factor defence He stated as follows:

10 *“The scheme of the Act is that a rebuttable presumption of sex discrimination arises once the gender-based comparison shows that a woman, doing like work or work rated as equivalent or work of equal value to that of a man, is being paid or treated less favourably than the man. The variation between her contract and the man’s contract is presumed to be due to the difference of sex. The burden passes to the employer to show that the explanation for the variation is not tainted with sex. In order to discharge the burden the employer must satisfy the tribunal on several matters. First, that the proffered explanation, or reason, is genuine, and not a sham or pretence. Second, that the less favourable treatment is due to this reason. The factor relied upon must be the cause of the disparity. In this regard, and in this sense, the factor must be a ‘material factor’ that is, a significant and relevant factor. Third, that the reason is not “the difference of sex”. This phrase is apt to embrace any form of sex discrimination, whether direct or indirect. Fourth, the factor relied upon is or, in a case falling within section 65(1)(c) EqA may be a “material” difference . that is a significant and relevant difference, between the woman’s case and the man’s case.*

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When section 1 is thus analysed, it is apparent that an employer who satisfies the third of these requirements is under no obligation to prove a “good” reason for the pay disparity. In order to fulfil the third requirement he must prove the absence of sex discrimination, direct or indirect. If there is any evidence of sex discrimination, such as evidence that the difference in pay has a disparately adverse impact on women, the employer will be called upon to satisfy the tribunal that the difference in pay is objectively justifiable. But if the

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employer proves the absence of sex discrimination, he is not obliged to justify the pay disparity.”

171. The Tribunal also had regard to *Walker v Co-operative Group Limited [2020] EWCA Civ 107*, referred to by Mr Clark, which affirmed that the material factor defence does not require an employer to show that any difference in pay is justified; that the question the Tribunal has to ask is whether the material factor is causative of the difference in pay (i.e. the factor explains the difference in pay).

172. Some guidance is obtained on the meaning of significant and relevant in *Rainey v Greater Glasgow Health Board 1987 UKHL 16*, (referred to by Mr Clark) and the passage of Lord Keith stated at para 13:

“The difference (ie the factor explaining the pay differential) must be “material”, which I would construe as meaning “significant and relevant”, and it must be between “her case and his”. Consideration of a person’s case must necessarily involve consideration of all circumstances of that case. These may go well beyond what is not very happily described as “the personal equation” ie the personal qualities by way of skill, experience or training which the individual brings to the job. Some circumstances may on examination prove to be not significant or not relevant, but others may do so, though not relating to the personal qualities of the employee. In particular, where there is no question of intentional sex discrimination whether direct or indirect (and there is none here) a difference which is connected with economic factors affecting the efficient carrying on of the employer’s business or other activity may well be relevant.”

173. Mr Clark also referred the Tribunal to *BMC Software Ltd v Shaikh [2019] EWCA Civ 267*, Underhill LJ said:

“...that the burden is on the employer to prove (by sufficiently cogent and particularised evidence) that the factor relied on explains the difference in pay complained of ...if an employer is going to seek to justify a pay disparity based on a factor such as the comparator’s promotion or superior “merit” or “market forces” it needs to be able to explain with particularity what those factors mean

and how they were assessed and how they apply in the circumstances of the case. It is evident from the tribunal's findings that BMC was simply unable to do that because of its chaotic and wholly non-transparent "employment systems". The equal pay risks in having non-transparent systems is a commonplace of equal pay law."

174. There is therefore a rebuttable presumption of sex discrimination. The burden rests with the respondent to prove:

- (1) that the real reason for difference in pay is not a sham;
- (2) that the factors relied upon are causative of the difference in pay between the claimant and her comparator and that the factors are significant and relevant; and
- (3) that the reason for the difference is not a difference in sex.

175. The first of these is not an issue for this Tribunal. It is not suggested that the factors are a sham.

176. The Tribunal therefore began by considering whether the factors relied upon were causative (i.e. explained) the difference in pay and were significant and relevant.

177. The Tribunal also reminded itself that what it has to do is make an assessment on an objective basis as to what was the cause of the pay disparity. One of Mr Clark's principle submissions was that the respondents had failed to call the comparator MB. This, he submitted, was fatal to their defence. He submitted that Ms Reid's evidence was incredible and could not be relied upon. This then left the respondents with Mr Fraser and Ms Brown, and their evidence was insufficient to discharge the burden of proof which rested on the respondents.

178. For reasons which are dealt with above, the Tribunal did not find Ms Reid's evidence to be incredible and unreliable. The Tribunal did not consider that it would have been assisted by hearing evidence from MB. What the Tribunal has to do is consider the respondent's reason for the disparity in pay, and

assess whether on an objective basis the reasons they rely upon caused the difference in pay.

179. The factors relied upon are skill, experience and potential. The Tribunal considered each of these in turn.

5 *Skills*

180. The Tribunal was satisfied that Ms Reid concluded that MB's writing skills and his skills in the creation of digital content were superior to the claimant's skills in those areas. Comparison of MB's and the Claimant's CV and performance at interview supported such a view. The claimant's CV contained numerous errors of spelling and grammar, whereas MB's did not. MB very considerably outperformed the claimant on the written exercise which they both completed. The written exercise which he produced at interview was assessed as excellent whereas the claimant's written work was found to contain significant errors, both in the information presented and in the standard of written English. The panel were also critical of the content of the claimant's written exercise.

181. Ms Reid's view of the claimant from her experience of working with her was she did not have the excellent written skills or a high level of accuracy in written work, which were required at points 1 and 2 of the key personal skills in the job description of the CAO. For reasons given in the Note of Eevidence, the Tribunal was satisfied that Mr Reid genuinely held that view and that she has a basis for doing so.

182. At interview, the panel assessed that the claimant had demonstrated limited direct experience of producing and delivering digital content and that this this would be an area for potential. This assessment was in keeping with Ms Reid's experience of the claimant's work in producing digital. She knew that the claimant had previously carried out some work on a Top up Tap webpage. She also largely maintained the respondents Webpage. This was also reflected in the claimant's CV. This work which largely involved uploading photographs and following a pro forma template.

183. In contrast, MB's CV identified that he had been responsible for coordination of all council press and media communications including social media and internal publications; and that he had delivered new advertising process through social media platforms as part of budget saving. At interview, the panel assessed that MB demonstrated a good grasp of different digital platforms and their uses, and that he was very adept at digital content creation.
184. The Tribunal considered whether the respondents had established that skills were a significant and relevant factor. In addition to Ms Reid's knowledge of the claimant's skill set, the interview process provided an opportunity to assess the relative skills/experience/potential of the claimant and MB. The Tribunal, however, keep in mind, as it was reminded by Mr Clark, it is not considering the CAS role for which the interviews were conducted, but the CAO role in the West Team, into which MB was recruited.
185. The CAO role is a communications role. The Corporate Affairs department in which the role sits had previously gone under the name of the Communications Department. The first two requirements in the job description under essential skills and knowledge were:
- *Excellent written verbal and listening communication skills; and*
 - *A high level of accuracy in written work.*
186. The first requirement under professional skills was:
- *"in depth knowledge and understanding of principles of effective communication and media and the application of these principles in a work environment to achieve desired outcomes."*
187. It was Ms Reid's view that the claimant did not possess these skills.
188. The function on which the CAO role sat was Communications and the fact that these were the first two essential skills on the job description supported the conclusion that good written skills were significant to the role. Further given the terms of the job description and nature of the function in which the

CAO role sat, the Tribunal accepted Ms Reid's evidence that much of the role of CAO was around the creation of content. This is also supported by the terms of point (1), (2) and (4) of the key accountabilities in the CAS job description. It also accepted Mr Reid's evidence that writing skills were a skill set that her team was lacking, and that she did not consider claimant had good writing skills.

189. The Tribunal also accepted Ms Reid's evidence that she also considered that there was a skills gap in the team in that it lacked skills in terms of creation of digital content and engagement with social media which she considered to be part of the CAO role, as identified in the first requirement of the professional skills in the CAO job description. Ms Reid's view of that there was a skills gap is in fact supported by the claimant's own evidence as to how her working week was made up. As submitted by Mr Clark, the claimant give evidence as to a list of tasks which the role of CAO involved as per the terms of her CV. However, notwithstanding the evidence the claimant gave about the job duties of a CAO, there is little from her evidence about how she spent her time at work to indicate that she undertook any significant degree the written work or digital content creation aspects of the CAO role,

190. In considering this the Tribunal also reminded itself of what was said by the EAT on appeal in this case (*Scottish Water v Edgar* [2024] EAT 32) to the effect that the Tribunal had erred "... *in determining that comparative evidence of the respective skills and abilities of the claimant and Mr B from a period in time after Mr B's appointment was irrelevant. Such evidence was plainly relevant to proof of a material factor defence to the extent that it showed the difference in skills and abilities between the claimant and Mr B both at the date of Mr B's appointment and thereafter. The burden of proving those things was on the appellant, and it was a material error of law on the part of the Tribunal to hinder the appellant in seeking to discharge that burden.*"

191. The Tribunal was satisfied that after he joined Ms Reid considered that MB was a high performer, and that he exceeded her expectations. The fact that she formed such a view is supported by the samples of MB's work which the

Tribunal was taken to in evidence. The press releases, a CEP, and a communications plan produced by produced by MB , were assessed by Ms Reid to be of a much better quality and standard in comparison to similar documents produced by the claimant. Consideration of the work produced by MB against that produced by the claimant demonstrated there was basis for her assessment.

192. The Tribunal was also taken to pieces of digital content created by MB and the claimant in the relevant period. Ms Reid assessed MD's output to be of a much better quality and standard in comparison to the digital content created by the claimant. She considered that MB's output demonstrated initiative and creativity which was very beneficial to the performance of the CAO role in that it was found to be helpful by stakeholders. This is in comparison to the claimant's output which largely followed a pro forma template.

193. The Tribunal was satisfied that that the respondents had demonstrated that the fact that MB had better writing and digital skills than the claimant, was a significant and relevant difference between him and the claimant in the performance of the CAO , related to pay, at the date of appointment and throughout the relevant period.

Experience

194. There was no attempt by the respondents on submission to separate the factors of skills and experience. The claimant had experience of working in the respondent's organisation, and this was experience which MB did not have. In this regard she was more experienced than MB. The fact that the claimant showed MB some of the operational aspects of the job was clearly a product of this.

195. There was, however, a basis for Ms Reid's view that MB had greater experience than the claimant in carrying out the work of a Communications Officer. MB's CV indicated the duties he carried out at Inverclyde Council were the same or a very similar to the duties of a CAO with the respondents, albeit within a different public body . He had almost five years more experience than the claimant of working in the field of Communications and

had experience of producing written material in his work at a broadcast journalist. On the basis of the information contained in MB's CV, and on the panel's assessment of his performance at the interview, she had a basis on which to conclude that his experience as a Communications Officer and as a broadcast journalist had allowed him to develop excellent writing and digital skills which she did not consider the claimant possessed. This experience was therefore relevant and significant the role of CAO in the Team for which she was recruiting. It was the experience in these areas which her team needed; the experience which the claimant had of working with Scottish Water, was not experience which her team lacked. The Tribunal was satisfied that MB's experience was therefore a significant and relevant difference between his case and the claimant's case. Further having regard to the relative performance of the claimant and MB after he joined, as set out above under *Skills*, the respondents had grounds on which to conclude that MB's experience continued to be a material difference between his case and the claimant's throughout the relevant period and that it was a significant and relevant difference in relation to pay.

196. *Potential*

197. Mr Clark referred the Tribunal to *Guest v Ferro (Great Britain) Ltd EAT 287/77* as reported in IDS, which warned employers should be wary of making such a factor a basis for their defence. However, in this case the respondents had an opportunity to assess MB's abilities as result of the interview process and having done that, they considered that he was a suitable candidate for the B grade CAS post. The interview panel's assessment of MB's performance at interview under each of the categories and the scores they awarded him under each category are also as set out in the findings in fact. They considered that he needed a greater understand of the respondent's role in reactive comms, but that at interview he had displayed an excellent skillset .

198. They also considered that it was very close decision for appointment and wanted to give positive feedback based on this to establish if MB interested in pursuing the Corporate Affairs Officer role.

199. MB scored 14 in their assessment of his performance against the criteria of the behavioural questions and 9 for technical skills, knowledge and experience. The panel's assessment of MB is indicative of what skills and abilities it was thought he could bring to the CAS post. MB was considered to be a very high level candidate for that job and he was assessed as suitable for the B Grade post. The only reason he was not offered that position because the internal candidate, whom the panel were predisposed towards appointing, scored one more point than him at interview.
200. When he took on the C Grade CAO post, MB was therefore considered suitable for appointment to the Grade B CAS post, demonstrating that when MB was appointed it was considered he was capable – that he had the potential- taking on a job which required more skills and responsibility in the CAT than the CAO role.
201. This is in contrast to the panel's assessment of the claimant. Their assessment of her at interview is as set out in the findings in fact. While this including that they considered she reflected some real strengths in the examples given (but not all of them are at the core of the role of CAS) and that she was proficient in her area of expertise, they also identified that she would benefit from further developing her technical skills and experience in a broader range of the activities that Corporate Affairs carries out. The claimant scored a total of 8 for behavioural questions and 5 for technical skills and knowledge questions. She was not considered to be a high performing candidate for the B grade post.
202. Mr Clark referred the Tribunal to Ms Reid's evidence to the effect that the claimant was also capable of undertaking a B grade post. This, he submitted, should prevent the respondents from insisting on potential as a material factor.
203. There was however, a clear difference between the detailed evidence as to why Ms Reid and the interview panel were satisfied that MB could undertake a B grade post in CAT and Ms Reid's evidence about the claimant's potential. She was asked in cross examination if she accepted that the claimant was

capable of working at B grade. She responded, not in the Communications team; maybe in a team that was not Communications, but she did not know where, but in a different area that did not involve Communications. Her evidence, therefore, as to the claimant's potential to take on a grade B post was very generalised, and did not identify other that very generally, what skill the claimant might bring to a role, or identify a specific department, within Scottish Water where the claimant might take on a B grade post.

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204. The Tribunal also considered the fact that both the claimant and MB were selected for interview. It seemed to the tribunal however that the reason for selection of the two candidates differed to the extent while all candidates were vetted, and the respondent's witnesses said they were satisfied the best candidates were selected, the evidence was also that all internal candidates were automatically selected for interview. The Tribunal therefore did not consider that a good deal could be drawn from the fact that the claimant and MB were both selected for interview for the CAS post.

205. Mr Clark also submitted that this account should be taken of the fact that a candidate might perform well or badly on the day of interview.

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206. However, the evidence demonstrated that the respondents considered on the basis of MB's work after he joined that he was exceeded expectations, which supports the conclusion that the panel and Ms Reid had a basis on which to conclude at interview that MB had potential, and that during the relevant period he fulfilled that potential. MB's potential is also reflected in the fact that he was subsequently promoted to a B grade post, working in the Communications area of the respondent's restructured business.

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207. Taking these matters into account, the Tribunal was satisfied that the respondents had established that MB's potential was a significant and relevant difference, related to pay between his case and the claimant's case during the relevant period.

Difference Not related to Sex

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208. The Tribunal then considered whether the difference in pay was related to sex. In doing so it takes into account what was said in *Calmac Ferries v Wallace* UKEAT/0014/13/BI to the effect that where pay disparity arises it is not sufficient for the employer to show why one party is paid as one party is, and that what is required is consideration of why the claimant is paid as she is and separately why the comparator is paid as he is
209. There was no issue between the parties as to the reason why the claimant was paid as she was. That was because she was appointed to the CAO role at the bottom of the C grade salary band. In common with the majority of the respondent's employees, her salary increased in line with salary increases negotiated with the reorganised trade unions and as a result of the respondents pay and grading system there were very limited means of achieving a higher salary.
210. The Tribunal was satisfied that the reason why MB was paid more than the claimant was that the respondents wanted to recruit him because of his skills, experience and potential. In order to do so they had to pay him at minimum of £35,000, his salary when he left Inverclyde, and that Ms Reid considered that it was a reasonable incentive to offer him what his salary would have been had he remained with Inverclyde. The Tribunal did not consider that anything turned on the fact that MB had been working freelance before he was recruited. Ms Reid was permitted to exercise discretion in terms of the respondents Recruitment Policy, and salary MB was offered fell within the C band pay grade, which was also permissible.
211. Mr Clark pointed to Ms Brown's evidence to the effect that she could not recall an instance of when an external candidate had been offered more. Ms Brown accepted that she could not recall an instance off hand, but that that offering an external candidate a salary that fell within a grade band was an accepted interpretation of the policy. Taking into account the terms of clause 4.3, which permits the exercise of discretion having regard to a non-exhaustive list of factors, the Tribunal did not consider that too much weight could be attached to her inability to recall an instance of when it has occurred.

212. The Tribunal was satisfied that the respondents wanted to recruit MB into the CAO role because of his skills, experience and potential which was a material difference between MB and the claimant, and this was the cause of the difference in pay between MB and the claimant, which was unrelated to sex.

5 **Conclusion**

213. The effects of these conclusions is that the Tribunal was satisfied that the respondents had established that MB's, skills, experience and potential were a significant and relevant difference, related to pay, between his case and the claimant's case on appointment and during the relevant period, which was not
10 related to the difference in sex.

214. The respondent's defence under Section 69 (1) of the EQA therefore succeeds and the claim is dismissed.

15 **Date sent to parties**

25 April 2025